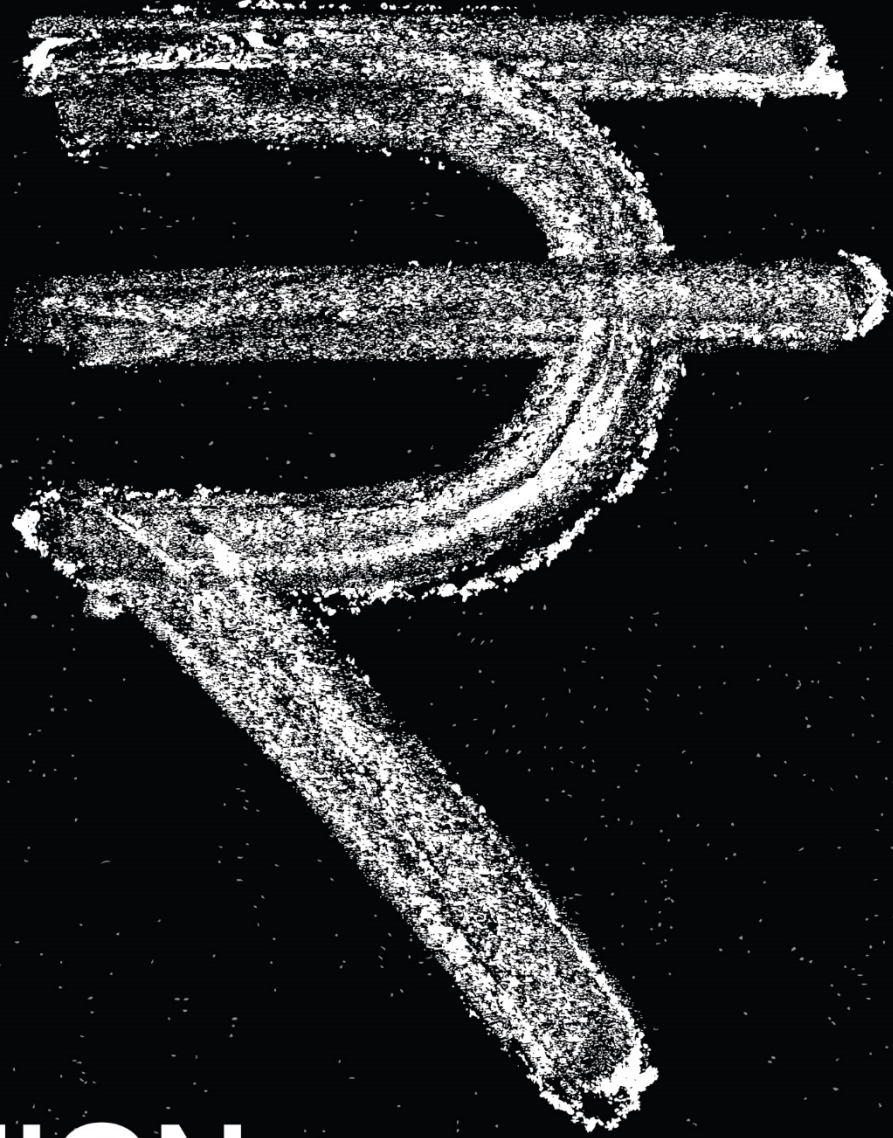




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# UNION BUDGET 2021

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AN ANALYSIS

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## PREFACE

Dear Reader

A modern budget for an economy poised to surge!

We at ELP have been analyzing the budgets for two decades now and the record will reflect that more often than not most budgets have not lived up to the hype; but today's budget analysis reveals a stable, pragmatic and long-term budget for India's growth.

The IMF and the Economic Survey of India both projected growth of 11%+ in the last week. Today's budget further strengthens foundation for this growth by being frugal in taxing, but liberal in policy announcements and prudent in compliance processes.

In sum, no increase in personal or corporate taxes, a relentless push towards privatization and use of pragmatic policy and technology to enhance ease of doing business in India have contributed in a huge way to the positivity that greets this budget today. Against a background where the economy has been ravaged by Covid-19 lockdown, some claw back by increase in taxes was apprehended by several. By not levying any additional taxes or customs duties there has been a huge 'relief rally' in the stock markets too.

There is an increase in government borrowing which will increase the fiscal deficit but there is a huge increase in spend on healthcare (137% including spend on the vaccine) and larger outlay for MSP in agriculture – especially significant in the backdrop of the ongoing farmer agitation. The increased fiscal deficit is expected to be offset by "asset monetization" and increased GST revenues brought about by increased consumption.

Previous policy measures which were taboo are now on the table - "privatization" of PSUs – **not** dis-investment but *privatization*. Amongst the notables on the privatization list is banks which were nationalized in 1969. The mind-set is that the Government is determined to get out of business – except in very few strategic sectors. Even FDI in insurance, which was a contentious issue, has now been permitted up to 74%.

Specifically, on some of the legal aspects of the budget –

- Clearly with a view towards legislating away the impact of the Supreme Court decision in *Smif Securities Limited* [(2012) 348 ITR 302 (SC)] the Government has done away with depreciation on Goodwill as an intangible asset. The amendment is worded too widely and can become a damper on M&A.
- Various sections have been introduced to reduce the controversies arising out of the "basis of charge" line of cases.
- There are plans to merge four Acts pertaining to various aspects of securities law in to one consolidated Securities Code. Even the commitment to the new labor code scheduled to take effect from 1<sup>st</sup> April 2021 was demonstrated in the Finance Minister's speech.
- Predictably, there are amendments in the Customs Tariff Act to rationalize and raise duties with the "atmanirbhar" theme in mind. Most commendably these are not as protectionist as one would've expected but pragmatic. Steel is one such example where there are reductions in basic customs duties and removal of anti-dumping and countervailing duties on several input steel products, and an increase in duties on finished steel products.
- There are also amendments in anti-dumping laws to bring about some procedural ease and retrospective levies in case of evasion.
- The law is used to incentivize compliance and not threaten punishment – the disallowance of tax credits to ensure timely payment of PPF contributions is one such example. It also effectively overrules the decision of the Supreme Court in *CIT v. Vinay Cement Ltd.* [2007] 213 CTR (SC) 268.
- The plans to use artificial intelligence and machine learning and create a 'faceless' Income Tax Appellate Tribunal are path breaking and, if it works will go a long way in reducing backlog not only in tax litigation, but potentially other litigation too. Even the period for re-assessment has been truncated to 3 years.

- The Authority for Advance Rulings presided over by a retired senior judge makes way for a board of resolution helmed by three senior bureaucrats and appeals to the High Court, instead of the Supreme Court. Given that there was frequent vacancy in the office of Chairman of AAR - it was virtually non-operational and so this is a welcome move. The Income Tax Settlement Commission has been done away with and one or more Interim Board(s) for Settlement of pending cases will be constituted. Advance rulings of such Board shall not be binding on the assessee or the Department and if aggrieved, the assessee or the Department may appeal against the ruling or order passed by the Board before the High Court.

It would've been very easy to raise taxes and impose surcharges to offset the impact of Covid-19. By not doing so, and increasing the fiscal deficit the Government has now given India Inc the opportunity and responsibility to match the bold policy measures with performance.

We hope you enjoy reading this, and as always, we welcome your feedback!

Thank you.



Suhail Nathani

Managing Partner

On behalf of Team ELP



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## BUDGET HIGHLIGHTS

### DIRECT TAXES

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- Headline income-tax rates remain unchanged
- Depreciation on goodwill prohibited in all cases
- Definition of slump sale extended to include all types of transfers (including slump exchange)
- The word “liable to tax” has now been specifically defined under the IT Act
- Tax Holiday for start-ups extended by a year up
- Advance tax to be applicable on dividend income only after its declaration
- Disallowance of PF contribution, in case the employee’s PF contribution was deducted but not deposited by the employer
- Faceless proceedings before ITAT introduced
- Time limit for re-opening cases reduced to 3 years from 6 years
- Serious tax evasion cases, with evidence of concealment of income of INR 50 lakh or more in a year, to be re-opened upto 10 years
- Limit of turnover for tax audit increased to INR 10 crore from INR 5 crore for entities carrying out 95% transactions digitally
- Discontinuation of Settlement Commission and Authority for Advance Ruling and setting up of Interim Board
- Adjustment for dividend income and expenses claimed in relation thereof while computing book profits in case of foreign companies
- Provision of MAT adjustment to book profits on account of income included in books of account due to secondary or due to APAs

### CUSTOMS

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- Conditional Customs duty exemptions would henceforth be valid only for a period up to 31st day of March falling immediately after two years from the date of grant or variation of the exemption
- Legal prescription for definite time-period of two years (subject to certain exceptions) for completion of investigations
- Emphasis on electronic delivery and acceptance of documents
- Tariff Section Notes & Chapter Notes to be aligned to HSN 2022 w.e.f. 1st January 2022
- Agriculture, Infrastructure and Development Cess levied on certain imports; BCD rationalized in such cases
- Goods allowed to be imported at concessional rate for job work subject to fulfilment of prescribed procedure

### GST

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- Explanatory amendments to clarify that the person and its members/constituents shall be deemed to be two separate persons
- ITC entitlement limited to the extent of ITC matched with GSTR 2A.
- Requirements of mandatory GST audit by independent professional done away with
- Retrospective amendments to clarify that interest liability triggers only on net cash liability
- Rationalization of zero-rating provisions for supplies to SEZs for authorized operations
- Export Rebate entitlement restricted to notified supplies

### CST

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- C-Form based concessional tax rate benefit for goods, in mining/ in the generation or distribution of electricity/ any other form of power/ a telecommunications network, done away with

# DIRECT TAX

## INCOME TAX RATES

### For individuals, HUF, AOP, BOI

No changes have been proposed in the personal tax rate. Accordingly, the rate of tax as applicable for AY 2022-23 is as under:

Income (INR)	Existing and Proposed Rates (%)		
	Individuals (Age < 60 years) and HUF, BOI, AOP	Individual senior citizens (Age > 60 years < 80 years)	Individual super senior citizens (Age > 80 years)
0 – 250,000	NIL	NIL	NIL
250,001 – 300,000	5	NIL	NIL
300,001 – 500,000	5	5	NIL
500,001 – 1,000,000	20	20	20
1,000,001 and above	30	30	30

No changes have been proposed in the new regime of taxation under Section 115BAC of the IT Act. Accordingly, the rate of tax as applicable for AY 2022-23 is as under:

Income (INR)	Existing and Proposed Rates (%)
	Individuals and HUF
0 - 250,000	NIL
250,001 - 500,000	5
500,001 - 750,000	10
750,001 - 1,000,000	15
1,000,001 - 1,250,000	20
1,250,001 – 1,500,000	25
1,500,001 and above	30

### Rebate, Surcharge & Cess

Sr. No.	Particulars	Existing & Proposed
1	Rebate	<ul style="list-style-type: none"> <li>INR 12,500 – If total income does not exceed INR 500,000</li> </ul>
2	Surcharge (for income other than Capital Gains and income by way of dividend)	<ul style="list-style-type: none"> <li>10% - If total income &gt; INR 5 million but ≤ INR 10 million</li> <li>15% - If total income &gt; INR 10 million, but ≤ INR 20 million</li> <li>25% - If total income &gt; INR 20 million, but ≤ INR 50 million</li> <li>37% - If total income &gt; INR 50 million</li> </ul>
3	Surcharge (for Capital Gains – i.e. Section 111A, 112A & 115AD(1)(b) and income by way of dividend)	<ul style="list-style-type: none"> <li>10% - If total income &gt; INR 5 million but ≤ INR 10 million</li> <li>15% - If total income &gt; INR 10 million</li> </ul>
4	Cess - Health and Education cess	<ul style="list-style-type: none"> <li>4%</li> </ul>



5	AMT (including surcharge and cess)	<ul style="list-style-type: none"> <li>19.24% - If adjusted total income &gt; INR 2 million, but ≤ INR 5 million</li> <li>21.16% - If adjusted total income &gt; INR 5 million, but ≤ INR 10 million</li> <li>22.13% - If adjusted total income &gt; INR 10 million, but ≤ INR 20 million</li> <li>24.05% - If adjusted total income &gt; INR 20 million, but ≤ INR 50 million</li> <li>26.36% - If adjusted total income &gt; INR 50 million</li> </ul>
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**For Companies, Firms, LLP**

Sr. No.	Description	Existing rates (%) (Including surcharge & Cess)			Proposed rates (%) (Including surcharge & Cess)		
(A)	Domestic Companies	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore
1	Turnover or gross receipts in previous year 2019-20 ≤ INR 400 crore (base rate – 25%)	26.00	27.82	29.12	26.00	27.82	29.12
2	Covered under Section 115BA (base rate – 25%)	26.00	27.82	29.12	26.00	27.82	29.12
3	Covered under Section 115BAA (base rate – 22%)	25.17			25.17		
4	Covered under Section 115BAB (base rate – 15%)	17.16			17.16		
5	Any other Company having turnover or gross receipts in previous year 2019-20 > INR 400 crore (base rate – 30%)	31.20	33.38	34.94	31.20	33.38	34.94
6	MAT under Section 115JB for companies other than that covered under Section 115BAA and 115BAB (Rate to be applied on book profits – base rate 15%)	15.60	16.69	17.47	15.60	16.69	17.47
7	BBT under Section 115QA (base rate -20%)	23.30			23.30		

(B)	Foreign Companies	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore	Net income ≤ INR 1 crore	Net Income > INR 1 crore, but ≤ INR 10 crore	Net income > INR 10 crore
1	Regular tax (base rate – 40%)	41.60	42.43	43.68	41.60	42.43	43.68
(C)	Firms and LLP	Net income ≤ INR 1 crore	Net income > INR 1 crore	Net income ≤ INR 1 crore	Net income > INR 1 crore		
1	Regular tax (base rate – 30%)	31.2	34.94	31.2	34.94		
		Adjusted total income ≤ INR 1 crore	Adjusted total income > INR 1 crore	Adjusted total income ≤ INR 1 crore	Adjusted total income > INR 1 crore		
2	AMT (base rate – 18.5%)	19.24	21.55	19.24	21.55		

**Surcharge and Cess**

Particulars	Existing & Proposed
Other domestic companies	<ul style="list-style-type: none"> <li>NIL - If total income ≤ INR 1 crore</li> <li>7% - If total income &gt; INR 1 crore, but ≤ INR 10 crore</li> <li>12% - If total income &gt; INR 10 crore</li> </ul>
For Domestic companies covered under Section 115BAA and Section 115BAB of the IT Act	<ul style="list-style-type: none"> <li>10% - Irrespective of the amount of total income</li> </ul>
For Foreign companies	<ul style="list-style-type: none"> <li>NIL - If total income ≤ INR 1 crore</li> <li>2% - If total income &gt; INR 1 crore, but ≤ INR 10 crore</li> <li>5% - If total income &gt; INR 10 crore</li> </ul>
For Firms and LLP	<ul style="list-style-type: none"> <li>12% - If total income &gt; INR 1 crore</li> </ul>
Cess - Health and Education cess	<ul style="list-style-type: none"> <li>4%</li> </ul>

**ELP COMMENTS:**

While the industry was concerned about a possible levy of 'COVID Cess' in order to fund series of COVID-19 measures announced and ongoing vaccination drive; however, Finance Minister must be complemented for keeping the rate of tax unchanged across all taxpayers.

In contrast to India, various international jurisdictions have either imposed additional taxes or increased their existing tax rates in order to fund their COVID-19 support measures.

Accordingly, this comes as a major relief for all taxpayers whose businesses are slowly recovering from the impact of COVID-19 pandemic as they shall not be subject to an additional tax levy.

## BASIS OF CHARGE

### Amendment to Definitions

A new clause 29A is proposed to be added to Section 2 of the IT Act to define the term 'liable to tax' to mean a person in relation to whom there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided.

This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

The proposed amendment has been inserted in line with various judicial precedents on the subject matter, wherein it has been held that the expression "liable to tax" does not necessarily imply that in order for a person to be resident of a Contracting State should actually be liable to tax in that contracting State; it is enough if the other Contracting State has right to tax such person, whether or not such a right is exercised.

Thus, as long as an individual is exposed to or subject to the possibility of tax, he should be regarded as liable to tax. This view is supported by Mumbai ITAT decision in case of Bhagwan T. Shrivani (20 taxmann.com 821).

Separately, various tax treaties provide that in order to ascertain the meaning of a term undefined in treaty, reference should be made to a definition provided under the domestic law. As most DTAs entered into by India do not define the said term, the above amendment could impact the interpretation of various DTAs.

Amendment is proposed in clause 42C of Section 2 of the IT Act, which defines 'slump sale'. As per the proposed amendment, transfer of an undertaking by any means (and not only by way of sale) will qualify as slump sale. An explanation is inserted to provide that the term 'transfer' shall have the same meaning as provided in clause 47 of Section 2. This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

Above amendment is directed to overturn the ruling of the Hon'ble Bombay High Court in case of Bharat Bijlee Limited, wherein taxability of slump exchange was denied in absence of monetary consideration. The above amendment proposes to tax "slump exchange" of an undertaking as capital gains.

Now, by virtue of the said amendment, all types of transfer of undertaking are sought to be covered by the provisions of slump sale under Section 50B of the IT Act. That said, computation mechanism for determining the capital gains may pose challenges absent precise guidelines for valuing the non-monetary consideration.

## INCOME NOT FORMING PART OF TOTAL INCOME

### Amendment to Section 10(5) of the IT Act

- Section 10(5) of the IT Act is proposed to be amended to provide tax exemption to cash allowance in the hands of individuals if any value or assistance is received by or due to such individual in lieu of any travel concession subject to fulfilment of conditions as may be prescribed.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

### Amendment to Section 10(10D) of the IT Act

- Section 10(10D) of the IT Act is proposed to be amended to provide for exemption on receipt of any sum under a ULIP issued on or after February 1, 2021, only if the amount of premium payable for any of the previous years during the term of the policy do not exceed INR 2.5 lakhs. However, any sum received from a ULIP shall be exempt if the same is received pursuant to death irrespective of the amount of the premium.
- If the premium payable by a person for more than one ULIPs issued on or after February 1, 2021, exemption under this clause shall be available only with respect to such policies, the aggregate premium whereof does not exceed the amount of INR 2.5 lakhs for any previous years during the term of any of the policy.

- Section 2(14) and Section 45 of the IT Act are proposed to be amended to provide for deemed taxation of profit and gains from the redemption of ULIP (to which exemption under Section 10(10D) does not apply) as capital gains and shall be deemed to be income of the previous year in which such amount was received and the income taxable shall be calculated as may be prescribed.
- These amendments are proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

### Amendment to Section 10(11) and 10(12) of the IT Act

- Section 10(11) of the IT Act deals with the exemption with respect to any payment from a provident fund to which the Provident Funds Act, 1925 applies or any provident fund set up by Central Government. Similarly, Section 10(12) of the IT Act provides for exemption with respect to the accumulated balance due and becoming payable to an employee participating in a recognized provident fund.
- Section 10(11) and Section 10(12) are proposed to be amended to provide that these provisions will not be applicable to interest income accrued to the extent it relates to the amount or aggregate of the amounts of contribution made on or after April 1, 2021 by the person exceeding INR 2.5 lakhs in the previous year in that fund.
- These amendments are proposed to come into effect from April 1, 2022 and shall apply to the AY 2022-23 and subsequent AYs.

#### ELP COMMENTS:

The removal of the exemption on interest income on contribution exceeding INR 2.5 lakhs may cause hardship to the employees, who contribute higher amounts to these funds.

### Amendment to Section 10(23FE) of the IT Act

- Section 10(23FE) of the IT Act was introduced by the Finance Act, 2020 to provide exemption to certain specified persons from the income in the nature of dividend, interest, long term capital gains from an investment made in India.
- Section 10(23FE) is further proposed to be amended to provide the following:
  - Allowing Category-I or Category-II AIF to invest between 50%-100% in eligible investments. However, exemption shall be calculated proportionately, in case if the aggregate investment in AIF is less than 100%.
  - Investment through holding company is now permitted, provided the investment holding company is a domestic company, set up or registered on or after April 1, 2021, should have minimum 75% investments in eligible investments. Exemption shall be calculated proportionately, in case if the aggregate investment is less than 100%.
  - Investment in Non-banking financial company, registered as Infrastructure Finance Company or a Infrastructure debt fund, is now permitted, provided such companies should have minimum of 90% lending to one or more the eligible investments. Exemption shall be calculated proportionately, in case if the aggregate investment is less than 100%.
- It is proposed to provide that for claiming exemption under this provision by the sovereign wealth funds or pension funds, there should not be any loan or borrowing for the purpose of making investment in India.
- Presently, sovereign wealth funds / pension funds are not allowed to undertake any commercial activity. This condition is proposed to be removed and replaced with a condition that sovereign wealth funds / pension funds shall not participate in day to day operation of investee companies. However, appointing director and executive director for monitoring the investment would not amount to participation in day to day operation.
- Presently, some pension funds are liable to tax in their country though exemption is given subsequently. It is proposed to amend this sub-clause to provide that if pension fund is liable to tax but exemption from taxation for all its income has been provided by the foreign country under whose laws it is created or established, then such pension fund shall also be eligible for exemption.
- This amendment is proposed to come into effect from April 1, 2021 and will accordingly apply to the AY 2021-22 and subsequent AYs.

**ELP COMMENTS:**

- The proposed amendments have been introduced to rationalize the provision of this clause and to remove the difficulties in meeting conditions as specified. Further, expansion of entities in which investment can be made, will have positive effect on the investment in India.

**Amendment to Section 10(50) of the IT Act and Equalisation levy**

- Section 10(50) of the IT Act is proposed to be amended to provide that
  - The earlier anomaly of the year of applicability of this section was clarified. It was clarified that this Section is applicable from April 1, 2020.
  - The Explanations shall be substituted as below:
    - By Explanation 1 it is proposed to be clarified that the income referred to in this clause shall not include and shall be deemed to have never included income which is chargeable to tax as royalty or FTS in India under the IT Act or DTAA.
    - By Explanation 2, while “e-commerce supply or services” is given the meaning assigned to it in clause (cb) of section 164 of the Finance Act, 2016; “specified service” is given the meaning assigned to it in clause (i) of the same.
    - Clause (cb) of section 164 of the Finance Act, 2016 proposed to add that “online sale of goods” and “online provision of services” shall include one or more of the following online activities:
      - (a) acceptance of offer for sale; or
      - (b) placing the purchase order; or
      - (c) acceptance of the purchase order; or
      - (d) payment of consideration; or
      - (e) supply of goods or provision of services partly or wholly;

**ELP COMMENTS:**

The equalisation levy of 2% on the non-resident e-commerce operators was effective from 1 April 2020. Earlier Section 10(50) provided that any transaction covered by such levy would not be subjected to withholding tax from 1 April 2021. So, for one year any transaction could be subjected to both EL 2.0 and withholding tax. This drafting anomaly was addressed. A clarificatory amendment was introduced wherein such mutual exclusion shall be effective from 01 April 2021 itself. While, this is a welcome clarification, there are many other issues in respect of Equalisation levy that also could be clarified for a better application of law.

Further, the amendment in the explanation specifically excludes income which is chargeable to tax as royalty or FTS in India under the IT Act read with relevant DTAA. This amendment seems to have been introduced in order to not let royalty and FTS dodge India based taxation vide treaty benefits eg. DTAA where the definition of royalty and/ or FTS is narrow, thereby taxing such royalty and FTS as equalisation levy. This amendment has a potential of enormous litigation on account of inconsistencies of positions adopted by the taxpayers and tax authorities.

**INCOME FROM BUSINESS AND PROFESSION****Amendment to Section 2(11), 32, 50 and 55 of the IT Act**

- Clause (11) of Section 2 of the IT Act, which defines ‘block of assets’, is proposed to be amended to exclude ‘goodwill of business or profession’ from such definition.
- Similarly, Section 32 of the IT Act is proposed to be amended to exclude goodwill of a business or profession from the category of depreciable assets.

- Further, a proviso is proposed to be inserted in Clause (2) of Section 50 of the IT Act, to provide that in a case where goodwill of a business or profession formed part of a block of asset for the AY beginning on the April 1, 2020 and depreciation has been obtained by the assessee under the IT Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed.
- Also, Clause (a) of Sub-section (2) of Section 55 of the IT Act is proposed to be substituted, to provide for the manner of determination of the cost of acquisition of goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture etc.
- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

**ELP COMMENTS:**

It is settled position by judicial pronouncements, including the decision of Hon'ble Supreme Court in the case of Smif Securities Limited [(2012) 348 ITR 302 (SC)], that goodwill is an asset that arises on account of consideration paid being in excess of fair value of assets and liabilities being acquired, irrespective of the fact whether consideration is discharged in cash or shares. The mode of acquisition of business may be via a merger, demerger or business purchase. However, the silver lining is that consideration paid for acquisition of such goodwill will continue in the tax books as non-depreciable asset, the cost of which will be available as a deduction in computing capital gains on any subsequent sale.

The proposal is to disallow allowability of depreciation on goodwill in all situations without making any distinction, including that of a business purchase. Goodwill by definition is a residual asset the value of which cannot be attributed to a specific tangible asset or intangible asset. But nonetheless, the buyer has paid value for this asset and there is no reason why such benefit should be denied unless it has been abused by way of an internal restructuring which otherwise can be arrested under the provisions of General Anti Avoidance Rules. Further IND AS 103 also does not allow recognition of goodwill in a "common control business combinations". This proposal would severely impact pay-back calculations in every commercial M&A deal. Depreciation on goodwill was an essential element in calculating post tax return of an acquisition proposal.

**Amendment to Section 36(va) and 43B of the IT Act**

- Section 43B of the IT Act is proposed to be amended by introducing an Explanation after Explanation 4 to clarify that Section 43B of the IT Act shall not apply to sum received by an assessee from his employees as contributions to any provident fund or superannuation fund or any fund set-up under the Employees State Insurance Act, 1948.
- Further, Section 36 of the IT Act is proposed to be amended by introducing an Explanation under clause (va) after the existing Explanation to clarify that Section 43B shall not apply to determine the due date under the said clause.
- This amendment is proposed to come into effect from April 1, 2021 and accordingly, would apply in relation to AY 2021-22 and thereafter.

**ELP COMMENTS:**

Whether delayed deposit of employee's contribution to welfare funds (by the employer) will be allowed as a deduction in terms of the provisions of Section 43B of the Act, has been a subject matter of litigation in numerous judicial proceedings.

The Hon'ble Supreme Court in CIT v. Vinay Cement Ltd. [2007] 213 CTR (SC) 268, had ruled in favor of the assessee. The Apex Court held that delay in deposit of employee's contribution entails payment of interest and penalties under the respective Acts. Further, if the said legislations allow delayed deposit upon payment of prescribed amounts, the assessee should be allowed a deduction under the IT Act up on actual payment, though made belatedly.

The present amendment intends to overturn the decision of Apex Court and the principle enunciated above, by denying the benefit of deduction, if the employers does not deposit employee's contribution to the welfare funds within the due dates prescribed under the respective legislations.

### Amendment to Section 43CA and 56 of the IT Act

- It is proposed to insert a new proviso in Section 43CA(1) of the IT Act, to increase the safe harbour limit from 10% to 20% in case of transfer of a 'residential unit' subject to fulfilment of the following conditions:
  - Transfer takes place between November 12, 2020 to June 30, 2021;
  - The transfer is by way of first-time allotment to any person; and
  - The consideration should not exceed INR 20 million.
- The term 'residential unit' has been defined to mean an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.
- Consequential relief also provided to the buyers of these 'residential units' by way of an amendment to Section 56(2)(x) of the IT Act by increasing the safe harbour limit from 10% to 20%.
- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

This is welcome proposal as the Real Estate developers are facing a lot of issues in liquidating their existing unsold inventories particularly in this pandemic situation wherein at one hand they are receiving lower price than the value adopted for stamp duty purposes and on the other hand the stamp duty value is considered as deemed sale price for computation of income.

### Amendment to Section 44AB of the IT Act

- Section 44AB of the IT Act, requires every person carrying on business to get its accounts audited, if the total sales, turnover or gross receipts exceed INR 10 million in any previous year.
- Further, the threshold limit for a person carrying on business is increased from INR 10 million to INR 50 million, where aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt and aggregate of all payments in cash during the previous year does not exceed 5% of such payment.
- It has been proposed to increase the threshold limit of tax audit in specified cases from INR 50 million to INR 100 million.
- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

This amendment is made to incentivize non-cash transactions and promote digital economy. This should further reduce the compliance burden on the MSMEs.

### Amendment to Section 44ADA of the IT Act

- Section 44ADA(1) of the IT Act is proposed to be amended to clarify that the presumptive taxation of profits and gains for profession shall not apply to LLP as defined under Section (1)(n) of the LLP Act.
- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

This amendment is only clarificatory in nature as LLP is required to maintain books of accounts under LLP Act and therefore, are not eligible to determine income on a presumptive basis.

### Amendment to Section 44DB and 47 of the IT Act

- Section 44DB of IT Act provides for computing deductions under Section 32, Section 35D, Section 35DD and Section 35DDA in case of business re-organization of cooperative banks.
- Section 44DB of the IT Act is proposed to be amended to extend the benefit of various deductions available under this provision in case of business re-organization of co-operative banks, to a case where a primary co-operative bank is converted to a banking company covered under Section 5(c) of the Banking Regulation Act, 1949
- Further, Section 47 is also proposed to be amended to include transfer of capital asset by a primary co-operative bank to a banking company as a result of such conversion within its ambit. Accordingly, such transaction shall not be treated as a transfer under Section 47 of the IT Act.
- Consequentially, the allotment of shares of the converted banking company to the shareholders of the predecessor primary co-operative bank shall also not be treated as a transfer under the Section 47 of the IT Act.
- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

These are facilitating amendments to ensure smooth conversion of primary co-operative bank to a banking company

### CAPITAL ASSETS & CAPITAL GAINS

#### Amendment to Section 45 (4) and 45(4A) and Section 48 of the IT Act

- It is proposed to substitute Section 45 (4) of the IT Act and insert new Section 45(4A) to compute tax on capital gains arising from dissolution or reconstitution of firms in the hands of firms.

Section	In case of transfer of	Full Value of consideration for the purpose of Section 48	Cost of Acquisition
45(4)	Capital Asset	Fair Market value of capital asset on the date of such receipt	Cost of acquisition of such capital asset
45(4A)	Money and Other Assets	Value of money and fair market value of other assets on the date of such receipt	Balance in Capital Account of the Partner at the time dissolution or reconstitution

- Balance in capital account of the Partner to be calculated without taking into account increase in the capital account due to revaluation of any asset, or due to self-generated goodwill or any other self-generated assets.
- These amendments are proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

Insertion of Section 45(4) and Section 45(4A) covers all forms of reconstitution including retirement of partner. Further, firm will be taxable for distribution of all assets including capital assets on dissolution or reconstitution of firms under the head Capital gains.

This will also make practice of revaluing assets and recording self-generated assets by crediting Partner's capital account immediately before dissolution or reconstitution of firms as a taxable event.



## SET OFF OR CARRY FORWARDS AND SET OFF

### Set off and carry forward of losses and unabsorbed depreciation of public sector companies in case of amalgamation

- Section 72A of the IT Act is proposed to be amended with a view to facilitate strategic divestment by the Government. Clause (c) of Section 72A (1) of the IT Act is proposed to be substituted to enable set off and carry forward of loss and allowance of depreciation of amalgamating company to amalgamated company (in the previous year in which the amalgamation is effected) in case of amalgamation of one or more public sector company/companies with another public sector company/companies.
- Further, clause (d) is proposed to be inserted in Section 72A (1) to extend the aforesaid benefit in case of amalgamation of erstwhile public sector company with one or more company/companies, where-
  - The share purchase agreement entered into under strategic divestment restricted immediate amalgamation of the public sector company; and
  - Amalgamation is carried out within 5 years from the end of previous year in which the restriction on amalgamation in the share purchase agreement ends
- A proviso is proposed to be inserted to Section 72A (1) of the IT Act to provide that in case of an amalgamation referred to in proposed clause (d), the accumulated loss and unabsorbed depreciation of amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company, as on the date on which the public sector company ceases to be one as a result of strategic divestment.
- Corresponding amendments are also proposed to be carried out in the definition of demerger in Section 2(19AA) of the IT Act to constitute reconstitution or splitting up of a public sector company into separate companies as a demerger.
- These amendments are proposed to be brought into effect from April 1, 2021 and will accordingly apply to AY 2021-22 and subsequent AYs.

#### ELP COMMENTS:

The Government of India has set an aggressive target of INR 175,000 crores from disinvestment in public sector companies for FY 2021-22. There are number of public sector companies which are loss making like Air India, BPCL, SCI etc. Accordingly, in order to facilitate strategic disinvestment of loss-making public sector companies, it is proposed to allow carry forward and set-off of losses of public sector companies upon their amalgamation.

## DEDUCTIONS

### Extension of time-limits for expiry of tax holiday/deductions

Section	Original due date to claim tax holiday	Revised due date to claim tax holiday
Section 80EEA- Deduction in respect of interest on loan taken for residential property	March 31, 2021	March 31, 2022
Section 80-IAC- Incorporation of start-up company	April 1, 2021	April 1, 2022
Section 80-IBA- Approval of Affordable Housing Project	March 31, 2021	March 31, 2022

### Amendment to Section 80-IBA of the IT Act

- Section 80-IBA of the IT Act is proposed to be amended to provide benefit of deduction to rental housing project which is notified by the Central Government in the Official Gazette and fulfils such conditions as specified in the said notification.
- This amendment is proposed to come into effect April 1, 2022 and accordingly would apply in relation to AY 2022-23 and thereafter.

**ELP COMMENTS:**

In order to give impetus to migrant labourers and promote affordable rental housing scheme, tax holiday benefit under Section 80-IBA has been extended to eligible rental housing project.

**SPECIAL PROVISIONS****Relief to NRIs with respect to income from retirement benefit account held in notified country (Section 89A)**

- Section 89A is proposed to be inserted under the IT Act to address mismatch in taxation of income from specified overseas retirement accounts maintained by specified person in a notified country.
- Specified person is a person resident in India who has opened a retirement benefit account in a notified country while being a non-resident in India and a resident in that country.
- It is proposed that the said income shall be taxed in such manner and in such year as may be prescribed.
- This amendment is proposed to come into effect from April 1, 2022 and accordingly would apply in relation to AY 2022-23 and thereafter.

**ELP COMMENTS:**

If a person has opened a retirement benefit account in a notified country while being non-resident in India, it is proposed to shift the taxation of such retirement benefit account from accrual basis to receipt basis in India. Such tax treatment is in line with most foreign countries. The aforesaid relief will mainly benefit the NRIs returning to India.

**Amendments pertaining to IFSC*****Amendment to Section 9A of the IT Act***

- Section 9A of the IT Act proposes new sub-Section 8A which shall provide that conditions prescribed in sub-Section (3) and (4) shall not apply or shall apply with modifications, as may be prescribed, in case of an eligible investment fund and its eligible fund manager, if such fund manager is located in an IFSC, as defined in Section 80LA, and has commenced its operations on or before March 31, 2024.
- Sub-Section (3) and (4) prescribe the conditions for qualification as eligible investment fund and fund manager for availing benefit of Section 9A of the IT Act.
- This amendment is proposed to come into effect from April 1, 2022 and accordingly would apply in relation to AY 2022-23 and thereafter.

***Amendment to Section 10(4D) of the IT Act***

- Section 10(4D) of the IT Act is proposed to be amended to provide for exemption to specified funds in case of any income accrued or arisen to, or received by the investment division of offshore banking unit to the extent attributable to it and computed in the prescribed manner.

***Introduction of Section 10(4E) and 10 (4F)***

- Section 10(4E) of the IT Act is proposed to be inserted to provide for exemption in the hands of non-residents on any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC which commenced operations on or before the March 31, 2024 and fulfils prescribed conditions.
- Section 10(4F) of the IT Act is proposed to be inserted to provide for exemption in the hands of non-residents on royalty income by way of lease of an aircraft paid by a unit of an IFSC which commenced operations on or before the March 31, 2024 and fulfils prescribed conditions.

***Exemption from capital gain tax on account of transfer of shares of an India Company on account of relocation***

- Section 10(23FF) of the IT Act is proposed to be inserted which exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of relocation from the original fund to the resultant fund.
- It is also proposed to amend Section 47 of the IT Act to insert new clauses in the said provision so as to provide that any transfer, in a relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gains tax purpose. It is also proposed to provide that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains. The terms Original Fund, Relocation and Resultant Fund are defined in Explanation to Section 47(viiac) and 47(viiad).
- These amendments are proposed to come into from effect April 1, 2022 and accordingly would apply in relation to AY 2022-23 and thereafter.

#### ***Amendment to Section 80-LA of the IT Act***

- Section 80LA of the IT Act provides income-based deductions for units located in IFSC from payment of income-tax.
- Section 80LA is proposed to be amended to provide that that deduction is available to a unit of IFSC if it is registered under the IFSC Authority Act, 2019 and thereby removing the earlier requirement of obtaining permission under any other relevant law.
- Further, it is also proposed to amend the said provision to provide that the income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by any unit of the IFSC from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction subject to condition that the unit has commenced operation on or before March 31, 2024.
- In addition to the above, it is proposed to provide that in case the unit is registered under the IFSC Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the IFSC Authority Act, 2019.
- This amendment is proposed to come into effect from April 1, 2022 and accordingly would apply in relation to AY 2022-23 and thereafter.

#### ***Carry forward and set off of losses in case of relocation between Original Fund and Resultant Fund***

- Section 79(2) of the IT Act is proposed to be amended by inserting clause (e), to specify the restriction pertaining to carry forward and set off of losses in case of change in shareholding pattern of company will not apply to a company wherein the change in shareholding pattern has taken place on account of relocation between original fund and resultant fund, as proposed to be defined vide amendments in Section 47 of the IT Act.
- This amendment is proposed to be brought into effect from April 1, 2022 and will accordingly apply to assessment year 2022-23 and subsequent AYs.

#### ***Amendment to Section 115AD of the IT Act***

- Section 115AD is proposed to be amended to provide that provision of this section shall be applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund. However, the provisions of this section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the SEBI (FPI) Regulations, 2019 calculated in the prescribed manner.

#### **ELP COMMENTS:**

The government has been promoting IFSC and making it attractive for foreign investors. Accordingly, during the past few years, a number of benefits has been introduced under the IT Act to make IFSC more attractive as a business enterprise. In this Budget, it is proposed to provide the following tax incentives:

- Section 9A – Relaxations in certain conditions for relocation of eligible fund manager
- Section 10(4D) - Exemption to investment division of offshore banking unit
- Section 10(4E) - Exemption to non-resident on transfer of non-deliverable forward contracts
- Section 10(4F) - Exemption to non-resident on royalty income by way of lease of an aircraft by an IFSC unit
- Section 10(23FF) - Exemption of capital gains on account of relocation of fund

- Section 80LA - Extension of income-based tax holiday for units located in IFSC
- Section 79(2) - Carry forward and set off of losses in case of relocation of fund to IFSC
- Section 115AD – Exemption extended to investment division of offshore banking unit

### Amendment to Section 115JB of the IT Act

- Section 115JB of the IT Act is proposed to be amended to provide that dividend income earned by foreign companies shall be reduced from the book profit and expenditure in relation to such dividend earned by foreign companies shall be added to its book profit
- It is further proposed to provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner. Further, the provision of Section 154 of the IT Act shall apply so far as possible and the period of four years specified in sub-Section (7) of Section 154 shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.
- This amendment is proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

The proposed amendments provide similar treatment to dividend as already there for capital gains on transfer of securities, interest, royalty and Fee for Technical Services (FTS) in calculating book profit for the purposes of section 115JB of the Act, so that both specified dividend income and the expense claimed in respect thereof are reduced and added back, while computing book profit in case of foreign companies where such income is taxed at a lower than MAT rate due to DTAA.

## PROVISIONS IN RELATION TO ADMINISTRATION AND ASSESSMENT

### Amendment to Section 139 of the IT Act

- Section 139 of the IT Act is proposed to be amended to provide the following:

Explanation 2 to Section 139(1) is proposed to be amended to align the due date of filing of the return of income of the spouse of the partner with the partner and firm, if the account of such spouse are required to be audited under the IT Act or under any other law, if the provisions of Section 5A of the IT Act are applicable to such spouse.

Section 139(4) and (5) of the IT Act are proposed to be amended wherein the last date for filing of the belated and revised return can be filed three months before the end of the relevant AY or before the completion of the assessment whichever, is earlier.

A proviso to Section 139(9) of the IT Act dealing with defective return of income is proposed to be inserted, to provide the conditions provided under Section 139(9) of the IT Act shall not apply such class of assessee or shall apply with modifications, as may be specified.

These amendments are proposed to come into effect from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

#### ELP COMMENTS:

Explanation 2 of Section 139(1) provides that the due date for filing of the return of income for a partner of a firm whose accounts are audited is October 31 of the AY. Section 5A of the IT Act deals with the provisions relating to taxation of spouses governed by the Portuguese Civil Code. The due date for filing of the return of income of a partner is aligned with that of the firm, however, such relaxation is not provided to the spouse of the partner to

whom Section 5A of the IT Act is applicable. Thus, the amendment is proposed to align the due date of filing of the return of income.

Reducing the timelines for filing of the belated and revised return of income, may be prejudicial to the taxpayers, even though with the faceless assessment and technology upgradation, a reduction in timeline may turn out to be burdensome to the taxpayers.

### Amendment to Section 142

- Section 142 of the IT Act is proposed to be amended to provide that any prescribed authority may issue a notice to conduct inquiry before the assessment, instead of empowering only the assessing officer.
- This amendment will take effect from April 1, 2021.

### Amendment to Section 143

- Section 143 of the IT Act is proposed to be amended to provide the following:  
Adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.  
Reduction in time limit for sending intimation under Section 143(1) is reduced from one year to nine months from the end of the financial year in which the return of income is furnished.
- These amendments will take effect from April 1, 2021.

### Insertion of new Section 147, 148, 148A, 149, 151, and amendment to 151A, 153A, 153C

- The Finance Bill, 2021, has proposed to re-vamp the law relating to re-assessment proceedings. The salient features of the proposed amendments are as follows:
- Substituted Section 147 of the IT Act proposes to allow the Assessing Officer to assess or re-assess or re-compute any income escaping assessment for any AY (subject to the time limit for issuance of notice).

Substituted Section 148 of the IT Act proposes that before making any assessment or re-assessment or re-computation, a notice is required to be issued under Section 148 of the IT Act, which can be issued only when there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant AY. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer. The information for this purpose means any information which has been flagged in the case of an assessee by the risk management strategy formulated by the CBDT. Further, a final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee has not been in accordance with the provisions of the IT Act shall also be considered as information. Additionally, in search, survey or requisition cases initiated or made or conducted, on or after April 1, 2021, it shall be deemed that the Assessing Officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three AYs immediately preceding the AY relevant to the previous year in which such search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

New Section 148A of the IT Act is proposed to be introduced which provides that before issuance of notice under Section 148 of the IT Act, the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under Section 148 of the IT Act and serve a copy of such order. The process of conducting enquiry and providing opportunity shall be undertaken after obtaining prior approval of the specified authority. The procedure as provided in Section 148A shall not be applicable to search or requisition cases. Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in Section 148A was not followed before issuing such notice for such income.

Substituted Section 149 of the IT Act proposes to provide for timelines for issuance of notice under Section 148 of the IT Act:

- No notice shall be issued if three years have elapsed from the end of the relevant AY unless the case fall in the specific cases;

- If the Assessing Officer has in his possession evidence which reveals that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to INR 50 lakhs or more, the notice can be issued beyond three years but not beyond ten years of the relevant AY. Notice under Section 148 of the IT Act cannot be issued at any time in a case for the relevant AY beginning on or before April 1, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under this provision, as they stood immediately before the proposed amendment. Further, the above provisions will not be applicable in a case, where a notice under Section 153A or 153C is required to be issued in relation to a search or requisition. At the time of computing the period of limitation for issuance of notice under Section 148 of the IT Act, the time or extended time allowed to the assessee for providing an opportunity of being heard shall be excluded.

Specified authority shall mean Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant AY and Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant AY.

The provisions of Section 153A and Section 153C, of the IT Act are proposed to be made applicable to only to search initiated under section 132 of the IT Act or books of accounts, other documents or any assets requisitioned under Section 132A of the IT Act, on or before March 31, 2021.

- These amendments will take effect from April 1, 2021.

#### ELP COMMENTS:

- The jurisprudence pertaining to re-assessment is as old as the income-tax law. The concept of reason to believe was amended time and again and finally is proposed to be deleted by the Finance Bill, 2021. Thus, one may contend that the discretion given to the Assessing Officer has been removed and has been provided that re-assessment proceedings can be initiated only if there is information with the Assessing Officer. As the saying devil is in the fine print, it has been provided, any information flagged by risk management strategy formulated by CBDT and object raised by Comptroller and Auditor General of India shall be regarded as information. There is certainly lack of clarity as of what would constitute “information” in these cases. It has been judicially (Indian & Eastern Newspaper Society vs. CIT (119 ITR 996 (SC)) held that an opinion of an audit party of the income-tax department on a point in law cannot be regarded as information and thus, cannot form the basis of re-assessment proceedings. If this interpretation is adopted, in such a case, any change in opinion arising on account of the audit report cannot be the basis of re-assessment proceedings, provided the Assessing Officer has applied his mind.
- Procedure has been provided for providing an opportunity to the assessee to show cause as to why notice under Section 148 should not be issued. The procedure as laid is principally in line with the decision of the Hon’ble Supreme Court in the case of GKN Driveshafts (India) Ltd (259 ITR 19 (SC))
- The time period for issuance of notice under Section 148 has been increased to 10 years from 6 years in cases where the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to INR 50 lakhs or more. Thus, expanding the time period within which the re-assessment proceedings may be initiated.

#### Amendment to Section 153

- Section 153 of the IT Act is proposed to be amended to reduce the time period for completion of assessment proceedings to nine months from the end of AY in which the income was first assessable.
- This amendment will take effect from April 1, 2021.

#### PROCEDURAL ASPECTS

##### ITSC proposed to be discontinued w.e.f. February 1, 2021 (Sections 245A to Section 245M)

- It is proposed to discontinue the ITSC with effect from February 1, 2021 and to constitute one or more Interim Board(s) for Settlement of pending applications.

- Applications which have not been declared as invalid under Section 245D(2C) and in respect of which no order has been issued under Section 254D(4) on or before January 31, 2021 are proposed to be treated as pending cases for Interim Boards.
- An order which was required to be passed by the ITSC under Section 245(2C) of the IT Act on or before January 31, 2021 to declare an application invalid but such order has not been passed before the aforesaid date, such application shall be deemed to be valid and treated as pending application
- All provisions pertaining to the exercise of powers and performance of functions by the ITSC including that of provisional attachment, exclusive jurisdiction, inspection of reports, power to grant indemnity etc. are proposed to be made applicable mutatis mutandis to the Interim Board for the purposes of disposal of pending applications and in respect of functions like rectification of orders for all orders passed under sub-Section (4) of Section 245D of the IT Act. However, where the time-limit for amending any order or filing of rectification 1<sup>st</sup> application under Section 245(6B) of the IT Act expires on or after February 1, 2021, in computing the period of limitation, the period commencing from February, 2021 and ending on the end of the month in which the Interim Board is constituted shall be excluded and the remaining period shall be extended to sixty days, if less than sixty days
- Applicants of pending cases are proposed to be given an option to withdraw their applications within a period of three months from the commencement of Finance Act, 2021 and intimate the same to the Assessing Officer. Where the option for withdrawal of application is not exercised by the assessee within the time allowed, the pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board.
- The Board may, by an order, allot any pending application to any Interim Board and may also transfer, by an order, any pending application from one Interim Board to another Interim Board. Where the pending application is allotted to an Interim Board or transferred to another Interim Board subsequently, all the records, documents or evidences, with whatever name called, with the ITSC shall be transferred to such Interim Board and shall be deemed to be the records before it for all purposes.
- Where an application is withdrawn, the case would be disposed-off as if no application to the ITSC was made in the first place. However, the period from the date of application to ITSC till the date of withdrawal will be excluded for the purpose of calculating limitation period and the amount of interest. The Assessing Officer shall not be entitled to use the material and other information produced by the assessee before the ITSC or the results of the inquiry held or evidence recorded by the ITSC in the course of proceeding before it.
- Every Interim Board is proposed to consist of three members nominated by the CBDT. The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible; optimizing utilization of the resources through economies of scale and functional specialization; and introducing a mechanism with dynamic jurisdiction.
- It is proposed to empower the Central Government, for the purpose of giving effect to the above scheme, to direct that any of the provisions of the IT Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Further, no such directions shall be issued on or after March 31, 2023.
- This amendment is proposed to come into effect from February 1, 2021 and would apply from such date and thereafter.

#### ELP COMMENTS:

This is a significant policy decision. It demonstrates the intent to view tax evasion more seriously and seeks to disallow the option of approaching Settlement Commission with a view to get waiver of penalty liabilities. Tax evaders may now face higher risk of criminal prosecution as the earlier option of approaching Settlement Commission to seek immunity from criminal prosecution stands discontinued.

Further, it is pertinent to note that the Interim Board is proposed to be constituted to conclude pending cases and no fresh applications may be made. It is also noteworthy that applicants have an option to withdraw their pending application within three months from the commencement of the Finance Act, 2021.



### Provision for Faceless Proceedings before the ITAT in a jurisdiction less manner

- Section 255 of the IT Act is proposed to be amended to provide powers to the Central Government to notify a scheme for disposal of appeals by the ITAT so as to impart greater efficiency, transparency and accountability by eliminating interface between the ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible, optimizing utilization of the resources through economies of scale and functional specialization. Introducing an appellate system with dynamic jurisdiction.
- It is proposed to empower the Central Government, for the purpose of giving effect to the above scheme, to direct that any of the provisions of the IT Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Further, the said directions shall be issued on or before March 31, 2023.
- It is proposed that every notification issued shall, as soon as may be after the notification is issued, be laid before each house of Parliament.
- This amendment shall take effect from April 1, 2021.

#### ELP COMMENTS:

The Government is committed to impart greater efficiency, transparency and accountability to the assessment, appeal and penalty processes. In addition to the already existing faceless assessment, appeal and penalty mechanisms, it is proposed to introduce faceless ITAT which will pave the way for a new era of digital dispute resolution mechanism. The aim is to reduce human interface, reduce cost of compliance for taxpayers, and to achieve even work distribution in different benches resulting in best utilization of resources.

While the aforesaid proposal for introducing faceless ITAT may be applauded; however, the implementation of faceless ITAT should be rigorously examined. In the garb of digitalisation, the faceless ITAT scheme should not temper/take away with the principal of natural justice of opportunity of being heard from the taxpayer.

## WITHHOLDING TAX PROVISIONS

### Amendment to Section 194 of the IT Act

- Section 194 of the IT Act prescribes withholding of tax on payment of dividends to a person resident in India.
- Section 194 of the IT Act is proposed to be amended to provide for exemption with respect to withholding tax on dividend paid by a SPV (as referred to in Explanation to Section 10(23FC) of the IT Act) to a business trust (as defined under Section 2(13A) of the IT Act) or any other person as may be notified by the Central Government in the official gazette.
- This proposed amendment is deemed to come into effect from April 1, 2020 and accordingly would apply retrospectively from AY 2021-22 and thereafter.

### Amendment to Section 194A of the IT Act

- Section 194A of the IT Act prescribes withholding of tax on payment of interest to a person resident in India.
- Currently, the provisions of Section 194A of the IT Act are not applicable on interest paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero coupon bond issued by them.
- The scope of the above exemption has been widened to further include interest paid or payable by an infrastructure debt fund in relation to a zero coupon bond issued by such fund.

### Introduction of Section 194P of the IT Act

- With a view to ease compliance for senior citizens, Section 194P is proposed to be inserted in the IT Act to provide for relaxation from furnishing/ filing of return of income to a senior citizen in the year in which tax has been deducted by the specified bank after giving effect to the deduction allowable under Chapter VI-A and rebate under Section 87A of the IT Act. The said provisions shall apply to senior citizens who is/ has:



- Resident in India;
  - Aged 75 years or more during anytime in the previous year;
  - No income other than pension and interest income from the same specified bank in which he is receiving his pension income; and
  - Furnished a declaration to the specified bank containing particulars, in such form and verified in such manner, as may be prescribed.
- This amendment is proposed to come into effect from April 1, 2021.

**ELP COMMENTS:**

This is a welcome amendment proposed to reduce the hassle of senior citizens who only have pension and interest income from furnishing/ filing of return of income where tax has already been withheld by the banks.

Additionally, the aforesaid relief has only been provided to senior citizens aged 75 years or more. However, the same should have been provided to all senior citizens (aged 60 or more) having pension and interest income.

**Introduction of Section 194Q of the IT Act**

- A new Section 194Q is proposed to be inserted in the IT Act to provide for withholding tax @0.1% on payment made by a buyer to a person resident in India for purchase of goods exceeding INR 5 million in a previous year. The buyer is required to withhold tax @0.1% on the sum exceeding INR 5 million (i.e. over and above INR 5 million).
- 'Buyer' is defined to mean a person whose total sales, gross receipts or turnover from the business carried on by him exceed INR 100 million during the FY immediately preceding the FY in which the purchase of goods is carried out.
- Further, the proposed provision shall not apply to a transaction on which:
  - tax is deductible under any other provisions of the IT Act; and
  - tax is collectible under the provisions of Section 206C of the IT Act (other than a transaction covered under Section 206C(1H) of the IT Act)

**ELP COMMENTS:**

The above provision is akin to the tax collection provisions of Section 206C(1H) of the IT Act which were introduced vide Finance Act, 2020 wherein the liability to collect tax on sale of goods was cast upon the Seller.

It is provided that where tax is required to be collected under Section 206C(1H) of the IT Act and the provisions of the proposed Section are also applicable, the said transaction shall be subject to only withholding tax under the proposed Section.

**Amendment to Section 196D of the IT Act**

- Section 196D of the IT Act prescribes withholding of tax @20% on dividend paid to FIIs from securities referred to in Section 115AD(1)(a) of the IT Act.
- Since the provision prescribes for a specific rate of withholding tax, the withholding is required to be made @20% and there were divergent views regarding applicability of beneficial rate of tax prescribed under the DTAA.
- In view of the above, various representations were received wherein it was requested that the benefit of DTAA under Section 90 or Section 90A of the IT Act may be considered at the time of withholding of tax on dividend paid to FIIs.
- Accordingly, Section 196D of the IT Act is proposed to be amended to provide that where DTAA under Section 90 or Section 90A of the IT Act applies to a payee and where such payee has furnished the TRC, then the tax shall be withheld @20% or the rate of tax provided in the DTAA for such income; whichever is lower.
- This amendment is proposed to come into effect from April 1, 2021.

**ELP COMMENTS:**

The eligibility of the beneficial rate of tax for dividend income prescribed under the DTAA's under Section 90 or Section 90A vis-à-vis the rate prescribed under the IT Act has been upheld by the Hon'ble SC in the case of *PILCOM vs. CIT West Bengal* (Civil Appeal No. 5749 of 2012).

The proposed amendment now resolves the ambiguity around applicability of the beneficial rate of tax for dividend income of FIIs.

**Introduction of section 206AB and Section 206CCA of the IT Act**

- Section 206AA of the IT Act provides for a higher rate of withholding tax for non-furnishing of PAN. Further, Section 206CC of the IT Act provides for higher rate of collection of tax for non-furnishing of PAN.
- In order to have similar provisions to ensure filing of return of income by taxpayers who have suffered a reasonable amount of withholding tax/ collection of tax, a new Section 206AB and Section 206CCA of the IT Act is proposed to be inserted in the IT Act to provide for a higher rate of withholding tax/ collection of tax for taxpayers not furnishing/ filing return of income.
- Section 206AB of the IT Act would apply on any sum paid/ payable/ credited by a deductee to a specified person (other than any sum where tax is required to be withheld under Sections 192, Section 192A, Section 194B, Section 194BB, Section 194LBC or Section 194N of the IT Act). The proposed withholding tax rate shall be higher of the followings:
  - twice the rate specified in the relevant provision of the IT Act; or
  - twice the rate or rates in force; or
  - the rate of five per cent
- Section 206CCA of the IT Act would apply on any sum or amount received by a collectee from a specified person. The proposed tax collection rate in the said section shall be higher of the following:
  - twice the rate specified in the relevant provision of the Act; or
  - the rate of five per cent
- Further, if the provisions of Section 206AA or Section 206CC of the IT Act is applicable to a specified person in addition to the proposed Sections (i.e. Section 206AB and Section 206CCA), the tax shall be deducted/ collected at higher of the two rates provided in the proposed Sections and in Section 206AA or Section 206CC of the IT Act.
- The 'specified person' is defined to mean a person:
  - Who has not filed the returns of income for preceding two AYs immediately prior to the PY in which tax is required to be deducted and for which the time limit for furnishing/ filing return of income under Section 139(1) of the IT Act has expired; and
  - aggregate of withholding tax is INR 50,000 or more in each of these two PYs.
- The 'specified person' shall not include a non-resident who does not have a permanent establishment in India.
- This amendment is proposed to come into effect from July 1, 2021.

**AUTHORITY FOR ADVANCE RULING**

With a view to provide alternate method of providing advance ruling which can give ruling in timely manner, it is proposed to constitute a Board of Advance ruling with the following amendments in the existing provisions of Authority for Advance Ruling:

- The Authority for Advance Ruling shall cease to operate with effect from such date, as may be notified in the Official Gazette.
- It is proposed that the Central Government shall constitute one or more Board for Advance Rulings for giving advance rulings under the said Chapter on and after the notified date. Advance rulings of such Board shall not be binding on the assessee or the Department and if aggrieved, the assessee or the Department may appeal against the ruling or order passed by the Board before the High Court.

- Section 245N of the IT Act is proposed to be amended to incorporate the definitions of the Board of Advance Rulings, notified date, Member of the Board of Advance Rulings and change in the definition of Authority to include the Board for Advance Rulings.
- Section 245-O of the IT Act is proposed to be amended to provide that the Authority constituted under the said section shall cease to operate on or after the notified date.
- Section 245-OB of the IT Act shall be inserted to provide for the constitution of the Board of Advance Rulings.
- Section 245P of the IT Act is proposed to be amended to provide that on or from the notified date, the provisions of the said Section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted.
- Section 245Q (which deals with filing of application) is proposed to be amended to provide that the pending application with the Authority i.e. in respect of which order under Section 245R(2) or Section 245R(4) has not been passed before the notified date shall be transferred to the Board for Advance Rulings along with all records, documents or material, by whatever name called and shall be deemed to be records before the Board for all purposes.
- Section 245R (which deals with the procedure) is proposed to be amended to provide that on or from the notified date, the provisions of the said Section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted and the provisions of the said Section shall apply *mutatis mutandi* to the Board for Advance Rulings as they apply to the Authority.
- The Central Government is also proposed to be empowered to make a scheme by notification in the Official Gazette for the purpose of giving advance ruling by Board of Advance Ruling under this provision. The scheme shall impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimizing utilization of resources and introducing dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of the IT Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after March 31, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.
- Section 245S (which deals with the applicability of advance ruling and makes it binding on the assessee and the Department) is proposed to be amended to provide that nothing contained in the said Section shall apply on and after the notified date.
- Section 245T (which deals with advance ruling to be void in certain situation) is proposed to be amended to provide that on or from the notified date, the provisions of the said Section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted.
- Section 245U is proposed to be amended to provide that on or from the notified date, the powers of the “Authority” under the said Section shall be exercised by the “Board for Advance Rulings” and the provisions of the said Section shall apply *mutatis mutandi* to the Board for Advance Rulings as they apply to the Authority.
- Section 245V is proposed to be amended to provide that nothing contained in the said Section shall apply on and after the notified date.
- A new Section 245W is proposed to be inserted to provide for appeal to High Court against the order passed or ruling pronounced by the Board for Advance Ruling. The appeal can be filed by the assessee as well as by the department.
- The Central Government shall be empowered to notify a scheme for filing of appeal by the Assessing Officer so as to impart greater efficiency, transparency and accountability by optimizing utilization of the resources through economies of scale and functional specialization, introducing a system with dynamic jurisdiction.
- The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of the IT Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the March 31, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.
- This amendment is proposed to come into effect from April 1, 2021.

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## CONSTITUTION OF DISPUTE RESOLUTION COMMITTEE FOR SMALL AND MEDIUM TAXPAYERS

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- Section 245MA of the IT Act is proposed to be inserted to provide for constitution, eligibility to claim benefit and threshold limit to be considered by the Dispute Resolution Committee.
- The committee shall resolve disputes of such persons or class of person which shall be specified by the Board. The assessee would have an option to opt for or not opt for the dispute resolution through the Dispute Resolution Committee. Only those disputes where the returned income is INR 50 lacs or less (if there is a return) and the aggregate amount of variation proposed in specified order is INR 10 lacs or less shall be eligible to be considered by the Dispute Resolution Committee.
- If the specified order is based on a search initiated under Section 132 or requisition made under Section 132A or a survey initiated under Section 133A or information received under an agreement referred to in Section 90 or Section 90A of the IT Act, such specified order shall not be eligible for being considered by the Dispute Resolution Committee. Further, Assessee would not be eligible for benefit of the aforesaid provision if there is detention, prosecution or conviction under various laws as specified in the proposed Section.
- Further, Dispute Resolution Committee has the powers to reduce or waive any penalty imposable under the IT Act or grant immunity from prosecution for any offence under the IT Act in case of a person whose dispute is resolved.
- The Central Government has also been empowered to make a scheme by notification in the Official Gazette for the purpose of dispute resolution. The scheme shall impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction.
- The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of the IT Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.
- However, no such direction shall be issued after March 31, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.
- This amendment is proposed to come into effect from April 1, 2021.

## OTHERS

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### Provisional attachment of assets in proceedings for imposition of penalty under Section 271AAD

- Section 281B of the IT Act is proposed to be amended to permit provisional attachment of property to protect interest of the revenue during pendency of proceeding for imposition of penalty under Section 271AAD of the IT Act (penalty for false entry or omission of entry in books of accounts to evade tax liability) where the amount or aggregate amounts of penalty likely to be imposed exceeds INR 20,000,000.

#### ELP COMMENTS:

The aforesaid amendment provides tax authorities power to provisionally attach property during pendency of proceeding for penalty under Section 271AAD of the IT Act for false entry or omission of entry. Such wide powers to the tax authorities may entail undue hardship to taxpayers.

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## VIVAD SE VISHWAS SCHEME

### GENERAL

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#### Amendments in the Direct Tax Vivad Se Vishwas Act, 2020

The Direct Tax Vivad Se Vishwas Act, 2020 ('DTVSV Act') did not intend to cover disputes pertaining settlement as per Chapter XIX-A of the IT Act (i.e., through the settlement commission). To remove ambiguity in relation to the same, definition of 'appellant', 'disputed tax' and 'tax arrear' under the DTVSV Act are proposed to be amended by inserting a proviso to clarify that any sum payable qua proceedings before the settlement commission/writs pertaining to orders passed by settlement commission cannot be settled under the DTVSV Act.

## INDIRECT TAX

### CENTRAL GOODS AND SERVICES TAX ACT, 2017

The following changes shall come into effect from a date to be notified.

#### Scope of Supply

- A new sub-section (aa) in Section 7 is proposed to be inserted retrospectively with effect from July 1, 2017 to levy tax on supply of services/goods by a person (other than an individual) to its members/constituents or *vice-versa* for a consideration.
- An Explanation is proposed to be inserted to the aforesaid sub-section to clarify that the person and its members/constituents shall be deemed to be two separate persons.
- Consequently, Entry 7 of Schedule II is proposed to be omitted retrospectively i.e. from July 1, 2017. The said Entry provided that supply of goods between unincorporated association/ body of persons to its members for a consideration would be liable to GST.

#### ELP COMMENTS:

The retrospective amendment in the definition of “supply” under Section 7 of the CGST Act and the corresponding retrospective omission of Entry 7 of Schedule II effectively overcomes the decision of the Hon’ble Supreme Court in the case of *State of West Bengal Vs Calcutta Club & Others [TS-779-SC-2019-VAT]* wherein the Hon’ble Supreme Court, applying the principles of mutuality, *inter alia* held that services by a club to its members amounts to services to self and would not qualify as a service for the purposes of levy of Service tax.

#### Conditions for availing ITC

- Section 16(2) of the CGST Act prescribes the conditions for availment of ITC by a registered person. Clause(a) [amongst others] provides for availment of ITC when in possession of a tax invoice/ debit note/ other such tax paying document issued by a supplier.
- A new sub-section (aa) is proposed to be inserted in Section 16(2) to provide that ITC on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of his outward supplies i.e. in GSTR 1 and such details have been communicated to the recipient of such invoice or debit note.

#### ELP COMMENTS:

With this proposed amendment, ITC entitlement will be restricted to the extent of ITC matched with GSTR 2A. It is worth pondering as to whether this amendment would make Rule 36(4) of the CGST Rules redundant.

#### Non- requirement of filing GSTR 9C and self-certification

- Section 35(5) of the CGST Act is proposed to be omitted to remove the mandatory requirement of getting annual accounts audited and submission of certified GSTR 9C i.e. reconciliation statement by a CA/ Cost Accountant.
- Corresponding amendments are proposed to be made in Section 44 of the CGST Act to remove the mandatory requirement for filing GSTR-9C with an option to file self-certified reconciliation statement.
- Further, Section 44 of the CGST Act is proposed to be amended to grant powers to the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.

#### Interest on delayed payment of tax

- Section 50(1) of the CGST Act levies interest on delayed payment of taxes by registered persons.
- A proviso to the said Section is proposed to be inserted with effect from July 1, 2017 to charge interest on late payment of tax on output tax liability debited through the electronic cash ledger i.e. on the net cash liability.

**ELP COMMENTS:**

The said proviso was inserted with effect from September 1, 2020 *vide Notification No. 63/2020 (Central Tax)* dated August 25, 2020 to charge interest on net cash liability. Further, a Press Release dated August 26, 2020 was issued to clarify that Authorities would not undertake any coercive action in respect of recovery of interest for prior period. Making the proviso effective from July 1, 2017; provides legal sanctity to the Press Release and gives a much needed relief to the assesseees.

### **Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of fact**

- Clause (ii) to Explanation 1 of Section 74 of the CGST Act is proposed to be amended so as make detention, seizure, confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.

### **Self-assessed tax**

- An Explanation is proposed to be included to Section 75(12) of the CGST Act [which deals with recovery of self - assessed tax] to include tax payable on outward supplies reflected in return filed under Section 37 (i.e. through GSTR-1) but not paid while filing return under Section 39 (i.e. GSTR-3B).

**ELP COMMENTS:**

The Authorities can initiate recovery proceedings even in cases where the tax liability in GSTR-1 is more than that in GSTR-3B.

### **Powers of the Authority to provisionally attach property/ bank accounts**

- Section 83(1) of the CGST Act is proposed to be substituted in order to expand the powers of Authorities to provisionally attach property/ bank accounts in case of assessments, inspection, search and seizure and all demand/ recovery proceedings.
- Further, the provisional attachment shall remain valid for the entire period starting from initiation of any proceedings till the expiry of one year from the date of order.

**ELP COMMENTS:**

Earlier, the Authorities were allowed to attach the property in case of specific scenarios i.e. assessment of non - filers of returns, assessment of unregistered persons, summary assessments, inspection, search and seizure. With the proposed amendments, powers of the Authorities have been expanded.

### **Pre-deposit while filing an appeal against detention/seizure of goods & conveyances**

- A proviso is proposed to be inserted to Section 107(6) of the CGST Act which requires an assessee to pay an amount equal to 25% of the penalty before filing an appeal against the order passed under Section 129(3) of the CGST Act (i.e. order for detention/seizure of goods and conveyances in transit).

### **Detention/seizure of goods & conveyances**

- Section 129(1) of the CGST Act is proposed to be amended to increase the penalty quantum where any person transports/stores goods in contravention of the CGST Act while they are in transit and such goods/ conveyances are liable to detention or seizure. Proposed penalty is as under:

Sr. No.	Scenario	Existing Penalty	Proposed Penalty
1	The owner of the goods comes forward for payment of such penalty	<ul style="list-style-type: none"> <li>• <b>Exempted goods:</b> 2% of value of goods or INR 25,000 whichever is less</li> <li>• <b>Goods other than above:</b> tax and penalty equal to 100% of tax payable on such goods</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Exempted goods:</b> 2% of value of goods or INR 25,000 whichever is less</li> <li>• <b>Goods other than above:</b> penalty equal to 200% of tax payable on such goods</li> </ul>
2	The owner of the goods does not come forward for payment of such penalty	<ul style="list-style-type: none"> <li>• <b>Exempted goods:</b> 5% of value of goods or INR 25,000 whichever is less</li> <li>• <b>Goods other than above:</b> Tax and penalty equal to 50% of the value of goods reduced by tax paid thereon</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Exempted goods:</b> 5% of value of goods or INR 25,000 whichever is less</li> <li>• <b>Goods other than above:</b> Penalty equal to 50% of the value of goods or 200% of tax payable on such goods, whichever is higher</li> </ul>

- Section 129(2) is proposed to be omitted which allows the assessee to release the seized goods under provisional basis upon execution of bond and furnishing of security.
- Section 129(3) is proposed to be amended to specify the duration of 7 days for issuance of notice for such detention and seizure and a duration of 7 days thereafter for passing an order.
- Section 129(6) of the CGST Act is proposed to be amended wherein the powers have been given to the Authorities to sale/ dispose off the seized goods/ conveyances in the prescribed manner, where the penalty has not been paid within a period of 15 days from the date of receipt of order. An option has been given to the transporter to pay the penalty as determined above or INR 1 lakh, whichever is less, for release of conveyance.

#### ELP COMMENTS:

The proposed amendment specifies timelines for issuance of notice as well as for passing of an order - which may expedite the process of release/ seizure of goods as the case may be. The said amendment also gives power to the Authorities to sale/ dispose off the goods in the event of non-payment of penalty.

The overall impact of the amendment suggests stringent approach towards non-compliance of provisions of goods/conveyance in transit.

#### Quantum of penalty payable for confiscation of goods

- The phrase 'Notwithstanding anything contained in this Act' is proposed to be removed from Section 130(1) of the CGST Act to remove superseding effect *qua* confiscation provisions.
- Lower limit of aggregate of fine and penalty leviable for confiscation of the goods is proposed to be increased to 100% of tax payable on such goods which was earlier limited to penalty leviable under Section 129 of the CGST Act.

#### Other Amendments

- Section 151 of the CGST Act is proposed to be substituted to grant power to call for information which was earlier restricted to collection of statistics.
- Section 152 of the CGST Act is proposed to be amended to mandatorily provide an opportunity of personal hearing (which was not there earlier) to the persons required to furnish information return before disclosing such information.



- Section 168 of the CGST Act is proposed to be amended to allow Jurisdictional Commissioner to exercise powers to call for information under Section 151.

## INTEGRATED GOODS AND SERVICES TAX ACT, 2017

The following changes shall come into effect from a date to be notified.

### Zero rated supply

- Section 16(1)(b) of the IGST Act is proposed to be amended to restrict the scope of “zero-rated supply” to the extent of such goods or services which are used for authorized operations in the context of supplies made to Special Economic Zone developer or a Special Economic Zone unit.
- Section 16(3) of the IGST Act is proposed to be substituted wherein the option of export on payment of IGST has been omitted. Consequentially, Section 16(4) is proposed to be inserted which restricts the option of zero-rated supply on payment of IGST to notified class of persons or notified supplies of goods/services.
- Further, a proviso is proposed to be inserted which provides that in case of non-realization of sale proceeds on account of export of goods, the exporter shall deposit the refund received on account of export under LUT along with applicable interest within 30 days from the date of expiry of time limit for collection of foreign exchange remittance as prescribed under FEMA.

#### ELP COMMENTS:

The aforesaid amendment provides more clarity in respect of taxation of SEZ supplies which is in line with the pre-GST era where the benefit of tax exemption in case of supplies to Special Economic Zone Developer/ Unit was granted only for authorized operations.

Effectively, exporters are now required to undertake zero-rated supplies under bond or LUT. Restriction with respect to export on payment of IGST would lead to blockage of working capital.

Additionally, export of goods is not only restricted to taking goods outside India, but it also requires receipt of payment in convertible foreign exchange. The said amendment may not have any impact on free supplies to unrelated parties outside India as the said transaction still does not qualify as a supply *per-se*. However, GST may be attracted on transactions of free supply with related parties outside India.

## EXCISE TARIFF CHANGES

- Introduction of new tariff items in fourth schedule of Central Excise Act, 1944 and seventh schedule of the Finance Act 2001 effective from January 1, 2022

Sr. No.	CTH	Description of Goods	Unit.	Excise Duty (%)	NCCD (%)
1	2404 11 00	Products intended for inhalation without combustion, containing tobacco or reconstituted tobacco	Kg.	81	25
2	2404 19 00	Products intended for inhalation without combustion, Other	Kg.	81	25

- Excise duty rates have been revised on the following products:

Sr. No.	CTH	Description of Goods	Unit	Existing Rate (%)	Revised Rate
1	2710 20 10	Automotive diesel fuel, containing Bio-diesel, conforming to standard IS 1460	Kg.	NA	14%+ ₹15 per litre

2	2710 20 20	Diesel fuel blend (B6 to B20) conforming to standard IS 16531	Kg.	NA	14%+ ₹15 per litre
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## AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS

Agriculture Infrastructure and Development Cess is proposed to be introduced on specified excisable goods. Accordingly, effective taxes are as under:

Sr. No.	Commodity	Duty rates applicable with effect from February 2, 2021 (Rs. Per litre)				
		BED	SAED	RIC	AIDC	Total
1	Petrol (Unbranded)	1.4	11	18	2.5	32.9
2	Petrol (branded)	2.6	11	18	2.5	34.1
3	Diesel (Unbranded)	1.8	8	18	4	31.8
4	Diesel (branded)	4.2	8	18	4	34.1

### ELP COMMENTS:

The said amendment has been made in such a manner that overall burden on the consumer remains unaffected.

## CENTRAL SALES TAX ACT, 1956

### Amendment to Section 8(3)(b) of CST Act

- Section 8(3)(b) of the CST Act has been substituted to omit the goods intended for use in the telecommunications network or in mining or in the generation or distribution of electricity or any other form of power from the ambit of CST.
- The said amendment has specified that the goods leviable to CST would *inter-alia* include goods purchased for use by the registered dealer in the manufacture or processing for sale of goods specified under Section 2(d), i.e. for sale of petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption.

### ELP COMMENTS:

The proposed amendment overcomes the judgement (interim orders) of *Asahi India Glass Limited vs. State of Maharashtra (WP 2923/2019)* and *Tata Steel BSL Limited vs. Union of India (WP (St.) 93160/2020)* wherein it was held that Form C can be issued for the goods covered under CST Act i.e. petroleum products even if they are used for manufacture of goods taxable under the GST Act.

## CUSTOMS - LEGISLATIVE CHANGES

### Conditional Customs duty exemptions would henceforth be valid only for a limited period

Presently, exemption notifications issued under Section 25 of the Customs Act are valid unless specified otherwise or withdrawn. The Bill proposes to amend the said section to provide as under:

- Conditional exemptions are valid only up to 31<sup>st</sup> day of March falling immediately after two years from the date of grant or variation of the exemption, unless otherwise specified or varied or rescinded on any other date.

- With respect to such exemptions which will be in force as on date on which the Bill will receive the assent of the President, the said period of two years shall be calculated from February 1, 2021.

#### ELP COMMENTS:

The amendment is proposed to achieve the overall objective of Customs duty rationalization with minimum distortions, wherein outdated exemptions are being eliminated and new exemptions are being introduced with a limited validity. In this regard, last year, 80 outdated exemptions were eliminated and this year nearly 400 old exemptions are proposed to be reviewed to put in place a revised customs duty structure from October 1, 2021. It is however important to note that such exemptions, which are granted “subject to specific conditions” are only proposed to have limited validity, and thus, the exemptions which are absolute in nature will not attract such limitation.

### Time limit of two years introduced for completion of any inquiry or investigation initiated under the Customs Act

- The Bill proposes to insert Section 28BB to the Customs Act, whereby it has been provided that a show cause notice under Section 28(1) or Section 28(4) of the Customs Act, is to be mandatorily issued by the Customs authorities within a period of two years from the date of initiation of audit, search, seizure or summons, etc.
- This period of two years may further be extended for one year by the Principal Commissioner or the Commissioner of Customs for a sufficient cause and reasons to be recoded in writing.

#### ELP COMMENTS:

Under the present provisions of the Customs Act, the time limit of two years have been prescribed for issuance of show cause notice for non-payment of duty for reasons other than collusion, will mis-statement or suppression of facts and five years for cases involving such suppression, etc. However, there is no provision prescribing any time limit for completion of Departmental inquiries or investigations. This has in many cases resulted in loss to the revenue due to failure in issuing show cause notices within the said period of limitation of two or five years on account of lingered investigation, which henceforth will be curbed.

### Bill of entry to be filed before the end of the preceding day of arrival of goods

- Section 46(3) of the Customs Act is proposed to be amended to prescribe for mandatory filing of bill of entry before the end of the day (including holidays) preceding the day of arrival of goods at a customs station.
- Presently, an importer can present the bill of entry before the end of the next day (excluding holidays) following the day of such arrival. However, going forward, the bill of entry will have to be presented by end of the preceding day of the arrival except for specified cases where different time limit may be notified, which shall not be later than the end of the day of such arrival.

### Procedure for pre-trial disposal of seized gold revised

- Presently, in terms of sub-section (1B) of Section 110 of the Customs Act, for disposal of any notified seized goods (including gold), an application *inter alia* for certifying the correctness of inventory or taking photographs or allowing to draw representative samples of such goods is required to be made by the proper officer before the Magistrate. Henceforth, in case of "seized gold", such application is to be made to the jurisdictional Commissioner (Appeals) instead of the Magistrate in terms of sub-section (1D) as proposed to be newly inserted under the said Section 110.
- Consequently, such inventories, photographs and lists as certified by the Commissioner (Appeals) would also be considered as 'document' having evidentiary value in terms of the amendment proposed in explanation to Section 139. Also, the powers and duties conferred to the Commissioner (Appeal) under Section 5(3) of the Customs Act has been accordingly proposed to be extended.

### Wrongful claim of remission or refund on exports to render severe consequences

The Customs Act has been proposed to be amended to incorporate provisions relating to the confiscation and imposition of penalty on goods exported with wrongful claim of remission or refund of any duty or tax.

- Section 113 of the Customs Act provides for various scenarios where goods attempted to be improperly exported are liable to be confiscated. It has been now proposed to include clause (ja), wherein a wrongful claim of remission or refund of any duty or tax or levy on export of goods, in contravention of the provisions of the Customs Act or any other law for the time being in force, shall be liable to confiscation.
- A new Section 114AC has been proposed to be inserted under the Customs Act to prescribe for imposition of penalty in cases where input tax credit under GST is claimed on the basis of invoices obtained fraudulently for discharging duty or tax on export of goods under a claim of refund. The penalty can extend up to five times the amount of refund claimed

**ELP COMMENTS:**

Recently, the Department has witnessed a lot of false cases of GST refunds claimed on the basis of fake/ bogus ITC invoices. In this regard, CBIC also released a Standard Operating Procedure (SOP) to be followed by exporters for verification of such claims by the authorities. The above amendments are proposed in order to take stringent actions to curb such false refunds. While the said amendments are caused to mitigate the risk, it is to be ensured that the genuine exporters do not face any hardship on account of such stringent provisions.

### Amendment in documents such as bills of entry, shipping bills etc, permitted to be undertaken electronically

Section 149 of the Customs Act is proposed to be amended to permit “electronic amendment” of documents such as bill of entry, shipping bill etc. as under:

- The authorisation or amendment may be done electronically through the Customs Automated System on the basis of risk evaluation through appropriate selection criteria.
- Further, in specified cases, such amendment can also be done by the importer or exporter on the common Customs Electronic Portal.

**ELP COMMENTS:**

Under the present Section 149, such amendment to the documents viz. bill of entry, shipping bill is permitted for justified reasons. However, the Customs authorities have been citing their inability to undertake such amendments electronically in the system on account of technical limitations of the system. This has resulted in denial of consequential benefits such as benefits under Foreign Trade Policy, refunds etc. Hopefully, this amendment should help in resolving such issues faced by the importers/exporters.

### Notices, orders, summons, etc. can henceforth be served on the Common Customs Electronic Portal

Section 153(1) is proposed to be amended by way of insertion of sub-clause (ca), whereby any order, decision, summons, notice or any other communication under the Customs Act may be served by making it available on the Common Customs Electronic Portal. Till now, the general modes of service included personal delivery to authorized representative, post, email, etc.

### Common Customs Electronic Portal for facilitating registration, filing bill of entry, etc.

Section 154C is proposed to be inserted to notify a common portal, to be called as “Common Custom Electronic Portal”, for facilitating the registrations, filing of bills of entry, shipping bill, payment of duty and other specified functions.

**ELP COMMENTS:**

At present, the Indian Customs Electronic Gateway (ICEGATE) is the electronic portal which provides e-filing services to the importers and exporters. It appears that the amendment intend to notify a common portal to offer a host of end-to-end services, including electronic filing, e-Payment, filing supporting documents to the industry.

## Import of goods at concessional rate of Customs duty allowed for use in manufacture of finished goods on job work basis

- The Customs (Import of Goods at Concessional Rate of Duty) Rules, 2007, which are applicable in cases where the benefit of concessional rate of Customs duty is availed in specified cases have been amended to provide for the following relaxation:
  - To allow imported goods to be used for manufacture of finished goods on job-work basis
  - To allow 100% outsourcing for manufacture of goods on job-work
  - To allow clearance of imported “capital goods” after having been used for specified purpose, on payment of differential duty, along with interest, on the depreciated value. The depreciation norms have been prescribed similar to as applied to EOUs as per the FTP.
- Detailed procedure has been prescribed in this regard under the amended rules, for sending imported materials at the premises of the job worker, return of processed goods to the importer or to another job worker as directed by the importer, the maximum period (i.e. six months) for which goods can be sent to the job worker, etc.
  - Gold, jewellery & articles thereof, and other precious metals are not permitted to be sent on job work
- The above rules have been amended vide Notification 09/2021 – Customs (N.T.) effective from February 2, 2021.

### ELP COMMENTS:

The issue of use of imported goods by job workers or loan-licensees for manufacture of specified goods under the above Concessional Rules has always been a subject matter of litigation. It has always been argued by the importers that the purpose of these rules is to promote manufacture of excisable goods in India and since it is met even if the importer/manufacturer transfers the goods to a job worker or loan-licensee, the benefit should be permissible. In the case of *Panacea Biotech Limited vs. CCE 2003-VIL-06-CESTAT-DEL-CU*, the Tribunal has held that the word “his factory” appearing in the similar erstwhile Customs Rules, 1996 will only mean the factory owned by the manufacturer and cannot be a factory of job worker. However, in the case of *Tamil Trading Corporation v Commissioner of Central Excise, Tuticorin – 2005-VIL-18-CESTAT-CHE-CU*, the Tribunal took a view contrary view. Thus, in the wake of the above amendment, this ambiguity is resolved.

## CUSTOMS - TARIFF CHANGES

### Changes in First Schedule to Customs Tariff

- First Schedule to Customs Tariff has been proposed to be amended with effect from January 01, 2022 to align with HS 2022 changes. These changes include changes in the Chapter Notes/Section Notes and substitution/insertion of Tariff Heading/Tariff item.
- Illustration:
  - Note 2 of Chapter 84 has been replaced by the new Chapter Note
  - Note 6 to Section XVI introduced
  - Tariff Heading 8462 substituted by new Heading
  - New Tariff item 8428 70 00 for industrial robots inserted

### ELP COMMENTS:

These changes are proposed to come into effect from January 01, 2022. Alignment with HS 2022 seeks to achieve uniformity of classification across the globe.

The changes in Section Notes, Chapter Notes and Tariff entries may have a likely impact on potential change in classification of goods under Customs and GST and consequently, the applicable rates of duty/tax.

**CHANGES TO NOTIFICATION NO 50/2017 - CUSTOMS**

- Presently, certain end use exemptions under Notification No. 50/2017 - Customs have been extended without the need to follow the procedure under IGCR Rules. With an intention to provide uniformity of enforcement of end-use provisions, the condition of IGCR Rules has now been made applicable to some of the end use exemptions under Notification No. 50/2017 - Customs. Few of such exemption entries have been listed below:

Sr. No.	CTH	Description of Goods
1	3208, 3815, 3901, or 3920	Specified goods for use in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or back sheet, which are used in the manufacture of solar photovoltaic cells or modules
2	3815 90 00, 3909 40 90, 7326 90 99, 84 or any other Chapter	Specified goods for use in the manufacture of cast components of Wind Operated Electricity Generator
3	84 or any other Chapter	All goods, imported by a manufacturer- supplier for the manufacture and supply of machinery and equipment to a power generation plant (other than captive power generation plant)
4	88 or any other Chapter	Parts of gliders or simulators of aircrafts (excluding rubber tyres and tubes of gliders)
5	4707	(A) All goods imported for use in, or supply to, a unit for manufacture of paper or paper board other than newsprint; (B) All goods, imported for use in, or supply to, a unit for manufacture of newsprint

- Union Budget 2021 continued the trend of the past years, of carrying out the thematic tariff changes that aims at supporting India's flagship Make in India program and vision of Atmanirbhar Bharat. A gamut of changes has been made which are aimed at making imports dearer, where corresponding manufacturing capacities exist indigenously. Others aim at checking anomalies of inverted duty structures. The proposed changes could alter supply chain qua cross- border jurisdictions eventually, leading to more value addition being done in India.
- Tariff rate changes for BCD are effective from February 02, 2021, unless otherwise specified, such as other amendments made vide Customs Notification No. 02/2021 dated February 01, 2021.

Sr. No.	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)	AIDC (%)
1.	0713 10	Peas (Pisum sativum)	50	10	40
2.	0713 20 10	Kabuli Chana	40	10	30
3.	0713 20 20	Bengal Gram (desichana)	60	10	50
4.	0713 20 90	Chickpeas (garbanzos)	60	10	50
5.	0713 40 00	Lentil (Mosur)	30	10	20
6.	0808 10 00	Apples	50/70	15/35	35
7.	1507 10 00	Crude Soya-bean Oil	35	15	20
8.	1511 10 00	Crude Palm Oil	27.5	15	17.5

9.	1512 11 10	Crude Sunflower Seed Oil	35	15	20
10.	2204, 2205, 2206, 2208	All goods	150	50	100
11.	2701, 2702, 2703	All goods	2.5	1	1.5
12.	3102 30 00	All goods	10	2.5	5
13.	3102 10 00	Urea	5	Nil	5
14.	31	Muriate of potash, for use as manure or for the production of complex fertilisers	5	Nil	5
15.	3105 30 00	Diammonium phosphate, for use as manure or for the production of complex fertilisers	5	Nil	5
16.	5201	Cotton, not carded or combed	Nil	5	5
17.	7106	Silver	12.5	7.5	2.5
18.	7106	Silver Dore	11	6.1	2.5
19.	7108	Gold	12.5	7.5	2.5
20.	7108	Gold Dore	11.85	6.9	2.5

## Other Tariff Changes

Sr. No.	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
1.	1206 00 90	All goods for the purpose of extraction and refining of oil	10	30
2.	2207 20 00	Denatured ethyl alcohol (ethanol) for use in manufacture of excisable goods	2.5	5
3.	28, 29, 30 or 38	Veterinary drugs and other goods specified in List 2 ( <b>Refer Note 1</b> )	10	5 to 50
4.	Chapter 23 (except 2309 10 00)	All goods	Nil to 30	15
5.	2528	All goods	Nil to 10	2.5
6.	Any Chapter (except 2501)	Common salt (including Rock Salt, Sea Salt and Table Salt)	Nil	Applicable BCD as per tariff
7.	2709 00 10	Petroleum Crude ( <b>Refer Note 2</b> )	-	5

8.	2709 00 20	Other ( <b>Refer Note 2</b> )	-	5
9.	2710	Naphtha	4	2.5
10.	2803 00 10	Carbon Blacks	5	7.5
11.	2907 2300	Bis-phenol A	Nil	7.5
12.	2910 3000	Epichlorohydrin	2.5	7.5
13.	2929 10 90	Diphenylmethane 4, 4-diisocyanate (MDI) for use in the manufacture of spandex yarn	Nil	7.5
14.	293371 00	Caprolactam	7.5	5
15.	3925	Builders' ware of plastics, not elsewhere specified or included	10	15
16.	3907 40 00	Polycarbonates	5	7.5
17.	3908	Nylon chips	7.5	5
18.	3920 99 99	All goods other than the following parts or sub-parts or accessories of cellular mobile phones, namely: - (i) Battery cover (ii) Front cover (iii) Front cover (with Zinc Casting) (iv) Middle cover (v) Back Cover (vi) Main Lens (vii) Camera Lens	10	15
19.	4016 95 90	Toy Balloons made of natural rubber latex	10	20
	39, 74 and 85	Former, bases, bobbins, brackets; CP wires; P.B.T.; Phenol resin moulding powder; Lamination/ El silicon steel strips for use in manufacture of transformers	Nil	Nil to 20
20.	32, 34, 38, 83 or any other	Goods covered under entry 229 (Serial No. a to zzs) of Notification No. 50/2017 – Customs ( <b>Refer Note 2</b> )	Nil	Applicable BCD as per tariff
21.	8504 90 90 or 3926 90 99	Moulded plastics for manufacture of charger or Adapter	10	15



22.	32, 84 or 96	Ink cartridges, ribbon assembly, ribbon gear assembly, ribbon gear carriage, for use in printers for computers	5	7.5 to 20
23.	41	Wet blue chrome tanned leather, crust leather, finished leather of all kinds, including split sand sides	Nil	10
24.	5002	Raw Silk (not thrown)	10	15
25.	5004	Silk Yarn (Other Than Yarn Spun from Silk Waste) Not Put Up for Retail Sale	10	15
26.	5005	Silk Yarn Spun from Silk Waste, Not Put Up for Retail Sale	10	15
27.	5006	Silk Yarn and Yarn Spun from Silk Waste, Put Up for Retail Sale; Silk-Worm Gut	10	15
28.	5202	Cotton waste (Including yarn waste and garneted waste)	Nil	10
29.	5402 to 5406	All goods of nylon	7.5	5
30.	5501 to 5510	All goods of nylon	7.5	5
31.	7007	Safety glass, consisting of toughened (tempered) or laminated glass – when used with motor vehicles	10	15
32.	7104	Cut and polished synthetic stones, including cut and polished Cubic Zirconia	7.5	15
33.	7107 00 00, 7109 00 00, 7111 00 00	Base metals or precious metals clad with precious metals	12.5	10
34.	7110	Other precious metals like Platinum, Palladium etc.	12.5	10
35.	7112	Waste and scrap of precious metals or metals clad with precious metals	12.5	10
36.	7112	Spent catalyst or ash containing precious metals	11.85	9.17
37.	7113	Gold or silver findings	20	10

38.	7118	Coin	12.5	10
39.	7204	Iron and steel scrap, including stainless steel scrap [upto March 31, 2022]	2.5	Nil
40.	7206, 7207	Primary/Semi-finished products of iron or non-alloy steel	10	7.5
41.	7208, 7209, 7210, 7211, 7212, 7225 (except 7225 11 00) and 7226 (except 7226 11 00)	Flat products of non-alloy and alloy steel	10/12.5	7.5
42.	7213, 7214, 7215, 7216, 7217, 7221, 7222, 7223, 7227 and 7228	Long product of non-alloy, stainless and alloy steel	10	7.5
43.	7225	Raw materials for use in manufacture of CRGO steel [upto 31.03.2023]	2.5	Nil
44.	7318	Screw, bolts, nuts, etc. of iron and steel	10	15
45.	7404	Copper scrap	5	2.5
46.	8430	Tunnel boring machines (TBMs)	Nil	7.5
47.	8431	Parts & components for manufacture of TBMs	Nil	2.5
48.	84143000	Compressors of a kind used in refrigerating Equipment	12.5	15
49.	84148011	Compressors of a kind used in air-conditioning Equipment	12.5	15
50.	850440	Solar Inverters	5	20
51.	85129000	Parts of electrical lighting or signaling equipment, windscreen wipers, defrosters and demisters, of a kind used for motor	10	15

		vehicles)		
52.	Any Chapter	All parts for use in the manufacture of LED lights or fixtures including LED Lamps	5	10
53.	Any Chapter	All inputs for use in the manufacture of LED (Light Emitting Diode) driver or MCPCB (Metal Core Printed Circuit Board) for LED lights and fixtures or LED Lamps	5	10
54.	8544 (except 8544 30 00 and 8544 70)	All goods (other than USB Cable for cellular mobile phone)	7.5	10
55.	8544 30 00	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships	10	15
56.	8443 32 90	Other machines capable of connecting to an automatic data processing machine or to a network	Nil	2.5
57.	8443 99 51	Ink cartridges, with print head assembly	Nil	2.5
58.	8443 99 52	Ink cartridges, without print head assembly	Nil	2.5
59.	8443 99 53	Ink spray nozzle	Nil	2.5
60.	Any Chapter	Components or parts, including engines, of aircraft of heading 8802 – (a) for manufacture of aircraft falling under heading 8802; (b) for manufacture of parts of aircraft at (a), imported by Public Sector Units under the Ministry of Defence	-	Nil
61.	94055040	Solar lanterns or solar lamps	5	15
62.	9503	Parts of electronic toys for manufacture of electronic toys.	5	15

63.	9801	High speed rail projects	-	5
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**Note 1:** The said entries in the Notification No. 50/2017 – Customs has been omitted and therefore, goods in List 2 will now attract applicable tariff rate.

**Note 2:** Will come into effect from April 01, 2021.

#### Social Welfare Surcharge – Rate Change

Sr. No.	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
1.	2515 11 00	Marble and travertine, Crude or roughly trimmed	10	-
2.	2515 12 10	Marble and travertine Blocks	10	-
3.	7106	Silver, including silver dore*	3	10
4.	7108	Gold, including gold dore*	3	10

\*Social Welfare Surcharge on the value of Agriculture Infrastructure and Development Cess on gold and silver has been exempted.

#### AD Duty

AD Duty on the following products of steel is being revoked:

Sr. No.	CTH	Description of Goods	Exporting/Originating Country
1.	7228	Straight Length Bars and Rods of Alloy Steel (Temporarily revoked for the period February 02, 2021 to September 30, 2021)	China PR
2.	7210, 7212, 7225 and 7226	Flat rolled product of steel, plated or coated with alloy of Aluminum and Zinc (Temporarily revoked for the period February 02, 2021 to September 30, 2021)	China PR, Vietnam, and Republic of Korea
3.	7228 10 10 or 7228 10 90	High-Speed Steel of Non-Cobalt Grade (Temporarily revoked for the period February 02, 2021 to September 30, 2021)	China PR, Brazil, and Germany
4.	7219	Cold-Rolled Flat Products of Stainless Steel of width 600mm to 1250mm and above 1250mm of non-bonafide usage	China PR, Republic of Korea, European Union, South Africa, Taiwan, Thailand and USA

**CVD/Provisional CVD**

CVD/Provisional CVD on the following products of steel is being revoked:

Sr. No.	CTH	Description of Goods	Exporting/Originating Country
1.	7219, 7220	Flat Rolled Products of Stainless Steel	Indonesia
2.	7219 or 7220	Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products (Temporarily revoked for the period February 02, 2021 to September 30, 2021)	China PR

## INTERNATIONAL TRADE

### AMENDMENT TO SECTION 9A OF THE CTA

Section 9A of the CTA, which relates to imposition of “Anti-dumping Duty” by the Central Government, is being amended to include certain provisions pertaining to anti-absorption, retrospective levy in anti-circumvention cases, revocation of AD duty for a period not exceeding one year, imposition of AD duties for a period of upto five years and aligning AD duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area.

Section 9A (1A) of the CTA pertains to levy of AD duty in anti-circumvention cases. Under this section, after the words “as the case may be”, the words “, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify” have been inserted so as to allow imposition of duty in anti-circumvention cases from the date of initiation of the anti-circumvention investigation.

#### ELP COMMENTS:

The power to impose anti-circumvention duties from the date of the initiation of the investigation has already been envisaged under Rule 27(3)<sup>1</sup> of the AD Rules. The amendment to the CTA above reinforces the power explained under the AD Rules.

Further, the DGTR has dealt with whether the option to impose anti-circumvention duties from the date of initiation must be exercised mandatorily in a recent investigation i.e. Final Findings dated December 28, 2020 issued in *Anti-circumvention investigation concerning imports of "Cold-Rolled Flat Products of Stainless Steel" originating in or exported from China PR, Korea, European Union, South Africa, Taiwan, Thailand and USA remanded by Hon'ble CESTAT through Order no. 51204-5120512019 dated 12.9.2019*. The above amendment clarifies that the retrospective levy from the date of initiation is optional, due to the use of the phrase “not earlier than” – confirming the position taken by the DGTR in the above investigation.

In Section 9A of the CTA, a new sub-section (1B) has been inserted introducing anti-absorption measures to the AD regime. This provision gives the power to the Central Government to modify the AD duty if such duty is rendered ineffective due to absorption of the AD duty. Absorption of AD duty is considered to have taken place if there is a decrease in the export price without a commensurate change in (i) the cost of production of such article or (ii) export price of such article to countries other than India or (iii) resale price of such article imported from the exporting country or territory or (iv) under such other circumstances as may be provided by the rules.

#### ELP COMMENTS:

The amendment brings the anti-absorption principles to the Indian AD framework. Other WTO members, such as the European Union, have previously implemented such anti-absorption principles. Some of the parameters enumerated in the above amendment are also identified in the EU Regulation as parameters considered for determining the presence of anti-absorption. However, it seems likely that there will be further amendments to the AD Rules (or perhaps a separate legislative instrument) to further expand upon the modalities of implementing the amendment – this is also reinforced by the fact that the amendment itself makes references to “other circumstances as may be provided by the rules”.

These additional amendments/rules will also need to clarify under which conditions applicants may seek the initiation of an anti-absorption investigation or a mid-term review.

In Section 9A sub-section (5) of the CTA, the words “of five years” have been substituted with “upto five years”. Also, a new proviso allowing temporary revocation of AD duty for a period not exceeding one year at a time has been introduced.

<sup>1</sup> Rule 27 (3) of the AD Rules reads as follows: “The Central Government may, pursuant to the recommendations made by the designated authority, extend the anti dumping duty to imports of article including imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.”

**ELP COMMENTS:**

AD Duties in India have historically been levied for five-year periods, with very few exceptions (For instance, Customs Notification No. 4/2021-Customs (ADD) dated January 30, 2021 issued in *Anti-dumping investigation concerning imports of "Front Axle Beam" and "Steering Knuckles" meant for medium and heavy commercial vehicles from China PR*). The above amendment gives greater flexibility to the Central Government, allowing it to take into consideration special circumstances that may be conducive to a shorter levy than the full five-year period. Further, even the AD Agreement under the WTO does not prescribe a rigid five-year levy, and only stipulates an outer limit for the duration of duties, whereby there doesn't appear to be any *prima facie* inconsistency between the amendment and the AD Agreement.

In Section 9A sub-section (2A) of the CTA, certain substitutions to the effect of aligning AD duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area has been made. Particularly, it has been clarified that AD duty will not be imposed on a unit from special economic zone unless the concerned notification specifically makes the duty applicable to such unit or such article is cleared into the Domestic Tariff Area or used in manufacture of any goods that are cleared into the Domestic Tariff Area.

**AMENDMENT TO AD RULES**

AD Rules provides the procedure for investigating dumping of the goods causing injury to the domestic industry. Certain procedural changes pertaining to the period of investigation, time period for completion of review investigations have been introduced as well as provisional assessment of imports of article alleged to be circumventing AD duty in force by way of seeking a guarantee from importer.

In Rule 5 of the AD Rules, after sub-rule (3), a provision pertaining to the period of investigation has been inserted. According to the said introduction, the period of investigation shall not be more than six months old as on the date of initiation. Also, the period of investigation shall be for a period of 12 months. However, a period of investigation of 6 months or upto 18 months may be considered with reasons recorded in writing. The same provision has been removed from Rule 22 of the AD Rules.

In Rule 23 of the AD Rules, a sub-rule (2) has been inserted to introduce a new requirement to complete the review investigation at least three months prior to the expiry of the AD duties. Further, certain changes to sub-rule (3) have been made so as to make the applicability of provisions of AD Rules i.e. Rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19 and 20 *mutatis mutandis* to review subject to sub-section (2) i.e. any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.

**ELP COMMENTS:**

The amendment creates a stricter deadline for the timely completion of sunset review, mitigating against any potential lapses of duty as seen in cases like *UOI vs Kumho Petrochemicals Co. Ltd* (2017) 8 SCC 307 where the Hon'ble Supreme Court held that an SSR customs notification issued after the expiry of the customs notification issued pursuant to the original investigation would not be valid. Further, the three-month requirement aligns with the period granted under Rule 18 of the AD Rules to the Central Government to levy duties post the issuance of final findings.

Further, the *mutatis mutandis* applicability of key rules from the AD Rules to reviews has also been made subject to the fulfillment of the timeline requirements set out in sub-section (2) of Rule 23 of the AD Rules.

Under Rule 26 of the AD Rules, a sub-rule (4A) has been inserted to allow provisional assessment of imports of article alleged to be circumventing AD duty in force, whereby a guarantee may be sought from the importer till the time a decision is reached under Rule 27 sub-rule (3) of the AD Rules.

**ELP COMMENTS:**

The above amendment allows the Central Government to provisionally take a guarantee from importers during the pendency of the investigation. This allows greater protection to the domestic industry particularly in those cases where the duration of the investigation is extended due to extraneous factors (such as a stay granted due to ongoing litigation).

## AMENDMENT TO SECTION 9 OF THE CTA

Section 9 of the CTA relates to imposition of “Countervailing Duty” in cases when an article is imported into India at subsidized prices so as to cause injury to the domestic industry. This Section is being amended to include certain provisions pertaining to anti-absorption, retrospective levy in anti-circumvention cases, revocation of AD duty for a period not exceeding one year, imposition of AD duties for a period of upto five years and aligning AD duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area. These changes are largely similar to that of the changes made in the AD Rules. With regard to anti-absorption measures under Section 9 of the CTA, absorption of CVD is limited to the following. Absorption of AD duty is considered to have taken place:

- if there is a decrease in the export price of an article without a commensurate change in resale price of such article imported from the exporting country or territory (or)
- under such other circumstances as may be provided by the rules.

## AMENDMENT TO CVD RULES

CVD Rules provides the procedure for investigating imports of subsidized goods causing injury to the domestic industry. Certain procedural changes similar to that of the changes made in the AD Rules pertaining to the period of investigation, time period for completion of review investigations as well as provisional assessment of imports of article alleged to be circumventing CVD in force by way of seeking a guarantee from importer have been introduced in the CVD Rules.

## AMENDMENTS TO THE CUSTOMS TARIFF (IDENTIFICATION AND ASSESSMENT OF SAFEGUARD DUTY) RULES, 1997

The Central Government has notified the Customs Tariff (Identification and Assessment of Safeguard Duty) Amendment Rules, 2021, which shall come into force on February 2, 2021.

The present amendment expands the scope of the existing Safeguard Duty Rules to apply to “*measures*” as opposed to “*duty*” and thereby substitutes the term “*measures*” in place of “*duty*” throughout the text. The term “Safeguard measure” is further defined as “*safeguard duty, or a tariff rate quota or such other measures imposed under sub-section (1) of section 8B of the Act*”.<sup>2</sup>

### ELP COMMENTS:

The amendment primarily aligns the existing Safeguard Duty Rules with the amendments introduced to the CTA in the Finance Act 2020. Herein, Section 8B of the CTA was expanded to include within the scope of safeguard measures “tariff rate quotas” and “other safeguard measures”.

The amendment also provides guidance with respect to the determination of the level of TRQ to be imposed. It identifies the following conditions that must be taken into account in such a determination:

- “*maintaining traditional trade flow of the article over the representative period;*
- *the existing and likely demand supply scenario in the country; and*
- *any other condition that may be considered relevant*”.<sup>3</sup>

The amendment also requires that “*the level of TRQ applied shall not reduce the quantity of imports below the level of average of imports in the last three years*”<sup>4</sup>.

Further, the amendment also permits the application of such TRQs on a “*global or country specific*”<sup>5</sup> basis. The Director General has also been empowered to review the usage and implementation of the tariff rate quota for any modification.<sup>6</sup>

<sup>2</sup> Clause 3 (d) of Notification No. 12/2021-Customs (N.T.)

<sup>3</sup> Clause 10 (i) of Notification No. 12/2021-Customs (N.T.)

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Clause 17 (iii) of Notification No. 12/2021-Customs (N.T.)



**ELP COMMENTS:**

Historically, Safeguard Measures have always been levied equally against all sources (with some exceptions for developing/under-developed countries). While the country-specific application of TRQs will give the Central Government more flexibility in terms of targeting specific, injurious imports for safeguard measures, the compatibility of such measures with the Safeguard Agreement and general WTO principles such as Most Favored Nation would also need to be examined.

The amendment also introduces Rule 19 which requires the Central Government to notify to the WTO all actions required under the WTO Agreement on Safeguards and to provide an opportunity to hold consultations with the members of the WTO having substantial interest as exporters of the product concerned before imposition of a safeguard measure.

**ELP COMMENTS:**

It is pertinent to note that presently the existing Safeguard Measures (Quantitative Restrictions) Rules, 2012 (QR Rules) govern the application of safeguard measures imposed in the form of quantitative restrictions. The QR Rules continue to remain in force and there is currently an ongoing safeguard investigation on Isopropyl Alcohol being conducted by the DGTR.<sup>7</sup> Given that both, the amended Safeguard Duty Rules and the QR Rules, continue to apply to safeguard measures that are in the form of quantitative restrictions, the operational as well as procedural aspects of the application of such rules would need to be clarified by the Central government to avoid any inconsistencies, unless the QR Rules are phased out.

## AMENDMENTS TO CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES 2017

Sr. No.	Name of the Product	Change in the Basic Customs Duty rate	Trade Remedial Amendments/Implications
1	Carbon Black	5% to 7.5%	The product attracted AD duties until December 31, 2020 from China and Russia. The Directorate General of Trade Remedies ("DGTR") recommended extension of duties vide final findings in review investigation dated December 22, 2020. However, the Ministry of Finance decided not to continue to the AD duties, and has instead provided relief to the industry by increasing the customs duties.
2	Caprolactam	7.5% to 5%	There is an ongoing AD investigation concerning imports of "Caprolactam" from European Union, Korea RP, Russia and Thailand. This is in line with the relief being given to the textile industry.
3	Nylon Fibre and Yarn	7.5% to 5%	There are number of AD investigations concerning imports from Nylon Filament Yarn. This is in line with the relief being given to the textile industry.
4	Iron and Steel Products (excluding scrap)	10%/12.5% to 7.5%	There are a number of AD and CVD investigations concerning imports of various steel products. These duties have been temporarily revoked by the Ministry of Finance to support the users. Following

<sup>7</sup> Safeguard (Quantitative Restrictions) Investigation concerning imports of "Isopropyl Alcohol" into India, Case No: (SG) 06/2019, 4 November 2019

		<p>are the steel products on which the duties have been revoked temporarily:</p> <ol style="list-style-type: none"> <li>1. Straight Length Bars and Rods of alloy-steel, originating in or exported from People's Republic of China, imposed vide notification No. 54/2018-Cus (ADD) dated October 18, 2018;</li> <li>2. High Speed Steel of Non-Cobalt Grade, originating in or exported from Brazil, People's Republic of China and Germany, imposed vide notification No. 38/2019-Cus (ADD) dated September 25, 2019;</li> <li>3. Flat rolled product of steel, plated or coated with alloy of Aluminum or Zinc, originating in or exported from People's Republic of China, Vietnam and Korea RP, imposed vide notification No. 16/2020-Cus (ADD) dated June 23, 2020.</li> <li>4. CVD on imports of Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products, originating in or exported from People's Republic of China, imposed vide notification No. 1/2017-Cus (CVD) dated September 7, 2017, is being temporarily revoked for the period commencing from February 2, 2021 till September 30, 2021.</li> <li>5. Provisional CVD is revoked on imports of Flat Products of Stainless Steel, originating in or exported from Indonesia, imposed vide notification No. 2/2020- Customs (CVD) dated October 9, 2020.</li> <li>6. AD duty on Cold-Rolled Flat Products of Stainless Steel of width 600 mm to 1250 mm and above 1250 mm of non bonafide usage originating in or exported from People's Republic of China, Korea RP, European Union, South Africa, Taiwan, Thailand and United States of America has been discontinued upon expiry of the AF duty hitherto leviable vide notifications no. 61/2015-Customs (ADD) dated December 11, 2015 and 52/2017-Customs (ADD) dated October 24, 2017.</li> </ol>
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**ELP COMMENTS:**

For several key products mentioned in the table above, the trade remedial measures which are currently in force have been revoked temporarily till the end of September 2021. These temporary revocations fall under the amendment incorporated as the proviso to Section 9A (5)<sup>8</sup> of the CTA, wherein it has been clarified that any temporary revocations cannot exceed one year in duration at a time. The above revocations, particularly with regard to the steel sector, appear to have been made on account of public interest considerations. In one other instance (i.e. Cold Rolled Stainless Steel of width between 600 and 1250 mm), AD duties have been terminated.

<sup>8</sup> Proviso to Section 9 (6) and 9A (5) of the CTA, "Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time."

## CORPORATE LAWS

### SMALL COMPANIES' GAMUT SET TO BE WIDENED UNDER THE CA2013

It is proposed that the definition of "small company" under Section 2(85) the CA2013 be revised by increasing their thresholds for paid-up capital from existing INR 5,000,000 to INR 20,000,000 and turnover from INR 20,000,000 to INR 200,000,000.

#### ELP COMMENTS:

Under the CA2013, there are lesser compliance requirements for companies which fall under the category of "Small Company". Small companies are companies other than public companies which fulfil the relevant criteria mentioned under the CA2013.

The proposed initiative to increase the threshold limit in the definition of "small company" under the CA2013 will enable more companies to be eligible to be classified as "small company" and seek the benefit of compliance exemption/ relaxations available to a "small company". This will aid in promoting small-scale businesses and reducing their compliance costs.

### RELAXATION TO OPCs TO BENEFIT START-UPS AND INNOVATORS

The Government has proposed to incentivize the incorporation of OPC by allowing them to grow without any restrictions on paid-up capital and turnover and allowing their conversion into any other type of company at any time. It is further proposed to reduce the residency limit for an Indian citizen to set up an OPC to 120 days from existing 182 days and to allow NRIs to incorporate OPCs in India.

#### ELP COMMENTS:

The Government has made the afore-mentioned proposals to boost the start-ups and help the Indian citizens and NRIs living abroad to consider India as a hub for investment. Currently, only a natural person who is an Indian citizen and resident in India is eligible to incorporate an OPC. Resident in India means a person who has stayed in India for a period of not less than one hundred and eighty two (182) days during the immediately preceding financial year. Allowing NRIs to set up OPCs is a welcome move and would act as a boost to start-up platform.

### MCA-21 3.0 – NEW MCA PORTAL

It is proposed that during the year 2021-22, MCA21 Version 3.0 will be launched which will be driven by data analytics, artificial intelligence and machine learning.

#### ELP COMMENTS:

The new Version 3.0 of the MCA portal will incorporate a larger platform and is expected to help stakeholders to access additional modules such as e-scrutiny, e-adjudication, e-consultation, thereby reducing the need to physically approach the authorities.

### STRENGTHENING OF NCLT AND IMPLEMENTATION OF E-COURTS

The Government proposes to strengthen the NCLT framework, implement e-Courts system and introduce an alternate methods of debt resolution and special framework for MSMEs.

#### ELP COMMENTS:

This initiative to strengthen the NCLT framework and implement e-courts will expediate the dispute resolution system and help in reducing the overall litigation costs of the parties.

### DECRIMINALIZATION UNDER THE LLP ACT

It is proposed that the Government will decriminalize certain offences under the LLP Act.

**ELP COMMENTS:**

Various provisions of the CA2013 were amended last year vide the Companies (Amendment) Act, 2020 to decriminalize certain provisions, substantial of which have been notified and enforced.

Recently, the Government had shared a Report of the Company Law Committee on Decriminalization of the LLP Act, dated January 4, 2021 for seeking public comments. The report inter alia provided for twelve offences to be decriminalized and to be shifted to in-house adjudication mechanism and two offences to be omitted. Under the said report, the Government had also proposed changes such as to allow LLPs to issue secured non-convertible debentures (NCDs) to bodies corporate or trusts regulated by SEBI or RBI, introduction of concept of small LLPs on the lines of small companies under the CA2013, etc.

In line with the same, the Government has now stated that it will now take up decriminalization of the LLP Act. LLPs being one of the enduring investment vehicles and investment choice for many investors, the present initiative is aimed at proving a greater ease of doing businesses by the LLPs.

## FOREIGN DIRECT INVESTMENT - INCREASE IN FDI LIMIT IN THE INSURANCE SECTOR FROM 49% TO 74%

The Government proposes to amend the Insurance Act, 1938 to increase the permissible FDI limits from 49% to 74% in insurance companies. This significant move will come with some “safeguards”. For instance, it is proposed that the majority of directors on the board, and key management personnel, of such insurance companies, would have to be resident Indians, with at least 50% of the directors being Independent Directors. A specified percentage of profits may also be required to be retained as general reserve.

**ELP COMMENTS:**

Although FDI of upto 100% is permitted under the automatic route in insurance intermediaries (such as insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors), presently, the FDI limit in insurance companies stands at 49% under the automatic route (which is subject to approval/verification by IRDAI). The proposal to increase the FDI limit in insurance companies is a significant move as it is considered a “sensitive” sector.

## INDIAN STAMP ACT, 1899: EXEMPTION FOR SALE BY GOVERNMENT

**Strategic sale, disinvestment, etc., of immovable property by Government company not liable to stamp duty.**

A new Section 8G is proposed to be inserted in the Indian Stamp Act, 1899 which shall exempt payment of stamp duty in respect of any instrument for conveyance or transfer of a business or asset or right in any immovable property from a Government company<sup>9</sup>, its subsidiary, unit or joint venture, by way of strategic sale or disinvestment or demerger or any other scheme of arrangement, to another Government company or to the Central Government or any State Government, after the approval of the Central Government.

**ELP COMMENTS:**

The proposed exemption in payment of stamp duty will reduce transaction costs in relation to the proposed corporatization of the Ordnance Factory Board.

<sup>9</sup> A “Government company” is a company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

## MISCELLANEOUS

### EASE OF DOING BUSINESS FOR MULTI-STATE COOPERATIVES

In order to promote development of Multi-State Cooperatives and for the purpose of streamlining the 'ease of doing business' for Cooperatives, it has now been proposed to set up a separate administrative structure for them.

#### ELP COMMENTS:

'Ease of doing business' has been one of the key agenda of the Government, and in order to achieve overall development of the economy, Multi-State Cooperatives are also required to be given the necessary benefits for development of their respective business(es). Afore-mentioned proposal to set up a separate mechanism is in furtherance of the same.

### BENAMI PROPERTY – ADJUDICATION MECHANISM

The Finance Bill, 2021 proposes following changes:

- The competent authority authorized under the Smugglers Act shall be the adjudicating authority to exercise jurisdiction, powers and authority conferred by or under the Prohibition of Benami Property Transactions Act, 1988. Under the Smugglers Act, the Central Government is authorized to appoint officers of the Central Government (not below the rank of a Joint Secretary to the Government), to perform the functions of the competent authority;
- On a reference made by the initiating officer, the afore-mentioned adjudicating authority is empowered to hold a particular property as a benami property or not, and thereby confirm or revoke the attachment order, as the case may be. This order is required to be passed after the expiry of one year from the end of the month in which the reference by the initiating officer was received. An exception has been incorporated to this, to provide that where the time limit for passing order expires during the period beginning from the July 1, 2021 and ending on September 29, 2021, the time limit for passing such order shall be extended to the September 30, 2021;
- Afore-mentioned amendments are proposed to come into effect from July 1, 2021.

#### ELP COMMENTS:

Afore-mentioned changes are intended to notify the authority and officers under Smugglers Act to take up the role of adjudicating authority under the Prohibition of Benami Property Transactions Act, 1988. The changes are also intended to provide an exception to the timeline of one year for passing orders.

### RELIEF TO SMALL CHARITABLE TRUSTS RUNNING EDUCATIONAL INSTITUTIONS AND HOSPITALS

It is proposed to reduce the compliance burden on small charitable trusts running educational institutions and hospitals. As of now, there is a blanket exemption to such charitable trusts from making compliances, whose annual receipt does not exceed INR 10,000,000. The exemption is now proposed to be extended to all such small charitable trusts running educational institutions and hospitals, whose annual receipt does not exceed INR 50,000,000.

#### ELP COMMENTS:

The exemption will be a welcome move for the small charitable trusts running educational institutions and hospitals, and will allow them to effectively utilize their funds on additional charitable activities and lessen the compliance burden on such charitable trusts.

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## IMPLEMENTATION OF LABOUR CODES

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The FM in her speech mentioned that the Code on Wages, 2019, the Occupational Safety, Health and Working Conditions Code, 2020, the Industrial Relations Code, 2020 and the Social Security Code, 2020, which have already been passed by both the Houses of the Parliament, would be implemented.

These legislations, which consolidate 29 existing labour legislations, propose to, amongst others, extend social security benefits to the gig economy and require payment of minimum wages to all categories of workers. These legislations are also expected to reduce compliance burden for employers.

The FM also proposed to make further amendments to the Apprenticeship Act, 1961 for enhancing apprenticeship opportunities for youth.

## FINANCIAL MARKETS

### DEBT FINANCING OF INVITS AND REITS BY FPIs

It is proposed that debt financing of InVITs and REITs by FPIs will be enabled.

#### ELP COMMENTS:

FPIs are known to have a progressive investment strategy, and we could witness significant participation in the infrastructure and real estate sectors. This will further improve the access to finance in these sectors.

### UNIVERSAL SECURITIES MARKET CODE

It is proposed to consolidate the provisions of the SEBI Act, 1992, Depositories Act, 1996, Securities Contracts (Regulation) Act, 1956 and Government Securities Act, 2007 into a rationalized single Securities Markets Code.

#### ELP COMMENTS:

- A consolidated Securities Market code will make the Indian corporate legal framework simpler, business friendly and will lead to lesser compliance burden and costs thereby is a move towards ease of participating in the securities market.
- It will lead to a boost to the securities market and bring in the much-needed consolidation of the multiple laws, ordinances, guidelines, regulations and circulars.
- The securities market code is in line with previous discussions on the National Financial Reporting Authority (NFRA).
- It will provide clarity in stakeholder policies and remove possible conflicts in the regulatory framework.

### FIN-TECH HUB AT GIFT-IFSC

The Government is proposing to support the development of a world class Fin-Tech hub at the GIFT-IFSC.

#### ELP COMMENTS:

This is in line with the previous efforts of the Government to promote the development of financial sector and boost the use of technology in the financial world.

### “POOLED INVESTMENT VEHICLE” INTRODUCED TO BORROW AND ISSUE DEBT SECURITIES

An amendment to the SCRA is proposed to introduce a “pooled investment vehicle” defined under Section 2(da) of the SCRA which will raise or collect monies from investors and invest in funds as specified by SEBI. Further, a new Section 30B to the SCRA sets out detailing the special provisions related to pooled investment vehicle. Such pooled investment vehicles will be able to borrow and issue debt securities in the manner as specified by SEBI.

An amendment to SARFAESI Act has been proposed to include pooled investment vehicles under the definition of “borrower” defined under Section 2(1)(f) of the SARFAESI Act. An amendment to the definition of “debt” under RDDBFI has been proposed to expand the said definition to include liabilities claimed which is due from a pooled investment vehicle.

#### ELP COMMENTS:

The proposed Section 30B restricts the pooled investment vehicles to borrowing and issuing only in debt securities. Further, mechanisms have been put in place for enforcement during situations of default and for recovery of defaulted amounts.

The proposed amendment will create a permanent institutional framework in the corporate bond market and generally increase liquidity and confidence in the in the secondary market. The changes will come into force from April 1, 2021.

## GOLD EXCHANGES - SEBI TO BE NOTIFIED AS REGULATOR

The Government has proposed to make SEBI as the regulator for gold exchanges.

### ELP COMMENTS:

- In the budget of 2018-19, Government had announced its intent to establish a system of regulated gold exchanges in the country.
- SEBI will be notified as the regulator and Warehousing Development and Regulatory Authority will be strengthened to set up a commodity market ecosystem arrangement including vaulting, assaying, logistics etc in addition to warehousing.

## INVESTOR CHARTER

The Government proposes to introduce an investor charter as a right of all financial investors across all financial products.

### ELP COMMENTS:

By outlining the rights of the financial investors and the grievance mechanism, it will help cut down mis-selling of financial products and provide protection to investors and boost transparency.

## DISINVESTMENT POLICY IN NON-STRATEGIC AND STRATEGIC SECTORS

The Government has approved the policy for disinvestment in all non-strategic and strategic sectors. Under the policy, the Government has proposed to keep four areas that are strategic where bare minimum Central Public Sector Enterprises ("CPSEs") will be maintained and rest privatized. In the remaining sectors, the Government has indicated that all CPSEs will be privatized.

The key highlights of the policy and which covers existing CPSEs, Public Sector Banks and Public Sector Insurance Companies are:

- Various sectors will be classified as strategic and non-strategic sectors.
- The strategic sectors classified are:
  - Atomic energy, Space and Defence;
  - Transport and Telecommunications;
  - Power, Petroleum, Coal and other minerals; and
  - Banking, Insurance and financial services
- In strategic sectors, there will be bare minimum presence of the public sector enterprises. The remaining CPSEs in the strategic sector will be privatized or merged or subsidiarized with other CPSEs or closed.
- In non-strategic sectors, CPSEs will be privatized, otherwise shall be closed.

In addition, the Government has indicated that NITI has started working out on the next list of Central Public Sector companies that would be taken up for strategic disinvestment to fast forward the disinvestment policy. The Government



has also proposed incentive package of Central Funds for States in respect of disinvestment of their Public Sector Companies.

The non-core assets largely consist of surplus land with government Ministries/Departments and Public Sector Enterprises. The Government has also proposed to set up a special purpose vehicle in the form of a company to monetize such surplus lands either by way of direct sale or concession or by similar means. In order to ensure timely completion of closure of sick or loss making CPSEs, a revised mechanism will be introduced to ensure timely closure of such units.

#### ELP COMMENTS:

- The main objectives of the policy are: (a) minimizing presence of Central Government Public Sector Enterprises including financial institutions and creating new investment space for private sector; (b) post disinvestment, economic growth of CPSEs/ financial institutions will be through infusion of private capital, technology and best management practices and which will contribute to economic growth and new jobs; and (c) disinvestment proceeds to finance various social sector and developmental programs of the Government.
- The move is in continuation of Government's target to disinvest and will attract private participation. Now with the approval of the policy of strategic disinvestment, it appears that the Government is confident to make use of disinvestment proceeds to finance various social sector and developmental programs and also to infuse private capital, technology and best management practices in Central Government Public Sector Enterprises.

## DISINVESTMENT AND STRATEGIC SALE OF LIC & OTHER GOVERNMENT CORPORATIONS

As part of the strategic disinvestments, which the Government had announced in 2020-2021, the Government has now proposed to complete its sale of holding in BPCL, Air India, Shipping Corporation of India, Container Corporation of India, IDBI Bank, among others, by 2021-22 fiscal year beginning April 1, 2021. In addition to the above, the Government has also proposed the completion of the following in the coming fiscal:

- Privatization of two public sector banks and one general insurance company; and
- Sale of its part holding in the LIC by way of an IPO to provide access to financial markets, unlock value and to give opportunity to retail investors to participate in the wealth creation.

The Government has proposed that the necessary amendments to implement the afore-mentioned would be submitted to the Parliament in the current session itself.

#### ELP COMMENTS:

- The Government has been trying to divest its stake in the Government owned entities (for example, in the Government owned air carrier Air India, Coal India), either to raise money or provide them a lifeline to continue running their business.
- It is interesting to note that over the years, the Government has been consistently selling its stake in IDBI Bank and presently LIC is its largest shareholder.

## AMENDMENTS TO THE LIC ACT

For the purposes of achieving the IPO of LIC, the Government, vide the Finance Bill of 2021, has proposed certain key changes to the LIC Act. As per the Finance Bill of 2021, the amendments (in whole or in part) to the LIC Act shall come into force on such date as the Government may notify. Some of the key amendments proposed in the LIC Act are related to superintendence and direction of the affairs and business of LIC, increase in the authorized share capital, transferability of shares, etc.

#### ELP COMMENTS:

- The amendments to the LIC Act are proposed in order to bring the provisions relating to corporate governance in alignment with the requirements under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, and thereby enabling the listing of LIC on recognised stock exchanges and making of an initial public offer, through which Government may sell its shares in LIC.

## BANKING & FINANCE

### DEVELOPMENT FINANCIAL INSTITUTION (DFI)

FM in her speech has proposed to introduce a Bill to set up a DFI with a capital of INR 200,000 million for promoting infrastructure funding since infrastructure needs long term debt financing. To that effect, a professionally managed DFI is necessary to act as a provider, enabler and catalyst for infrastructure financing. FM further stated that the DFI will aim at developing a lending portfolio of at least INR 5,000,000 million in 3 years' time.

In the budget for FY 2019-20, the FM had proposed a study for setting up DFIs for promoting infrastructure funding. About 6835 projects, which has now been expanded to over 7,400 projects, were identified under the NIP with projected investment of a whopping INR 111,000,000 million during 2020-25. Hence, the DFI will play a major role in mobilizing the 111,000,000 million required for funding of the ambitious NIP.

#### ELP COMMENTS:

A DFI is important since infra financing needs patient capital, and banks are currently not suited for lending for long term projects with long gestation periods which do not generate any cash for years. The DFI will be a catalyst and would fund projects where others are not willing to venture because of the risks involved. This will also help ease out the burden of banks. In addition, setting up of DFI will boost the infrastructure sector and will attract new infrastructure projects which in turn will result into more employment generation and demand.

### DEPOSIT INSURANCE

In the budget for FY20-21, FM had announced increase in the Deposit Insurance Coverage for a depositor from INR 100,000 to INR 500,000 by the Deposit Insurance and Credit Guarantee Corporation. The FM, with the intent of streamlining the provisions, has proposed to amend the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

#### ELP COMMENTS:

As per the present provisions, the depositors could claim the insurance coverage only when the liquidation proceedings of the bank have been initiated or its banking license is cancelled. The proposed amendment to the Deposit Insurance and Credit Guarantee Corporation Act, 1961 shall allow the depositors to get funds covered under the deposit insurance even while the bank is under stress. Considering the recent past and impositions of moratorium by the RBI, which resulted in limited access to deposits, this is a positive development and shall protect the interest of the depositors.

### CORPORATE BOND MARKET

With an intent to instil confidence amongst the participants in the Corporate Bond Market and to deepen the corporate bond market, FM has proposed a permanent institutional framework for purchase of investment-grade bonds. The proposed institution would purchase investment grade debt securities, both in stressed and normal times and will help in enhancement of secondary market liquidity of corporate bonds.

#### ELP COMMENTS:

The new framework would help to bring in liquidity to debt markets and will also facilitate faster debt resolution for stressed assets.

### ISSUE OF ZERO COUPON BONDS BY NOTIFIED INFRASTRUCTURE DEBT FUNDS (IDFS)

FM in her speech has proposed that in a bid to attract investments into the country's infrastructure sector, the government will notify IDFs eligible to raise funds by issuing tax efficient zero coupon bonds.

**ELP COMMENTS:**

A zero-coupon bond is a debt security that does not have to pay interest but instead trades at a deep discount, rendering a profit at maturity, when the bond is redeemed for its full face value. The zero-coupon bonds are an attractive investment option, and this move will benefit debt investments in the infrastructure sector over a period of time.

**PUBLIC SECTOR DISINVESTMENT**

FM mentioned that in addition to sale of its balance stake in IDBI Bank Limited, the Government would initiate privatization of two Public Sector Banks and one General Insurance company in FY 21-22. FM also proposed requisite amendments under Life Insurance Corporation Act, 1956 for liquidating/selling of stakes of the Government in Life Insurance Corporation of India through an IPO. LIC, being the largest institutional investor in country, an announcement of its listing on stock exchanges has set the expectations of it being the largest public issue for the coming financial year 2022.

**ELP COMMENTS:**

The disinvestment of the Government stake in the Public Sector Banks and the General Insurance Companies shall help in unlocking their value and providing opportunity for retail investors to participate in wealth creation. Further, listing of companies on stock exchanges disciplines a company and provides further access to financial markets.

**DIGITAL MODES OF PAYMENT**

For providing further encouragement and boost to digital transactions, FM earmarked INR 15,000 million towards a proposed scheme that will provide financial incentive to promote digital modes of payment.

**ELP COMMENTS:**

Incentivizing digital payments will bring about a lot of opportunities for fintechs to innovate and grow.

It's a positive move towards enhancing ease of doing business in India. Further, digital payments are secure and provide a systematical and convenient mode of transactions.

## STRESSED ASSET RESOLUTION

### RESOLUTION OF STRESSED ASSETS BY SETTING UP OF BAD BANK

The FM in her speech has emphasized on the need to clean up the books of the PSB due to high level of the provisioning by the PSBs of their stressed assets. In view of the same, the FM announced the establishment of a “bad bank” which shall be based on an ARC, AMC and AIF model to acquire, manage and efficiently dispose off the bad loans of such PSBs.

#### ELP COMMENTS:

The proposal for setting up of a bad bank will certainly ease up the bad loan burden on the PSBs and shall provide the PSBs with an opportunity to focus solely on the credit growth, which has taken a hit in the past few years and especially during the nation-wide lockdown induced by the COVID-19 pandemic.

### SARFAESI-REDUCTION IN THRESHOLDS

For NBFCs with a minimum asset size of INR 1000 million, the minimum loan size eligible for debt recovery under the SARFAESI is proposed to be reduced from the existing level of INR 5 million to INR 2 million. This change is proposed to motivate credit discipline while safeguarding the interests of small borrowers.

#### ELP COMMENTS:

In order to make the enforcement of security interest under SARFAESI more accessible to the NBFCs, earlier last year, changes in thresholds were announced whereby asset size of NBFC was reduced from INR 5000 million to INR 1000 million and loan (secured debt) size from INR 10 million to INR 5 million, for being qualified as financial institution under the SARFAESI Act for enforcement of its security interest. This announcement follows in the same vein as a further reduction in loan amount threshold has been affected. However, in addition to making the remedies under SARFAESI more accessible, importance should also be placed on making these remedies practically viable for financial institutions by ensuring time-bound enforcement and ease of recovery.

### STRENGTHENING THE DISPUTE RESOLUTION FRAMEWORK

The introduction of IBC was met with an enthusiastic response; however, the recent years have seen many financially stressed companies plunged into long and tiresome litigations with no repose in the near future. It is for this reason, that the FM stated, that in order to ensure a faster resolution of the companies undergoing restructuring as per the provisions of the IBC, the framework in relation to the NCLT shall be strengthened. Further, the FM also announced implementation of an e-courts systems for speedy resolution of disputes under IBC.

#### ELP COMMENTS:

Even though IBC provides for an extensive dispute resolution mechanism, the same is marred with various operational difficulties. The above-mentioned proposal would lead to a faster dispute resolution which in turn would ultimately benefit various stakeholders of the company undergoing restructuring under IBC.

### MEASURES FOR MSME SECTOR

MSMEs have been a focal point of much deliberation during the past year. Arguably, it is one of the most stressed sectors, and in the pandemic, the Government came to the aid of the MSMEs facing the threat of insolvency. The Government announced various remedial measures including granting a loan moratorium, redefining MSMEs, as well as suspending initiation of fresh insolvencies under the IBC. However, with the suspension of IBC coming to an end on March 31, 2021, a looming uncertainty in the MSME sector is palpable. In this backdrop, the FM has now announced a special mechanism for resolution of MSMEs.

#### ELP COMMENTS:

Though details of this special mechanism are awaited, the fact that MSMEs have been subject to recent pro-active measures will inspire confidence in all the stakeholders of this sector. It is in line with the earlier announced changes/measure that prove that MSMEs are the backbone on which an AtmaNirbhar Bharat would be built.

## INFRASTRUCTURE

### INTRODUCTION

As expected, infrastructure has been one of the primary focus areas in this year's budget as well. The FM has provided for sharp increase in capital expenditure by over INR 5,500,000 million which is 35.4% more than the budget estimate of 2020-21. Out of the above, the FM has kept a sum of more than INR 440,000 million in the Budget head of the Department of Economic Affairs, which will be provided for projects/programs/departments that show good progress on Capital Expenditure and are in need of further funds.

To achieve the goals and objectives of the National Infrastructure Pipeline, the FM has emphasized on the need for major increase in funding from the Government as well as the financial sector. The same is proposed to be achieved through creation of institutional structures, asset monetization, and enhancement of share of capital expenditures in the central and state budgets. Accordingly, a "Development Finance Institution" is proposed to be set up for providing long term debt support for infrastructure projects. A sum of INR 200,000 million has been allocated to capitalize the finance institution which has a lending target of INR 5,000,000 million in coming three years. As regards asset monetization, the FM has announced the launch of a "National Monetization Pipeline" of potential brownfield assets. An asset monetization dashboard will also be created for tracking the progress and to provide visibility to investors. To allow ease of access to InvITs and REITs the budget has provided some encouragement for private participation. The FM highlighted some important measures taken in the direction of asset monetization which includes sponsoring of InvITs by NHAI and PGCIL and rollouts proposed in the roads, railways, transmission, oil and gas, airports and sports space. Additional sum of more than INR 2,000,000 million will be provided to States and autonomous bodies for their capital expenditure. The Government will also work out mechanisms to budget to nudge the States to spend more money for creation of infrastructure.

### INVESTMENTS IN INFRASTRUCTURE SECTOR

A range of key steps have been proposed to augment infrastructure investment and ease of funding to the infrastructure projects. Some of these are listed below.

**InvITs and REITs.** Debt Financing of InvITs and REITs by FPIs will be enabled by making suitable amendments in the relevant legislations.

**Tax on dividend.** The dividend paid to REITs or InvITs has been exempted from TDS. It is also proposed to clarify that deduction of tax on incomes including dividend income of FPIs may be made at treaty rate. It is also proposed to exempt dividend payment from levy of MAT for foreign company if the applicable tax rate is less than the rate of MAT.

**Investment by funds.** For ease in availing the 100% tax exemption granted to funds such as pension funds and sovereign wealth funds, the Government proposes to relax certain pre-conditions to availing the exemption. These conditions primarily relate to prohibition on private funding, restriction on commercial activities, and direct investment in infrastructure.

**Zero coupon bonds.** Notified infrastructure debt funds will be made eligible to raise funds by issuing tax efficient zero-coupon bonds

**Stressed Asset.** Acknowledging the high-level provisioning by private sector banks of their stressed assets, the FM has called for the need for measures to be taken to clean up the bank books. For the same, an asset reconstruction company limited, and asset management company is proposed to be set up by the Government. The company will consolidate and take over existing stressed debt and then manage and dispose the assets to AIFs and other potential investors for value realization.

**Strategic Divestment.** The FM announced approval for the policy of strategic disinvestment of public sector enterprises by the Government. The policy provides a road map for disinvestment in all non-strategic and strategic sectors. Several divestments such as BPCL, Air India, Shipping Corporation of India, Container Corporation of India, IDBI Bank, BEML, Pawan Hans, Neelachal Ispat Nigam limited are proposed to be completed in the coming financial year. The Government will work out incentive package of central funds for States to encourage the States to divest from their stake in public sector companies.

### POWER, OIL AND GAS

**Power.** Acknowledging the serious concerns around viability of DISCOMS, the FM mentioned that a reforms-based result-linked power distribution sector scheme will be launched. The scheme will aid DISCOMS for infrastructure creation

including pre-paid smart metering and feeder separation, upgradation of systems, etc., tied to financial improvements. The FM has allocated a sum of INR 3,059,840 million for the coming 5 years to the proposed new scheme. No further details of the scheme were provided. However, the FM did not comment on the report card of the Ujjwal DISCOM Assurance Yojana Scheme announced in November 2015. The FM also did not comment on the key difference between the proposed scheme and the Ujjwal Scheme. Further, a framework is proposed to be put in place by the Government to give consumers alternatives to choose from among more than one DISCOM as DISCOMS across the nation are mostly government or private monopolies. Choice to consumers will aid competition among DISCOMS.

Further boost to the non-conventional energy sector has been provided for through additional capital infusion of INR 10,000 million to the SECI and INR 15,000 Million to IREDA. Custom duty on solar investors and solar lanterns has been increased with a view to encourage domestic production. The Government proposes to notify a phased manufacturing plan for solar cells and solar panels. At present, to encourage domestic production, we are raising duty on solar invertors from 5% to 20%, and on solar lanterns from 5% to 15%. Details of the phased manufacturing plan were for solar cells and solar panels were not mentioned. It will remain to be seen as to whether the plan includes within its ambit the required ecosystem for the solar manufacture industry.

Transmission assets of value of INR 70,000 Million will be transferred to PGCIL's InvITs under the proposed asset monetization objectives.

We note that the FM did not provide clarity on the plans of the Government in respect of the long pending reforms in the power sector including the passing of the new electricity law. In her last budget speech, the FM also spoke about deliberations by the Government on honoring of the terms of its contracts. However, nothing in respect of the same was referred by the FM in her latest speech. It may be advisable for the Central Government to focus on the long standing critical concerns that have been looming over the power sector such as, fuel supply issues, easing the renewable purchase obligations, cross - subsidy surcharge, pilferage and transmission losses, transmission capacity augmentation and open access availability, payment defaults by DISCOMs and compliance of their obligations under the power purchase agreements (such as providing payment securities to the developer/power supplier), clarity on amendments to the captive power rules etc.

**Oil and Gas.** For easy access to natural gas on a non-discriminatory open access basis, the FM proposed setting up of an independent Gas Transport System Operator to facilitate and coordinate booking of common carrier capacity in all-natural gas pipelines. With this initiative, the government aims to address concerns around the allocation of gas transportation capacity by players involved in both the supply and transportation of natural gas.

Further, the City Gas Distribution Network is proposed to be extended to 100 more districts in the next three years.

The Ujjawala scheme, which provides LPG connections with financial assistance from the Central Government and currently benefits 80 Million households, will be further extended to 10 Million more households.

Oil and gas pipelines of GAIL, IOCL and HPCL will be rolled out under the proposed asset monetization program.

## ROADS

The FM while discussing the Bharatmala Pariyojana project announced that by March 2022, 8,500 kms length of roads would be awarded and an additional 11,000 kms of national highway corridors would be completed.

In order to monetize infrastructure projects, the FM announced that five operational roads with an estimated enterprise value of INR 50,000 million were being transferred to the InvIT sponsored by NHAI. NHAI operational toll roads would be rolled out under the asset monetization programme. It would be important to see whether timely monetization is actually achieved in a manner that enables NHAI to decrease its debt burden. Given the tepid response received for the previous TOT bundles, it would be crucial to ascertain whether the Central Government proposes another model for the monetization or amends the TOT model as envisaged by the Cabinet in November 2019. The geographies of the identified bundles would be key.

The FM also announced that a few more economic corridors including 3,500 km national highway work in Tamil Nadu, 1,100 km national highway work in Kerala, 675 km of highway works in West Bengal and more than 1,300 km of national highways in Assam were also being planned.

The FM also identified certain other expressways/corridors which would see considerable activity in 2021-22. Some of these projects include the Delhi-Mumbai expressway, Bengaluru-Chennai expressway, Delhi-Dehradun Economic corridor, Kanpur-Lucknow expressway, and the Chennai-Salem corridor.

## RAILWAYS

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A National Rail Plan for India – 2030 has been prepared by the Indian Railways to create a ‘future ready’ Railway system by 2030. The FM also announced that railways would monetize Dedicated Freight Corridor assets for operations and maintenance, after commissioning. Numerous freight corridors have been announced to be undertaken to lessen passenger traffic and provide for cheaper logistics. The FM mentioned that 100% electrification of Broad-Gauge routes would be completed by December 2023.

A record sum of INR 11,00,550 million has been announced for Railways out of which INR 10,71,000 million is for capital expenditure.

The budget did not provide much in respect of private investment in the railways sector.

## AIRPORTS

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The FM announced that the next lot of new airports would be monetized for operations and management concession. Further AAI Airports in Tier II and III cities would be rolled out under proposed asset monetization programs.

Tax holiday for capital gains for aircraft leasing companies, tax exemption for aircraft lease rentals paid to foreign lessors have also been proposed.

## PORTS WATERWAYS

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Major ports will be moving from managing their operational services on their own to a model where a private partner will manage it for the major ports. In this regard, FM announced 7 projects for more than INR 20,000 Million by the Major Ports on PPP mode in FY 2021-22. However, the FM did not hint on the likely terms and conditions for such private participation.

The industry was hoping to hear on initiatives on indigenous container manufacturing as the same are dominated by other countries, particularly China. Long delays and surge in freight costs due to paucity of containers has been a pain point for exporters for long. However, the same did not find any consideration in the FM’s speech.

In order to promote flagging of merchant ships in India, the FM proposed to launch a scheme which provides for subsidy support to Indian shipping companies in global tenders floated by ministries and central public sector enterprises. In this regard, FM announced that an amount of INR 16,240 Million will be provided over 5 years.

Efforts are proposed to be made to bring ships to India from Europe and Japan for recycling purposes. The FM announced that the recycling capacity of around 4.5 Million Light Displacement Tonne (LDT) will be doubled by 2024.

Substantial investments in the development of modern fishing harbours and fish landing centres are also proposed. To start with, 5 major fishing harbours – Kochi, Chennai, Visakhapatnam, Paradip, and Petuaghat are proposed to be developed as hubs of economic activity.

## LOGISTICS AND URBAN INFRASTRUCTURE

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The FM announced that the Government would work towards raising the share of public transport in urban areas through expansion of metro rail network and augmentation of city bus service. As such, new scheme will be launched at a cost of INR 1,80,000 million to support augmentation of public bus transport services. The scheme will facilitate deployment of innovative PPP models to enable private sector players to finance, acquire, operate and maintain over twenty thousand buses. The scheme will be aimed to boost the automobile sector, economic growth, employment opportunities for the youth and enhance ease of mobility for urban residents.

The FM announced that two new technologies i.e., ‘MetroLite’ and ‘MetroNeo’ will be deployed to provide metro rail systems at much lesser cost with the same experience, convenience and safety in Tier-II cities and peripheral areas of Tier-1 cities. The central counterpart funding was announced by the FM for metro projects in Chennai, Bengaluru, Nasik and Nagpur.

Other core infrastructure assets that will be rolled out under the proposed asset monetization programme regarding logistics are, warehousing assets of CPSEs such as, central warehousing corporation and National Agriculture Cooperative Marketing Federation of India among others.

The national logistics policy proposed by the FM in her speech in the last budget has not yet been rolled out. The policy was aimed at bringing down logistics costs. The Government was also planning to draw up a comprehensive digital inventory of logistics assets to maintain a record to reflect the availability of space through geotags. However, nothing on the above was mentioned by the FM in her latest speech.



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## WATER INFRASTRUCTURE

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The FM announced that, the Jal Jeevan Mission (Urban), is to be launched. It aims at universal water supply in all 4,378 urban local bodies with 28.6 Million household tap connections, as well as liquid waste management in 500 AMRUT cities. It is to be implemented over five years, with an outlay of INR 28,70,000 million.

### ELP COMMENTS:

There seems to be a clear thrust by the Government to facilitate the infrastructure asset monetization program. Provisions to enhance fund raising such as allowing foreign participation in debt funding of InvITs and REITs, allowing notified debt funds to raise zero coupon bonds and removing restrictions to meet the conditions for availing 100% tax exemption by investment funds is a welcome move.

However, the FM did not touch upon the other long pending issues such as snarls in land acquisition and approvals, uniformity in compensation to land owners, issues around contract enforcement, renegotiation of contracts, sector specific concessions and fair allocation of risks, protracted disputes resolution, and development of regulatory and institutional framework. We hope that the focus on creating the asset management company after consolidating stressed debts would create promising and better managed investment opportunities. The recent efforts of NHAI to monetize the national highways through the TOT model, had received a mix response from the stakeholders due to various reasons. The Government would have to ensure that it learns from such incidents and monetizes the toll roads in a strategic manner to ensure maximum gains from such roads. It may resort to a different mode for monetizing the operational roads. We also note that the FM did not provide clarity on the plans of the Government in respect of the long pending reforms in the power sector including the passing of the new electricity law. These concerns must be addressed expeditiously.



## REAL ESTATE

### DEBT FINANCING OF INVITS AND REITS BY FOREIGN PORTFOLIO INVESTORS

The FM announced that debt financing of InvITs and REITs by Foreign Portfolio Investors will be enabled by making suitable amendments in the relevant legislations.

#### ELP COMMENTS:

The above introduction of long term debt financing shall further provide easily accessible finance and credit to InvITS and REITs, thus augmenting funds for real estate and infrastructure sectors and providing a boost to the real estate and infrastructure industries.

### INCREASE IN SAFE HARBOR LIMIT FOR PRIMARY SALE OF RESIDENTIAL UNITS

With a view to incentivize home buyers and real estate developers, FM proposed to increase safe harbor limit from 10% to 20% for the specified primary sale of residential units.

#### ELP COMMENTS:

The increase in safe harbor limit coupled with the concessions provided in the stamp duty for sale of real estate (as already implemented in various States of India due to the Covid-19 pandemic), shall aid in boosting the sale of residential units and give the real estate sector a much-needed respite.

### TEXTILE PARKS

FM announced a scheme for launching Mega Investment textiles parks in addition to the PLI scheme. It has been proposed by the FM that 7 textile parks will be established over 3 years. This will create world class infrastructure with plug and play facilities to enable create global champions in exports and also lead to a spike in demand for huge land parcels and/or land banks.

#### ELP COMMENTS:

This will create world class infrastructure and will unlock the potential of new markets for development and provide an impetus to real estate assets, including logistics and warehousing.

### AFFORDABLE HOUSING/RENTAL HOUSING

The Government of India has been a proponent for 'Housing for All' and affordable housing as priority areas. FM proposed an extension in the tax holiday for an additional year for Affordable housing projects till March 31, 2022 and provided a tax exemption for notified affordable rental housing projects.

#### ELP COMMENTS:

The above announcements were made to further stress the importance of affordable housing for all, and affordable rental housing for migrant workers, and shall result in a further boost to the real estate sector by enabling labor to find suitable accommodation, aiding development.

### GROWTH OF INFRASTRUCTURE

FM in her speech on the Union Budget 2021-22, laid emphasis on boosting infrastructure in the country including airports, highways, etc.

#### ELP COMMENTS:

Acquisition of land by the Government is integral for setting up of any new infrastructure in the country. Suitable amendments may be proposed to the legislations by the Government to supplement the beneficial operation of public infrastructure. The Government may be looking at simplifying the land acquisition procedure for public purposes. Historically, there have been a large number of litigations surrounding the issue of land acquisition by the Government. This is because, generally, there is a big difference between reckoner value and actual market

value and the valuation of the lands are conducted without capturing the appreciation in value upon construction of land. These factors result in disputes and litigation. Since the Government is planning a massive boost in infrastructure there is an anticipation of simplification and transparency in the process of land acquisition and calculation to the compensation to be paid by the Government for acquired lands. This will have a two-fold advantage – one is lesser disputes and second less delays in the completion of projects.

## CENTRE FORMING AN SPV TO MONETIZE LAND OWNED BY PSUS

FM has announced monetization of non-core assets largely consisting of surplus lands with government Ministries/Departments and Public Sector Enterprises by way of sale or concession or similar ways. FM proposed that the same should be undertaken by a special purpose vehicle in the form of a company to carry out the task.

### ELP COMMENTS:

Monetizing lands may be a significant potential means for generating additional revenue, given the quantum of under-utilized prime lands held by the Government and/or its undertakings. This will also aid in upgrading rural, urban and social infrastructure and would add to the opportunities for construction and real estate sector.

## SWACHCH BHARAT, SWASTH BHARAT

For further swachhta of urban India, the FM announced the need to focus on reduction in air pollution by effectively managing waste from construction-and-demolition activities and bio-remediation of all legacy dump sites. The Urban Swachh Bharat Mission 2.0 will be implemented with a total financial allocation of 14,16,780 million over a period of 5 years from 2021-2026.

### ELP COMMENTS:

Such environment friendly efforts may help in attracting investment from multi-national companies who are generally conscious of carbon footprints and promote sustainable development.

## RECORD OF RIGHTS BEING GIVEN TO PROPERTY OWNERS IN VILLAGES

Early this year, Honorable Prime Minister had launched SWAMITVA Scheme. Under the aforesaid scheme, the relevant record of rights are being given to the property owners in villages. Up till now, about 0.180 million property owners in 1,241 villages have been provided cards. The FM in her speech on the Union Budget 2021-22 has further proposed to extend this to cover all States/Union Territories.

### ELP COMMENTS:

The above step shall better protect the rights of the property owners in villages, who are generally uneducated about the need to have their names mutated in the record of rights. This will facilitate the smooth functioning of property transfers, reduce litigation and aid in systematizing the process of record keeping.

## SCRAPPING POLICY

The FM announced the voluntary vehicle scrap policy which may come into force from April, 2022. Apart from the anticipated reduced environmental pollution, boost in auto sales, and the potential tax and loan incentives being attached to such schemes generally, this policy will initiate substantial demand for storage/parking of these scrapped/old/unfit vehicles to be stored in the interim.

### ELP COMMENTS:

This may lead to a spike in demand for huge land plots or land banks (or scrap parks), which are typically taken on lease for storage of the said discarded vehicles near several metro cities. The draft scheme/policy of the Ministry of Road, Transport, and Highways (MoRTH) is awaited to determine the land usage for this scheme, and the kind of approvals required in this case.

## DEFENCE & AEROSPACE

### OVERVIEW

The Union Budget of 2021-22 has allocated INR 4,781 billion towards the Ministry of Defence for revenue and capital expenditure, defence pensions and other miscellaneous expenditures. Out of this allocation, the Defence Expenditure (Revenue and Capital) budget for 2021-22 amounts to INR 3,470 billion. The Defence Expenditure equals roughly 9.9% of the central government's total expenditure for 2021-22 and 2.58% of India's estimated GDP.

### INDIA'S DEFENCE BUDGET ANALYSIS

India's defence budget for 2021-22 has grown by 7.4% over last year's budget estimates. On the face of it, this looks like a promising increase, however, when compared with last years' revised estimates, the growth is only 0.9%. Such an increase of less than 1% over the previous years revised estimates indicates that the defence budget has shrunk rather than increased when considered the impact of inflation.

In order to achieve its status as a self-sufficient country that primarily exports rather than imports its defence equipment, the Standing Committee on Defence in its 2014 report had recommended that India's defence budget should be increased to about 3% of GDP. While this year, the Defence Budget amounts to 2.5% of India's GDP, this figure is not to cheer given the fact that India's GDP has shrunk by -9.6% over the course of 2020-21 on account of the coronavirus pandemic. Given below is an analysis of the defence budget over the past 7 years:

**Figure 1: Defence Budget Analysis**

Year	Defence Budget (INR billion) (BE)	Share of GDP (%) <sup>10</sup>	Growth over previous years' Defence Budget (BE) (%)
2015-16	2,301	2.26%	3.5%
2016-17	2,487	2.21%	8.1%
2017-18	2,630	2.17%	5.7%
2018-19	2,793	1.48%	6.2%
2019-20	3,052	1.45%	9.3%
2020-21	3,230	1.44%	5.8%
2021-22	3,470	2.5%*	7.4%*

*Defence Budget = Capital Expenditure + Revenue Expenditure*

*BE = Budget Estimates*

### SHARE OF CAPITAL & REVENUE EXPENDITURE

In 2021-22, capital expenditure is budgeted at INR 1,350 billion, and it accounts for 39% of the total defence budget (excluding pensions and miscellaneous expenses). Capital outlay includes expenditure on purchasing defence equipment, weaponry, aircrafts, naval ships, land, and construction of roads and bridges in border areas. This figure is only 0.9% higher than last years revised estimates and is not sufficient to even cover inflation of the ongoing acquisitions, let alone provision for any new ones.

The remaining defence expenditure is revenue expenditure which includes expenditure on salaries, allowances, stores required for running the defence services and maintenance of equipment and buildings. Revenue expenditure for 2021-22 stands at INR 2,120 billion and amounts to 61% of the defence budget. Share of revenue expenditure is typically high

<sup>10</sup> Ministry of Statistics & Programme Implementation (MoSPI) data

\* Based on calculations as per data presented in the Union Budget 2021-22

because the Indian defence forces are personnel-intensive, with a sanctioned strength of 1.4 million active personnel along with 2.8 million reserve personnel.

The amount of funds sanctioned in this budget for defence pensions amounts to INR 1,158 billion, which has decreased when compared to last years' figures of INR 1,250 billion.

Over the years, the budget for capital acquisitions for the services is declining in comparison to revenue allocations, thereby adversely affecting the modernization process of the armed forces. It means that India would be unable to acquire a lot of modern equipment and technology, having to rely on its outdated arms, ammunition and technology. While its neighbors continue to grow from strength to strength spending vast sums on their defence sector (an example can be taken from China, who despite having 2.1 million active military personnel allocate a significant chunk of their defence budget towards modernization and capital acquisition), India is adopting a perilous approach by not matching them stride for stride.

**Figure 2: Budget Break-up (in INR billions)**

Major Head	Actual 2019-20	Revised 20-21	Budgeted 21-22	% change (RE to BE)
Revenue Exp.	2,075.72	2,093.12	2,120.28	1.3%
Capital Outlay	1,110.92	1,345.10	1,350.61	0.4%
Pensions	1,178.10	1,250	1,158.50	-7.32%
Civil Expenditure	165.22	159.14	152.57	-4.12%

**Figure 3: Union Budget 2020-21 (Revised Estimates) vs Union Budget 2021-22 (Budget Estimates)**

Particulars	Union Budget 2020-21 (RE)	Union Budget 2021-22 (BE)
Share of GDP	1.45%	2.5%
Capital Expenditure	1,345.10 billion	1,350.61 billion
Revenue Expenditure	2,093.12 billion	2,120.28 billion
Defence Pensions	1,250 billion	1,158.50 billion
Total Defence Allocation (excluding Pensions)	3,438.22 billion	3,470.89 billion

**ELP COMMENTS:**

Defence was identified as one of the pillar sectors in the Economic Stimulus Package announced earlier in 2020. Surprisingly, Defence did not see a notable increase in the overall capital budget given the Eastern Ladakh stand-off in early May last year and subsequent threats from India's neighboring countries. Capital allocations, which fund the purchase of new weapons and equipment for modernization has increased by only 0.9% over the previous years revised estimates, which is barely enough to cover inflation of ongoing acquisitions. However, given the Covid-19 times' requirement to first address the health and economy of the nation, MoF has catered for the ongoing priority procurements. Very rarely do the Defence Pensions estimates see a dip and this has been such an unprecedented year. With the Defence Acquisition Procedure 2020 promising innovative acquisition formats, the only thing missing in the puzzle is how will the new acquisitions be funded. MoD will have to look at other ways to fund its war preparedness in critical areas of technology.

Further, how the newly created negative list for indigenous procurements will be implemented, needs to be looked at since MoF has mentioned about setting aside an allocated budget for procurements from Indian Industry. However, this budget has not specified if there is an increase in such allocation over the last one announced at INR 520 billion.

## GLOSSARY OF TERMS

Abbreviation	Meaning
AD	Anti Dumping
AE	Associated enterprise
AD Agreements	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.
AD Rules	Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995
AIF	Alternative investment fund
ALP	Arm's length price
AMT	Alternate minimum tax
AO	Assessing officer
AOP	Association of persons
APA	Advanced pricing agreement
ARC	Asset reconstruction company
ARE	Alternate reporting entity
AMC	Asset management company
ASCM	Agreement on Subsidies and Countervailing Measures
AVGC	Animation, Visual effects, Gaming and Comics
AY	Assessment year
BBT	Buy-back tax
BCD	Basic Customs Duty
BED	Basic Excise Duty
BEPS	Base erosion and profit shifting project
Bill	Finance Bill 2020
BOI	Body of individuals
CAT	Common aptitude test
CA2013	Companies Act, 2013
CBCR	Country by country reporting
CBDT	Central Board of Direct Taxes
CDRI	Coalition for Disaster Resilient Infrastructure
CGST Act	Central Goods and Services Tax Act, 2017
CTA	Customs Tariff Act, 1975
CVD	Countervailing Duty
CVD Rules	Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995
DDT	Dividend Distribution Tax
DFI	Development Financial Institution
DGTR	Directorate General of Trade Remedies
DISCOMs	Power Distribution Companies
DPIIT	Department of Promotion for Industry and Internal Trade
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement entered into by India
EC	European Commission
ECB	External Commercial Borrowings
FAME	Faster Adoption and Manufacture of Hybrid and Electric Vehicles
FDI	Foreign Direct Investment
FTS	Fee for Technical Services
FII	Foreign Institutional Investors
FM	Finance Minister
FMV	Fair market value

<b>FPI</b>	Foreign Portfolio Investors
<b>FTA</b>	Free Trade Agreement
<b>FTP</b>	Foreign trade policy
<b>FY</b>	Financial Year
<b>GIFT</b>	Gujarat International Finance Tech-city
<b>G2B</b>	Government to Business
<b>GDP</b>	Gross Domestic Product
<b>G-Sec</b>	Government securities
<b>GST</b>	Goods and Services Tax
<b>HFC</b>	Housing Finance Company
<b>HNI</b>	High net worth individual
<b>HUF</b>	Hindu Undivided Family
<b>IBC</b>	Insolvency and Bankruptcy Code, 2016
<b>IDBI</b>	Industrial Development Bank of India
<b>IDFs</b>	Infrastructure Debt Funds
<b>IFSC</b>	International Financial Services Centre
<b>IGCR Rules</b>	Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR Rules)
<b>IGST</b>	Integrated Goods and Services Tax
<b>IGST Act</b>	Integrated Goods and Services Tax Act, 2017
<b>IIFCL</b>	India Infrastructure Finance Company Limited
<b>ITSC</b>	Income Tax Settlement Commission
<b>IIM</b>	Indian Institute of Management
<b>Ind AS</b>	Indian Accounting Standards
<b>INR</b>	Indian Rupees
<b>InvITs</b>	Infrastructure Investment Trusts
<b>IPO</b>	Initial Public Offering
<b>IREDA</b>	Indian Renewable Energy Development Agency
<b>IT Act</b>	The Income-tax Act, 1961
<b>ITAT</b>	Income-tax Appellate Tribunal
<b>ITC</b>	Input Tax Credit
<b>KYC</b>	Know Your Customers
<b>LIC</b>	Life Insurance Corporation
<b>LIC Act</b>	Life Insurance Corporation Act, 1956
<b>LLP</b>	Limited Liability Partnership
<b>LLP Act</b>	Limited Liability Partnership Act, 2008
<b>LRS</b>	Liberalised Remittance Scheme
<b>MAT</b>	Minimum Alternate Tax
<b>MCA</b>	Ministry of Corporate Affairs
<b>MoF</b>	Ministry of Finance
<b>MoC</b>	Ministry of Commerce
<b>MSME</b>	Micro Small and Medium Enterprises
<b>NABARD</b>	National Bank for Agriculture and Rural Development
<b>NBFC</b>	Non-Banking Finance Company
<b>NCCD</b>	National Calamity Contingent duty
<b>NCLT</b>	National Company Law Tribunal
<b>NEFT</b>	National Electronic Funds Transfer
<b>NELP</b>	New Exploration Licensing Policy
<b>NHAI</b>	National Highways Authority of India
<b>NHB</b>	National Housing Bank
<b>NIIF</b>	National Investment and Infrastructure Fund
<b>NIP</b>	National Infrastructure Pipeline
<b>NPA</b>	Non-performing assets
<b>OPC</b>	One Person Company
<b>OECD</b>	Organization for Economic Co-operation and Development

<b>PAN</b>	Permanent Account Number
<b>PIB</b>	Press Information Bureau
<b>PGCIL</b>	Power Grid Corporation of India Limited
<b>PLI</b>	Production-Linked Incentive
<b>PMAY</b>	Pradhan Mantri Awas Yojana
<b>PPP</b>	Public Private Partnership
<b>PSB</b>	Public sector banks
<b>PSU</b>	Public sector undertaking
<b>PTA</b>	Purified Terephthalic Acid
<b>QFIs</b>	Qualified Foreign Investors
<b>RBI</b>	Reserve Bank of India
<b>RDDBI</b>	The Recovery of Debts Due to Banks and Financial Institutions Act, 1993
<b>RBI Act</b>	Reserve Bank of India, Act, 1934
<b>RDB</b>	Rupee Denominated Bond
<b>REITs</b>	Real Estate Investment Trusts
<b>RIC</b>	Road and Infrastructure Cess
<b>ROO</b>	Rules of Origin
<b>RTGS</b>	Real Time Gross Settlement
<b>SAD</b>	Special Additional Duty
<b>Safeguard Duty Rules</b>	Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997
<b>SAED</b>	Special Additional Excise Duty
<b>SARFAESI</b>	The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002
<b>SCN</b>	Show Cause Notice
<b>SCRA</b>	Securities Contracts (Regulation) Act, 1956
<b>SDGs</b>	Sustainable Development Goals
<b>SEBI</b>	Securities and Exchange Board of India
<b>SEBI Act</b>	Securities Exchange Board of India Act, 1992
<b>SECI</b>	Solar Energy Corporation of India
<b>Smugglers Act</b>	Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
<b>SFT</b>	Statement of financial transaction
<b>SPV</b>	Special Purpose Vehicle
<b>TCS</b>	Tax Collected at Source
<b>TOT</b>	Toll Operate Toll
<b>TDS</b>	Taxes Deducted at Source
<b>TRQ</b>	Tariff Rate Quota
<b>UTGST</b>	Union Territory Goods and Services Tax
<b>UDAN</b>	Ude Desh ka Aam Naagrik
<b>UDAY</b>	Ujjwal DISCOM Assurance Yojana
<b>UK</b>	United Kingdom
<b>ULIP</b>	Unit Linked Insurance Policy
<b>USA</b>	United States of America
<b>WTO</b>	World Trade Organisation



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