UNION BUDGET – 2022

ANALYSIS OF KEY DIRECT TAX PROPOSALS

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Key Direct Tax Proposals at a glance:

Direct tax proposals presented in the Union Budget 2022-23 by Hon'ble Finance Minister Smt Nirmala Sitharaman on the surface looked like a mix of reforms for simplification of procedural issues alongwith provision of some tax incentives and reduction of litigation. While the intention is commendable; however, as one reads the fine print of the Finance Bill, 2022, the idiom – *'Devil lies in the details'* comes to play as there are some significant amendments which are proposed but were not elaborately or explicitly covered in the Budget Speech. We have analysed some of the significant Direct Tax proposals as under:

1. Voluntary compliance for income not offered in the tax return filed earlier

1.1. Provisions of section 139(1) lays down the time limits for furnishing the return of income. Section 139(4) allows a person to file the tax return **belatedly** before 3 months prior to the end of the relevant Assessment Year and section 139(5) provides an option to **revise** the tax return which is to be filed 3 months before the end of the Assessment Year. In a scenario where after filing the tax return or where no tax return is filed, taxpayer obtains information that certain **income has remained to be offered to tax** in the tax return filed earlier or in case no tax return is filed earlier, **additional time of 24 months** is proposed to be granted in order to file an "updated tax return" to offer the said income to tax. New sub-section (8A) under section 139 is proposed to be introduced to provide for furnishing of updated return applicable from 1st April, 2022.

1.2. Following are the conditions proposed for filing an updated return under the new provisions:

- The provisions shall not apply, if the updated return is a return of loss or has the effect of decreasing the total tax liability or results in refund or increases the amount of tax refund claimed in the tax return filed earlier.

- A person shall not be eligible to file updated tax return in cases where proceedings for search /survey / seizure are initiated

- The option to file the updated tax return can be availed only once for the relevant assessment year.

- The option to file updated tax return shall not be available if:

  - Any proceeding for assessment or reassessment or recomputation or revision of income or prosecution proceedings under Chapter XXII under the Act is pending or has been completed for the relevant assessment year.
  - The Assessing Officer has information in respect of the tax payer for the relevant assessment year under the PMLA / Black Money Act or the Prohibition of Benami Property Transactions Act, 1988 or The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 or information has been received under an agreement referred to in sections 90 or 90A and the same has been communicated to the taxpayer prior to the date of filing the updated tax return.

- The updated tax return shall be accompanied by the proof of payment of the tax payable under section 140B. The tax and interest so payable shall be after considering the credits of TDS, advance tax, self assessment tax and other reliefs, wherever applicable.

- Alongwith the aforesaid tax and interest payable in relation to the income offered to tax, **an additional tax** is also payable which shall be equal to **25%** of the tax and interest so computed which is to be paid alongwith the updated return **where the updated return is furnished within 12 months** from the end of relevant Assessment Year and **50%** of the tax and interest if the updated return is furnished **after 12 months but before 24 months** from the end of the relevant assessment year. Thus, a penal tax is payable at the rate of 25% and 50% over and above the tax and interest payable on the additional income offered to tax in the updated tax return.

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The intention behind introduction of this provision as quoted in the Explanatory Memorandum to Finance Bill is *"the **additional timeline for filing a revised/belated return may not be adequate when we factor in utilization of huge information and data available** coupled with the "nudge approach" that motivates the taxpayer towards the desired objective of voluntary tax compliance, starting with filing of correct tax returns."* However, the new provision is **applicable only in cases where there is additional income to be offered** to tax which results either in increase of the tax liability or reduction of tax refund or reduction in the amount of loss. There may be cases **where certain loss or any other benefit / relief which has remained to be claimed** in the original tax return and the time limit for revising the tax return has lapsed. In such cases, the taxpayer would not be eligible to file an "updated return" as per the new provisions and **be at the mercy of Tax Authorities to admit the same during the course of regular assessment proceedings / appellate proceedings**. Further, the **additional penalty** levied at the rate of **25% / 50%** of the aggregate taxes and interest may also serve as a disincentive in cases where there are legal claims for which the taxpayer may seek to **litigate instead of offering the same under the updated tax return**.

2. Faceless assessment proceedings to be valid even if no draft assessment order is issued

2.1. The procedure for conducting Faceless Assessment is laid down under section 144B of the Act. Before passing of the assessment order under section 143(3), the Assessing Officer is required to service a **"draft assessment order"** upon the assessee to show cause why the proposed variations should not be made.

2.2. Sub-section 9 of section 144B expressly provided that assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) other than the cases transferred under sub-section (8), on or after the 1st day of April, 2021, **shall be non est if such assessment is not made in accordance with the procedure laid down under this section**.

2.3. Assessments were completed in many cases without adhering to the procedure laid down in section 144B either on account of non granting of opportunity of being heard or non service of draft assessment order prior to issue of the assessment order under section 143(3). As a consequence of the violation of the principles of natural justice, several writ petitions were filed before various High Courts. Invariably in all such cases, the Courts decided in favour of the assessees.

2.4. The Finance Bill, 2022 proposes to **omit the provisions of sub-section (9) of section 144B with retrospective effect from 1-4-2021,** i.e. from inception.

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As per the Explanatory Memorandum to the Finance Bill, it is stated that a large number of disputes have been raised under subsection (9) **involving technical issues** arising due to use of information technology, leading to **unnecessary** litigation. It is, therefore, proposed to omit this subsection i.e., sub-section (9) of section 144B from its date of inception. This amendment proposed seems barbaric and it implies that even if the procedure laid down for Faceless Assessment is not followed, the orders passed under section 143(3) would be valid!
However, regardless of the omission of the sub-section (9) of section 144B of the Act, the **principles of natural justice** would still continue to be respected by the Courts and therefore, the **proposed omission is not likely to have any implications on the orders passed which are devoid of nature justice**.

3. Changes in the scope of reassessment proceedings

3.1. The Finance Act, 2021 amended the provisions for carrying out reassessment proceedings under the Act with effect from the 1st April, 2021. The said amendment modified, *inter alia,* sections 147, section 148, section 149 and also introduced a new section 148A in the Act.

3.2. Under the provisions of **section 148A,** the Assessing Officer prior to reopening the assessment for any year is required to **conduct independent inquiry** and **provide opportunity** to the taxpayer before issue of notice under section 148. A prior approval of the Principal Commissioner or Commissioner is required prior to issue of notice under section 148A.

3.3. In order to reduce the compliance, it is now proposed under the Finance Bill 2022 that once the approval of the Principal Commissioner or Commissioner is sought and order is passed under section 148A(d) for reopening of the proceedings under section 148, the approval stipulated under section 148 would not be required to be taken again.

3.4. Finance Act, 2021 had stipulated that the notice under section 148 can be issued only if the Assessing Officer has any **information** which suggests that income has escaped assessment. The term 'information' was defined under the Explanation to section 148 to mean **information which has been flagged** in the case of the assessee for the relevant assessment year in accordance with the **risk management strategy formulated by**

CBDT or **a final objection raised by the CAG** that the original assessment not made in accordance with the provisions of the Act.

3.5. It is now proposed to omit the word 'flagged' from the above Explanation and to include **any audit objection, or any information received from a foreign jurisdiction under an agreement or directions contained in a court order, or information received under a scheme notified under section 135A etc**.

3.6. Further, the re-opening period stipulated under section 149 was reduced **from six years to three years** vide the Finance Act 2021. However, an exception was provided that in cases where the **income in the form of an asset**, exceeding Rs. 50 lakhs has escaped assessment, such cases can be reopened up to **ten years**.

3.7. Finance Bill, 2022 has proposed amendment under section 149 to provide that a notice under section 148 shall be issued for the relevant assessment year after three years but prior to ten years from the end of the relevant assessment year where the Assessing Officer has in his possession, books of account or other documents or evidence which reveal that the income chargeable to tax, represented:

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

which has escaped assessment amounts to or likely to amount to fifty lakh rupees or more.

3.8. Further, in cases where the value of Rs 50 lakhs in respect of the investment in such asset or expenditure has been made or incurred, in more than one previous years relevant to the assessment years within the period, it is proposed that notice under section 148 shall be **issued for every such assessment year** for assessment, reassessment or recomputation, as the case may be.

These amendments will take effect from 1st April, 2022.

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The scope of reassessment proceedings for assessment years **beyond 3 years upto 10 years** prior to the end of relevant assessment year are proposed to be **enhanced** in respect of the income escaping assessment exceeding Rs 50 lakhs to include in addition to any asset, any **expenditure or entries in the books of accounts**. This widening of the scope would have far-reaching implications and would practically cover any issue (exceeding Rs 50 lakhs) for the purpose of reopening.

Further, Finance Act 2021 had provided for applicability of the new provisions of section **148A with effect from 1st April 2021**. However, the Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020 provided that the **old mechanism** of issuing notices under section 148 shall be applicable **till the month of June 2021**. Pursuant thereto, several notices were issued for reopening following the

old mechanism prescribed under section 148 post 1st April 2021 **without the recourse to the new provision under section 148A**. These notices were challenged by way of writ petition before several High Courts. Delhi, Allahabad, Rajasthan and Calcutta High Courts have held that the notices issued under section 148 under the old regime on or after 1st April 2021 **without following the new provisions laid under section 148A are invalid and bad in law**. There is no proposal under the Finance Bill 2022 to clarify on this issue and therefore, this issue appears to have reached finality, unless the Hon'ble Apex Court holds it otherwise.

4. Deduction for Education Cess not allowable

4.1. As per the provisions of section 40(a)(ii), any sum paid on account of any rate or tax is expressly disallowed in following two scenarios:

(i) where the rate is levied on the profits or gains of any business or profession, and
(ii) where the rate or tax is assessed at a proportion of or otherwise on the basis of any such profits or gains.

4.2. **Hon'ble CBDT** vide Circular No. 91/58/66 - ITJ(19) dated May 18, 1967 had stated that the effect of the omission of the word **'cess' from section 40(a)(ii)** is that only taxes paid are to be disallowed in the assessment for the years 1962-63 onwards. Relying on this Circular, **Hon'ble Bombay High Court in the case of Sesa Goa [2020] 117 taxmann.com 96 (Bombay) and Hon'ble Rajasthan High Court's decision in the case of Chambal Fertilisers** – ITA No. 52/2018 dated 31.07.2018) held that **'education cess' can be claimed as an allowable deduction** while computing the income chargeable under the heads "profits and gains of business or profession".

4.3. Basis the above High Court rulings, ITAT in several cases admitted the additional ground of appeal raised by the assessees and granted the deduction for education cess under section 40(a)(ii) read with section 37(1).

4.4. In the above rulings, **it was observed that the intention of the legislature was not to include 'cess' under section 40(a)(ii)** and therefore, the education cess being a 'cess' would be out of purview of the disallowance under section 40(a)(ii). In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to include **an Explanation retrospectively** in the Act itself to **clarify that for the purposes of this sub-clause, the term "tax" includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax**. Amendment is **made retrospectively** with effect from 1st April 2005 to make clear the position irrespective of the circular of the CBDT.

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In a detailed legal written submissions-styled write-up, Explanatory Memorandum to the Finance Bill, 2022 seeks to explain the rationale behind introduction of such amendment. Reliance is placed on the **Kolkata ITAT** in the case of Kanoria Chemicals & Industries Ltd [TS-1129-ITAT-2021(Kol)] wherein the both the above

High Court rulings were evaluated and it was held that the issue of allowability of education cess under section 40(a)(ii) is squarely covered by **Supreme Court ruling in K. Srinivasan** where **surcharge and additional surcharge were held to be a part of the income-tax;** ITAT observed that the **Supreme Court ruling and the provisions of Finance Act, 2004 and the relevant provisions of Section 2(11) and (12) of the subsequent Finance Acts were not brought to the knowledge of the two High Courts.** Though this amendment puts an end to the litigation in this matter, the retrospective amendment may render certain settled cases unsettled.

5. Clarifications in relation to successor entity under the schemes of reorganization

5.1. In the schemes of reorganization which are pending approval from the National Company Law Tribunal, the appointed date of the scheme is ordinarily a much earlier date than the effective date of the reorganisation. In the intervening period from the Appointed date till the effective date, there may be certain proceedings which are initiated against the predecessor company. Certain Courts have held the income tax proceedings and assessments which are completed on the predecessor entities to be illegal since the predecessor assessee ceases to exist.

5.2. Finance Bill 2022 proposes to insert **sub-section (2A)** to **section 170,** to provide that in the event of a business reorganisation, the assessment or other proceedings pending or completed on the predecessor **shall be deemed to have been made on the successor**.

5.3. Further, Finance Bill 2022 proposes to insert **Section 170A** to enable the entities going through business reorganisation to **file modified returns** for the period between the appointed date and the date of issuance of final order of the competent authority on business reorganization.

5.4. Further, in the cases of business reorganisation, there are instances where the Court or Tribunal or an Adjudicating Authority under section 5(1) of Insolvency and Bankruptcy Code, 2016, **recasts the tax liabilities** leading to **modified tax demand** and presently there is no procedure or mechanism in the Act **to reduce such demands from the outstanding demand register;** To facilitate this, Finance Bill 2022 also proposes to insert **Section 156A** to **give effect to the orders of the competent authority and to modify such demands** in accordance with the directions; Amendments proposed to be effective from Apr 1, 2022

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These are welcome amendments plugging the inconveniences / anomalies in the provisions relating to the succession post business reorganization as well as the reduction in the tax demands post the order from Adjudicating Authority under the IBC. The facility to file a **modified tax return** of the successor entity post reorganization would enable the successor entity to file correct taxes for assessment years where the due date has already expired for revising the return of income and

without approaching the CBDT to issue order under section 119 granting the extension of time for revising the return. **However, similar provision ought to have been introduced to enable the predecessor entity to revise the tax return** or withdraw the tax return post reorganization.

6. Disallowance under section 14A even in the absence of any exempt income

6.1. As per the provisions of section 14A, no deduction is allowed in respect of any expenditure incurred in relation to income which does not form a part of the total income.

6.2. Over the years, disputes have arisen in respect of the issue whether disallowance under section 14A of the Act can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year. Several High Courts including the judgements of the Delhi High Court in the cases of Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (DEL) and PCIT v. IL&FS Energy Development Company Ltd. 250 Taxman 0174, have held that **no disallowance under section 14A of the Act should be made in respect of any expenditure incurred in earning any exempt income, in the absence of any exempt income**. Hon'ble Supreme Court has also dismissed several SLPs filed by the Tax Authorities in relation to this ground.

6.3. Finance Bill 2022 proposes to insert **an Explanation to section 14A** of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and **shall be deemed to have always applied** in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income. The amendment is applicable from 1st April 2022.

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Supreme Court had already settled this issue and upheld non-applicability of the provisions of section 14A in relation to disallowance of expenditure in the year in which no exempt income is earned / received by the assessee. However, this amendment seeks to discord the settled issue. It is pertinent to note that though the words used in the Explanation are ***"shall be deemed to have always applied",*** the amendment is proposed to have a **prospective application.**

7. Prove source of the funds lent by the lender under section 68

7.1. Section 68 of the Act provides that where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

7.2. Finance Act, 2012 had introduced a proviso under section 68 wherein it was provided that the nature and source of any sum, **in the nature of share application money, share capital, share premium** or any such amount by whatever name called, credited in the books of a **closely held company** shall be **treated as explained only if the source of funds** is also explained in the hands of the shareholder.

7.3. It has been proposed in the Finance Bill 2022 to amend the provisions of section 68 of the Act so as to provide that the **nature and source of any sum**, **whether in form of loan or borrowing, or any other liability** credited in the books of an assessee shall be treated as explained **only if the source of funds is also explained in the hands** of the creditor or entry provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

This amendment will take effect from 1st April, 2023

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In the context of applicability of provisions of section 68 in respect of any cash credit, **Supreme Court in the cases of CIT v. Lovely Exports (P.) Ltd. [2008] 216 CTR 195 (SC) and CIT v. Steller Investment Ltd. [2001] 115 Taxman 99 (SC),** have held that **identity, creditworthiness of creditor and genuineness** of transactions for explaining the credit in the books of account is **sufficient,** and the onus does not extend to explaining the source of funds in the hands of the creditor.

Basis this amendment, it would now become mandatory to explain the **source of the source** even for loan / borrowings or any other liability in order to establish the identity creditworthiness and genuineness parameters under section 68 of the Income Tax Act.

8. Appeal in abeyance in case of an identical question of law pending before jurisdictional High Court or Supreme Court

8.1. In several cases, an addition / disallowance made in the assessment proceedings of any assessment year is sought to be made in every subsequent year if the facts remain the same in the subsequent years. If the assessee gets a relief in respect of such addition / disallowance from the appellate authorities as well as the jurisdictional High Court, the Tax Authorities may have filed an appeal before the Supreme Court.

8.2. Under the existing law, provisions of section 158AA provides that if the Commissioner / Principal Commissioner is of the opinion that any question of law arising in the case of an assessee (relevant case) is **identical with a question of law arising in his case for another assessment year** (other case) which is **pending in appeal before the Supreme Court** against an order of High Court which was in favour of assessee, he may **direct the Assessing Officer** to make an application to the Appellate Tribunal stating that an **appeal on the question of law in the relevant case may be filed when**

the decision on the question of law becomes final in the other case, subject to the acceptance of the same by the assessee.

8.3. It is proposed to **expand this principle** to the identical question of law pending before the High Court even in cases **other than that of the assessee** by way of insertion of a new section 158AB in the Act. It is proposed that where the 'Collegium' (constituting of two or more Chief Commissioners / Principal Commissioners) is of the opinion that any 'Question of Law' arising in the case of an assessee for any assessment year is **identical with a 'Question of Law' already raised in his case or in the case of any other assessee** for an assessment year, **which is pending before the jurisdictional High Court or the Supreme Court** against the **order of the ITAT** or the jurisdictional High Court, as the case may be, in favour of such assessee (in other case), it may**, decide and intimate the Commissioner or Principal Commissioner not to file any appeal, at this stage, to the ITAT or to the High Court**.

8.4. The Commissioner or Principal Commissioner shall on receipt of a communication from the 'Collegium', **direct the Assessing Officer to make an application to the ITAT or jurisdictional High Court** within sixty days from the date of receipt of the order of the CIT(A) or within one hundred and twenty days from the date of receipt of the order of the ITAT, stating that **an appeal on the 'Question of Law' arising in the relevant case may be filed when the decision on the 'Question of Law' becomes final in the other case** subject to acceptance of the assessee to the effect that the 'Question of Law'.

8.5. With the introduction of section 158AB, a sunset clause is proposed to be inserted in sub-section (1) of section 158AA to provide that no direction shall be given under the said sub-section on or after 1st April, 2022.

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This is an important step towards managing and to some extent minimizing the litigation in cases where the identical question of law is pending before the Courts. The Collegium would have to actively monitor the cases and Assessing Officer would have to keep a track of the cases which are not appealed before the ITAT vis-à-vis the other cases where the question of law is pending its final outcome.

9. Changes in the provisions relating to Search, Seizure and Survey proceedings

9.1. **No Setoff of losses / unabsorbed depreciation against undisclosed income:**

- ✓ As per the provisions of the Act, setoff of losses are governed by Chapter VI which does not provide for any distinction between disclosed and undisclosed income detected in the course of search and survey proceedings.

- ✓ It is proposed to introduce new section 79A applicable with effect from 1st April 2022 to provide that where there is any **income detected during the search process** under Section 132, 132A and 133A, **no set off of any loss (whether brought forward or otherwise, or unabsorbed depreciation under Section**

32(2)) shall be permitted against such undisclosed income under any provision of this Act.

9.2. **Prior Approval of higher authorities before passing of order**

Under the provisions Search assessments inserted by the Finance Act 2021 in Section 147 to Section 151, there was no provision of prior approval of superior authority before passing of such assessment orders. It is now proposed to insert a **new section 148B** applicable with effect from 1st April 2022 to provide that no order of assessment or reassessment or recomputation under the Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, in respect of assessments consequent to search, survey and requisition to reduce avoidable inaccuracies.

9.3. **Period of limitation** – It is proposed to amend Section 153 and 153B by inserting new clause to exclude the period (not exceeding 180 days) commencing from date of initiation of search to date on which seized books of accounts, bullion, cash, jewellery etc. is handed over to Assessing Officer having jurisdiction over the Assessee, from the period of limitation. This amendment is applicable with effect from 1st April 2021.

9.4. **Time frame for Re-Assessments modified**

Explanation 2 to Section 148 introduced vide Finance Act 2021 covered search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, wherein a fiction was created basis which the income chargeable to tax was deemed to have escaped assessment for the **three assessment years immediately preceding the assessment year** relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted. Finance Bill 2022 proposes delete this Explanation. This implies that in the cases, where the reassessment orders are to be framed in pursuance to the search proceedings under section 132, the same **shall not be restricted to three years**, as was mentioned earlier.

Further, it has been proposed to amend the first proviso to section 149(1) of the Act wherein reference to section 153A or section 153C has been inserted. It has been proposed that the **timelines for initiating the reassessment proceedings shall be in consonance to the time limits prescribed in section 153A or section 153C**, **as they stood prior to the Finance Act 2021.** In other words, in the case of search proceedings the reassessment proceedings has to be based on the time lines stated in sections 153A/153C, i.e. **six years from the date of search**.

These amendments will take effect retrospectively from 1st April, 2021.

10. Other key direct tax proposals

10.1. **Deduction in respect of expenditure incurred for violation of law under section 37(1) –**

No deduction shall be allowed under section 37 of the Act on business expenditure incurred for:

- ✓ Any purpose which is an offence, or which is prohibited by any law both within **or outside India**.
- ✓ Providing benefit to any person, if acceptance of such benefit violates any law/ rule/ regulation/ guidelines governing the conduct of such person.
- ✓ **Compounding of offence both within and outside India**.

This amendment is applicable with effect from 1st April 2022

10.2. Withdrawal of **concessional dividend tax rate** –

Section 115BBD of the Act provides for a concessional rate of tax of 15 % on the dividend income received by an Indian company from a foreign company holding more than 26% stake in such foreign company. The said provisions are proposed to be withdrawn with effect from AY 2023-24.

10.3. **Covid related reliefs:**

- ✓ Amount received from employer or any other person towards medical treatment of self or family member will not be considered as a taxable perquisite or income from other sources.
- ✓ Any amount received by a family member of the deceased from the employer due to COVID-19 or related illness shall be exempt.
- ✓ Amount received upto Rs 10 lakhs received from any person other than employer would be tax exempt if such sum is received within 12 months from the date of death.

These amendments will take effect retrospectively from 1st April, 2020 and will accordingly apply in relation to the assessment year 2020-21 and subsequent assessment years.

10.4. **Conversion of interest payable into financial instruments –**

Conversion of interest payable to financial institutions/NBFCs/scheduled bank or a co-operative bank, into debenture or any other financial instruments basis **which liability to pay is deferred shall not be regarded as actual payment** and hence no deduction

under section 43B shall be allowed on such conversion. This amendment will be applicable with effect from AY 2023-24.

10.5. **Extension of sunset clause for certain reliefs / exemptions**

- ✓ Section 115BAB of the Act provides for an option of concessional rate of taxation **@ 15 % for new domestic manufacturing companies**. It is proposed to extend the date of commencement of manufacturing or production of an article or thing, from 31st March, 2023 to 31st March, 2024.

- ✓ Provisions of the **section 80-IAC** of the Act provide for a deduction of an amount equal to one hundred percent of the profits and gains derived from an **eligible business by an eligible start-up** for three consecutive assessment years out of ten years provided it satisfies certain conditions which inter alia include that it is incorporated on or after 1st day of April, 2016 but before 1st day of April 2022. It is proposed to amend the provisions of section 80-IAC of the Act to **extend the period of incorporation of eligible start-ups to 31st March, 2023**.

10.6. **Taxation of virtual digital assets**

- ✓ New clause (47A) is proposed to be inserted to section 2 of the Act to define a "**virtual digital asset"** which means information / token / code / number generated through cryptographic means and inter alia includes non-fungible tokens and any other digital asset as may be notified by Central Government.

- ✓ **Income from transfer** of virtual digital assets shall be **taxable at a flat rate of 30%. No deduction other than the cost of acquisition** of such virtual digital asset shall be allowable against the income from transfer. If the net result on transfer of the virtual digital asset is a **loss** during the year, the same shall neither be allowed to be setoff against any other income nor carried forward to subsequent years.

- ✓ It is proposed that tax be deducted on **payment made for transfer** of virtual digital asset at the rate of 1% effective from 1 July 2022.

10.7. **Widening ambit of bonus/dividend stripping**

The existing anti-avoidance provision stipulated under 94(8) relating to bonus stripping is applicable to units of mutual fund / UTI. The applicability of said provision is proposed to be widened to bring within its ambit stocks, shares, units of InvITs, REITs and AIFs. Similarly, dividend stripping provisions under section 94(7) are proposed to be enlarged to cover within its ambit units of InvITs, REITs and AIFs. This amendment will be applicable with effect from AY 2023-24.

10.8. **Restriction in rate of surcharge to 15%**

It is proposed to cap the rate of surcharge to 15% on the long term capital gains on sale of any capital asset. This amendment is applicable with effect from AY 2023-24.

10.9. **TDS under section 194-IA on Purchase of Property**

Section 194-IA of the Act provides for deduction of tax at the rate of **1%** on payment on transfer of certain immovable property other than agricultural land. It is proposed to amend section 194-IA of the Act to provide that in case of transfer of an immovable property (other than agricultural land), TDS is to be deducted at the rate of one per cent of such sum paid or credited to the resident **or the stamp duty value of such property, whichever is higher**. This amendment will take effect from 1st April, 2022.

10.10. **Measures to promote International Financial Services Centre ('IFSC')**

- ✓ To encourage Offshore Banking Unit setup in IFSC, tax exemption is proposed on income earned by non-residents on transfer of offshore derivative instruments or over-the-counter derivatives entered into with an Offshore Banking Unit.
- ✓ In relation to the Fund management activities from IFSC, it is proposed that income earned by non- residents from investments in overseas securities/financial products/funds, managed by the portfolio manager in IFSC be exempt.
- ✓ Tax exemption is proposed for royalty/interest income earned by non- residents from leasing of ships to units in IFSC.
- ✓ Similarly, income arising from transfer of an asset, being a ship, which was leased by a unit in IFSC to any person shall be eligible for a tax holiday for a period of 10 years.

These amendments will be applicable with effect from AY 2023-24.