

**Budget Circular**  
Finance Bill, 2022

**JAIN SARAOGI & CO.**  
CHARTERED ACCOUNTANTS

## DIRECT TAX

The Hon'ble Finance Minister has presented The Finance Bill, 2022 on 01.02.2022. The broad proposals are set out as below:

▪ **Rates of Income tax**

There is no change in the rate of Corporate Income-Tax.

There is no change in the rate of Personal Income-Tax.

▪ **Surcharge on Income Tax**

There is no change in Surcharge on Income Tax except the following:

- In the case of co-operative society :
  - ◆ having a total income exceeding Rs. 1 Crore but not exceeding Rs. 10 Crores, at the rate of 7%;
  - ◆ having a total income exceeding Rs. 10 Crores, at the rate of 12%.
- Surcharge on Long Term Capital Gain on transfer of any type of asset shall be capped at the rate of 15%.

▪ **Provision to file an updated return**

It is proposed to insert sub-section (8A) in section 139, to provide that, Any person, whether or not he has furnished a return, for an assessment year (herein referred to as the relevant assessment year), may furnish an updated return of his income or the income of any other person in respect of which he is assessable under the Act, for the previous year relevant to such assessment year, within 24 months from the end of the assessment year.

The proposed sub-section (8A) of section 139 shall not apply, if the updated return, is a return of a loss or has the effect of decreasing the total tax liability determined on the basis of return already furnished or results in refund or increases the refund due on the basis of return already furnished, of such person under the Act for the relevant assessment year.

A person shall not be eligible to furnish an updated return under the proposed sub-section (8A) of section 139, if: --

- (a) search has been initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of such person, or
- (b) a survey has been conducted under section 133A, other than sub-section (2A) of that section, in the case such person, or
- (c) a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or section 132A in the case of any other person belongs to such person, or

(d) a notice has been issued to the effect that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.

Further, a new section 140B has been proposed to provide for:

- ◆ The additional tax, required to be paid at the time of furnishing the return under sub-section (8A) of section 139, shall be equal to 25% of aggregate of tax and interest payable, if such return is furnished within a period of 12 months from the end of the relevant assessment year.
- ◆ However, if such return is furnished after the expiry of 12 months from the end of the relevant assessment year but before completion of the period of 24 months from the end of the relevant assessment year, the additional tax payable shall be 50% of aggregate of tax and interest payable.

It is also clarified that for the purposes of computation of “additional income-tax”, tax shall include surcharge and cess, by whatever name called, on such tax.

▪ **Litigation Management**

It is proposed to insert a new section 158AB in the Act, to provide that where the collegium is of the opinion that any question of law arising in the case of an assessee for any assessment year (“relevant case”) is identical with a question of law already raised in his case or in the case of any other assessee for an assessment year, which is pending before the jurisdictional High Court or the Supreme Court in an appeal or in a SLP, against the order in favour of such assessee (“other case”), it may, decide and intimate the Commissioner or Principal Commissioner not to file any appeal at that stage and subject to acceptance by the assessee that the question of law is identical.

▪ **Clarification on allowability of expenditure under Section 37**

It is proposed to include an *Explanation* to sub-section (1) of section 37 to further clarify that the expression “expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall include expenditure incurred to compound an offence under any law for the time being in force, in India or outside India.

▪ **Clarification regarding treatment of cess and surcharge under Section 40**

It is proposed to include an *Explanation* retrospectively in the Act itself to clarify that for the purposes of this sub-clause, the term “tax” includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax. Amendment is made retrospectively to make clear the position irrespective of the circular of the CBDT.

▪ **Disallowance u/s 14A even if no exempt income earned during the year**

It is proposed to insert an Explanation to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

▪ **Clarification regarding deduction on payment of interest on actual payment under Section 43B**

It is proposed to provide that conversion of interest payable to financial institution, into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid and accordingly no deduction can be claimed.

▪ **Rationalisation of TDS on sale of immovable property**

It is proposed to amend section 194-IA of the Act to provide that in case of transfer of an immovable property (other than agricultural land), TDS is to be deducted at the rate of 1% of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher.

In case the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than fifty lakh rupees, then no tax is to be deducted under section 194-IA.

▪ **TDS on benefit or perquisite of a business or profession**

It is proposed to insert a new section 194R to the Act to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident (i.e. Business Promotion Expenditure), shall ensure that tax has been deducted in respect of such benefit or perquisite at the rate of 10%.

No tax is to be deducted if the value of the benefit or perquisite does not exceed Rs. 20,000 during the financial year.

▪ **Bonus Stripping applicable to Securities and Units**

It is proposed to amend sub-section (8) of section 94, pertaining to the prevention of tax evasion through bonus stripping, so as to make the said provision applicable to securities as well. It is also proposed to amend the Explanation to the said section to modify the definition of unit, so as to include units of business trusts such as InvIT, REIT and AIF, within the definition of units.

▪ **Scheme for taxation of Virtual Digital Assets including Cryptocurrency**

It is proposed to insert section 115BBH to provide that the amount of income-tax on income of transfer of any virtual digital asset shall be calculated at the rate of 30%.

However, no deduction in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act while computing income from transfer of such asset.

Further, no set off of any loss arising from transfer of virtual digital asset shall be allowed against any income computed under any other provision of the Act and such loss shall not be allowed to be carried forward to subsequent assessment years.

It is proposed to insert section 194S to the Act to provide for deduction of tax on payment for transfer of virtual digital asset to a resident at the rate of 1% of such sum.

In order to provide for taxing the gifting of virtual digital assets, it is also proposed to amend Explanation to clause (x) of sub-section (2) of section 56 of the Act to *inter-alia*, provide that for the purpose of the said clause, the expression “property” shall have the meaning assigned to it in Explanation to clause (vii) and shall include virtual digital asset.

A virtual digital asset is proposed to mean any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically. Non fungible token and; any other token of similar nature are included in the definition.

▪ **Cash credits under Section 68**

It is proposed to amend the provisions of section 68 of the Act so as to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained by the creditor or entry provider in its hand.

However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well-regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

▪ **Extension of date of incorporation for eligible start up for exemption**

It is proposed to amend the provisions of section 80-IAC of the Act to extend the period of incorporation of eligible start-ups to 31st March, 2023.

▪ **Extension of last date for commencement of manufacturing or production under Section 115BAB**

It is proposed to amend section 115BAB so as to extend the date of commencement of manufacturing or production of an article or thing, from 31st March, 2023 to 31st March, 2024 for availing concessional rate of taxation.

▪ **Withdrawal of concessional rate of taxation on dividend income under section 115BBD**

It is proposed to amend section 115BBD of the Act to provide that the provisions of this section shall not apply to any assessment year beginning on or after the 1st day of April, 2023.

▪ **Set-off of losses in Search cases**

It is proposed to insert a new section 79A in the Act to provide that where a search initiated under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than under sub-section (2A) of section 133A and the total income of any previous year of an assessee includes any undisclosed income, no set off, against such undisclosed income, of any loss, whether brought forward or otherwise, or unabsorbed depreciation under sub-section (2) of section 32 shall be allowed to the assessee under any provision of this Act in computing his total income for such previous year.

▪ **Rationalisation of provisions relating to assessment and reassessment**

It is proposed to insert a new proviso to the effect that requirement for approval to issue notice under section 148 shall not be required to be taken by the Assessing Officer if he has passed an order under 148A(d) with prior approval in that case stating that the income is escaping assessment. It is proposed to omit the requirement of approval of specified authority in clause (b) of section 148A.

It is proposed to clarify what constitutes information under Explanation 1 to section 148 so as to include any audit objection, or any information received from a foreign jurisdiction under an agreement or directions contained in a court order, or information received under a scheme notified under section 135A etc.

It is proposed to amend the clause (b) of sub-section (1) of the section 149 to provide that a notice under section 148 shall be issued only for the relevant assessment year after 3 years but prior to 10 years from the end of the relevant assessment year where the Assessing Officer has in his possession documents or evidence that the income chargeable to tax, represented,

- ◆ in the form of an asset; or

- ◆ expenditure in respect of a transaction or in relation to an event or occasion; or
- ◆ an entry or entries in the books of account,

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

It is proposed to insert a new sub-section (1A) in section 149 to provide that notwithstanding anything contained in sub-section (1) of the said section, where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1) of the said section, has escaped assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1) of the said section, notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

## GOODS & SERVICES TAX

- **Claim of ITC**

Section 16(4) of the CGST Act is being amended to provide that ITC related to a financial year can be availed till 30<sup>th</sup> day of November of the following financial year.

- **Registration liable to be cancelled**

Registration of a person is liable for cancellation:

- (i) A person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing of the said return;
- (ii) a person, other than those paying tax under section 10, has not furnished returns for such continuous tax period as may be prescribed.

- **Issuance of Credit Note**

Section 34(2) of the CGST Act is being amended to provide that Credit note in respect of supplies made during a financial year can be issued till 30<sup>th</sup> day of November of the following financial year.

- **Rectification of mistakes in GSTR-1**

Section 37 of the CGST Act is being amended to provide that Mistakes in GSTR -1 can be rectified till 30<sup>th</sup> day of November of the following financial year.

- **No claim of ITC on provisional basis**

Section 41 of the CGST Act is being substituted to provide that “Claim” of eligible input tax credit on a “provisional” basis will not be available.

- **Interest on wrong availment of ITC**

Section 50(3) of the CGST Act is being substituted retrospectively to provide that Interest @ 18% would be levied on input tax credit wrongly availed and utilized.

**THANK YOU**

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