



An insight on India's Union Budget 2021

4 February 2021

Table of contents

5	Transaction Tax	71	Equalization Levy
12	Corporate Taxation	75	Trust Taxation
17	Partnership Taxation	78	Goods & Services Tax
22	Tax Return, Audit & Assessments	88	Customs Duty
43	TDS / TCS	91	Corporate & Allied Laws
51	Personal Taxation	98	Labour Law
60	International Taxation	103	Rates of taxes

Foreword

*The Budget 2021
could truly be
considered as a bold
and reformist one.*



Coming in the backdrop of pandemic, the budget was expected to speed up the pace of reforms & disinvestment which otherwise might have taken its own sweet time.



The daunting task of ignoring fiscal prudence despite the risk of downgrading of sovereign rating by rating agencies and taking the lead to revive the economy by increasing spending, has been undertaken without any flinch whatsoever. The financial markets gave a big thumbs up by posting the single largest jump on the budget day.

Foreword

Rationalization & simplification of laws for promoting “ease of doing business” & “Make in India initiative” was quite well amplified.



The clear intention to promote “Atmanirbharta” (Self-reliance) led the Government to increase customs duty on various products and also announce various measures for MSME sector.

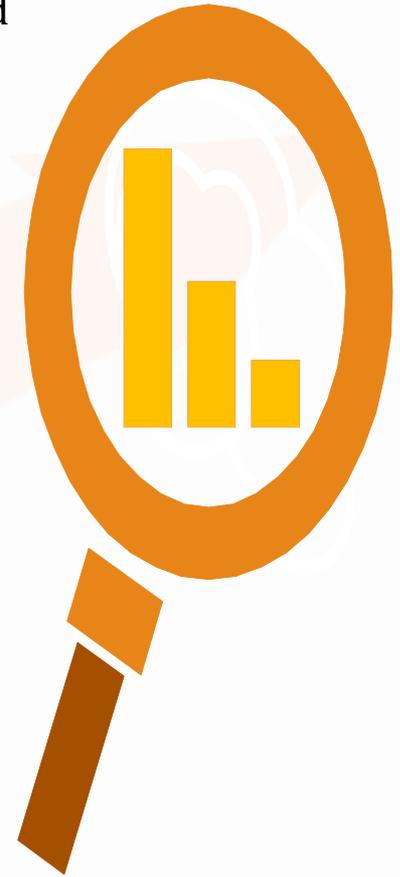


No changes in tax rates w.r.t direct taxes and GST (like introduction of COVID Cess) has helped taxpayers heave a sigh of relief amidst these challenging times. The execution and implementation of the intent proposed by the government through the budget would require a political strong will.

Transaction Tax

Depreciation on goodwill

- ▷ Earlier, in case of a business acquisition, the excess consideration paid over and above the value of tangible and intangible assets was recognized as goodwill and depreciation was claimed on the same relying on the decision of SC in the case of **Smifs Securities Ltd (2012) 348 ITR 302 (SC)** and various other judicial precedents.
- ▷ W.e.f. from 1st April 2020, “goodwill of business or profession” is specifically excluded from the definition of block of assets and therefore, depreciation cannot be claimed.
- ▷ If assessee has claimed depreciation on goodwill in the previous years, the purchase price of the goodwill (for computing capital gains on sale of such goodwill) will be adjusted to the extent of the depreciation benefit already claimed.
- ▷ The manner of computation of capital gains in a case where goodwill formed part of the block of assets as on 1st April 2020 and such block ceases to exist and depreciation was claimed, shall be prescribed.



Given that the amendment is effective from 1st April 2020, whether the depreciation claimed in the earlier years, pursuant to amalgamation / demerger would stand the test of time?

Denial of depreciation affecting genuine business acquisitions & way-forward (1/2)

- ▷ The primary intention of the amendment was to restrict depreciation on goodwill arising out of business restructuring (such as merger, demerger, etc). However, it was felt that goodwill only appreciates and there is no depreciation in the value. This has resulted in denial of depreciation on all kinds of goodwill (whether purchased or through accounting).
- ▷ This could affect business acquisitions where the consideration is more than the fair value of assets resulting in goodwill which becomes non depreciable asset in light of the amendment.
- ▷ Below are some case laws which allowed depreciation on intangibles other than goodwill, which could be considered while allocating the purchase price towards these assets if there are valid and commercial reason backed by valuation / supporting documents.

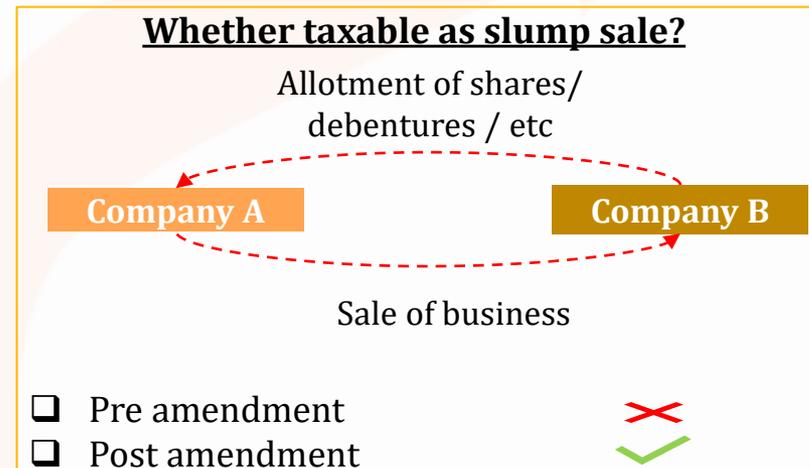
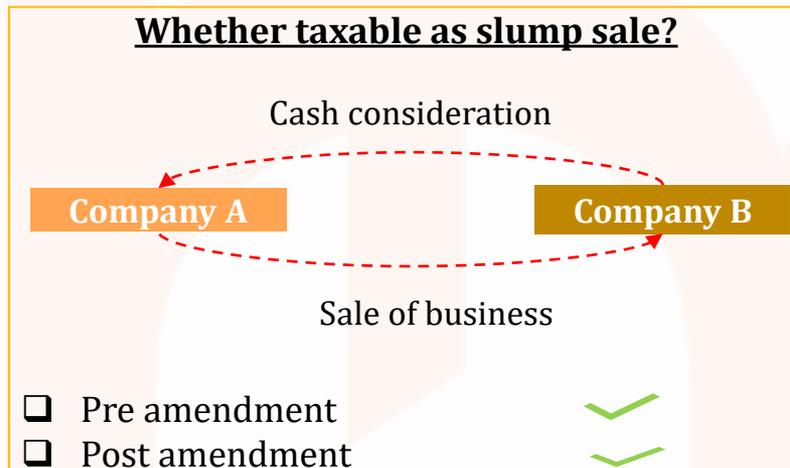
Citation	Key extract from the decision
Areva T & D India Ltd vs DCIT [2012] 20 taxmann.com 29 (Delhi HC)	Intangible assets, viz, business claims, business information, business records, contracts, employees, and know-how were all assets, which were invaluable and result in carrying on the transmission and distribution business by the assessee, which was hitherto being carried out by the transferor, without any interruption. The aforesaid intangible assets are, therefore, comparable to a license to carry out the existing transmission and distribution business of the transferor. It is held that the specified intangible assets acquired under slump sale agreement were in the nature of 'business or commercial rights of similar nature' specified in Section 32(1)(ii) and were accordingly eligible for depreciation under that section.

Denial of depreciation affecting genuine business acquisitions & way-forward (2/2)

Citation	Key extract from the decision
Mobis India Ltd vs DCIT [2018] 90 taxmann.com 389 (Madras HC)	The Assessing Officer was fully justified in holding that the vendor and dealer network rights and the goodwill acquired by the assessee pursuant to the Business Transfer Agreement dated 26-4-2007, would qualify for depreciation under section 32.
Brembo Brake India (P.) Ltd [2015] 56 taxmann.com 217 (Pune ITAT)	Where the assessee acquired the customer base, the list of material suppliers, process know-how , then the said acquisitions were the licenses for assessee to carry on the business of two-wheeler braking system in India on its acquisition from BCSIL. The said assets are the intangible assets acquired by the assessee and are eligible for deduction under section 32(1)(ii).
SKS Micro Finance Ltd. [TS-283-ITAT-2013(HYD)]	The acquisition of rights over the assets of SKS Society including the customer base is an intangible asset. Therefore, in our view, the client acquisition cost paid by the assessee is towards acquiring an intangible asset and therefore eligible for depreciation u/s 32(1)(ii) of the Act.
India Capital Markets P Ltd [TS-883-ITAT-2012 (Mum)]	It is not in doubt or dispute that purchase of the clientele business by the assessee from M/s. AFC is a right which can be used as a tool to carry on the business. In our considerate view, after considering the entire gamut of facts of instant case, we have no hesitation to hold that the assessee is entitled for depreciation .

Taxability of slump exchanges

- ▶ One essential ingredient for taxability as slump sale was ‘**transfer of undertaking as a result of sale**’ i.e., consideration should be in monetary form. Therefore, where the consideration was in non-monetary form (eg: slump exchanges) were held as not taxable in some judicial precedents even though all other criteria of slump sale are satisfied.
- ▶ The definition of “slump sale” has been amended to include “transfer of undertaking by **any means**” and transfer shall mean **transfer as defined in Section 2(47)**.



Restructuring of public sector companies

- ▷ **Reconstruction / split up of a public sector company shall be a demerger** if assets are transferred and the resultant company is a public sector company as on the appointed date.
- ▷ **Carry forward of accumulated losses & unabsorbed depreciation in case of a merger is now available for all public sector companies** (earlier benefit was only for public sector cos engaged in the business of operation of aircraft or owning industrial undertakings / ships / hotel, specified banking companies etc.)
- ▷ In case of strategic disinvestment of public sector companies resulting in **transfer of control and Government holding below 51%** and the share purchase agreement provides a restriction on immediate merger, then **on merger of the public sector company with any company, the amalgamated company can carry forward accumulated losses & unabsorbed depreciation**. However, the amount carried forward shall not exceed the accumulated losses & unabsorbed depreciation available with the erstwhile public sector company on share transfer date. The merger should be completed within 5 years from the end of the FY of expiry of merger restriction.
- ▷ It is proposed to insert Section 8G to the Indian Stamp Act, 1899 **to exempt Government companies from paying any stamp duty** on the instrument for transfer of a business or asset or right in any immovable property to another Government company or Central Government or any State Government **by way of strategic sale or disinvestment or demerger or any other scheme of arrangement**, subject to the approval of the Central Government.

Conversion of urban co-operative bank into banking company

▷ Conversion of urban co-operative bank into banking company:

- ▷ Earlier, Section 44DB allowed proportionate allocation of depreciation, preliminary expenses, amalgamation expenses etc. between predecessor and successor co-operative banks when there has been a reorganization of co-operative banks. Section 44DB has been amended to bring conversion of primary co-operative banks into a banking company by transfer of assets and liabilities within its fold.
- ▷ Further, Section 47 has been amended to include the above conversion of primary co-operative banks into a banking company within its scope. Accordingly, such conversion will not be treated as a “transfer” subject to capital gains.

Corporate Taxation

Deductibility of Employees' contribution to PF ESI, etc.

- ▷ Employee's Contribution to provident fund, superannuation fund, Employee State Insurance or any other fund for the welfare of the employees is considered as "income" in the hands of employer under Section 2(24)(x).
- ▷ Section 36(1)(va) of the Act provides for deduction in respect of the same **only if** such sum is paid to the relevant fund (employees account) on or before the **due date as per the relevant laws governing such contribution.**
- ▷ Certain Courts have held that once the amounts are disallowed under Section 36(1)(va), it takes the colour of employer contribution and payment of the same made by the company on or before the due date of filing income tax return would be allowed as deduction under Section 43B.
- ▷ It has been now specifically clarified that deduction for employee's contribution to such funds shall be allowed only if the same is paid before the due date as per the relevant laws and consequent amendments have been made in section 36(1)(va) and 43B of the Act.

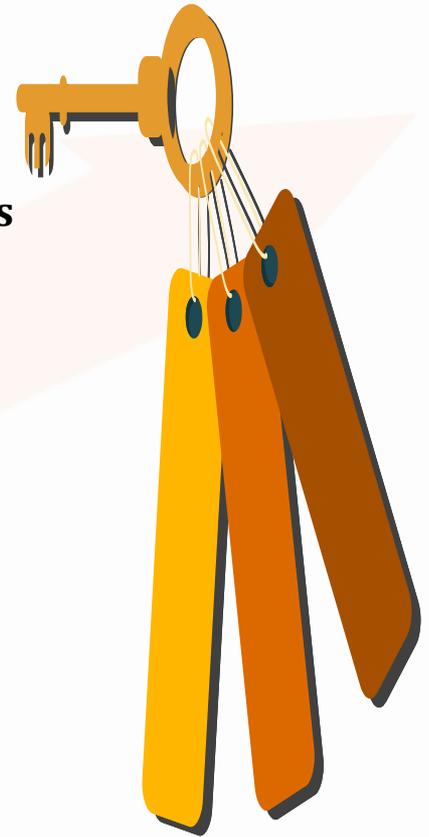
These amendments will take effect from assessment year 2021-22 onwards. Would this amendment strengthen the stand taken in the earlier years given that there was no specific restriction in section 43B denying deduction for employee's contribution ?

Book Profits adjustments for MAT computation

- ▷ Where the profits as per the books of account includes any impact of advance pricing agreement or secondary adjustments pertaining to the past years, the Assessee can make an application for rectification to the Assessing Officer requesting the book profits of the prior years to be recomputed and to give effect to the same in respective years.
- ▷ Presently, in case of foreign companies, following items were excluded in the computation of book profit.
 - Income by way of capital gains from securities, interest, royalty or fee for technical services,
 - Dividend exempt under section 10(34)
 - Any expenditure in relation to the above items
- ▷ With the introduction of classical taxation of dividend, the same is no more exempt in the hands of shareholders under section 10(34). Therefore, on a plain reading, dividend income does not get excluded from book profits.
- ▷ In order to remove the anomaly and to treat dividend at par with interest, royalty, etc, the provisions of 115JB is amended to include dividend as an adjustment item similar to interest, royalty.

Affordable Housing Projects

- ▷ **Tax deduction for PMAY - Affordable Rental Housing Complex Scheme:**
 - ▷ **100% deduction for profits and gains derived from the business of developing and building rental housing projects** i.e., project which is notified by Central Government in the Official Gazette on or before 31st March 2022 and which fulfills such other conditions as may be prescribed in the notification.
- ▷ **Sunset clause extension in relation to affordable housing projects:**
 - ▷ The sunset clause for obtaining approval to claim **100% deduction of profits and gains** from **business of developing and building affordable housing** under Section 80-IBA is **extended from 31st March 2021 to 31st March 2022.**



- MAT / AMT shall be applicable on income derived from affordable housing projects.
- Companies claiming benefit of lower tax u/s 115BAA shall not be entitled to the above deductions.

Extension of sunset date for start-up incentives

Provision in summary	Existing sunset date	Proposed sunset date
S. 80-IAC provides for a deduction of 100% of profits derived from an eligible business by an eligible start-up* for 3 consecutive AYs out of 10 years at the option of the assessee.	Eligible start-up is required to be incorporated on or after 1 April 2016 but before <u>1 April 2021</u>	Eligible start-up is required to be incorporated on or after 1 April 2016 but before <u>1 April 2022</u>
S. 54GB provides for capital gains exemption arising from transfer of residential property owned by the eligible assessee, if the net consideration is utilized in subscription of equity shares of an eligible start-up.	Benefit is available only when the residential property is transferred on or before <u>31 March 2021</u>	Benefit is available only when the residential property is transferred on or before <u>31 March 2022</u>

* A private limited company or an LLP, recognized by the DPIIT under the Start-up India Action Plan

Amendment ensures aiding eligible start-up and would boost investment in such start-up

Partnership Taxation

Taxation on withdrawal by Partners / Members

– Dawn of the New Era (1/4)

- ▷ Presently, transfer of Capital Assets to the Partners on dissolution of the firm or otherwise is chargeable to Capital Gains in the hands of the Firm in the year of such transfer. The fair market value at the assets transferred to Partners as at the date of transfer is considered as full value of consideration in the computation of Capital Gains.
 - ▷ However, there was no specific provision to tax the payment made to partner in excess of his capital contribution and share of profits (already assessed to tax in the hands of the firm in respective years) arising out of revaluation of assets, valuation of self-generated assets brought into the books at the time of dissolution or reconstitution of the Firm. Consequently, any withdrawal of amount from the capital account was considered as “**Capital Receipt**” and not chargeable to tax in India, as held by various judicial precedents, including:
 - Dynamic Enterprises [TS-556-HC-2013 (KAR)]
 - Electroplast Engineers [TS-168-HC-2019 (BOM)]
 - PCIT Vs R.F. Nangrani HUF, 93 taxmann.com 302
 - ▷ In order to bring the above to tax, FB 2021 has substituted section 45(4) and has inserted a new section 45(4A) and the same has been analysed in the ensuing slides.
 - ▷ This provision also applies to association of person (AOP) or Body of Individuals (BOI) (not being a Company or a Co-operative Society).
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Taxation on withdrawal by Partners / Members – Dawn of the New Era (2/4)

- ▷ The provisions of **Section 45(4)** can be summarized as follows:
 - ▷ Where a Partner receives capital asset during the previous year, which represents his capital account balance;
 - ▷ At the time of dissolution or reconstitution of the Firm;
 - ▷ The profits and gains arising from receipt of such capital asset shall be deemed to be the income of the Firm
 - ▷ Capital gains shall be computed as follows:
 - ▷ FMV of the capital asset on the date of receipt shall be deemed as full value consideration (FVC); and
 - ▷ Cost of acquisition of the capital asset shall be determined in accordance with the provisions of this Chapter (Chapter IVE)

- ▷ The provisions of **Section 45(4A)** can be summarized as follows:
 - ▷ Where a Partner receives any money or other asset during the previous year, which is in excess of his capital account balance;
 - ▷ At the time of dissolution or reconstitution of the Firm;
 - ▷ The profits and gains arising from receipt of such money or other asset shall be deemed to be the income of the Firm

Taxation on withdrawal by Partners / Members

– Dawn of the New Era (3/4)

- ▷ Capital gains shall be computed as follows:
 - ▷ Value of money or FMV of other asset on the date of receipt shall be deemed as FVC; and
 - ▷ Balance in capital account of the Partner shall be deemed to be the cost of acquisition
- ▷ A comparison of section 45(4) and 45(4A) is provided below for easy of understanding:

Particulars	Section 45(4)	Section 45(4A)
Underlying asset	Capital asset, representing the capital balance of the partner	Money or any other asset, which is in excess of the capital balance of the Partner
Trigger point	Dissolution or reconstitution	Dissolution or reconstitution
FVC	FMV of the capital asset	Value of money or FMV of other asset
Cost	Cost of the capital asset	Balance in capital account of the Partner

Taxation on withdrawal by Partners / Members

– Dawn of the New Era (4/4)

- ▷ The substitution of section 45(4) and insertion of 45(4A) may result in new set of interpretation issues and the same is as follows:
 - ▷ Does section 45(4) and 45(4A) apply together or is it mutually exclusive?
 - ▷ Whether money would fall under 'capital asset' and trigger provisions of section 45(4)?
 - ▷ Whether 'other asset' under section 45(4A) include capital asset, since the latter is already covered in section 45(4)
 - ▷ In case of depreciable asset, how to determine the cost of asset under section 45(4) and how the block of asset would get adjusted (ie should the Firm reduce the consideration or WDV of the asset or Nil (since no consideration received by Firm))
 - ▷ What if the money or asset is withdrawn by Partner after 1-2 years of the reconstitution? Does the provision of section 45(4) or 45(4A) still applicable ?
 - ▷ In case inventory is distributed to partners, how is taxation dealt with under the head PGBP ?
 - ▷ Whether receipt of money or other assets covered under section 45(4A) chargeable as long term or short-term capital gains ? If long term, how would indexation be computed?
 - ▷ Since fair market value is not referred to section 50C does it mean Circle rate/ guideline value cannot be considered as fair value of immovable property ?

Considering the various issues, it is recommended that Government issues suitable clarification by way of amendment or circular to avoid significant litigation on this.

Tax Return, Audit & Assessments

Timelines for furnishing belated return/ revised return:

- ▷ At present, the timelines for furnishing a belated/ revised return of income is earlier of –
 - ▷ **any time before the end of relevant AY**
 - ▷ before the completion of Assessment
- ▷ The said timelines proposed to be reduced to –
 - ▷ **any time within three months prior to the end of relevant AY**
 - ▷ before the completion of Assessment
- ▷ Comparison of the timelines for belated return/ revised return before and after amendment (assuming assessment has not been completed until the below date):

Particulars	Up to AY 2020-21	From AY 2021-22
Belated / Revised Return	31 st March 2021	31 st December 2021

Note: The timelines for furnishing original return of income for AY 2021-22 for an assessee for which transfer pricing audit applies is 30th November 2021, and timelines for belated return or revised return is 31st December 2021, which indicates that only one month would be available to revise / file belated return after the due date.

Timelines for furnishing return of income by a partner of a firm/ LLP subject to transfer pricing:

- ▷ Where, the firm or LLP is required to furnish a report from an accountant in Form 3CEB for transfer pricing for an assessment year, the due date for filing return of income for the partners of the firm or LLP is proposed to be extended to 30th November of the relevant assessment year.

Relaxation in respect of defective return:

- ▷ Section 139(9) lists down the conditions when a return of income could be treated as a defective return.
- ▷ CBDT has been granted powers to notify certain relaxation in the aforesaid conditions, as may be applicable to any class of assessee.

Adjustments made by CPC while processing of RoI :

- ▷ Section 143(1) provides certain adjustments that can be made in the course of processing of return of income, which *inter-alia* includes disallowance of any expenditure indicated in the tax audit report but not considered by the assessee in the return of income.
- ▷ It is proposed to widen the ambit of adjustment that can be made under this clause to include any increase in income indicated in the tax audit report but not considered by the assessee in the return of income.
- ▷ At present, Section 143(1) provides for disallowance of deductions claimed u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE in the course of processing of return, **in case the RoI is not furnished within the due date specified u/s 139(1) of the Act**
- ▷ The ambit of adjustment is proposed to be widened to cover **all Sections** under Part – C of Chapter VI-A “Deductions in respect of certain income”.

▷ Reduction in the timelines for processing of RoI:

- ▷ It is proposed to reduce the timelines for processing of RoI and issuance of intimation under Section 143(1) by 3 months. The comparison of existing and the proposed timelines are as follows:

Particulars	Existing timelines	Proposed timelines
Processing of RoI and issuance of intimation u/s 143(1)	One year from the end of the FY in which the return is filed.	Nine months from the end of the FY in which the return is filed.

▷ Issuance of notice requiring the Assessee to file return of income

- ▷ At present, only the Assessing Officer has the authority to issue notice under Section 142(1) of the Act to an assessee who has not submitted the Return of Income, requiring him to submit the same.
- ▷ It is proposed to empower the prescribed Income Tax Authority to issue notices under the said clause. Thus, CPC or the Income Tax Authorities pertaining to faceless assessments centre may be prescribed for this purpose.

Tax Audit

- ▷ Section 44AB is proposed to be amended to increase the threshold limit of sales / turnover for audit **from INR 5 crore to INR 10 crore** for persons carrying on business (other than professionals) whose:
 - ▷ Aggregate of **all receipts in cash including amount received for sales** during the previous year does not exceed **5% of the said amount; and**
 - ▷ Aggregate of **all payments in cash including amount incurred for expenditure** during the previous year does not exceed **5% of said payment.**
- ▷ For all other cases of business, the existing threshold limit of INR 1 crore shall continue to apply.
- ▷ In respect of profession, the existing threshold limit of INR 50 lakhs/ provisions of presumptive taxation would continue to apply,



Presumptive taxation – not applicable to LLP

- ▷ **Presumptive taxation for professionals under section 44ADA not available to LLP**
 - ▷ Section 44ADA provides for payment of taxes on a presumptive basis for specified professionals. It is proposed to amend the said section to clarify that LLP as defined under section 2(1)(n) of the Limited Liability Partnership Act, 2008, is not an eligible assessee for payment of taxes on presumptive basis.

Assessment Procedure

▷ Reduction in the timelines for initiation of assessment:

- ▷ It is proposed to reduce the timelines for issuance of notice u/s 143(2) for initiation of assessment. The comparison of existing and the proposed timelines are as follows:

Particulars	Existing timelines	Proposed timelines
Issuance of notice u/s 143(2)	Six months from the end of the FY in which return is filed.	Three months from the end of the FY in which return is filed.

▷ Reduction in the timelines for completion of assessment:

- ▷ It is proposed to reduce the timelines for completion of assessment u/s 143(3) or 144, as the case may be, by three months. The timelines for assessments are tabulated below.

Assessment Year ('AY')	Timelines
Prior to AY 2018-19	21 months from the end of AY
AY 2018-19	18 months from the end of AY *
AY 2019-20 & AY 2020-21	12 months from the end of AY
AY 2021-22 and onwards	9 months from the end of AY

* Timelines for completion of assessment for AY 2018-19 was extended to March 31, 2021 on account of COVID 19 pandemic.

Revamping of procedure for income escaping assessment and search assessments (1/3)

- ▷ Under the Act, AO can reassess any income if he has a reason to believe that income has escaped assessment.
- ▷ Separately, assessment in search cases (covered by S. 153A, 153B 153C and 153D) are also highly litigation prone due to procedural challenges
- ▷ FB 2021 proposes to completely reform system of assessment or reassessment or re-computation of income escaping assessment and assessment of search related cases , with effect from 1 April 2021
 - ▷ Due to easy access to information to the tax authorities due to advancement in technology
 - ▷ To ensure less litigation and provide ease of doing business to taxpayers

Sources of information available with tax authorities for reopening assessments:

- ▷ Information flagged (through computer-based systems) in accordance with the risk management strategy formulated by the board.
- ▷ a final objection raised by the Comptroller and Auditor General of India
- ▷ In search, survey or requisition cases (on or after 1 April 2021), AO is deemed to have information suggesting that the income has escaped assessment for 3 AY's immediately preceding the relevant to PY in which search, survey or requisition is made.

Revamping of procedure for income escaping assessment and search assessments (2/3)

Procedure for conducting inquiry, providing opportunity of being heard etc (S. 148A):

- ▷ Conduct any enquiry, with the prior approval of specified authority, with respect to the information which suggests that income chargeable to tax has escaped assessment
- ▷ Provide opportunity of being heard to the assessee, with the prior approval of specified authority, before issuing the notice of re-assessment etc. and consider reply from assessee.
- ▷ Decide whether the case is fit for issuing notice of reassessment based on material available with AO as well as the reply from assessee
- ▷ The above procedure shall not be applicable for search or requisition cases where search etc. is initiated on or before 31 March 2021
- ▷ Once assessment or reassessment etc. has begun, the AO is 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 irrespective of whether the above procedure is followed before issuing such notice for such income.

Revamping of procedure for income escaping assessment and search assessments (3/3)

Time limit for issuance of Notice and specified authority for conducting inquiry etc.

Particulars	Time limit for issuing notice of reassessment	Specified Authority
In case where AO is in possession of evidence income escaping assessment represented in the form of asset amounts to 50 lakh or more	10 years from the end of relevant AY	Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General
In all other cases	3 years from the end of relevant AY	Principal Commissioner or Principal Director or Commissioner or Director
Assessment or reassessment etc. in search or requisition cases (initiated on or before 31 March 2021)	Above time limits shall not apply	

Dispute Resolution Committee

- ▷ In order to provide early tax certainty to small and medium tax payers, it is proposed to introduce a new Section 245MA for constitution of a Dispute Resolution Committee ('DRC') for preventing new disputes and settling the issue at the initial stage.
- ▷ Only those disputes where the returned income is fifty lakh rupee or less (if there is a return) and the aggregate amount of variation proposed in specified order is ten lakh rupees or less shall be eligible to be considered by the DRC.
- ▷ It is at the option of the tax payer to choose DRC or normal route of litigation.
- ▷ Specified orders which are based on search or survey conducted or information received under tax treaty **shall not be eligible** for consideration by DRC.
- ▷ The Central Government is empowered (with Parliament's approval) to make such directions for the purposes of giving effect to the scheme, latest by 31st March 2023.

Faceless proceeding before ITAT

- ▷ In order to impart greater efficiency, transparency and accountability to the assessment process, appeal process and penalty process under the Act a faceless assessment scheme, faceless appeal scheme and faceless penalty scheme are already in place
- ▷ FB 2021 proposes to extend Faceless Scheme for ITAT proceedings by establishing a National Faceless ITAT Centre (amendment to take effect from 1 April 2021). All communication shall be through electronic mode and personal hearing if needed, shall be done through video-conferencing
- ▷ The CG is empowered to notify a scheme for this purposes to –
 - eliminate the human interface between the ITAT and parties to the appeal
 - optimising utilisation of the resources through economies of scale and functional specialisation
 - introducing an appellate system with dynamic jurisdiction
- ▷ CG is also empowered to issue notification in Official Gazette (on or before 31 March 2023), to direct the provisions of the Act which shall not apply/ shall apply with certain exceptions/ modifications.

Constitution of the BAR to replace AAR (1/3)

- ▷ Authority of Advance Ruling ('AAR') bench consists of a Chairman and various Vice-Chairman (VC), revenue members and law members. A bench cannot function if the post of Chairman or VC is vacant.
- ▷ As per past experience, the posts of Chairman and VC have remained vacant for a long time due to non-availability of eligible persons (Eg. retired judges of SC/HC etc.). This has seriously hampered the working of AAR and has impacted speed of disposal of a large number of applications.
- ▷ To ensure vacancy of the bench does not impact disposal of cases, it is proposed to replace the AAR with Board of Advance Ruling ('BAR'). The BAR shall consist of two members, each being an officer not below the rank of Chief Commissioner. BAR shall function on and after a notified date.
- ▷ Following amendments are proposed to be made to the various provisions of the ITA to this effect.

Sections	Amendments
Sec. 245N (Definition of AAR)	Proposed to incorporate definitions of the BAR, notified date, Member of the Board of Advance Rulings and change in the definition of Authority to include the BAR
Sec. 245-0 (Authority of AAR)	To provide that the AAR shall cease to operate on or after the notified date.
Sec. 245-0B	New section shall be inserted to provide for the Constitution of the BAR
Sec. 245P (Vacancies, etc. not to invalidate proceedings.)	Proposed amendment to replace AAR with BAR

Constitution of the BAR to replace AAR (2/3)

Sections	Amendments
Sec. 245Q (filing of application)	Where the application is pending with the AAR, in respect of which order has not been passed before the notified date, such application shall be transferred to the BAR along with all records, documents or material, by whatever name called and shall be deemed to be records before the Board for all purposes.
Sec. 245R (Procedure on receipt of application)	<ul style="list-style-type: none">• Substitute AAR with BAR and the provisions of this section shall apply mutatis mutandi to the BAR as they apply to the AAR;• Empowers the CG to make faceless scheme (similar to faceless assessment, appeal, etc).• Further empowers CG to make suitable modification by notification (to be issued on or before 31 March 2023).
Sec. 245S (Binding nature of order of AAR)	Proposed amendment to provide that nothing contained in the said section shall apply on and after the notified date.
Sec. 245T (order of AAR to be void in certain situation)	Substitute AAR with BAR and the provisions of this section shall apply mutatis mutandi to the BAR as they apply to the AAR

Constitution of the BAR to replace AAR (3/3)

Sections	Amendments
Sec. 245U (Powers of Authority)	On or from the notified date, the powers of the AAR shall be exercised by the BAR and the provisions of the said section shall apply mutatis mutandis to the BAR as they apply to the AAR.
Sec. 245V (Procedure of Authority)	Nothing contained in the said section shall apply on and after the notified date.
Sec. 245W	It is proposed to insert new Sec. 245W to provide for appeal to High Court against the order passed or ruling pronounced by the BAR, which can be filed by the applicant as well as the Department within 60 days from the date of communication of such ruling or order, in such form and manner as may be prescribed. However, where the High Court is satisfied, on an application made in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in this section, it may allow a further period of thirty days for filing such appeal.
Others	References to Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 in the definition of applicant in section 245N and in section 245Q relating to application for advance ruling is proposed to be omitted.

Discontinuance of Settlement Commission (1/2)

- ▷ FB 2021 proposes to cease the operations of **the Income-tax Settlement Commission (ITSC) on or after the 1 February 2021 and** to constitute an Interim Board of settlement for pending cases. The key amendments are:
 - ▷ No application shall be made to ITSC on or after 1 February 2021 and all the powers vested in the hands of ITSC shall *mutatis mutandis* be vested in the hands of the Interim Board
 - ▷ All applications that were filed before the ITSC and not declared invalid and in respect of which no order under was issued by the ITSC on or before the 31 January 2021, shall be treated as pending applications
 - ▷ In respect of an application, if an order was required to be passed by the ITSC on or before the 31 January 2021 to declare an application invalid but such order has not been passed on or before such date, such application shall be deemed to be valid and treated as pending application.
- ▷ Powers of CG
 - ▷ To constitute 1 or more Interim Board to settle pending applications consisting of 3 members each, being an officer of the rank of Chief Commissioner, as may be nominated by such Board.

Discontinuance of Settlement Commission (2/2)

- ▷ To make a scheme by notification (on or before 31 March 2023), 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 and may direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.
- ▷ The amendments inter-alia provides for an option to the taxpayer to withdraw pending applications
 - ▷ within a period of 3 months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer (AO), in the prescribed manner, about such withdrawal
 - ▷ Once exercised, AO/ other tax authority to assume power as if no application under ITSC is made (excluding the time during which the case was pending before ITSC)
 - ▷ If no option is exercised, such application shall be deemed to be received by the Interim Board
- ▷ Where the time-limit for amending any order or filing of rectification application expires on or after 1 February 2021, in computing the period of limitation, the period commencing from 1 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.

Exclusion of ITSC cases from VsV

- ▷ The Direct Tax Vivad se Vishwas (VsV) Act, 2020 was enacted on 17 March 2020 with the objective of reducing pending income tax litigation, generating timely revenue for the Government and giving benefit to taxpayers by providing them peace of mind, certainty and savings on account of time and resources
- ▷ The scheme extends to appeals, writ petitions, SLP, and arbitration filed by taxpayer of department on or before January 31, 2020.
- ▷ The settlement provisions under the ITA provide for an alternate mechanism to a taxpayer who chooses to exit the regular process of assessment which would have resulted into determination of tax liability and instead approached the ITSC for settlement of his case.
- ▷ As the VsV Act was enacted for the resolution of disputed tax and not for the taxes covered by an order in pursuance to the settlement of a case, such cases (whether they have attained finality or not) have always been, therefore, intended to be outside the purview of VsV.
- ▷ With a view to remove any ambiguity, it is proposed to amend the provisions of VsV to clarify that the cases pending before the ITSC are outside the purview of VsV and accordingly, the definitions of “appellant”, “disputed tax” and “tax arrear” are amended
- ▷ The amendments are proposed to take effect retrospectively from the 17 March 2020.

No interest on refund under IDS

- ▷ Income Declaration Scheme, 2016 (IDS), which commenced on 1 June 2016, provided an opportunity to persons who had not disclosed any income in the past to come clean by making payment of tax, surcharge and penalty as per the provisions of IDS
- ▷ Any amount of tax, surcharge and penalty paid in pursuance of a declaration made under the IDS shall not be refundable, unless CBDT specifies a class of persons to whom such tax paid in excess shall be refundable.
- ▷ FB 2021 clarifies that the excess amount of tax, surcharge or penalty paid in pursuance of a declaration made under the IDS shall be refundable to the specified class of persons **without payment of any interest.**
- ▷ This amendment will take effect retrospectively from 1 June 2016.

Interest on advance tax on dividend income

- ▷ **Relaxation in respect of interest for deferred payment of advance tax on dividend income:**
 - ▷ Section 234C requires payment of interest where the assessee has not paid/ where there is a shortfall in payment of advance tax. However, certain exceptions have been provided in respect of advance tax on certain items of income, where estimation of the same is not practical, which inter-alia includes dividend income to the extent taxable under Section 115BBDA under DDT Regime. Now, this exception is extended to all dividend income (except Deemed Dividend under Section 2(22)(e)).

TDS / TCS

TDS on purchase of goods (1/5)

TCS on Sale of Goods

- ▷ At present, TCS under Section 206(1H) applies on sale of goods where the aggregate value of sales exceeds Rs 50 lakhs in a year. The said provisions were not applicable if the Seller turnover did not exceed Rs 10 crores in the preceding year.

TDS on purchase of Goods

- ▷ FB 2021 proposes to insert a new **section 194Q** to levy TDS on purchase of goods. The key conditions with regard to applicability of TDS are:
 - ▷ The onus to deduct tax is on the **Buyer**
 - ▷ The total sales/ gross receipts/ turnover from the business carried on by him **exceeds Rs. 10 crores** during the **preceding FY**
 - ▷ Applicable on any sum paid/ payable to any **resident seller**
 - ▷ In relation to purchase of any goods whose **aggregate** value exceeds **INR 50 Lakhs** in any previous year
 - ▷ Tax shall be deducted at the rate of 0.1 % on **such sum exceeding INR 50 Lakhs**
 - ▷ Tax shall be deducted at the time of **payment/ credit, whichever is earlier.**

TDS on purchase of goods (2/5)

- ▷ Exceptions to this section are as follows:
 - ▷ If tax is deductible under any other provisions of this Act
 - ▷ If tax is collectible under section 206C other than section 206C(1H)
- ▷ The aforesaid TDS provision shall apply effective from 1st July 2021. It is noted that TCS provisions under Section 206(1H) doesn't cease to operate from 1st July 2021, but continues to be applicable where the conditions provided therein are satisfied.
- ▷ TCS under Section 206(1H) shall not apply in respect of a transaction where TDS is applicable, **and the buyer has deducted such amount.**
- ▷ We have applied the Provisions of TDS and TCS under certain scenarios as below:

Scenario	Possible View
Seller whose preceding years' (PY) turnover is more than Rs. 10 Crore sells goods worth Rs. 1 Crore to a buyer whose PY turnover is less than Rs. 10 Crore on 1 st Sept 2021.	Buyer is not required to deduct TDS (PY turnover criteria not met). However, since seller's PY turnover is more than Rs. 10 Crore, TCS on sale of goods would be applicable under section 206C(1H).

TDS on purchase of goods (3/5)

Scenario	Possible View
<p>Seller & Buyer turnover is significantly higher than Rs. 10 Crore in the PY. Seller sells goods worth Rs. 1 Crore to Buyer on 1st July 2021, however, the buyer fails to deduct TDS and remits the entire consideration to Seller</p>	<p>Based on the literal reading of Section 206(1H), where the Buyer has not deducted tax, it appears Seller would be liable to collect tax.</p>
<p>Seller has received an advance of Rs. 0.40 Crore (40% of the purchase order amount) on 25th June 2021 and sold the goods on worth Rs. 1 Crore on 5th July 2021</p>	<p>Seller is required to collect TCS on receipt of advance of Rs. 0.40 Crore on 25th June 2021.</p> <p>TDS provisions not applicable on the date of advance payment of Rs. 0.40 Crore (since TDS is applicable earlier of date of credit or payment). Hence, it is arguable that Buyer is required to deduct TDS only on Rs. 0.60 Crore on 5th July 2021 (earlier of date of credit or payment).</p> <p>Assuming Buyer has deducted TDS on Rs. 0.60 Crore, Seller is not required to collect TCS upon receipt of the same.</p>

TDS on purchase of goods (4/5)

Scenario	Possible View
<p>Based on the seller's process, seller always charges TCS on the invoice.</p> <p>Seller has raised an invoice in respect of sale of goods on 25th of June 2021, details of the same are as below:</p> <ul style="list-style-type: none">• Value of the goods Rs. 10,000,000• GST @ 18% Rs. 1,800,000• Sub-Total Rs. 11,800,000• TCS @ 0.1% Rs. 11,800• Total Rs. 11,811,800	<p>The buyer receives the goods on 1st of July 2021 and this invoice needs to be accounted for.</p> <p>It is noted that date of credit (the earlier event of date of credit or payment) is on or after 1st of July 2021 and TDS provisions have become effective, and hence buyer shall deduct applicable tax.</p> <p>The buyer may choose not to pay the amount of TCS to the seller, as the TCS provisions (which are based on date of receipt of consideration by the seller) is not applicable, as TDS is applicable on the transaction and buyer has deducted such tax.</p> <p>However, if the buyer has made the payment of TCS to the seller, it would not preclude him from not deducting tax in respect of the same. TDS provisions would still be applicable.</p>

*The seller can return the TCS collected from the buyer (which was charged in the invoices but became inapplicable at the time of receipt).

TDS on purchase of goods (5/5)

Practical Challenges:

- ▷ TDS on purchase of goods could cover huge volume of transactions in Companies engaged in manufacturing/ trading of goods and hence the following aspects could be challenging.
 - ▷ Tremendous compliance burden on the buyer (deductor)
 - ▷ Seller would also to have monitor as to whether TDS is deductible / deducted by the Buyer otherwise, the provision of TCS apply on him.
 - ▷ Reconciliation of TDS / TCS Credits between books and Form 26AS
- ▷ The process and ERP would have been revamped recently to suit TCS on sale of goods introduced with effective 1st October 2020. With the introduction of TDS on purchase of goods, TCS provisions largely becomes inapplicable and hence the process/ ERP would again need to be realigned to suit TDS provisions. This could lead to additional cost and efforts and creates an impression that provisions are introduced without clear thoughts.
- ▷ Income Tax / GST Authorities may seek a reconciliation between Sale of goods as per Form 26AS and GST returns, and hence it is advisable that the Assessee proactively puts in the processes for the same at the time of setting up the process/ ERP.

TDS/ TCS at higher rates in case of non-filers (1/1)

- ▷ Non-filer: A person (deductee) who has not filed the return of income for the previous two years where time limit for filing such return under Section 139(1) of the Act has expired **and** aggregate TDS and TCS in his case is \geq Rs. 50,000 in **each** of these two previous years.
- ▷ Higher rate of TDS/ TCS is proposed in respect of payments to residents and non-residents having permanent establishment in India covered by TDS under Chapter XVII B and TCS Provisions under Chapter XVII BB of the Act, effective **1st July 2021**.
- ▷ **Exceptions** to applicability of higher rates of taxes :
 - ▷ TDS on Salaries u/s 192
 - ▷ TDS on accumulated balance due to an employee u/s 192A
 - ▷ TDS on winnings from lottery u/s 194B
 - ▷ TDS on winnings from horse race u/s 194BB
 - ▷ TDS on income in respect of investment in securitization trust u/s 194LBC
 - ▷ TDS on payment of certain amounts in cash u/s 194N
- ▷ **Applicable TDS rates – Higher of the below:**
 - ▷ Twice the rates specified in the relevant provision of the Act
 - ▷ Twice the rate or rates in force
 - ▷ Five percent

TDS/ TCS at higher rates in case of non-filers (2/2)

▷ **Applicable TCS rates - Higher of the below:**

- ▷ Twice the rates specified in the relevant provision of the Act
 - ▷ Five percent
- ▷ Where the deductee has not furnished PAN, TDS/ TCS would be applicable at the higher of -
- ▷ aforesaid rates
 - ▷ TDS rates provided in Section 206AA/ 206CC, as the case may be.

▷ **Practical Challenges:**

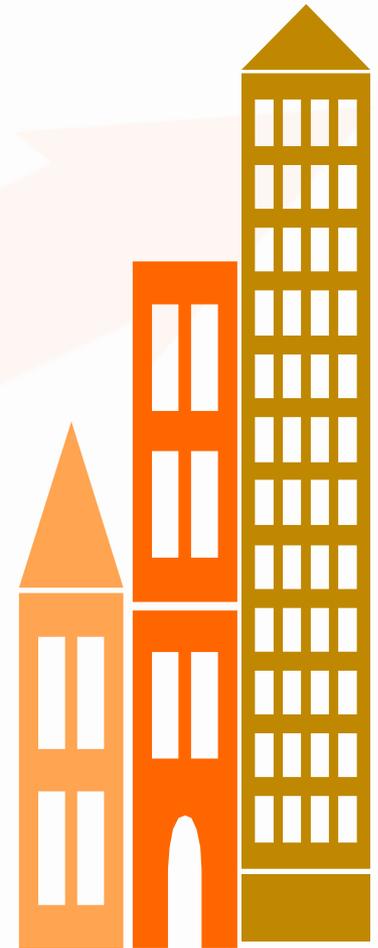
- ▷ Increased Compliance burden on the deductor / collector in collecting tax return
- ▷ The manner in which the deductor can ascertain whether the deductee has filed the return of income has been left open.
- ▷ The provisions are silent where the deductee is not required to file the return of income under the provisions of the Act (example, total income is less than basic exemption limit)

The Government can introduce a tool / facility in income-tax portal, whereby the parties can directly find out whether its vendors/ customers have filed return of income instead of asking the vendors/ customer, which would be a cumbersome / time consuming exercise. This would not only ease the process but would ensure confidentiality of data of other party.

Personal Taxation

Transfer of residential units

- ▷ Currently, if the consideration value in respect of land and building transaction is less than stamp value by more than 10%, the difference is taxed in the hands of Seller under capital gains/ business profits (as the case may be) and in the hands of Buyer under other sources.
- ▷ The variance limit has been increased from **10% to 20% for transfer of residential units alone** if the following are satisfied:
 - ▷ The transfer of residential unit is **between 12th November 2020 to 30th June 2021**.
 - ▷ It is a **first-time allotment** of the residential unit to a person.
 - ▷ The consideration for such transfer **does not exceed Rs. 2 crores**.
- ▷ It is to be noted that the amendment is only brought about only in Section 43CA and Section 56(2)(x) and not in Section 50C and therefore, the variation limit of 10% would continue to apply in the case of sellers whose income is subject to tax under capital gains, in case of resale of flats.



Comparison of impact of variation

▷ A comparison on account of the aforesaid change is explained below:

Type	Sale Price	Stamp Value	Implications - Pre amendment	Implications - Post amendment
Residential unit (First allotment)	1.00 Cr	1.15 Cr	<ul style="list-style-type: none"> 0.15 Cr taxable as additional consideration in the hands of seller under PGBP / CG 0.15 Cr as IOS in the hands of Buyer u/s 56(2)(x) 	<ul style="list-style-type: none"> No implications as the variation is within 20% (provided income is chargeable to tax in the under PGBP)
Residential unit (First allotment)	2.50 Cr	3.00 Cr	<ul style="list-style-type: none"> 0.50 Cr taxable as additional consideration in the hands of seller under PGBP / CG 0.50 Cr as IOS in the hands of Buyer u/s 56(2)(x) 	<ul style="list-style-type: none"> Same as pre-amendment
Any other immovable property (say land, resale of flat, etc)	1.00 Cr	1.15 Cr	<ul style="list-style-type: none"> 0.15 Cr taxable as additional consideration in the hands of seller under PGBP / CG 0.15 Cr as IOS in the hands of Buyer u/s 56(2)(x) 	<ul style="list-style-type: none"> Same as pre-amendment as the variation benefit of 20% is only for residential units allotted on first time to buyers

Relaxation from filing return of income for specified senior citizen

Relaxation from filing of return to specified senior citizens:

- ▷ Resident senior citizens aged 75 years or more, who is having income of the nature of pension and interest income from the **same specified bank in which he is receiving pension income** and has **not earned any other income** would not be required to file their return of income.
- ▷ The following conditions are to be satisfied in this regard:
 - ▷ The specified Senior Citizen shall furnish a **declaration** to the specified bank in the prescribed form.
 - ▷ The specified bank is required compute the total income of the specified senior citizen giving effect to the deduction allowable under Chapter VIA and rebate under Section 87A and compute tax thereon and deduct applicable tax under Section 194P.

Interest on Provident Fund

- ▷ At present, the following amounts are exempt from tax:
 - ▷ Any receipt of statutory provident fund,
 - ▷ Accumulated balance of Provident Fund becoming payable to an employee participating in a recognized provident fund as at the date of Assessee ceasing to be an employee
- ▷ Currently, there are no limits prescribed in respect of the employee's contribution to PF. In other words, employees can contribute any amount as “voluntary” contributions, and interest on the entire contribution is exempt from tax.
- ▷ It is proposed to impose a threshold limit of Rs 250,000 in respect of employee's contribution and any interest upto the said threshold shall continue to be exempt. In other words, interest on employee's contribution exceeding Rs 250,000 during the previous year would be subject to tax.
- ▷ The amendment is applicable for contributions made on or after 01st April 2021. Hence, interest on contributions made in the prior years continues to be fully exempt from tax.

The manner of computation of interest exceeding the threshold contribution shall be prescribed.

Unit Linked Insurance Policy ('ULIP')

- ▷ At present, any sum received under a life insurance policy (including ULIP), annual premium in respect of which does not exceed 10% of the capital sum assured, subject to few exclusions, is exempt from tax.
- ▷ It is proposed to restrict the exemption in respect of proceeds from redemption of ULIP whose annual premium does not exceed Rs. 250,000, where the ULIP has been issued on or after 1st February 2021.
- ▷ Where a person holds multiple ULIPs issued on or after 1st February 2021, exemption would be limited to those ULIPs whose **aggregate** premium does not exceed Rs. 250,000.
- ▷ Redemption of ULIPs in respect of which premium is more than the aforesaid threshold will be taxable as capital gains in the year of receipt. Taxation of ULIP would be similar to unit of equity-oriented fund under Section 111A or Section 112A.
- ▷ Securities Transaction Tax ('STT') would be levied on maturity/ partial withdrawal of ULIP where premium is more than the aforesaid threshold, on the excess amount.
- ▷ The aforesaid cap shall not apply in respect of any sum received on death of a person.

Leave Travel Concession Cash Scheme (LTC-CS)

- ▷ LTC-CS was announced vide press release dated **29th October 2020** to incentivize the employees who are unable to travel due to COVID restrictions. The said provisions are now introduced in the Act. The conditions to be satisfied (to be prescribed in Rules) are :

The employee must exercise an option for deemed LTC fare in the block year 2018-21.

Expenditure must be incurred on goods or services which attract GST at the rate of 12% or more.

Should be incurred during the period commencing from 12th October 2020 to 31st March 2021.

Exemption limit is capped at Rs. 36,000 (per person) or one-third of such expenditure, whichever is less, subject to the actual LTC paid by the employer.

Payment should be made from an account payee cheque, draft or electronic clearing system or any other method as may be prescribed.

This scheme is applicable for the FY 2020-21 only.

Multiple individuals cannot claim exemption in respect of the same expenditure.

Deduction for affordable housing interest and investment in start-ups

- ▷ **Sunset clause extension for interest deduction on loans for affordable housing:**
 - ▷ The sunset clause for obtaining **sanction of loan** for affordable housing to claim interest deduction under Section 80EEA has been **extended from 31st March 2021 to 31st March 2022**.
 - ▷ Therefore, an individual can claim **deduction of lower of Rs. 150,000 or actual amount of interest under Section 80EEA**, if the loan is sanctioned by a financial institution before 31st March 2022 for acquiring an affordable house having stamp duty value not more than Rs. 45 lakhs and such individual does not own any other residential property at the time of sanction of loan.

- ▷ **Sunset clause extension for claiming LTCG exemption by investing in start-ups:**
 - ▷ The sunset clause for claiming **exemption on long term capital gains derived by individual / HUF** from sale of residential property **by way of investment in eligible start-up** has been **extended from 31st March 2021 to 31st March 2022**.

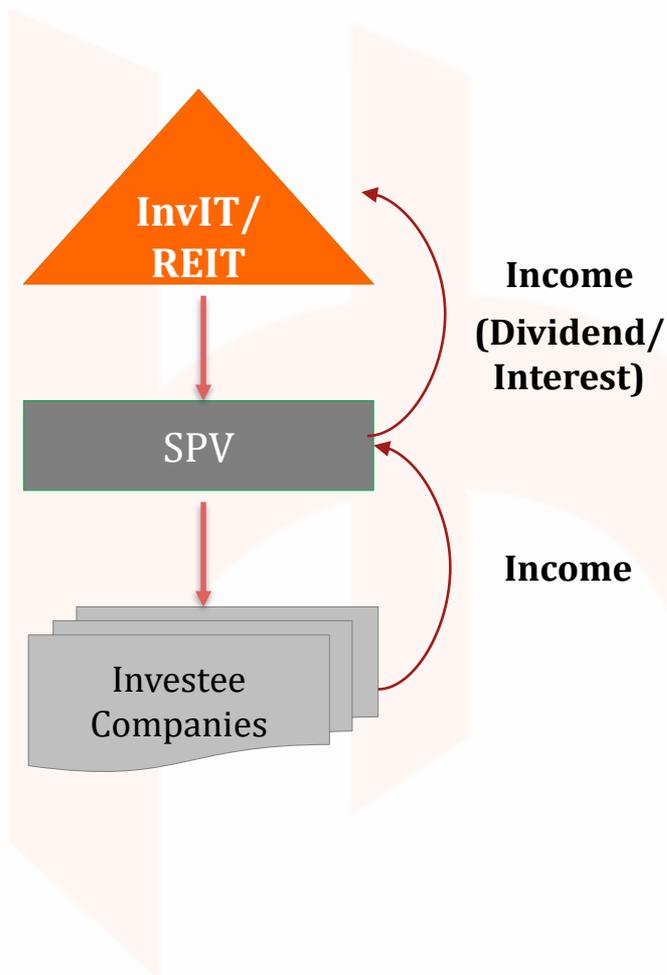
Overseas retirement funds

▷ **Taxability of income from overseas retirement funds:**

- ▷ When non-resident Indians return to India, there was a mismatch in taxability of income from overseas retirement funds opened when they were non-residents. Withdrawal from such fund is taxable in some overseas countries on receipt basis and income is taxable on accrual basis in India. This created difficulties in getting foreign tax credit.
- ▷ To remove the hardship of double taxation, Section 89A has been introduced to resolve the timing mismatch for taxability of income of “specified persons” from “specified accounts”. However, the modality of the resolution is yet to be prescribed.

International Taxation

Exemption of WHT on payment of Dividend to business trusts (viz. InvIT/REIT)



- ▷ Income received by InvIT/REIT being dividend or interest exempt u/s 10(23FC).
- ▷ **WHT on interest**
 - ▷ Specific exemption u/s 194A.
- ▷ **WHT on dividend**
 - ▷ Hitherto, no exemption from WHT on dividend u/s 194, resulting in procedural hassle of obtaining refund of WHT by InvIT/ ReIT
 - ▷ FB 2021 rationalises section 194 to exempt WHT on dividend income by SPV to InvIT/REIT.
- ▷ Amendment to take effect retrospectively from 1 April 2020

Rationalization of the provision concerning withholding on payment made to FIIs

- ▷ Section 196D of the Act provides for WHT on income of FII received in respect of certain listed securities at the rate of 20 per cent. Hitherto, benefit of lower WHT rate as per DTAA was not available at the time of WHT based on the Supreme Court ruling in the case of PILCOM [TS-219-SC-2020].
- ▷ It is proposed in FB 2021, to provide that in case of a payee to whom a DTAA applies and such payee has furnished the TRC, then the WHT rate shall be lower of
 - ▷ 20%; or
 - ▷ Rate or rates of income-tax provided in relevant DTAA on such income.
- ▷ This amendment will take effect from 1 April 2021.

New definition for “liable to tax”

- ▷ The term “liable to tax”, though it is widely used term in section 6, section 10(23FE) and various agreements entered under section 90 & section 90A of the Act, the same was not defined under the provisions of the Act and hence, had been the subject matter of various judicial proceedings.
- ▷ Various appellate authorities have held that for a person to be a resident of a Contracting State, the term “liable to tax” does not necessarily imply that the said person should actually be liable to tax in that State, it is enough if the other Contracting State has the right to tax such person and whether or not such right is exercised.
- ▷ In order to bring to rest the various interpretations surrounding the term, it is proposed to define the same in the Act, by inserting a new clause (29A) in Section 2.
- ▷ Accordingly, where there is a liability of tax on a person under any law in any country, such person is treated as “**liable to tax**”, even if an exemption is provided from that liability.
- ▷ Various treaties provide that, where any term used in the treaty is not defined in the Act, reference should be made to the provisions of the domestic laws of the respective Contracting States.
- ▷ Most of the treaties entered by India does not define the term “liable to tax” and the said amendment could impact the manner in which the treaties shall henceforth be interpreted.

Rationalisation of provisions related to Sovereign Wealth Fund and Pension Fund (1/3)

- ▷ Presently, Section 10 (23FE) of the Act provides exemption to specified persons (i.e. SWF or PF) from the income in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India subject to fulfilment of certain conditions.
- ▷ This provision was introduced through Finance Act 2020 (and a subsequent notification) to encourage investments of SWF/PF into infrastructure sector of India.
- ▷ In order to rationalise the provision of this clause and to remove the difficulties in meeting some of the conditions, FB 2021 proposes to make following amendments to section 10(23FE) with effect from 1 April 2021 -

Current provision	Proposed amendment
<ul style="list-style-type: none">▷ SWF/PFs may invest in Category-I or Category-II Alternative Investment Fund ('AIF'), having 100% investment in eligible infrastructure company.	<ul style="list-style-type: none">○ To relax the condition of 100% to 50%.○ Allow the investment by Category-I or Category-II AIF in an Infrastructure Investment Trust (InvIT).○ Exemption under this clause shall be prorated if aggregate investment of AIF in infrastructure company or companies or in InvIT is less than 100%

Rationalisation of provisions related to Sovereign Wealth Fund and Pension Fund (2/3)

Current provision	Proposed amendment
<ul style="list-style-type: none"> ▷ SWF/PFs are not allowed to invest in NBFC-IFC/IDF. 	<ul style="list-style-type: none"> ○ To allow investment in NBFC-IFC/IDF if, at least 90% of its lending is made to one or more infrastructure entities (prorated exemption for lending less than 100% to specified entities).
<ul style="list-style-type: none"> ▷ SWF/PFs are not allowed to invest through holding company. 	<ul style="list-style-type: none"> ○ Proposed to allow investment through holding company provided that, <ul style="list-style-type: none"> ○ Holding company is a domestic company. ○ It should be set up and registered on or after 1st April, 2021. ○ It should have minimum 75% investments in one or more infrastructure companies. ○ Exemption under this clause shall be prorated, if aggregate investment of holding company in infrastructure company or companies is less than 100%
<ul style="list-style-type: none"> ▷ SWF/PFs are not allowed to have loans or borrowings or deposit or investments as there is a condition that no benefit should ensure to private person 	<ul style="list-style-type: none"> ○ It is proposed to provide that, there should not be any loan or borrowing for the purpose of making investment in India. ○ The condition regarding no benefit to private person and assets going to government on dissolution would not apply to any payment made to creditor or depositor for loan taken or borrowing other than for the purpose of making investment in India

Rationalisation of provisions related to Sovereign Wealth Fund and Pension Fund (3/3)

Current provision	Proposed amendment
<p>▷ SWF/PFs are not allowed to undertake any commercial activity.</p>	<ul style="list-style-type: none">○ This condition is proposed be replaced with a condition that SWF/PFs shall not participate in day to day operation of investee.○ Appointing director and executive director for monitoring the investment would not amount to participation in day to day operation.○ The term "investee" is defined to mean a business trust or a company or an enterprise or an entity or a category I or II AIF or an InvIt or a domestic company or an Infrastructure Finance Company or an Infrastructure Debt Fund, in which the SWF or PF, as the case may be, has made the investment, directly or indirectly, under the provisions of this clause
<p>▷ Some PFs are 'liable to tax' in their country though given exemption subsequently</p>	<ul style="list-style-type: none">○ Amendment to provide that if PF 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 PF shall also be eligible for the exemption

Tax incentives for units located in IFSC (1/4)

- ▷ Government's continued efforts to make the International Financial Services Centre ('IFSC') a global financial hub is reflected in its plethora of tax incentives to units located in IFSC, which include, tax holiday for capital gains for aircraft leasing companies, tax exemption for aircraft lease rentals paid to foreign lessors; tax incentive for relocating foreign funds in the IFSC and to allow tax exemption to the investment division of foreign banks located in IFSC etc.
- ▷ To give effect to the above incentives, following amendments are proposed to be made to the Act, with effect from 1 April 2021,

Section	Proposed amendment
9A - Certain activities not to constitute business connection in India	<ul style="list-style-type: none">• Empowers Central Government to specify (by way of notification) that any one or more of the specific conditions not apply or apply with modification• Applies to an eligible investment fund or its eligible fund manager, if such fund manager is located in IFSC and has commenced operations on or before 31 March 2024
10(4D) - capital gains exemption on transfer of GDR/ bonds by Category-III AIF	<ul style="list-style-type: none">• Such exemption is extended to any income accrued or arisen or received by a division of offshore banking unit (a NR located in IFSC and commenced operations on or before 31 March 2024) to the extent attributable to it and computed in the prescribed manner.

Tax incentives for units located in IFSC (2/4)

Section	Proposed amendment
10(4E) (New clause) - Transfer of non deliverable forward contracts	To exempt any income of 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 31 March 2024.
10(4F) (New clause) - Royalty income from lease of aircraft	<ul style="list-style-type: none">• Exempts any income of a non-resident by way of royalty on account of lease of an aircraft in a previous year paid by a unit of an IFSC,<ul style="list-style-type: none">• Such unit should be eligible for deduction under section 80LA for that previous year and• Has commenced operation on or before the 31 March 2024
10(23FF) (New clause) - Capital gains on transfer of shares	<ul style="list-style-type: none">• Exempt any income of non resident on account of transfer of shares of Indian company by resultant fund where<ul style="list-style-type: none">• such shares were transferred from original fund to resultant fund in a relocation and• Capital gains on such shares are not chargeable to tax if the relocation has not taken place.• Original Fund is a fund established or incorporated outside India, which collects funds from its members for investing it for their benefit and fulfils certain conditions

Tax incentives for units located in IFSC (3/4)

Section	Proposed amendment
47 - Transactions not regarded as transfer	<ul style="list-style-type: none">• Relocation is defined as transfer of assets of the original fund to a resultant fund on or before 31 March 2023 and consideration is to be discharged by way of issue of proportionate shares or units or interest in the Resultant Fund.• Resultant Fund to be SEBI registered Category I, II or III AIF located in IFSC <p>Following new clauses will be inserted,</p> <ul style="list-style-type: none">• any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gain tax purpose.• 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. <p>Consequential amendments made to section 49 (cost of acquisition), 56 (Income from other sources) and 79 (Set-off & carry forward of losses in companies) on account of such relocation.</p>

Tax incentives for units located in IFSC (4/4)

Section	Proposed amendment
80LA – Deductions in respect of certain incomes of Offshore Banking Units and IFSC	<p>Following amendments are proposed,</p> <ul style="list-style-type: none">• Deduction under said section is made 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.• Income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit 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 the 31 March 2024
115AD – Tax on income of FII from securities/CG on transfer	<ul style="list-style-type: none">• Provision of this section made applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund.

Equalization Levy

-
- ▷ Equalization Levy (“EL”) is levied at 2% of the consideration received or receivable by a non-resident e-commerce operator from e-commerce supply or services made or provided or facilitated by it to a –
 - Person resident in India; or
 - Non-resident in specified circumstances; or
 - Person who buys goods and/or services using IP address located in India
 - ▷ FB 2021 proposes **to include an inclusive definition for the expression “consideration received or receivable from e-commerce supply or services”** –
 - consideration for sale of goods irrespective of whether e-commerce operator owns the goods; and
 - consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.
 - ▷ The “e-commerce supply or service” was defined as –
 - online sale of goods owned by or the services provided by the e-commerce operator,
 - **online sale of goods or provision of services** or both, facilitated by the e-commerce operator, or
 - any combination of the above.

- ▷ FB 2021 proposes to define the expressions “online sale of goods” and “online provision of services” used in the above definition as - one or more of the following activities taking place online -
- Acceptance of offer for sale;
 - Placing the purchase order;
 - Acceptance of the Purchase order;
 - Payment of consideration; or
 - Supply of goods or provision of services, partly or wholly

In the present era of technology, use of ERP systems for purchase orders etc., e-mails for related communications, and e-payments are widely in practice and what exactly is considered to be within the ambit of the aforesaid activities performed “online” is to be pondered upon.

Specific clarification on what could be considered as “facilitated by e-commerce operator” and what could be out of the scope of the same would help. For example, whether the information of features of the product, price, the location and contact information of the dealers etc. made available in the website of the manufacturer/ trader would be covered by this provision appears to be in “grey” area.

Clarifications/ guidance to distinguish “online provision of services” from “services rendered from remote location” is also a need of the hour.

Equalization levy vis-à-vis Income Tax in India

- ▷ Section 10(50) provided exemption from income tax in respect of transactions of online sale of goods or provision of services which are chargeable to EL.
- ▷ FB 2021 provides that the aforesaid exemption **shall not apply** for **Royalty or Fee for Technical Services (FTS)** taxable under the Act read with the applicable tax treaties. Corresponding clarification that “e-commerce supply or services” shall not include amounts taxable as royalty or FTS in India has been inserted. Accordingly, EL would not be applicable on the same.

Does it mean that EL would be applicable in respect of royalty or FTS **not** taxable to tax in India for reasons like restrictive definition in the tax treaty etc. ?

Trust Taxation

Taxability of trusts / educational institution

- ▷ **Carry forward of excess application:** It is proposed that any **excess application** of the trust in the previous year **cannot be carried forward and set off** against income of subsequent years overruling judicial decisions in the case of Institute of Banking Personnel Selection (2003) 264 ITR 110 (Bom HC), Shri Plot Swetamber Murti Pujak Jain Mandal [TS-5781-HC-1993(Gujarat)] etc. Refer illustration:

Particulars	FY 2019-20	FY 2020-21
1. Income during the year	100	100
2. Income to be applied (85%)	85	85
3. Income applied during the year	90	75
4. Excess / (Shortfall) (1-2)	5	(10)
The excess application of Rs. 5 in FY 2019-20 cannot be carried forward and set off against the shortfall in FY 2020-21.		

- ▷ **Increase in exemption limit for educational institutions and hospitals:** The exemption limit for annual receipts specified under Section 10 (iiiad) / (iii ae) for educational institutions / hospitals, shall be **increased to Rs 5 crore from Rs 1 crore**. Further, it is proposed that the exemption limit shall be looked at on an **aggregate basis** in case of receipts from multiple educational institutions / hospitals.

Taxability of trusts - Removing the anomaly of double claim due to Corpus investment / loan

- ▷ **Elimination of double deduction claimed by trusts:**
 - ▷ Voluntary contribution received with specific direction that it shall form part of the **corpus shall not be treated as “income” provided it is invested in the prescribed modes** such as post-office savings bank, etc.
 - ▷ Further, application out of such corpus shall not be considered for computing 85% application of income. If the corpus fund is spent, it shall be treated as an application only in the year the amount spent is invested back into the corpus in any of the modes specified in Section 11(5).
 - ▷ Application from loans and borrowings shall not be considered as application for charitable or religious purposes. However, when loan or borrowing is repaid from the income, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.



Trusts may have to maintain separate books of accounts to tag the application out of corpus and income.

Goods & Services Tax

Goods & Services Tax amendments

(1/9)

Particulars	Proposed Amendment	Implications
1. Scope of Supply Supply (Section 7 of CGST Act) – Taxation on supplies by clubs etc. to its members	<ul style="list-style-type: none">○ Supply shall include activities or transactions by a person (other than individual) to its members or constituents or vice-versa, for cash, deferred payment or other valuable considerations, effective from 1 July 2017.○ Person and its members or constituents shall be deemed to be two separate persons, notwithstanding anything contained in any other law or judgements of the courts.○ Entry 7 of Schedule II - Supply of goods by any unincorporated association or body of person to its members for consideration - is omitted w.e.f 1 July 2017	<ul style="list-style-type: none">○ The doctrine of mutuality as upheld by Supreme Court in the case of Calcutta Club Limited is proposed to be negated through this retrospective amendment○ All transactions / activities of mutual associations including co-operative housing societies, member's clubs, trade associations, professional associations etc. with its members and vice versa for a consideration shall be liable to GST.

Goods & Services Tax amendments

(2/9)

Particulars	Proposed Amendment	Implications
2. Matching with GSTR 2A/2B as condition to take Input Tax Credit – (Section 16 of CGST Act)	<ul style="list-style-type: none">Input tax credit (ITC) on invoice or debit note provided by the supplier, can be availed only when the supplier has reported the said Invoice or debit note in GSTR1 and the same is reflected in GSTR 2A/2B of the recipient.	<ul style="list-style-type: none">Presently, Rule 36(4) prescribes that ITC can be availed for credits reflecting in GSTR 2A/2B subject to variance. Validity of Rule 36(4) has been challenged before various courts. Now matching is made as a pre-condition to avail ITC in the Act.5% variance as permitted in Rule 36(4) shall not be available.
3. Scrapping of GST Audit (Section 35(5) and Section 44 of CGST Act)	<ul style="list-style-type: none">Section 35(5) requiring audit of annual accounts is deleted.RP to submit annual return along with a self certified reconciliation statement reconciling values declared in GSTR 9 and audited accounts.Power given to Commissioner to exempt certain class of persons from filing annual return	<ul style="list-style-type: none">Persons with specified T/O were required to file Annual Return - GSTR 9 and Reconciliation Statement - GSTR 9C duly certified by a CA or CMA.Certification by CA / CMA has been done away with and now a Self certified reconciliation statement to be submitted along with GSTR 9.CBIC has clarified vide twitter handle that GST Audit for FY 2019-20 will be applicable.

Goods & Services Tax amendments

(3/9)

Particulars	Proposed Amendment	Implications
<p>4. Interest payable on Net cash liability has given retrospective effect (Proviso Section 50 of the CGST Act)</p>	<ul style="list-style-type: none">○ Proviso that interest is payable only on amount paid by debit to electronic cash ledger for the tax period has been given effect from 1 July 2017.	<ul style="list-style-type: none">○ Earlier proviso was effective from 1 September 2020, though GST Council recommendation was to give effect from 1 July 2017.○ The amendment will settle the issue related to interest on delay payment for tax periods July 2017 to August 2020 as to whether the same was payable on gross tax liability or net cash liability,○ Companies can evaluate the option of claiming refund of interest already paid.
<p>5. Difference in tax liability between GSTR 1 vs GSTR 3B to be treated as Self Assessed Tax</p>	<ul style="list-style-type: none">○ The tax payable reported in Form GSTR 1 but not included in Form GSTR 3B will be considered as “Self assessed tax”	<ul style="list-style-type: none">○ There was no mechanism to recover the difference in tax payable reported in GSTR 1 and GSTR 3B, other than way by assessment / audit / SCN.○ By treating the difference between tax payable as per GSTR 1 and GSTR 3B as self assessed tax, department can recover the tax by initiating recovery proceedings under section 79.

Goods & Services Tax amendments

(4/9)

Particulars	Proposed Amendment	Implications
6. Addition in cases where Provisional attachment can be done (Section 83 of the CGST Act)	<ul style="list-style-type: none">○ Scope for Provisional Attachment (“PA”) enhanced by including assessment under various section.○ Property of any person (including bank accounts), who retains the benefit of a transaction specified and at whose instance such transaction is conducted, can also be considered for provisional attachment	<ul style="list-style-type: none">○ Presently, PA is allowed in case of assessment of non-fliers / unregistered persons, summary assessment in special cases, tax demands u/s 73 or 74.○ PA can be initiated in cases of determination of tax by department under self assessment, provisional assessment, scrutiny of return, inspection of goods, tax collected but not paid etc. as well.
7. Delinking tax recovery proceedings & penalty proceedings in detention /confiscation cases	<ul style="list-style-type: none">○ Proceeding under section 129 (detention / seizure) and section 130 (confiscation of goods) has been delinked from the Provision of Section 74.○ No Tax or Interest to be recovered under section 129 (detention / seizure) and section 130 (confiscation of goods)	<ul style="list-style-type: none">○ Presently conclusion of Proceeding u/s section 74 on the main person liable to tax will conclude the proceeding against all person liable to pay penalty u/s 129 / 130. This has been delinked.○ Penalty proceedings initiated in respect of detention or seizure, confiscation of goods or vehicle is independent and separate from the proceeding under section 74.

Goods & Services Tax amendments

(5/9)

8. Changes in provision of detention/ seizure/ release of goods/ conveyances in transit (Section 129)

Particulars	Present	Proposed
Owner of the goods comes forward for payment of penalty in case of Taxable Goods	Tax + penalty equal to 100% of tax payable	Penalty equal to 200% of tax payable
Owner of the goods does not come forward for payment of penalty in case of Taxable Goods	Tax + penalty equal to 50% of value of goods	Penalty - Higher of 50% of value goods (or) 200% of tax payable
Furnishing of Security for release of goods	Release of goods upon furnishing security allowed	Release of goods upon furnishing security not allowed
Maximum Penalty on transporter for release of Conveyance	No Provision	Rs. 100,000
Service of order of detention or conveyance on the person transporting the goods	No detention / seizure possible without serving of order	Now Detention / seizure of goods can be made without serving of order.

Goods & Services Tax amendments

(6/9)

Particulars	Present	Proposed
Timelines	Payment of taxes / penalty within 14 days of detention	<ul style="list-style-type: none">- Notice within 7 days of detention or seizure- Order within 7 days of Notice date- Payment within 15 days from Order received date
Sell / dispose the goods on non-payment of penalty	Power to dispose if payment not made within 3 months subject to other conditions given in section 130.	Power to dispose, if payment not made within 15 days
Appeal with Appellate Authority	No Specific provision in the Act. Courts have allowed the appeals.	Appeal allowed u/s 107 with a pre-deposit of 25%. (10% in general cases)

Goods & Services Tax amendments

(7/9)

Particulars	Proposed Amendment	Implications
9. Increase in Penalty in confiscation of goods u/s 130 of the CGST Act)	<ul style="list-style-type: none">○ The Minimum penalty under this section has been delinked from penalty specified in section 129 and now the minimum penalty will 100% of the tax payable.	<ul style="list-style-type: none">○ Presently, the minimum penalty payable u/s 130 is penalty prescribed in section 129 of the CGST Act.○ With the increase in penalty u/s 129 to 200% of tax payable, the minimum penalty has been retained at 100% of tax amount.
10. Power to collect information (Section 151 of CGST Act)	<ul style="list-style-type: none">○ Jurisdictional commissioner or an officer authorised by him is empowered to direct any person to furnish information relating to any matter dealt with in connection with GST Act.○ Information collected shall not be used for any proceedings without giving an opportunity of being heard to the concerned person	<ul style="list-style-type: none">○ Earlier only commissioner was empowered to collect information only for statistical purpose and that too by way of notification. Further, this information can used for any proceeding as well.

Goods & Services Tax amendments

(8/9)

Particulars	Proposed Amendment	Implications
11. Zero Rated Supply (Section 16 of the IGST Act)	<ul style="list-style-type: none">○ Supplies to SEZs shall qualify as zero rated supply only if such supply is for authorized operations of the SEZ unit or SEZ developer.○ Zero rated supplies can be made only without payment of IGST under bond or LUT with an entitlement to refund of unutilized ITC.○ Government may notify<ul style="list-style-type: none">- class of persons who may make zero rated supplies with payment of tax and claim refund of the tax paid- class of goods/services which may be exported with payment of tax and claim refund of the tax paid	<ul style="list-style-type: none">○ Supplier to ensure that supplies to the SEZ unit is for authorized operations, before treating the supply as Zero - rated Supply.○ Option of supply of zero rated of goods or services with payment of taxes and claiming refund of such taxes paid (Rebate model) is not allowed unless the government notifies specifically for a class of persons / goods.○ This will impact business having accumulated ITC due to capital investment, as per prevailing rules does not allow including ITC on Capital goods as part of refund of unutilized ITC on zero rated supplies.

Goods & Services Tax amendments

(9/9)

Particulars	Proposed Amendment	Implications
11. Zero Rated Supply (Section 16 of the IGST Act)	<ul style="list-style-type: none">○ In case of export of goods, refund already availed to be repaid with interest, in case of non-realization of export proceeds within time limit prescribed in Foreign Exchange Management Act, 1999.	<ul style="list-style-type: none">○ Recently Rule 96B was introduced stating that refund received on export of goods to be repaid on non-realization of export proceeds. The Validity of this rule has been challenged in the Courts, stating that the rule is ultra-vires to the Act.○ To settle this issue, the post refund condition of realization has been included in the Act itself.○ However, no guidance on refund claim, if the amount is realized after the prescribed time limit / written off with RBI approval as presently given in Rule 96B.

The proposed amendment in the CGST Act and IGST Act will be effective only when the provisions are specifically notified in the Gazette and not from the date on which the Finance Bill receives the presidential assent. Further, the amendment proposed in the CGST Act will also require to be made in the respective state GST Act.

Customs Duty

Key Customs amendments

(1/2)

Particulars	Amendment & Implications
1. Filing of Bill of Entry (section 46(3) of the Customs Act)	<ul style="list-style-type: none">○ Currently, the Bill of Entry had to be filed before the end of the next day following the day (excluding holidays) of arrival of goods.○ Now the Bill of entry have to be filed before the end of the day preceding the day (including holidays) of arrival of goods.
2. Sun Set clause for conditional exemptions (Section 25 of the Customs Act)	<ul style="list-style-type: none">○ All Conditional exemptions given under the customs act, unless specifically extended / rescinded earlier. shall come to an end on 31st March falling immediately two years after the date of such grant or variation.○ All existing conditional exemption in force as on date on which the Finance Bill receives Presidential assent, shall end on 31 March 2023, unless specifically extended / rescinded earlier.
3. Time limit for completion of any proceeding (Section 28BB of the customs Act)	<ul style="list-style-type: none">○ Any proceedings (inquiry or investigation) should culminate into issuance of a notice within 2 years from the date of initiation (audit, search, seizure, summons etc.). Power given to extend the period for a further one year.○ Earlier, there was no timeline specified and certain proceedings with last for years.

Key Customs amendments

(2/2)

Particulars	Amendment & Implications
4. Wrongful Claim of remission or refund of any tax	<ul style="list-style-type: none">○ Confiscation of goods entered for export allowed, if meant for wrongly claim of refund / remission of any tax or duty in contravention with any law.
5. Refund claim on export by utilizing ITC on fraudulent invoices	<ul style="list-style-type: none">○ Penalty up to 5 times of refund claim on export of goods, whereby liability is discharged by utilizing ITC on fraudulent invoices.○ This is in addition to the penalty for fraudulent invoice under GST and Income Tax laws.
6. Agriculture Infrastructure and Development Cess (AIDC)	<ul style="list-style-type: none">○ New Cess "AIDC" imposed on specified goods effective from 2 February 2021.○ Reduction in BCD rates to the extent of AIDC in most of these items..○ SWS will be levied on AIDC○ Usage of Duty Credit Scrips (MEIS / SEIS) may not be allowed for AIDC.
7. New Common Portal	<ul style="list-style-type: none">○ New Common Portal to be introduced for registration, filing of BOE, Shipping bills, payment of tax etc. (Probable Replacement for ICEGATE.GOV.IN)

In addition there are changes in BCD rates for certain items.

- Rate increase for items such as Carbon Black, Compressors for AC / Refrigerators, certain parts of automobile, textiles etc.
- Rate decrease for items such as Nylon Fibre & Yarn, Naptha, certain iron and steel products, etc.

Corporate & Allied Laws

Decriminalization under LLP Act & Amendment in definition of Small company

▷ Decriminalization under LLP Act:

- ▷ Post a string of amendments brought by the Government to decriminalize offences in Companies Act, 2013, the Government has now shifted its focus to decriminalization of LLP Act. The committee report has been submitted to the Ministry in January 2021 and it is expected to be enforced soon either through an ordinance or an amendment to the Act. 12 offences (such as non-filing of annual returns, non-filing on changes in partnership status / composition, non-display of name, address of regd. office in its invoices, official publications, etc.) are proposed to be decriminalized.

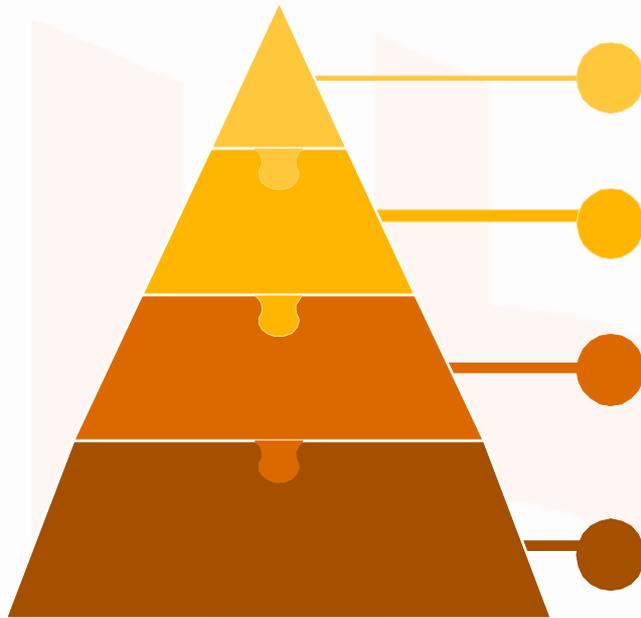
▷ Increased thresholds for definition of 'small companies':

- ▷ The threshold criteria for a 'small company' has been enhanced through Companies (Specification of Definition details) Amendment Rules, 2021 as below –

Threshold Criteria	Current	Proposed
Paid up capital	Upto Rs. 50 lacs	Upto Rs. 2 Crores
Turnover	Upto Rs. 2 Crores	Upto Rs. 20 Crores

This will result in relaxed compliance requirements such as preparing CFS, timeline for holding board meetings, exclusion from the overall limit of 20 companies for auditors, reporting of internal financial controls and its operating effectiveness by the auditors, etc.

One Person Company - To gain attraction



No restriction on paid up capital and turnover to convert Pvt co to an OPC.

NRIs are also allowed to setup OPCs in India.
Reduction in residency limit from 182 to 120 days.

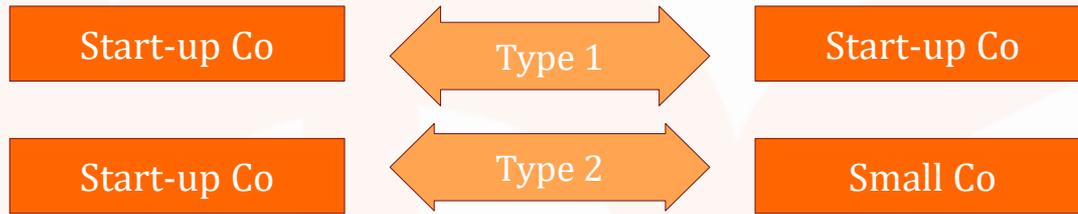
No mandatory requirement to convert into private / public co if the turnover / paid up capital exceeds threshold limits.

Free conversion of OPC into any other type of company at any point of time (no lock in period of 2 years before voluntary conversion).

The changes have been brought through Companies (Incorporation) Second Amendment Rules, 2021. Though the concept of OPC was introduced at the inception of Companies Act, 2013, very few OPCs were set-up. Doing away with the requirement of an active Indian resident setting up an OPC and removing the restriction on paid up capital and turnover could possibly attract NRIs to venture into the accelerating Indian business setup, particularly start-ups. However, one will have to wait and watch if the concept of OPC finds its place in the traditional model.

Fast track merger for start up companies

- ▷ The Companies (Compromises, Arrangement and Amalgamations) Amendment Rules, 2021 have been notified to allow **fast track mergers for start-up companies (with immediate effect)**.
- ▷ This was earlier available only for merger of two or more small companies or merger of wholly owned subsidiary and holding company and has now been extended the following types of merger also:



- ▷ Start up company means a company recognized by Department for Promotion of Industry and Internal Trade (DPIT).

While this was not explicitly mentioned in the Budget Speech, this comes as a welcome move to boost the growth of the Start-ups in India and support the 'Make in India' initiative of the Government. Further, since small companies' definition has been widened, more companies would be eligible for the fast-track merger route.

Resolution of disputes & V.3.0 of MCA 21

▷ Resolution of disputes

- ▷ Strengthening of the National Company Law Tribunal Framework to ensure faster resolution of pending cases,
- ▷ Implementation of the new concept of 'e-courts' for company law adjudications.
- ▷ Establishing alternate methods of debt resolution and special framework for MSMEs.

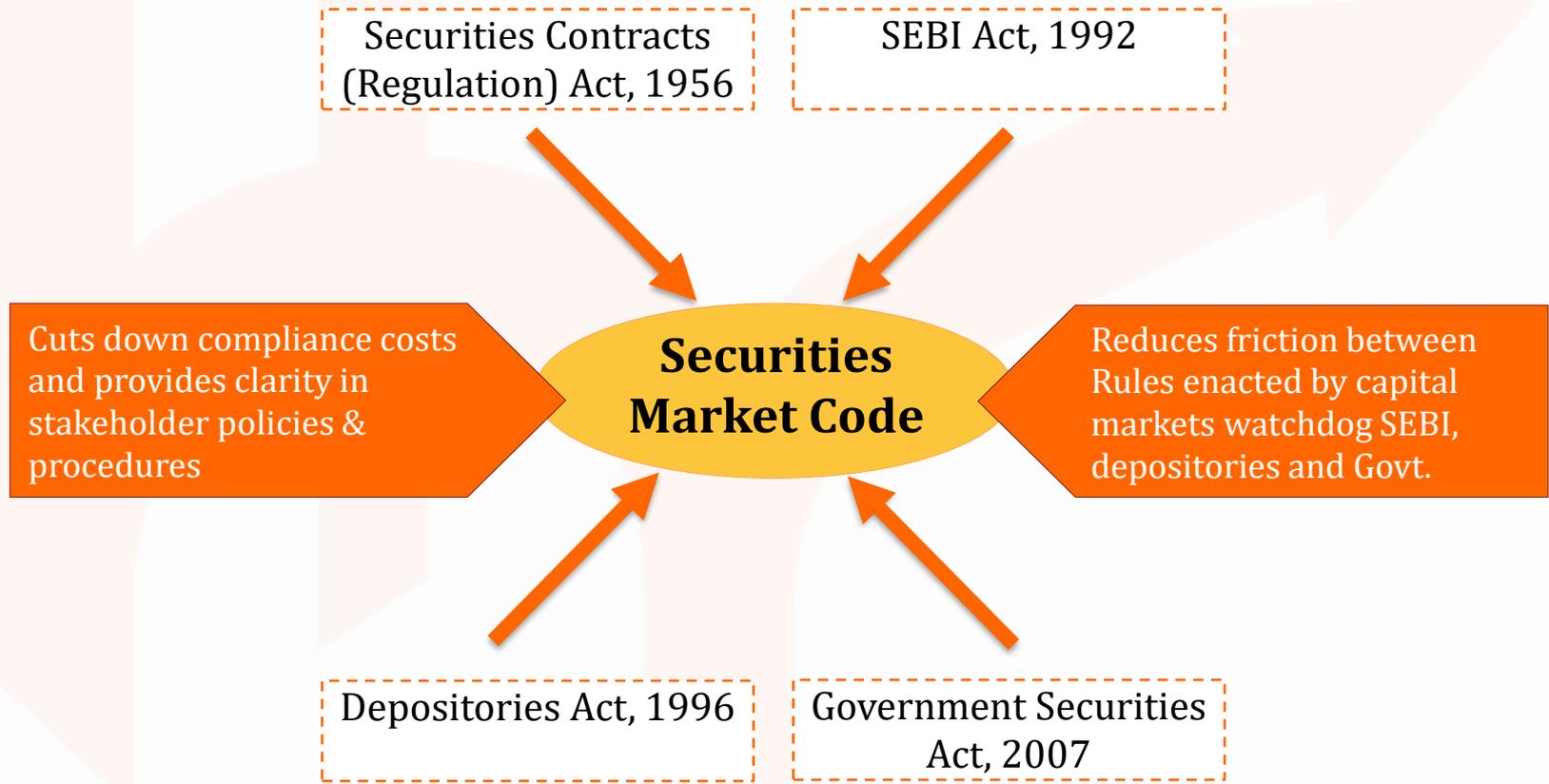
▷ Launch of MCA 21 Version 3.0

- ▷ The Government is proposing to launch Version 3.0 of MCA21, the Ministry's official e-governance platform. The new platform would be driven by modern technology of data analytics, artificial intelligence, machine learning.
- ▷ This will also pave way for e-scrutiny, e-Adjudication, e-Consultation and Compliance Management.

The Government has taken cue from the way businesses have fared and appreciated the faceless compliance mechanisms under Income-tax law implemented last year and has endeavored to bring about similar measures into corporate law administration and dispute redressal mechanism as well. Further, upgradation of enhanced technologies into the e-governance system would mean that stakeholders would have to be doubly cautious on filing various forms in the MCA portal as this may lead to enhanced regulatory scrutiny and data analytics by the Ministry .

Consolidation of Securities Laws

- ▶ The Government has proposed consolidation of the below Securities Laws into a single code.



Increase in FDI in Insurance Sector

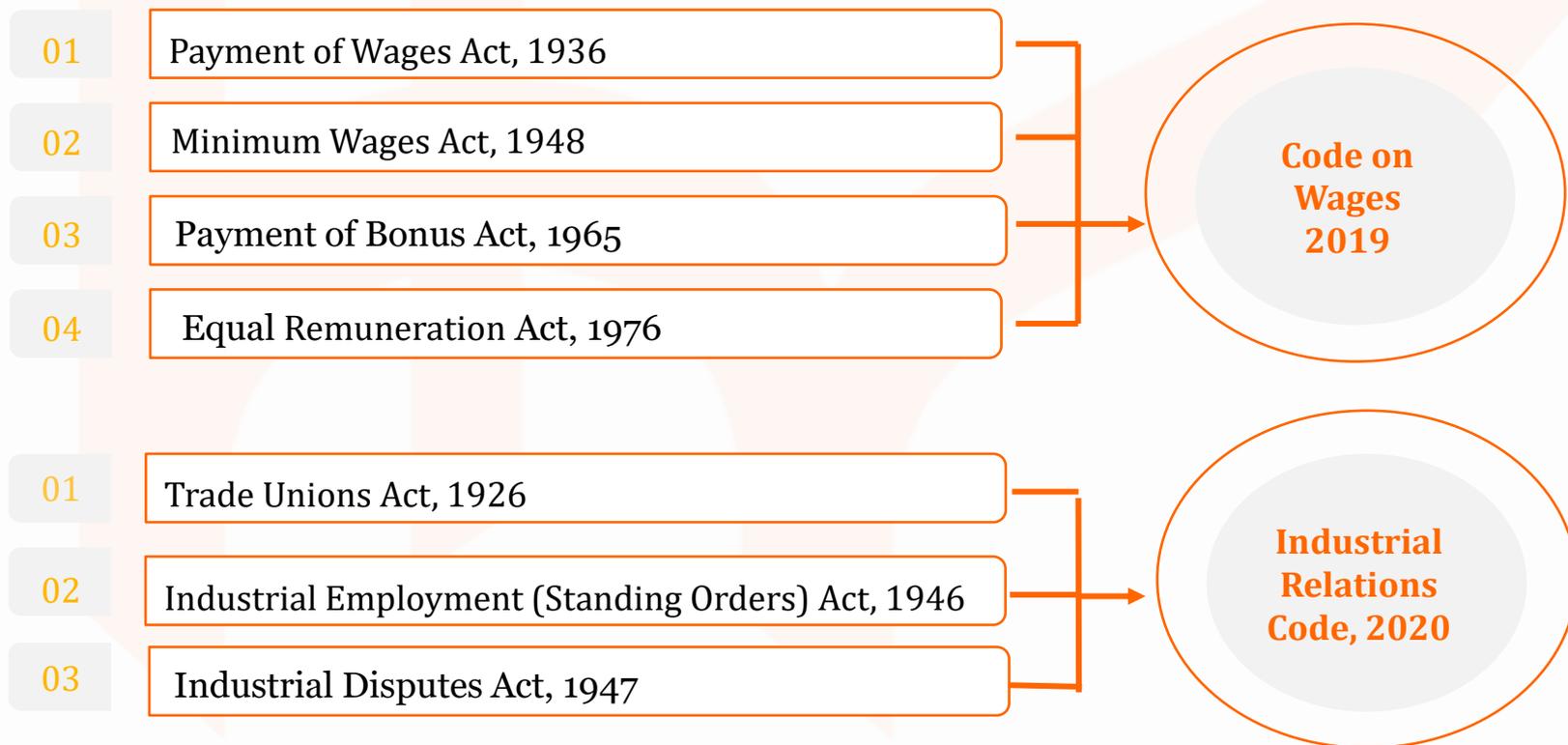
▷ Amendment in Insurance Act, 1938:

- ▷ The permissible FDI limit in insurance companies is proposed to be **increased to 74% from 49%, subject to following conditions/ criteria.**
 - ▷ Foreign ownership and control shall be allowed with safeguards as prescribed.
 - ▷ **Majority of directors on the Board and KMP should be resident Indians,** with at least 50% of directors being independent directors.
 - ▷ Specified percentage of the profits should be retained as general reserves.

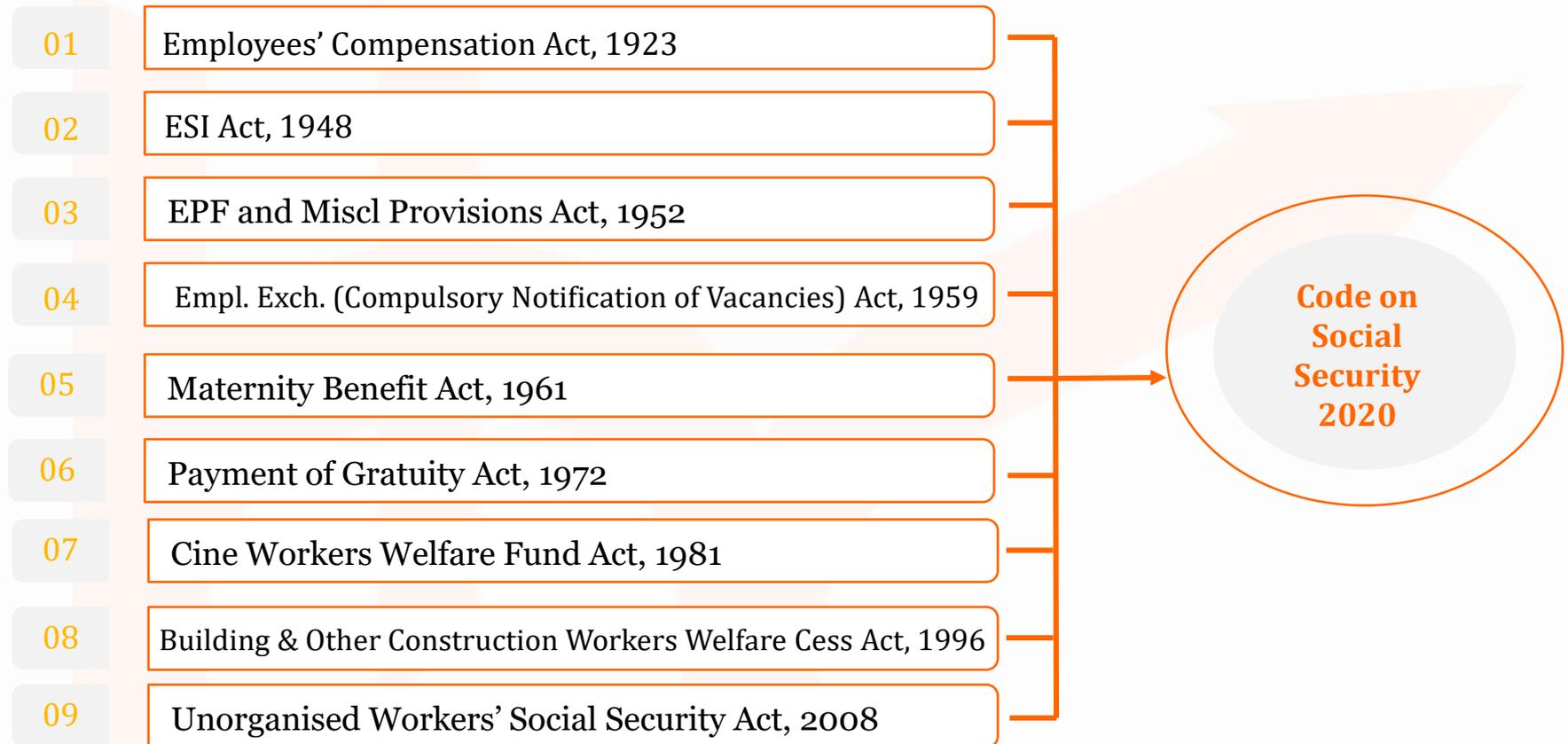
Labour Law

Consolidation of Labour Laws (1/4)

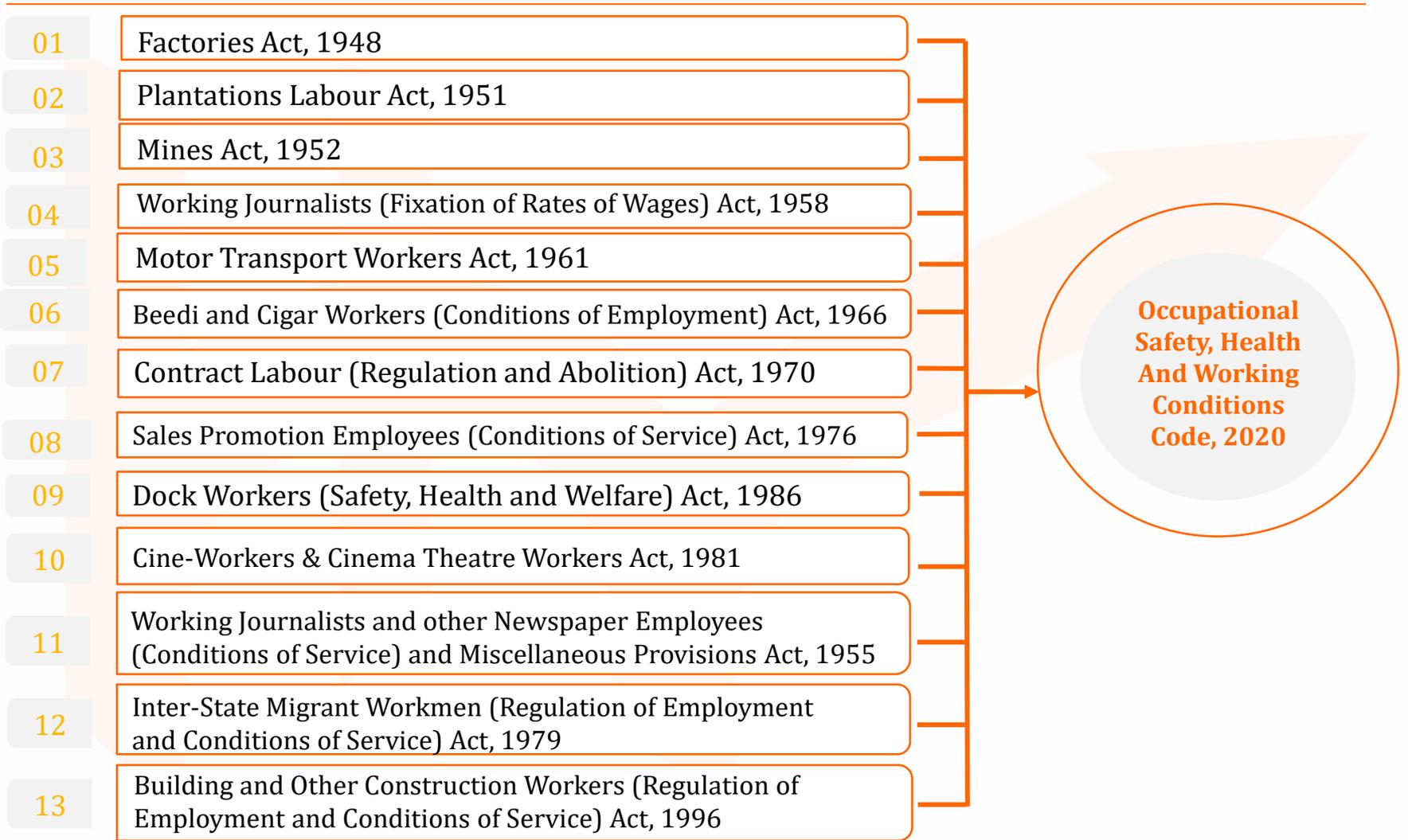
The Government had enacted the following four Labour Codes during 2019 and 2020 to subsume various labor laws as provided below. The Finance minister in her budget speech reiterated the Government's commitment to notify and implement the Labour Codes – in essence repeal the old laws and replace with the newer ones.



Consolidation of Labour Laws (2/4)

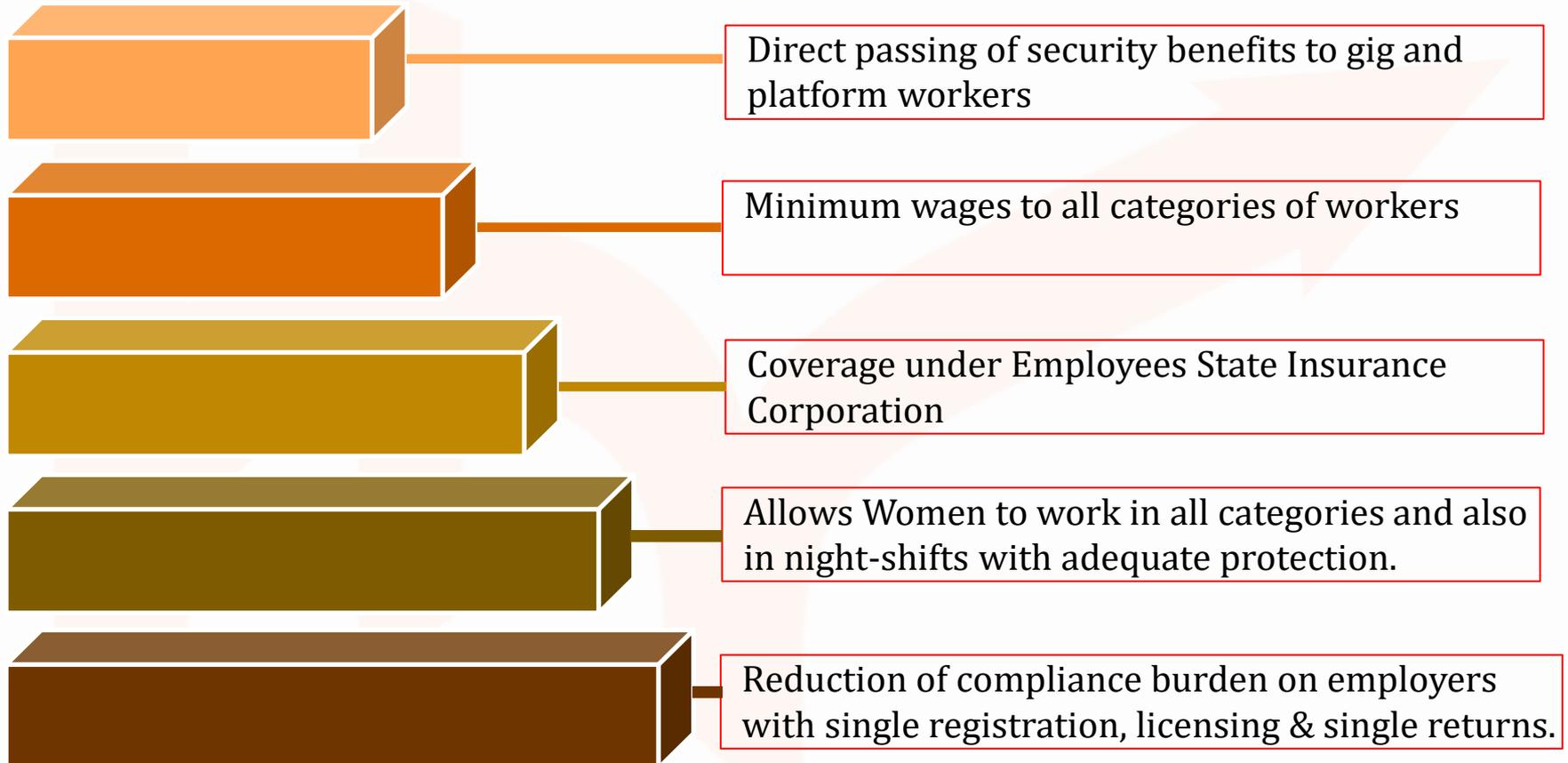


Consolidation of Labour Laws (3/4)



Consolidation of Labour Laws (4/4)

The benefits of new labour codes are as follows:



Rates of taxes

Corporate tax rates

There is no amendment in the tax rates applicable to the corporates for FY 2021-22. Accordingly, the following tax rates will continue to apply in FY 2021-21:

Type	Taxable income <= 1 crs		Taxable income > 1 crs		Taxable income > 10crs	
	Normal	MAT	Normal	MAT	Normal	MAT
Domestic Company: Turnover <= Rs. 400 crores in FY 2019-20	26%	15.6%	27.82%	16.692%	29.12%	17.472%
Domestic Company: Turnover > Rs. 400 crores in FY 2019-20	31.2%	15.6%	33.384%	16.692%	34.944%	17.472%
Domestic Company: Opting for Section 115BAA @	25.17%	NA	25.17%	NA	25.17%	NA
Domestic Company: Option for Section 115BAB @	17.16%	NA	17.16%	NA	17.16%	NA
Foreign Company	41.6%	NA *	42.432%	NA *	43.68%	NA *

@ Subject to satisfaction of conditions prescribed

* Unless they are foreign companies having PE in India

Individual tax rates

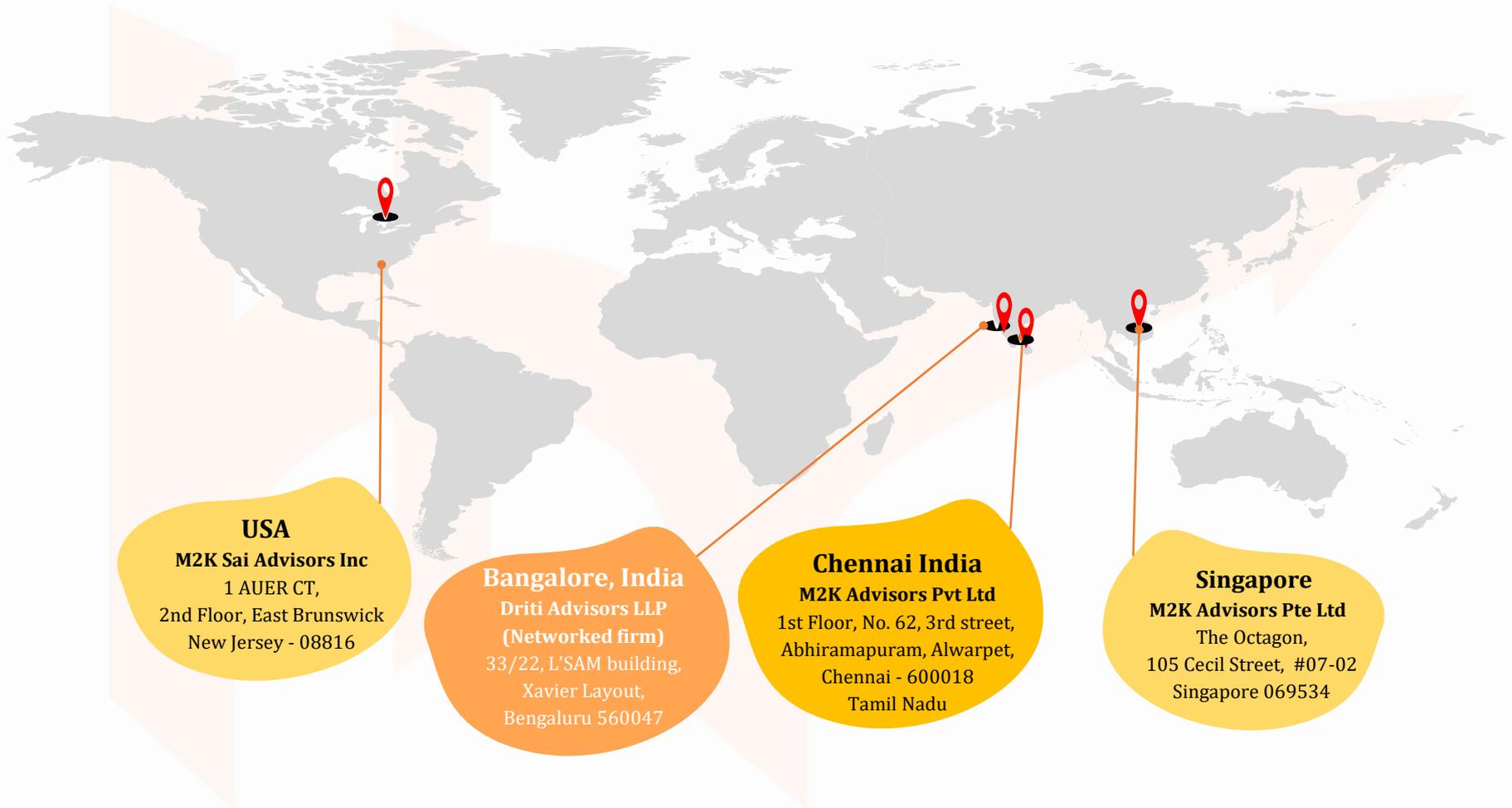
There is no amendment in the tax rates applicable to the individuals for FY 2021-22. Accordingly, the following tax rates will continue to apply in FY 2021-21:

	Total taxable income (in INR)	Normal Regime			New Regime	
		Age < 60	Age < 80	Age > 80		
Base Tax	Up to 2,50,000	Nil	Nil	Nil	Nil	
	2,50,001 to 3,00,000	5% *	Nil	Nil	5%*	
	3,00,001 to 5,00,000	5% *	5% *	Nil	5%*	
	5,00,001 to 7,50,000	20%	20%	20%	10%	
	7,50,001 to 10,00,000	20%	20%	20%	15%	
	10,00,001 to 12,50,000	30%	30%	30%	20%	
	12,50,001 to 15,00,000	30%	30%	30%	25%	
	Above 15,00,000	30%	30%	30%	30%	
Surcharge	Total taxable income	Up to Rs. 50 lakhs	> 50 lakhs < 1 crore	> 1 crore < 2 crore	> 2 crore < 5 crore	> 5 crore
	Rate (other than for income u/s 111A, 112A, 115AD)	Nil	10%	15%	25%	37%

H&E Cess shall be levied at the rate of 4% on the amount of tax computed, inclusive of surcharge.

* No tax on individuals having taxable income up to Rs.5 lakhs as a result of rebate of Rs. 12,500

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