Union Budget - 2021

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Budget Special Edition 2021

SBS Wiki

2021 Budget Special

By

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Dear All,

Greetings!

This is one of the finest budgets this country has witnessed. The budget aligns with the macro economic scenario and takes care of the impact of COVID. In this budget edition, we discuss the various proposals segment and tax wise. Hope this effort of ours is useful for understanding the proposals. Let me also allow to summarise the various proposals before our detailed analysis.

On the direct tax front, there are certain amendments which have tried to put an end to decade long litigations. Hope they do not open a new round of litigation. The changes in partnership taxation trying to put an end to abusive strategies and the removal of goodwill from the block of assets to put end to settled views are two extreme hues of the budget.

Undoubtedly, the tax avenues (leakages looked from the perspective of tax authorities) available high networth individuals are being closed budget by budget. The taxation of ULIPs and interest on provident fund contributions exceeding certain limits are steps in the above direction. The introduction of safe harbour for sale of residential units considering the COVID periods is a thoughtful move putting an end to litigation on this front. Finally, the definition of 'liable to tax' has been brought into the domestic tax provisions putting concrete end to so many aspects. The clarification of the dis-allowability on employee share in a way puts end to disputes but a bit harsher on the employer.

The scrapping of settlement commission, advent of new board for Advance Rulings, contemplation of Dispute Resolution Committee and getting ITAT proceedings also under the faceless are laudable steps. The rationalisation of rationale for re-opening of assessments, reduction of time limit and restricting it to only specified instances is much awaited move.

The proposal of tax deduction/collection at higher rates if the specified assessee has not filed the return where TDS/TCS is more than INR 50K would cast a huge burden on the assessee. The significant of direct tax proposals is further relaxation of tax audits for business who are having less than turnover of INR 10 Crores subject to a condition that there cash transactions are less than 5%. Prior to this budget, the threshold was at INR 5 Crores.

On the indirect taxation front, there are no changes to GST laws except for a major one which would be a great relief to the MSME sector, is the scrapping of GST audit. It is a welcome move since a significant time is saved for both the auditors and trade. The existing reconciliation exercise does not really reveals the true spirit of audit.

The changes brought to OPCs and allowing NRIs to be able to open OPCs is a great move. Further, the increase of threshold for small companies is also a welcome move which facilitates the ease of doing business.

With this brief, I present you the detailed analysis on significant clauses on Finance Bill 2021. We wish this effort of ours is fruitful and we would love to receive feedback on this.

Thanking You,

SURESH BABU SANNAREDDY

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Suresh Babu S
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Proposals under Direct Taxation

A. Individual Taxation:

a. Relaxation for Specified Senior Citizen:

1. Through Finance Bill, 2021,a relaxation has been provided from filing of income tax return in respect of Specified Senior Citizen(for brevity 'SSC'). For this purpose, SSC is defined to mean an individual being resident in India who is of the age of 75 years or more and who is having only income from pension and interest on account maintained in the same bank, from which such pension is received.

2. Further, the banks are obligated to deduct tax at source while paying to SSC by computing tax liability at the rates in force on income determined after providing deductions allowable under Chapter VI-A and rebate under Section 87A.

b. Removal of Exemption on Interest on contributions made to Provident Funds in excess of specified limits:

3. At present, interest received by a person from statutory provident fund and recognised provident fund is exempted from tax under Section 10(11) and Section 10(12) of the Act, respectively.

4. Now, it is proposed to amend Section 10(11) and 10(12) of the Act to provide that interest from provident fund to that extent it relates to contribution made in excess of INR 2,50,000 shall not be claimed as exemption.

c. Removal of Exemption on Gains Accrued from Unit Linked Insurance Policy in excess of specified limits:

5. Unit Linked Insurance Policy (for brevity 'ULIP') is a hybrid product wherein the insurance company provides both investment exposure and insurance coverage in single instrument. This concept is introduced by Insurance Regulatory and Development Authority of India (for brevity 'IRDAI') through 'IRDAI (Unit Linked Insurance Products) Regulations, 2019'. Under the existing provisions, amount received on maturity of ULIPis exempt from tax subject to the satisfaction certain conditions.

6. As ULIP involves both investment and insurance coverages, providing exemption to maturity amount by treating such transaction as insurance was felt as not a correct approach, especially, when huge amounts are invested to get benefit of return on investment. Hence, the following amendments are proposed:

Specified ULIPs are excluded from exemption under Section 10(10D):

Under the existing provisions, amount received on maturity of an insurance policy is exempt from tax. However, such exemption is available only when the premium payable annually does not exceed 10% of sum assured.

Now, it is proposed that exemption under Section 10(10D) is not applicable in respect of ULIPs issued on or after February 01,2021, if amount of premium payable exceeds INR 2,50,000 during any year covered by the policy tenure. Further, it is clarified that the said exemption is not applicable even to those cases where more than one ULIPs are issued on or after the said date and the aggregate of the premium payable for such policies put together exceed INR 2,50,000 during any year covered by the tenure of such policies. It is also clarified that the exemption under Section 10(10D) can be claimed in cases of death even if the premium payable exceeds the above specified limit.

Income from specified ULIPs is chargeable under Capital Gains:

As the above exemption is withdrawn considering the specified ULIPs as an investment option over insurance coverage, it is proposed to make consequential amendments to Section 2(14), Section 45 and Section 112A in order to tax the income from these specified ULIPs under the head 'Capital Gains'.

d. Increase of Safe Harbour Limit for Limited Period:

7. Under section 43CA of the Act, when the assessee transfer any immovable property for a consideration which is less than fair market value, then fair market value shall be considered as income from transfer of such immovable property. Further, such difference is also taxable in the hands of buyer as gift under section 56(2) (x).In order to remove genuine hardship to the taxpayer, a safe harbour of 10 percent is provided under section 43CA and section 56(2)(x).

8. The Honourable Finance Minister under AatmaNirbhar Bharat Package 3.0 has provided certain relaxations to real estate developers. In this regard, Central Board of Direct Taxes (for brevity 'CBDT'/'Board') has issued press release to increase the above-mentioned safe harbour from 10 percent to 20 percent if transfer of ***residential unit*** takes place between November 12, 2020 to June 30, 2021 by way a first-time allotment of such unit to any person and the consideration does not exceed Rs. Two Crores. Now, it is proposed to amend section 43CA and section 56(2)(x) to insert the above relaxations under the Act.

B. Corporate Taxation:

e. Removal of 'Goodwill' from Block of Assets:

9. For the purposes of Income Tax Act, Goodwill can be broadly categorised into self-generated goodwill and acquired goodwill. Section 55 provides that the cost of acquisition of self-generated goodwill is Nil, depreciation cannot be claimed on this goodwill and the entire sale consideration received upon sale of such goodwill shall be considered as capital gain. In case of acquired goodwill, the amount paid towards its acquisition shall be considered as cost of acquisition under Section 55. As cost of acquisition in case of acquired goodwill is not Nil, depreciation was claimed under Section 32. However, tax authorities have been disputing before various judicial for a about tax payers claim of depreciation on acquired good will and the courts have taken different views.

10. In order to put rest to this dispute and ambiguity, it is proposed to amend Section 2(11),so as to provide that the definition of 'block of assets' does not include 'goodwill' and Section 32 to exclude the 'goodwill' from the ambit of depreciation.

11. As a result, goodwill be it, self-generated or acquired shall be considered as capital asset within the meaning of section 2(14) and gain arising from its transfer shall be considered as capital gain under section 45 and no depreciation can be claimed.

12. In cases where assessee has already treated such goodwill as depreciable asset under Section 32, it is clarified that such assessee can claim depreciation up to March 31,2021 and WDV as on April 01, 2021 shall be treated as cost of acquisition of such goodwill.

13. Further, it is proposed to amend Section 50 to provide that where there is transfer of goodwill on which depreciation is already claimed, the value of short-term capital gain shall be determined as per the rules which may be prescribed.

f. Employee Contribution to Welfare Funds:

14. Contributions received by employer from employee towards employee welfare funds shall be allowed as deduction under Section 36(1)(va) of the Act in computing business profits, only when such amounts are deposited within the due dates specified under the respective statutes under which the fund accounts are established. On the contrary, the employer share, though not deposited within the due dates specified under the respective statutes but paid within the due date for filing the return of income under Section 139(1), the said amounts shall be allowed as deductions.

15. Assesses haven taken plea that the employee contributions which have not been paid within the due dates of respective statutes but paid before the due date of filing return, the same can be claimed as deduction. There are several judicial pronouncements which held that deduction can be claimed if the employee share was paid before due date and no disallowance for the reason that said employee share was not deposited within the respective due dates prescribed by relevant statutes.

16. It is proposed to insert clarification in both these sections to the effect that deduction can be claimed only when such employee contribution to welfare fund is deposited within the due date mentioned in relevant statute notwithstanding anything contained under Section 43B. This implies that employee contributions deposited after their statutory due date cannot be claimed as deduction for determining business profits. This would be a permanent disallowance.

g. Relaxation from Tax Audit:

17. Through Finance Act, 2020, Section 44AB has been amended to increase the turnover limit for tax audit from one crore to five crores in all those cases where assessee is engaged in business ('not applicable for income from profession') having receipts in cash(both revenue and capital)not exceeding five percent of total receipts and also payments in cash (both revenue and capital) not exceeding five percent of total payments. It is now proposed to amend this section to increase the turnover limit to ten crores.

h. Rationalisation of Dividend Taxation:

18. Through Finance Act, 2020, dividend distribution tax (for brevity 'DDT') is abolished, and such income is made taxable in the hands of the recipient shareholder. While switching over from erstwhile DDT system to the new taxation system, there are some provisions which remained unchanged. It is now proposed to amend these provisions to rationalise the taxation of dividends.

No 234C interest on dividends:

19. Failure to pay advance tax instalments attracts interest under Section 234C. Under the provisions of the Act, advance tax instalments shall be computed on estimated income of the assessee for the relevant year. However, in case of dividend income, it is not possible to estimate amount of dividend income for the year since the receipt of dividend is not in the hands of shareholder and a proper estimation cannot be made. Hence, Section 234C is proposed to be amended so as to provide that advance tax on dividend income shall be payable in subsequent instalments after the declaration of dividend.

No TDS on dividend paid to business trust:

20. Section 194 obligates every person who declares dividend to deduct tax at source with some exceptions. Though the dividend paid by special purpose vehicle to business trust is exempt from tax, relaxation is not provided from such TDS requirement under existing provisions of Section 194. Hence, it is proposed to amend Section 194 to provide that dividend received by business trust is not liable for deduction of tax at source under Section 194.

Dividend income under Minimum Alternative Tax:

21. Under the existing provisions of the Act, in the case of foreign company, the transaction in respect of capital gain on securities, interest, royalty or Fee for Technical Services shall not be considered for computing book profits under Minimum Alternative Tax (for brevity 'MAT') provided rate of tax on such transaction is less than the MAT rate. The reason behind exclusion of such transactions from the ambit of MAT is not to tax those incomes at higher rate when lower rate is prescribed under the Act.

22. As dividend received by a foreign company may be subject to tax at lower rate based on the treaty with respective country, it is proposed to amend Section 115JB so as to provide that dividend shall not be included in book profits if such dividend is taxable at lower rate.

i. Rationalisation of concept of MAT:

23. When there is a primary adjustment as specified under Section 92E, then the assessee is required to make adjustments in the books of account to record such primary adjustment in the current year even though such income is not really pertaining to current year. Similarly, based on Advance Pricing Agreements, assessee is required to recognise income of past years as if it is income of current year.

24. Hence, Section 115JB has been proposed to be amended to provide that, in respect of computing book profits under Section 115JB, such adjustments to be made in book profit of the relevant assessment to which such adjustment pertaining to.

25. For this purpose, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year or years and tax payable, if any, by the assessee during the previous year, in such manner as may be prescribed and the provisions of section 154 shall, so far as may be, apply and the period of four years specified under section 154 shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.

j. SlumpSale:

26. Under the existing provisions of the Act, gain arising from transfer any undertaking through slump sale is chargeable to tax under special provisions of Section 50B. At present, undertakings transferred by way of sale alone are considered as slump sale for the purpose of section 50B.

27. It is proposed to amend section 2(42C) to provide that transfer of an undertaking under any modes including modes specified under section 2(47) shall be treated as slump sale.

C. Partnership Taxation:

k. Capital Gains on dissolution or reconstitution of a firm/AOP/BOI:

28. The taxation of amounts received by partner at the time of retirement is a quite an ambiguous one. There are multiple judgments advocating different views. The Honourable Supreme Court in Mohanbhai Pamabhai[1] and others consistently held that amounts settled at the time of retirement of partner is not subjected to tax for the sole reason that it was an inter-se settlement and no transfer can be perceived.

29. However, Honourable High Court of Bombay in the matter of Tribhuvandas G Patel [2]has distinguished the judgment of Mohanbhai Pamabhai of Supreme Court and stated that, when a partner receives any asset in excess of his of his capital balance, the same shall be treated as transfer of right to continuing partner and chargeable to tax. The judgment in the matter of Tribhuvandas G Patel has been reversed by Honourable Supreme Court. However, various tribunals continued to follow Tribhuvandas G Patel and started stating that amounts in excess of capital accounts are taxable. The entire controversysurrounding this aspects can be accessed in detail at Partner vis-à-vis Capital Gains | SBS Blog

30. Further, the firms also resort to discharge capital assets equivalent to the credit of their capital account balances at the time of retirement or dissolution. This is to certain extent is addressed by current Section 45(4) which states that there would be transfer in the hands of the firm, when such firms transfer assets to the partners at the timed of dissolution or otherwise. The tax payers have claimed shelter stating that retirement is not covered under the existing Section 45(4) since it states dissolution or otherwise. The tax payers took a claim that the phrase 'otherwise' does not include retirement and accordingly litigated that current Section 45(4) does not apply to transfer of capital assets at the time of retirement. However, the Honourable Bombay High Court in the case of AN Naik Associates & Others[3] held that retirement is also covered under the phrase 'otherwise' and accordingly held that transfer of capital asset at the time of retirement is subjected to tax under Section 45(4).

[1]Approving the Gujarat High Court Judgment of [1973] 091 ITR 393 (Guj) in [1987] 165 ITR 166 (SC)
[2][1978] 115 ITR 095 (Bom)
[3][2004] 265 ITR 346 (Bom)

31. However, using the above judgments which held that retirement is not covered under Section 45(4) and amounts received at retirement are not taxable, the firms have adopted to various abusive strategies by increasing the capital account balances (either because of self-generated goodwill or revaluation of capital assets) or allocating capital assets equivalent to capital account balances and thereby entering a retirement cum admission deed and transferring the assets to new set of partners without paying for tax. By adopting to such strategy, the firm is not paying tax on the revalued amounts or transfer of capital asset (at the time of retirement) and the partner is not paying tax claiming the shelter of judgments to the extent that amounts received by partner at time of retirement are not taxable and retirement is not covered under Section 45(4). The same can be understood by way of the below example:

Example 1: ABC & Co is a partnership firm having partner Mr A and Mr B and is engaged in the business from past several years. The major assets of the partnership firm include lands at various places which were acquired at INR 10 Crores. During the year, ABC & Co has revalued it assets to INR 25 Crore and the notional gain is transferred to partner's capital accounts. Subsequently, there is retirement of a partner Mr A and Mr B and on the same date, new partners Mr D and Mr E have admitted. On retirement, Mr A and Mr B have received an higher amount as the assets are revalued. However, there is no capital gains in the hands of the firm or partner leading to loss of tax revenue.

32. To fix the above anomalies or abusive strategies under the existing provisions, it is proposed to replace existing section 45(4) and introduce new sub-section (4A). The existing Section 45(4) is replaced with new section, which in conspicuous terms covers 'reconstitution' instead of current 'otherwise'. Hence, any asset allocation happening at the time of retirement is also covered in much clear terms in new Section 45(4). In a way, the Finance Bill upholds the judgment of Honourable Bombay High Court in the matter of AN Naik Associates& Others. Further, in order to tax the amount which is in excess of balance in capital account of the retiring partner, a new sub-section (4A) has been introduced to tax such excess balance which is received in the form of money or other asset.

33. Further, in order to eliminate double taxation when such revalued asset is subsequently transferred, it is proposed to amend section 48 to provide that gain already computed under new provisions shall be reduced from the full value of consideration received upon transfer of such asset. Further, there is a bit disconnect in the language of the new sub-sections (4) and (4A). We have to await for the Finance Act to gauge the exact change intended to be brought in.

D. Non-Resident Taxation:

l. Equalization levy:

34. By considering recommendations of the Action Plan -1 of Base Erosion Profit Shifting (for brevity 'BEPS') initiative, a new set of provisions were inserted to levy a new tax called 'equalisation levy' on digital transactions at the rate of six percent. Subsequently, the scope of equalisation levy is expanded through Finance Act,2020 to impose equalisation levy at two percent on e-commerce transactions by way of online supply of goods or services.

35. It is further provided that those transactions which are covered under equalisation levy are exempt from tax under Section 10(50) the Income Tax Act. By virtue of these exemptions, royalty and Fee for Technical Services (for brevity 'FTS') which are taxable under the Income Tax Act at higher rate may be covered under the scope of equalisation levy and accordingly may be liable for lower rate of tax.

36. Hence, it is proposed to provide clarificatory amendments under equalisation levy and the Income Tax Act to provide that the transition which are taxable as royalty or FTS under the Income Tax Act or Double Taxation Avoidance Arrangements (for brevity 'DTAA') shall not be under the purview of equalisation levy. Consequential amendments have been proposed under section 10(50) of the Act to provide that exemption under section 10(50) is not applicable to those transaction which are taxable as royalty or FTS.

m. Liable to Tax:

37. The concept of 'liable to tax' under treaties has created prolonged litigation. Now it is proposed to in insert definition for the word 'liable to tax' to mean in relation to a person, means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided.

n. Deduction of Tax as per the rate provided under Treaty:

38. Under the existing provisions of section 115AD of the Act, in respect of Foreign Institutional Investor ('FII'), income from securities shall be chargeable to tax at the rate of twenty percent and in respect of such income, tax under section 196D shall be deducted at source at the rate of twenty percent.

39. However, DTAA may provide lower rate in respect income from securities covered above. Further, the Honourable Supreme Court in the case of PILCOM[4] held that treaty rate cannot override the rate provided under Section 194E of the Act for deduction of tax at source. In such a situation, deducting a tax at source at higher rate may cause hardship to the investor.

[4][2020] 116 taxmann.com 394 (SC)

40. Hence, it is proposed to amend section 196D to provide that in respect of income from securities, where India has entered into DTAA with such country and the payee has furnished tax residency certificate then to payer, income-tax thereon shall be deducted at the rate of 20% or at the rate or rates of income-tax provided in such agreement for such income, whichever is lower.

E. Assessment Procedures:

o. Completion of Assessment:

41. With a view to reduce the time limit for completion as assessments under Section 143, various provisions of the act have been amended as under:

Processing of Return of Income:

42. Under the existing provisions of the Act, an intimation processing the return of income shall be passed with a period of one year from the end of relevant assessment year. In order to complete the processing of return of income much earlier, Section 143 has been amended to provide that intimation processing the return of income shall be passed within a period of section 9 months from the end of relevant assessment year (for brevity 'AY').

Completion of Scrutiny or Best Judgement Assessment:

43. Under the existing provisions of the Act, regular assessments shall be completed within a period of 12 months from the end of the relevant assessment year. Now, it is proposed to amend Section 143 to reduce the time limit for completion of assessment from 12 months to 9 months. Hence, under the proposed amendment, assessment shall be completed within 9 months from the end of relevant assessment year.

Issue of notice for scrutiny:

44. For the purpose of conducting scrutiny, assessing officer shall servea notice under section 143(2) of the Act within a period of 6 months from the end of relevant assessment year. As the time limit for completion of assessment is reduced by three months, time limit for servicing of notice for scrutiny is also reduced by three months. As a result, notice for scrutiny shall be served within a period 3 months from the end of relevant assessment year.

Time limit for filing Return of Income:

45. In order to issue notice for conducting scrutiny to complete the assessment, there is need to file the income tax return well before the assessment year. Hence, section 139 has been proposed to be amended to provide that belated return and revised return shall be filed within three months prior to the end of relevant assessment year.

Proposed New Time Lines for Various Aspects

Particulars	Existing time limits	Proposed time limits
Filing of Belated or Revised return	Within end of relevant AY	3 months before end of relevant AY
Serving of notice for Scrutiny	6 months from end of relevant AY	3 months within end of relevant AY
Completion of Assessment	12 months from end of relevant AY	9 months within end of relevant AY
Processing of Income Tax Return	One year from end of relevant AY	9 months within end of relevant AY

p. Income escaping assessment and Search assessment:

Income escaping Assessment:

46. If the assessing officer has reason to believe that any income escaped assessment, he may assess or reassess such income or recompute the loss or depreciation at any time before the expiry of 4 years or 6 years, as the case may be, from the end of relevant assessment years. In a case where assets are located outside India, assessing officer make assessment at any time before the expiry of 16 years from the end of relevant assessment year.

Assessment under Search cases:

47. When there is search is initiated under Section 132 or requisition is made under Section 132A of the Act, assessing officer shall proceed to conduct assessment under Section 153A or 153C for a period 6 years or 10 year if conditions mentioned therein are satisfied.

48. In the present digital era, as the information is readily available with the income tax authorities, much longer time is not required for recomputing, reassessing of income of the assessee. Further, in order to mitigate the litigation, it is proposed to reform the entire concepts of income escape assessment and search assessment. It is proposed to withdraw assessment under section 153A and section 153C in respect of search initiated and requisition made on or after April 01,2021.

Income escape assessment and search assessment under existing provisions vis-à-vis proposed provisions

Particulars	Existing	Proposed
Part I: Recomputing or reassessing the income or loss (Section 147)	If assessing officer has reason to believe that the income escaped the assessment, he can reassess or recompute the income or loss.	If assessing officer has reason to believe that the income escaped the assessment, he can reassess or recompute the income or loss.
Part II: Issuing of Notice(Section 148)	For reassessing or recomputing, assessing officer shall serve a notice on the assessee asking the assessee to file return of income. Before issuing the notice, AO shall record his reasons for doing so.	For reassessing or recomputing, assessing officer shall serve a notice on the assessee asking the assessee to file return of income. No notice shall be issued unless there is information with the AO which suggests that the income has escaped the assessment and the AO has obtain the prior approval from specified authority.
Part III: Income deemed to be escaped the assessment	The following shall also be deemed to be cases where income has escaped the assessment. i. Where no ITR was filed although his total income exceeded the maximum amount which is not chargeable to tax. ii. Where ITR was filed but no assessment was made and AO has noticed that the assessee has understated the income or claimed excess loss. iii. Where the assessment is completed but income is under assessed or income is assessed at too low rate or excessive relief or loss is provided. iv. Where the assessee has failed to furnish the report under section 92E.	The information with the assessing officer which suggests that the income chargeable to tax has escaped the assessment means: I. Any information flagged in the case of assessee in accordance with the risk management strategy formulated by the board from time to time. ii. Any final objection raised by C&AG to the effect that the assessment has not been made in accordance with the provisions of the Act. In the following case, the assessing officer shall be deemed to have information which suggests that the income has escaped the assessment for the three assessment years immediately assessment year:

	v. On the basis of information received from prescribed income tax authority that the assessee has understated the income or claimed excessive loss. vi. Where a person is found to have assets located outside India.	i. A search is initiated under section 132 or requisition is made under section 132A on or after April 01,2021. ii. A survey is conducted in the case of assessee on or after April 01,2021. iii. AO is satisfied, with the prior approval of PCIT or CIT, that any money, bullion, jewellery or other valuable article or thing seized or requisitioned in case of other person on or after April 01, 2021 is belonging to the assessee. iv. AO is satisfied, with the prior approval of PCIT or CIT, that any books of account or documents seized or requisitioned in case of other person on or after April 01,2021, pertains or information contained therein relate to the assessee. As case relating search and requisition are brought within the purview of income escape assessment, the existing section 153(A) and section 153 (C) for making assessment are made ineffective in relation search initiated or requisition is made on or after April 01, 2021.

Part IV: Procedure for making reassessment or recomputation	The existing provision does not provide clear procedure to be followed when a notice is issued under section 148. The Honourable Supreme Court in the case of GKN Drive shafts (India) Ltd.[5] provided the following procedure for making reassessment or recomputation. i. Serving a notice under section 148 after recording reasons. ii. Filing of income tax return by the assessee. iii. Asking for reasons by the assessee. iv. Providing reasons to the assessee by the AO. v. Filing objects against the reasons with the AO. vi. Disposing of objections by the AO with separate speaking order.	Before issuing any notice under section 148, the AO shall i. Conduct an enquiry with respect to the information which suggests that the income has escaped the assessment. ii. Provide an opportunity of being heard to the assessee by serving a notice to show cause as to why a notice under section 148 shall not be issued. iii. Consider the reply of the assessee in response to the show cause notice. iv. Decide whether or not notice under section 148 can be issued by passing as order with the prior approval of specified authority. However, above mentioned procedure is not required in the cases covered under clause (i), (iii) and (iv) of Part III.

[5](2003) 259 ITR 19 (SC)

Part V: Time limit for issuing notice	Under the existing provisions of the Act, notice under section 148 shall not be issued, i. If 4 years have elapsed from the end of relevant assessment years. ii. If 4 years but not 6 years elapsed from the end of relevant assessment year unless income escaped the assessment exceeds Rs.1,00,000/-. iii. If 4 yeas but not 16 years elapsed from the end of relevant assessment year unless the income in relation to asset located outside has escaped the assessment. Further, where scrutiny in the case of the assessee was completed and assessee has disclosed fully and truly all material facts, then no assessment shall made under section 147 after the expiry of the 4 years from the end of relevant assessment year.	Under the proposed provisions, notice under section 148 shall not be issued, i. If 3 years have elapsed from the end of relevant assessment year. ii. If 3 years but not 10 years have elapsed from the end of relevant assessment year unless the AO has in his possession of books of accounts or other documents or evidence which reveal that the income, represented in the form of asset, has escaped assessment amounts to Rs.50,00,000 or more for that year. Provided that for the purpose of computing the period of limitation, period during which the proceedings under section 148A are stayed by any court shall be excluded.

F. <u>Dispute Resolution Committee:</u>

49. In order to reduce the volume of tax litigation in India, Government has taken many steps including enhancing the monetary limits for filing of appeal by revenue, introducing 'Vivad Se Vishwas Scheme' for settlement of disputes etc. Further, to provide relief from future litigation to small and medium taxpayers, it is proposed to setup new regulation under the act.

- ***Dispute Resolution Committee:*** Under the proposed provisions, central government shall constitute Dispute Resolution Committee (hereinafter referred to as 'DRC') for resolution disputes.

- ***Benefit of resolution:*** DRC shall have powers to reduce or waive penalty imposable under the Act or provide immunity from prosecution for any offence under the Act.

- ***Faceless:*** as every interaction between the assessee and the revenue has been made through digital mode, it is proposed that DRC also work faceless mode.

- ***Eligible Assessee:*** The provisions shall apply only to those assessee in respect of whom the aggregate sum of variation proposed or made in the order does not exceed INR 10 lakhs. When assessee has filed return of income, total income as per such income tax return does not exceed INR 50 lakhs. However, where such order is based on the search initiated or requisition is made in respect of assessee or any other person or survey conducted or information obtained under the agreement referred to in section 90 or section 90A, such assessee is not eligible for dispute resolution.

- **Offences under other Acts:** When there are offences under other specified Act, such assessee is not eligible for dispute resolution under this provision.

G. Omission of Settlement Commissions:

50 . The existing provisions of settlement commission is ceases to effect from February 01, 2021.

H. Constitution of Board for Advance Ruling:

51. At present, advance rulings are being issued by authority constituted under section 245O of the Act. As the Authority constituted under section 245O of the Act contains limited number of members, large number of applications are pending at the Authority.

52. In order remove such difficulty, it is proposed to constitute more boards for advance ruling with two members in each board. Further, it is proposed to amend provisions of section 245R to provide that proceedings for Advance rulings to be conducted through faceless mode.

I. Faceless proceedings at Income Tax Appellate Tribunal:

53. With a view to increase efficiency, transparency and accountability in income tax assessment, government has introduced faceless assessment and faceless appeal at CIT (Appeals) by incorporating National e-assessment centre and National faceless appeal centre respectively.

54. By going one step forward, now through the Finance Bill, 2021 it is proposed to amend provisions 255 of the Act so as to provide that appeals at Tribunal may be conducted through digital mode. However, where there is requirement for personal hearing, such hearing may be conducted through virtual mode.

J. Deduction of Tax at Source:

q. Deduction of tax at source for sale of goods:

55. In Finance Act,2020, a new clause for collection of tax is inserted in order to bring-in certain transaction in respect of sale of goods under the purview tax collection at source (for brevity 'TCS'). Under the amended provisions through Finance Act 2020, any seller who has made domestic sales, being sale of goods, to any person in any previous year in excess of INR 50lakhs is liable to collect tax at the rate of 0.1 percent from the buyer on such amount exceeding INR 50lakhs subject to other conditions mentioned therein.

56. Now, in the Finance Bill, 2021, it is proposed to insert new provisions for deduction of tax at source. Under the proposed provisions, a buyer who is responsible for making any payment to any resident in respect of purchase of goods in a previous year in excess of INR 50lakhs is required to deduct tax at source at the rate of 0.1 percent on value exceeding INR 50lakhs subject to other conditions mentioned therein.

57. If, by virtue of above two provisions, there arises a situation where both TDS and TCS provisions are applicable in respect of same transaction, only TDS as proposed in Finance Bill, 2021 is required to be deducted at the rate of 0.1 percent and TCS is not required in respect of such transactions.

r. Higher TDS for Non-Filers of Returns:

58. Section 206AA of the Act provides that, for the purpose of deducting tax at source, payee shall furnish his PAN to the payer otherwise payer shall deduct the tax at source at the higher rate.These provisions are incorporated under the Act to compel the payee to furnish the PAN to buyer. In order to compel the assessee to file income tax return under the Act, it is proposed to insert new section 206AB.

59. As per the proposed amendment, where any amount is payable to any specified person, the tax shall be deducted at the higher of the following rates:

    a. at twice the rate specified in the relevant provision of the Act
    b. at twice the rate in force
    c. at the rate of five precent

60. In a case where provisions of section 206AA are also applicable in his case, in addition to the above provisions, tax shall be deducted at higher of rates provided in section 206AA and section 206AB.Further, the proposed provisions are not applicable in cases of deduction of tax at source in respect of salaries, withdrawal of provident fund, winning from lotteries and crossword puzzle, winning form lotteries, payment in respect of investment in securitisation of trust and withdrawal of cash from bank.

s. Higher TCS for Non-Filers of Returns:

61. Similar to section 206AA, section 206CC requires, for the purpose of collecting tax at source, the payer to furnish his PAN to payee otherwise tax at source shall be collected at the higher rate. These provisions are incorporated under the Act to compel the payee to furnish the PAN to the person who responsible for collecting tax at source. In order to compel the assessee to file incometax return under the Act, it is proposed to insert new section 206CCA under the Act.

62. As per the proposed amendment, where any amount is payable to any specified person, the tax shall be collected at the higher of the following rates:

    i. at twice the rate specified in the relevant provision of this Act or
    ii. at the rate of five per cent.

63. For the purpose of section 206AB and section 206CCA, specified person is defined to mean a person who has not filed return of income for both of the assessment years relevant assessment year immediately preceding year in which tax is required to be deducted and the aggregate of tax deducted and tax collected in his case is Rs.50,000 or more in each of the two assessment years. Further, specified person shall not include a non-resident who does not have permanent establishment in India.

Proposals under Indirect Taxation

Amendments under GST Laws:

K. Supply vis-à-vis Principle of Mutuality[6]:

64. Honourable Supreme Court in the case of State of West Bengal & Others vs Calcutta Club Limited[7] struck down the levy of VAT and Service Tax on the goods or services, as the case may be, exchanged between member clubs or associations and their members on the principle of mutuality. Considering this ratio, in order to nullify the principal of mutuality with respect to supplies under GST, the term 'Supply' is now amended to expressly include activities or transactions between members clubs or association and their members. Further, it is expressly clarified that such clubs and associations and their members shall always be considered as two different persons. The said amendment is made with retrospective effect from the day when GST laws have come into force i.e. 01.07.2017 onwards. A detailed article surrounding this controversy can be accessed at Concept of Mutuality - A Real Concern | SBS Blog

[6] Amendment made to section 7(1)
[7] 2019 (10) TMI 160 - Supreme Court

L. ITC available only when Suppliers declares their Supply[8] :

65. In order to avail ITC, it is now amended to provide that uploading of the details of invoice or debit note by vendor in the outward supply return (GSTR-1) filed under section 37 is a pre-requisite for recipient to avail input tax credit. Prior to the amendment, the said condition was indirectly enforced through insertion of Rule 36(4) of CT Rules. There were writ petitions [9] filed challenging the enforcement of Rule 36(4) without corresponding amendment in parent legislation. The current amendment in a way addresses the challenge to the Rule 36(4). However, it also strengthens the view that until amendment takes effect, Rule 36(4) as in force as on day suffers from vires of excessive delegation. The amendment penalizes the recipient since he is barred from taking credit in cases where no returns are filed by suppliers. This puts the recipient much worser position than pre-amendment, which allowed to take credit upto 105% of the invoices available in GSTR-2A.

M. Interest on Net Liability— 2019 Amendment notified to be Retrospective [10]:

66. It is clarified by Finance (No.2) Act, 2019 amendment that interest is payable on net liability payable in cash after adjusting the accumulated ITC. The said amendment is already notified to be effective from 01.09.2020 [11]. Based on the recommendations of GST Council, it is now proposed to notify the said amendment retrospectively from 01.07.2017 onwards. This is a welcome move and puts an end to unnecessary litigation pending for the period prior to 01.09.2020. A detailed article surrounding this controversy can be accessed at Interest on Gross or Net? | SBS Blog

N. Supplies to SEZ are zero-rated only when received for authorized operations[12] :

67. SEZ Act, 2005 confers tax benefits and exemptions on SEZ developer and SEZ unit only when goods or services are procured for authorized operations. On the other hand, IGST law provides that goods or services received by SEZ developer or SEZ unit are considered as zero-rated supplies. There is no condition prescribed under IGST law that the goods or services should be received for authorized operations. Because of this reason, there appears to be an apparent conflict between the two laws. It is proposed to consider only goods or services received by SEZ developer or SEZ unit for their authorized operations in SEZ area as zero-rated supplies. Vide this amendment the drafting lacuna on the requirement that such services or goods to be used only for authorized operations not appearing in the relevant section is removed.

[8] Amendment made to section 16
[9] Surat Mercantile Association of India vs UOI, 2020(12)TMI 896- Gujarat High Court
[10] 2019 Finance (No.2) Act amendment to insert proviso to section 50(1).
[11] Notified by N No. 63/2020-CT dated 25.08.2020
[12] Section 16 of the IGST Act, 2017

O. Recovery of Refund for non-receipt of CFE[13] :

68. In order to consider the goods exported[14] , it is sufficient that they are taken out of India to a place outside India. There is no condition related to receipt of convertible foreign exchange. On the other hand, in order to consider services as exported[15] , receipt of consideration in convertible foreign exchange is a pre-requisite. Considering this distinction, Rule 96B is introduced in CT Rules to recover refund sanctioned for exported goods if the consideration is not realized in convertible foreign exchange. It is now proposed to amend the IGST law to provide for recovery of refund amount sanctioned in all cases where goods are exported but convertible foreign exchange has not been received.

P. Restriction on Zero-Rated Supplies with payment of Tax and consequent Refund[16] :

69. At present, the suppliers of zero-rated supplies can opt to supply their goods or services by paying integrated tax and claim refund of such integrated tax as an option to all taxpayers. It is proposed that this option shall only be made available to notified class of persons or to notified class of goods or services. In all cases where the persons or the goods or services are not notified, the supplier is required to claim refund of accumulated ITC by supplying their goods or services without paying tax under bond/LUT.

Q. Taxable on supplies declared in GSTR-1 liable for recovery without SCN[17] :

70. At present, recovery proceedings can be issued without show cause notice to recover any tax or interest payable thereon if the said amount of tax is self-assessed by taxpayer by declaring in GSTR-3B return. It is now proposed that such self-assessed tax shall include any outward supplies declared under GSTR-1 return but the corresponding tax may not be paid in GSTR-3B returns. This implies that the tax authorities can recover the tax payable without serving any show cause notice on outward supplies declared in GSTR-1 return if the same is not paid under GSTR-3B returns.

R. Omission of Annual GST Audit by CA/CMA[18] :

71. It is proposed to withdraw the mandatory requirement of annual audit of books of account by a Chartered Accountant or a Cost Accountant and corresponding certification of the reconciliation statement drawn. Taxpayers are now required to file their annual return and a reconciliation statement on self-certification basis. This is a welcome move since it reduces compliance and other associated costs. Further, the current certification of reconciliation statement does not exhibit the true spirit of audit.

[13]Section 16 of the IGST Act, 2017
[14]Section 2(5) of the IGST Act, 2017
[15]Section 2(6) of the IGST Act, 2017
[16]Section 16 of the IGST Act, 2017
[17]Amendment made to section 75
[18]Amendment made to section 35(5) and section 44

S. Delinking proceedings related to Detention, Seizure and Confiscation from Tax Recovery[19]:

72. At present, proceedings related to detention, seizure and confiscation of goods or conveyances in transit are connected to recovery of tax and the said proceedings shall get concluded if taxpayers settle the issue by paying the applicable tax along with interest and penalty to the extent specified. It is proposed to notify the proceedings related to detention, seizure and confiscation of goods and conveyances as separate proceedings dehors of the proceedings related to recovery of tax. Therefore, the proceedings related to detention, seizure and confiscation of goods continue even though the applicable tax, interest and penalty specified under section 74 are paid.

T. Mandatory pre-deposit for appeal against detention/seizure orders[20]:

73. As the proceedings related to detention and seizure of goods or conveyances has been separated from tax recovery, it is now provided that in order to file an appeal against orders of detention or seizure, it is required to pre-deposit an amount equivalent to twenty five percent of the penalty.

Note: All the above amendments under GST law except the amendment to 'Supply' definition and Section 50(1) are going to be effective from a date to be notified after ensuring corresponding amendments in State GST laws of all States.

Amendments under Customs Laws:

U. Automatic Withdrawal of Exemption Notifications under Customs[21]:

74. It is proposed to amend the Customs law to provide that conditional exemptions given shall be valid up to 31st March falling immediately after two years from the date on which such exemption is granted or varied. The exemption available shall stand withdrawn automatically after the expiry the said time unless otherwise specified. Further, it is provided that all the existing conditional exemptions for which no end dates are provided will come to end by 31st March 2023 unless otherwise specified or varied or rescinded.

V. Time limit specified to conclude proceeding and issue a show cause notice[22]:

75. It is proposed to insert a new section to prescribe a time limit of two years for issuance of show cause notice from the date of initiation of audit, search, seizure or summons as the case may be. Further, power has been extended to Principal commissioner or Commissioner in all cases where sufficient cause is shown and by recording the reasons in writing to extend the said time limit by another year. Further, it has been provided that the period of stay on the proceeding if any granted by a court or tribunal or the period for which information is sought from overseas authority through legal process shall stand excluded for computing the time limit.

[19] Amendment to Section 74
[20] Amendment made to Section 107
[21] Amendment to Section 25 of the Customs Act, 2017
[22] Insertion of new section 25BB in Customs Act, 2017

W. Change in time limit for presentation of bill of entry[23] :

76. At present, the importer is required to present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which goods are to be cleared for home consumption or warehousing. It is now proposed to amend the relevant provision to mandate the filing of bill of entry by atleast one day prior to the date of arrival of such aircraft, vessel, or vehicle. Power is extended to CBIC in all cases where it deems fit to prepone the specified time limit.

X. Change in procedure related to disposal of seized gold[24] :

77. In order to sell seized goods of perishable nature as notified, it is required to file an application before magistrate to certify the correctness of inventory of seized goods, certify the photographs of seized goods as true, to draw representative samples and certify the correctness of the list of samples drawn. The relevant provision is now amended to provide that in case of seized gold such application can be made before the Commissioner (Appeals) instead of magistrate.

Y. Confiscation of goods entered for exportation by unlawful claim of duty remission or refund[25]:

78. At present, the goods cleared for exportation is liable to confiscation when they are not entered for exportation on account of any will-full act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer. The relevant provision is now amended to provide for confiscation of goods entered for exportation under unlawful claim of remission or refund of any duty in contravention of the provisions of Customs Act, 1962 or any other law for the time being in force.

Z. Fraudulent utilization of ITC to pay IGST on goods exported and refund claim thereof[26] :

79. A new provision is inserted to provide that exporters who have availed ITC fraudulently to pay IGST on goods exported in order to claim ineligible refund shall be liable to a penalty not exceeding five times the refund claimed.

AA. Facilitation of Common Customs Portal[27] :

80. A new provision is inserted to provide that CBIC may notify a common portal to be called the Common Customs Electronic Portal for facilitating registration, filing of bill of entries, shipping bills, other documents and other prescribed forms. Further, it is also provided that order, summons, notice etc shall be considered as served by making them available on the Common Customs portal.

[23] Amendment to section 46 of the Customs Act, 1962
[24] Amendment to section 110 of the Customs Act, 1962
[25] Amendment to section 113 of the Customs Act, 1962
[26] Insertion of section 114AC of the Customs Act, 1962
[27] Insertion of Section 154C of Customs Act, 1962

Note: All the amendments proposed under Customs Act, 1962 shall be effective from the date of enactment of Finance Bill, 2021.

BB. Amendment to First Schedule of the Customs Tariff Act, 1975:

81. The first schedule to the Customs Tariff Act, 1975 which provides for rates of BCD is proposed to be amended in accordance with HSN 2022. Around 351 amendments are proposed to the existing tariff. All the changes to tariff shall be effective from 01.01.2022. It is clarified that the amendments are necessary for trade facilitation and ease of doing business. Explanatory Memorandum to Finance Bill, 2021 shall be referred for the summary of changes made to Customs Tariff and the effective rates of BCD notified for various goods.

CC. Agriculture Infrastructure and Development Cess (AIDC):

82. It is proposed to levy AIDC as duty of customs[28] effective from 02.02.2021 on all the goods specified in first schedule to Customs Tariff Act, 1975 being goods imported into India as duties of customs at the rate not exceeding Basic Customs Duty specified in the said schedule. AIDC is levied to finance the agriculture infrastructure and other development expenditure. AIDC shall be levied on value of imported goods as determined under section 14 of the Customs Act, 1962. The effective rates of AIDC as notified[29] .

83. Social Welfare Cess (SWC) would be levied on AIDC. However, exemption is given from levy of SWS on AIDC in case of import of gold and silver. Further, goods imported under customs duty exemptions related to Free Trade Arrangements, EOU as well as advance authorization schemes are exempted from AIDC.

84. It is proposed to levy AIDC as additional duty of excise[30] effective from 02.02.2021 on manufacture of petrol and diesel at the rate specified in the seventh schedule when manufactured or produced in India. It is proposed to levy AIDC at Rs. 2.5 per litre of petrol and at Rs. 4 per litre of diesel. Further, the rates of BCD, SAED are calibrated in order to ensure no additional tax burden on consumer.

DD. Changes related to Social Welfare Cess (SWS)

85. Levy of SWS petrol, diesel, silver and gold at the rate of three percent is now withdrawn[31] . Levy of SWS on granite blocks and traventine falling under tariff codes 251511 and 251512 is not withdrawn. The changes shall be effective from 02.02.2021.

[28] Under clause 115 of Finance Bill
[29] Effective rates of AIDC are notified under N No. 11/2021-Cus dated 01.02.2021
[30] Under clause 116 of Finance Bill
[31] The amendment is applicable from 02.02.2021

EE. Withdrawal of Concessional CST Rate for Industrial Consumption of Diesel, Natural Gas and ATF:

86. Subsequent to introduction of GST, dispute arose on entitlement of C-Forms to procure diesel, natural gas, ATF[32] at concessional rate of CST[33] for industrial consumption. Many High Courts have dealt this issue and decided in favour of taxpayers directing VAT authorities to issue C-Forms and extend the benefit of concessional rate. In order to nullify the impact of these decisions, it is proposed to limit the concessional rate of CST only to those dealers engaged in resale of such goods. This amendment will have adverse impact on trade as industries which consume diesel, natural gas, ATF in their business and are now required to pay CST at higher rate.

Proposals under Allied Laws

FF. Amendments to Prohibition of Benami Transactions Act, 1988:

t. Change in Adjudicating Authority:

87. At present, as no Adjudicating Authority is appointed under Prohibition of Benami Transaction Act, (for brevity 'PBT Act'), the Adjudicating Authority appointed under Prevention of Money Laundering Act, 2002 (for brevity 'PMLA') is designated as Adjudicating Authority under PBT Act until the Adjudicating Authorities are appointed under PBT Act.

88. Now, through Finance Bill 2021, it is proposed to appoint an adjudicating authority under Section 7 of PBT Act. The proposed amendment provides that the competent authority authorised under subsection (1) of section 5 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for brevity 'SFEM Act') shall be the Adjudicating Authority under PBT Act. Competent authorities under section 5 of SFEM Act means officers, not below the rank of Joint Secretaryto the Government of India, appointed by the central government.

89. As the new Adjudicating Authority is proposed to take charge from July 01, 2021, it is proposed to extend the time limit for passing order under PBT to September 30, 2021 where the time limit for passing such order expires between July 01,2021 and September 29, 2021.

90. As competent authority under SFEM Act is appointed as adjudicating authority under PBT Act, section 8 to section 17 under PBT Act which provides for qualifications and procedure for appointment of adjudicating authority are omitted.

[32] Aviation Turbine Fuel
[33] Central Sales Tax

GG. Amendments to the provisions of the Companies Act, 2013

u. Amendment of the definition of 'Small Company':

91. The definition of 'small company' has been amended by increasing the threshold in paid up capital from not exceeding INR 50 lakhs to not exceeding INR 2 Crores and turnover from not exceeding INR 2 Crores to INR 20 Crores.

92. In line with the speech of the Honourable Finance Minister, the Ministry of Corporate Affairs (for brevity 'MCA') has brought amendment rule to this effect, to be effective from 01.04.2021. The amendment to the definition, is a move forward on the slogan "ease of doing business", and accordingly, will bring most of the companies under the ambit of small company, thereby reducing the compliances under the Companies Act, 2013.

93. In respect of the said companies, certifications of practicing professionals will not be applicable in respect of the filings with MCA, and also such companies have the convenience of having just two Board Meetings in calendar year unless otherwise specifically required by the Company. Further, Cash Flow Statement, shall not form part of the 'Financial Statements' of such small company.

v. Amendments to the provisions of 'One Person Company':

94. This Budget proposes to encourage the incorporations of One Person Companies (OPCs) and further growth of OPCs by converting the same in to Private or Public Companies as the case may be other than a Section 8 Company.

95. In line with the proposals, the Ministry of Corporate Affairs, has amended the Companies incorporation Rules, removing the restriction of mandatory residential status of the subscriber of the said OPC, as optional, and further reducing the requirement of stay in India from 182 days to 120 days. Further relaxations for conversion of Private Companies other than Section 8 Companies, in to OPCs have been provided, removing the criteria or capital or turnover.

96. As per provisions prior to the amendment rules, a person not fulfilling the residential status, was ineligible to incorporation of OPC, whereas post the amendments, even Non-Resident persons can start incorporating OPCs with ease, and the process of conversion of Private Companies to OPC, and OPC to Private or Public companies, further relaxed, resulting the entity having the option of deciding its constitution and accordingly reduce on the compliance cost and have better compliances.

w. MCA Version 3.0:

97. Government is proposing to launch data analytics, artificial intelligence, machine learning driven MCA Version 3.0. This version 3.0 enables additional modules for e-scrutiny, e-Adjudication, e-Consultation and compliance management.

98. This is the 3rd general version of the MCA Portal. Once the Government the V3 of the MCA portal is deployed, it is very evident that the little physical interaction that is present now, will also be removed and interaction with most of the departments and authorities like the ROC, NCLT etc will be done away with, and all the legal process and proceedings will be through faceless or No physical presence of the representatives of the corporates, somewhat similar to that of the faceless assessment under the Income tax. This will benefit the corporates in saving the time and cost.

x. National Company Law Tribunal:

99. During her speech, the Finance Minister spoke about strengthening of the NCLT framework, to ensure faster resolution of cases. Implementation of e-Courts system and alternate methods of debt resolution and special framework for MSMEs was proposed to introduced.

100. With the introduction of e-Courts, physically presence by parties to the legal proceedings is not required, location barriers are narrow down and hearing can be done from any place with the help of technology and cases are resolved at the faster phase. However, the same comes with its own dis-advantages, Physical hearing of matters is the most appropriate manner in which the submissions can be placed before the respective Courts. This new normal situation it to be adopted for good, in reduction of the already burdened courts, rather than prolonging of the matters through e-courts.

HH. Amendment to Foreign Exchange Management Act, 1999:

101. Under existing FDI norms, the Insurance Sector is eligible to the extent of 49% FDI, the same being enhanced in the Budget-2021 to 74% which allow the foreign investors to have major ownership & control rights. However, major ownership & control rights are in the hands of foreign investors, but safeguard measures were taken by having majority of Directors of the Board and Key Management Persons would be resident Indian, with at least 50% of the Directors being Independent Directors and specified percentage of profits are being transferred to the general reserve.

102. Even though the Government enhanced FDI limits in insurance sector from 49% to 74%, the foreign investors may feel challenging to come forward and invest due to stringent provisions in the management of the Company like majority of Directors & Key Management Persons are resident Indians and with at least 50% of the Directors being the Independent Directors etc which makes them to think twice before enhancing FDI limits.

II. Consolidation of four Acts related to securities:

103. Consolidation of the provisions of SEBI Act, 1992, Depositories Act, 1996, Securities Contracts (Regulation) Act, 1956 and Government Securities Act, 2007 into a rationalized single Securities Markets Code.

104. Consolidation of above four (4) acts enables reduction in compliance procedures to the corporates, and may provide for a better synchrony of returns.

JJ. Labour Law Reforms:

105. Implementation of four (4) labour codes namely, Wage Code, Industrial Relations Code, 2020, Code on Occupational Safety, Health & Working conditions Code, 2020 and Social Security Code, 2020 with intention of One Labour Return, One License and One Registration.

106. For the first time globally, Social Security benefits will extend to gig and platforms workers. Minimum wages will apply to all categories of workers, and they will be covered by the Employees State Insurance Corporation.

107. Employers deduct the contribution of employees towards Provident funds, superannuation funds, and other social security funds but do not deposit these contributions within the specified time. For the employees, this means a loss of interest or income. To ensure that employees' contributions are deposited on time, the late deposit of employee's contribution by the employer will not be allowed as deduction to the employer.

108. This reform will bring the moral confidence in the minds of the labour, all other categories of workers and impose strict compliance on the part of the corporates to implement.

KK. Amendment to the Indian Stamp Act, 1899:

109. Insertion of Section 8G after Section 8F of the Indian Stamp Act, 1899, provides overriding power under the stamp act or any other law for the time being in force, that payment of stamp duty shall not applicable under Indian Stamp Act, 1899, in respect of transfer any instrument or transfer of business or asset or right in any immovable property from Government Company, its subsidiary, unit or joint venture, by way of strategic sale or disinvestment or demerger or any other scheme of arrangement to another Government Company or Central Government or any State Government, after approval of the Central Government.

110. The newly added section provides for exemption of stamp duty in respect of transfer of business or asset or right in any immovable property from Government Company, its subsidiary, unit or joint venture, by way of strategic sale or disinvestment between the Government entities.

LL. Amendments to the Securities Contracts (Regulation) Act, 1956 – Pooled Investment Vehicle:

111. 'Pooled Investment Vehicle' means a fund established in India in the form of a trust or otherwise, such as mutual fund, alternative investment fund, collective investment scheme or a business trust as defined in sub-section (13A) of section 2 of the Income tax Act, 1961 and registered with the Securities and Exchange Board of India, or such other fund, which raises or collects monies from investors and invests such funds in accordance with such regulations as may be made by the Securities and Exchange Board of India in this behalf.

112. The Pooled investment Vehicle shall be eligible to raise & borrow debt securities in such manner and to such extent as may be specified in the regulations made by the Securities & Exchange Board of India. It can subject to the provisions of trust deed, be permitted to provide security interest to lenders in terms of the facility documents entered by it.

113. In case, Pooled Investment Vehicle defaults in repayment of Principal amount or payment of interest or any such amount due to lender, the lender shall recover the defaulted amount and enforce security interest, if any, against the trust assets, by initiating proceedings against the trustee acting on behalf of Pooled Investment Trust. However, proceedings against the trustee shall not be personally liable and his assets shall not be utilised towards recovery of Pooled Investment Vehicle. Residual assets after recovery of defaulted amount by the lenders will be distributed to the unit holders on proportion basis.

114. By Insertion of the definition and section 30B, enables the Pooled Investment Vehicle to raise monies in the form of debt securities in addition to monies raised from multiple individual members which boosts the vehicle to raise the monies at lower cost and invest where returns are higher the cost, the difference can be distributed to the members of the pooled investment vehicle.

MM. Amendments to SEBI Act, 1992:

115. Amendment of Section 15 of the Act, to provide that no person shall sponsor or cause to be sponsored or carry on or cause to be carried on the activity of an alternative investment fund or a business trust, without obtaining the certificate of registration from SEBI.

116. The said amendment is a welcome move, as part of having a control that no person can undertake the business of AIF or Business Trust as defined in clause (13A) of section 2 of the Income-tax Act, 1961, without certificate from SEBI.

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