

## HAND PICKED BUDGET PROPOSALS 2021



The Finance Minister, Smt. Nirmala Sitharaman, has presented the Union Budget 2021 in the Parliament. It was the first-ever digital Union Budget as Govt. had decided not to print the budget documents.

The Finance Bill 2021 which was tabled in the Parliament has proposed 80+ amendments to the Income-tax Act and other related Acts. The Govt. has decided not to change the tax rates for the next year. Increase in the tax audit turnover, Faceless Appeals, Dispute Resolution Committee, reduction in time-limit for re-opening of assessments, etc. are a few key proposals which have been introduced in the Finance Bill, 2021.

<b><u>Particulars</u></b>	<b><u>Page No.</u></b>
General Proposals	2-3
Company Law Proposals	3-4
Income Tax Proposals	4-14
Amendments proposed in GST Law	14-15
Amendments proposed under the Customs Laws	15-16

## GENERAL PROPOSALS

1. **Proposal to consolidate 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.**
2. Government had announced its intent to establish a system of **regulated gold exchanges in the country**. For the purpose, SEBI will be notified as the regulator and Warehousing Development and Regulatory Authority will be strengthened to set up a commodity market eco system arrangement including vaulting, assaying, logistics etc in addition to warehousing.
3. **Proposal to amend the Insurance Act, 1938 to increase the permissible FDI limit from 49% to 74% in Insurance Companies** and allow foreign ownership and control with safeguards. Under the new structure, the majority of Directors on the Board and key management persons would be resident Indians, with at least 50% of Directors being Independent Directors, and specified percentage of profits being retained as general reserve.
4. The high level of provisioning by public sector banks of their stressed assets calls for measures to clean up the bank books. **An Asset Reconstruction Company Limited and Asset Management Company would be set up to consolidate and take over the existing stressed debt** and then manage and dispose of the assets to Alternate Investment Funds and other potential investors for eventual value realization.
5. Last year, Government had approved an increase in the **Deposit Insurance cover from `1 lakh to `5 lakhs for bank customers**. I shall be moving amendments to the DICGC Act, 1961 in this Session itself to streamline the provisions, so that if a bank is temporarily unable to fulfil its obligations, the depositors of such a bank can get easy and time-bound access to their deposits to the extent of the deposit insurance cover. This would help depositors of banks that are currently under stress

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## 6. Disinvestment and Strategic Sale

- a. "In spite of COVID-19, we have kept working towards strategic disinvestment. **A number of transactions namely BPCL, Air India, Shipping Corporation of India, Container Corporation of India, IDBIBank, BEML, Pawan Hans, Neelachal Ispat Nigam limited among others would be completed in 2021-22.** Other than IDBI Bank, **we propose to take up the privatization of two Public Sector Banks and one General Insurance company in the year 2021-22.** This would require legislative amendments and I propose to introduce the amendments in this Session itself."- FM
- b. "In 2021-22 we would also bring the **IPO of LIC** for which I am bringing the requisite amendments in this Session itself."-FM

## COMPANY LAW PROPOSALS

1. The **decriminalizing** of the procedural and technical compoundable offences under the Companies Act, 2013, is now complete. I now propose to next take up decriminalization of the Limited Liability Partnership (LLP) Act, 2008
2. Proposal to **revise the definition under the Companies Act, 2013 for Small Companies by increasing their thresholds for Paid up capital** from "not exceeding `50 Lakh" to "**not exceeding `2 Crore**" and **turnover** from "not exceeding `2 Crore" to "**not exceeding `20 Crore**". This will benefit more than two lakh companies in easing their compliance requirements.
3. Incorporation of **One Person Companies (OPCs)** by allowing OPCs to grow without any restrictions on paid up capital and turnover, allowing their conversion into any other type of company at any time, reducing the residency limit for an Indian citizen to set up an OPC from 182 days to 120 days and also allow Non Resident Indians (NRIs) to incorporate OPCs in India.

4. NCLT framework will be strengthened, **e-Courts system** shall be implemented and alternate methods of debt resolution and special framework for MSMEs shall be introduced.
5. During the coming fiscal 2021-22, we will be launching **data analytics, artificial intelligence, machine learning driven MCA21 Version 3.0**. This Version 3.0 will have additional modules for e-scrutiny, e-Adjudication, e-Consultation and Compliance Management.

## INCOME TAX PROPOSALS

### Income under the head 'Salaries'

#### **Exemption for cash allowance received in lieu of LTC**

Where an employee receives Leave Travel Concession (LTC) from his employer for going on vacation in India, the amount so received shall be exempt from tax under section 10(5), subject to certain conditions. However, due to the COVID-19 pandemic and the nationwide lockdown, employees have not been able to avail of Leave Travel Concession (LTC) in the current block of 2018-21.

Thus, to provide relief to such employees, the said section has been proposed to be amended to provide an exemption in respect of cash allowance received in lieu of leave travel concession (LTC). However, the exemption shall be allowed subject to certain conditions. One of such condition is that the amount so received should be incurred by the assessee or a member of his family during the period between 12-10-2020 to 31-03-2021 on goods or services which attract GST rate of 12% or more.

#### **Taxability of Interest on Provident Fund**

It has been proposed that the exemption shall not be available for the interest income accrued during the previous year on the recognised and statutory provident fund in the account of the person to the extent it relates to the contribution made by the employees in excess of Rs. 2,50,000 in a previous year.

### Profits and gains from business and profession

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### **No MAT on dividend income of a foreign company**

Dividend received by a foreign company on its investment in India shall be excluded for calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided under DTAA.

### **No deduction for employee's contribution if not deposited before the due date**

The deduction under Section 36(va) for contribution received by the employers from his employees towards any welfare fund shall be allowed only if such sum is credited by the employer to the employee's account in the relevant fund on or before the due date prescribed under the relevant Act

### **LLPs are not eligible for presumptive taxation scheme under Section 44ADA**

Section 44ADA allows specified professionals to calculate and pay tax on a presumptive basis. The amendment proposes to specify an exclusive list of the assesseees who are eligible for the presumptive taxation scheme prescribed under Section 44ADA. Now only an Individual, HUF or a Partnership Firm, not being an LLP, shall be eligible to opt for presumptive taxation scheme under Section 44ADA.

### **Increase in threshold limit for tax audit to promote digital transactions**

If at least 95% of the business receipts and payments are made through electronic modes, the threshold limit for the tax audit is proposed to be increased from Rs. 5 crores to Rs. 10 crores with effect from the assessment year 2021-22.

### **No depreciation shall be allowed on goodwill**

The Finance Bill, 2021 has proposed to amend various sections under the Income Tax Act to ensure that no depreciation is claimed on goodwill. It has been proposed to amend section 2(11) to specifically provide that "block of assets shall not include goodwill" be it acquired or self-generated. Section 55 is also proposed to be amended to provide that if the assessee has claimed depreciation on goodwill prior to the Assessment Year 2021-22, then the cost of purchase of such

goodwill in his hands will be reduced by such amount of depreciation while computing capital gains.

### **No Equalisation Levy on royalty or FTS**

It has been proposed that equalization levy shall not be levied on consideration received or receivable for specified services or for e-commerce supply which is taxable as royalty or fees for technical services.

### **Exemption in respect of income chargeable to Equalisation Levy**

It has been proposed that exemption under Section 10(50) will apply for the e-commerce supply or services made or provided or facilitated on or after 01-04-2020 on which equalization levy is levied. Further, no exemption will apply for royalty or fees for technical services which are taxable under the Income-tax Act read with the Double taxation avoidance agreement.

### **Income under the head capital gains**

#### **All types of transfer are covered within the scope of slump-sale**

The scope of term slump sale is proposed to be expanded to cover all types of transfers as specified under Section 2(47).

#### **Transfer of capital asset to partner/member on the dissolution of the firm/AOP/BOI taxable as capital gains**

It has been proposed that where a partner/member receives any money or other asset at the time of dissolution or reconstitution of the firm/AOP/BOI which is more than the balance appearing in the capital account (without considering revaluation), the profits or gains arising from such receipt shall be chargeable under the head 'capital gains' as income of such firm, AOP or BOI of the previous year in which such money or other asset was received by the specified person.

#### **Taxation of unit linked insurance policy (ULIP)**

Section 10(10D) provides exemption in respect of sum received under a life insurance policy if the premium payable for any of the years during the terms of the policy does not exceed 10% of sum assured.

Considering the instances that high net worth individuals are claiming exemption under said section by investing in ULIP with huge premium, the Finance Bill 2021 has proposed that the exemption under section 10(10D) shall not be available with respect to any ULIP issued on or after the 01-02-2021, if the amount of premium payable during the term of the policy exceeds Rs. 2,50,000 per annum.

Further, it has also been proposed that a ULIP (not eligible for exemption under section 10(10D)] shall be treated as capital asset.

### **Revision in the safe-harbour limit in respect of the transfer of immovable property below SDV**

Where an immovable property is transferred for consideration below its stamp duty value, it gives rise to tax implications in the hands of the seller and the buyer. As per Section 43CA, the stamp duty value of the property is deemed as sale consideration in the hands of the seller. Whereas, as per section 56(2)(x), the difference between stamp duty value and the actual consideration of the property is chargeable to tax under the head other sources in the hands of the buyer. However, both these provisions do not apply if the variation between the actual consideration and stamp duty value is up to 10% ('Safe Harbour Limit').

To boost the demand in the real-estate sector and to enable the real-estate developers to liquidate their unsold inventory at a lower rate to home buyers, the safe harbour limit is proposed to increase from existing 10% to 20% in case of transfer of residential property during the period from 12-11-2020 to 30-06-2021 by way of first-time allotment to any person. Further, the consideration received or accruing as a result of such transfer should not exceed Rs. 2 crores.

### **Extension in the time limit for transfer of residential house property for Section 54GB exemption**

Section 54GB provides for exemption from the capital gain arising from the transfer of a residential property on or before 31-03-2021 if the assessee utilises the net consideration for investment in the equity shares of an eligible start-up. The Finance Bill 2021 has proposed to extend the said outer date of transfer of residential property to 31-03-2022.

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## **Return of Income**

### **Reduction in the time limit for filing of belated or revised return**

The time limit for filing of belated return or revised return is proposed to be reduced by 3 months. Now the belated or revised return can be filed on or before December 31 of the assessment year or before the completion of the assessment, whichever is earlier.

### **Exemption from the filing of return by an individual whose age is 75 years or above**

Resident Senior citizen who is of the age of 75 years or above shall not be required to file the return of income if he has only pension income and interest income from the same bank in which he is receiving his pension. However, the bank shall be required to deduct tax at the rates in force.

### **Reduction in the time limit for processing of ITR and issuance of notice**

The time-limit for processing of Income-tax return and sending of an intimation to the assessee has been proposed to be reduced from 1 year to 9 months from the end of the financial year in which the return is filed. Also, the time-limit to serve a notice for scrutiny assessment is proposed to be reduced from 6 months to 3 months from the end of the financial year in which the return of income is furnished.

### **Adjustments to be made by CPC while processing ITR**

The CPC while processing the return of Income under section 143(1) can make an adjustment for any increase in income due to mismatch in the income disclosed in the tax audit report and income computed in the Income-tax return.

### **Notice to file the return of income can be issued by the prescribed authority**

To enable centralised issuance of notices in an automated manner, the prescribed Income-tax authority would be empowered to issue a notice under Section 142(1) requiring a person to furnish his return of income. Earlier, this notice could be issued only by the Assessing Officer.



## **Assessments and Appeal**

### **Reduction in time limit for reopening of cases**

The Finance Bill, 2021 has proposed to introduce a completely new procedure of assessment in case of search and income escaping assessment. The new system is focused on less litigation and providing ease of business by reducing the time limits to issue notice for assessment or reassessment. In normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. However, if the income escaping assessment exceeds or is likely to exceed Rs. 50 lakhs, the notice can be issued within 10 years from the end of the relevant assessment year.

### **Reduction of time limit for completion of the assessment proceedings**

The time limit for completion of scrutiny assessment under Section 143 and Best Judgment Assessment under Section 144 is proposed to be further reduced by 3 months. Now, the time for completion of assessment shall be 9 months from the end of the assessment year in which the income was first assessable.

### **Faceless scheme for ITAT appeal**

The Central Government has been empowered to notify a faceless scheme for disposal of appeal by the ITAT. This shall eliminate the interface between the ITAT and parties to the appeal to the extent technologically feasible. All communication between the Tribunal and the Appellant shall be electronic. Where a personal hearing is needed, it shall be done through video-conferencing.

### **Constitution of DRC for small and medium taxpayers**

A new scheme is proposed for setting up of Dispute Resolution Committee (DRC). Taxpayers having a taxable income of up to Rs. 50 lakh and disputed income of up to Rs. 10 lakh shall be eligible to approach the Committee. The assessee would have an option to opt or not to opt for the dispute resolution through the DRC.

### **Discontinuance of Income-tax Settlement Commission**

Income-tax Settlement Commission (ITSC) is proposed to be discontinued with effect from 01-02-2021 and an Interim Board of Settlement is to be constituted

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for pending cases. The Central Government is empowered to notify a scheme for settlement in respect of pending applications by the Interim Board

### **Constitution of the Board for Advance Ruling**

To provide an alternative method of providing advance ruling which can give rulings to taxpayers promptly, a Board of Advance Ruling is proposed to be constituted. The Authority for Advance Rulings shall cease to operate with effect from the notified date. The Central Government is empowered to notify a scheme to give advance ruling by the Board of Advance Ruling.

### **TDS/TCS**

#### **TDS on purchase of goods**

New Section 194Q is proposed to be inserted for deduction of TDS by a person (whose turnover exceeds Rs. 10 crores) who is paying any sum to any resident for purchase of any goods of the value exceeding Rs. 50 lakhs in any previous year. The tax shall be deducted at the rate of 0.1%, which shall be increased to 5% if the seller does not provide his PAN.

#### **Non-filer shall be subject to TDS/TCS at higher rates**

The Finance Bill proposes to insert Section 206AB and Section 206CCA to provide for deduction and collection of TDS and TCS at the higher rates in case of non-filers of the income tax return. The rate of TDS/TCS shall be at the double of the specified rate or 5%, whichever is higher. These provisions shall not be applicable where the tax is required to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act.

#### **TDS at a concessional rate on the income from securities held by FPIs**

Any person responsible for paying any income (other than the interest payable in respect of Rupee Denominated Bond of an Indian company or Government Security) to foreign portfolio investors (FPIs) in respect of securities is liable to deduct tax under section 196D. The said section provides for deduction of tax at the rate of 20%.

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As FPIs are incorporated outside countries, their taxability in India is also subject to double taxation avoidance agreements ('DTAAs'), if applicable. Thus, considering the applicability of DTAA in case of FPIs, Section 196D is amended to provide that tax shall be deducted at the rate provided under DTAA if same is lower than the existing TDS rate of 20%.

### **No TDS on dividend distributed by SPV to the business trust**

Business Trusts (REITs or InvITs) have been provided with the status of a pass-through entity whereby they are allowed to pass certain income to their unit holders without paying tax at their end. One of such income is the dividend received from special purpose vehicle (SPV). As business trust can freely pass the dividend received from SPV to its unit-holders, it is proposed to provide that no tax shall be deducted on payment of dividend by the SPV to the business trust.

### **Charitable and religious trust**

#### **Set-off of deficit not to be allowed to Charitable Institutions**

It has been proposed that the charitable trusts shall not be permitted to claim any carry forward of losses. Therefore, no set-off/deduction/allowance of any excess application of any preceding year shall be allowed while computing income required to be applied or accumulated during the previous year by such institutions.

#### **Amount applied out of loans not to be considered as an application of Income**

It has been proposed that utilization of borrowed money shall not be considered as an application of income for charitable or religious purposes. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as an application in the previous year in which it is repaid.

#### **Corpus Contributions to be exempt only if invested**

Voluntary contributions made with a specific direction that it shall form part of the corpus shall be eligible for exemption only if it is invested/deposited in modes specified under Section 11(5) maintained specifically for such corpus. Further,

the amount spent from such corpus shall not be considered as an application against the mandatory 85% application of non-corpus income.

### **Exemption to educational or medical institutions having annual receipt of up to Rs. 5 crores**

Educational or Medical institutions are entitled to exemption under section 10(23C)(iiia) and 10(23C)(iiiae) respectively, if the annual receipt of such institutions does not exceed Rs. 1 crore. The said limit is proposed to be increased to Rs. 5 crores.

### **Deductions**

#### **Section 80-IBA deduction to rental housing projects**

Section 80-IBA provides for deduction of an amount equal to 100% of the profits and gains derived by an assessee from the business of developing and building affordable housing project approved on or before 31-03-2021. This date has been proposed to be further extended to 31-03-2022.

Further, to help migrant labourers and to promote affordable rental housing, the scope of Section 80-IBA is proposed to be expanded to allow a deduction in respect of notified rental housing projects as well.

#### **Extension in the due date for the incorporation of start-up co. for Section 80-IAC**

A start-up is eligible for deduction under section 80-IAC if it satisfies certain conditions. One of the conditions provide that it should be incorporated between 01-04-2016 and 31-03-2021. The Finance Bill 2021 proposes to extend the outer date of incorporation to 31-03-2022.

#### **Extension in the time-limit for sanction of housing loan for deduction under Section 80EEA**

Additional deduction under Section 80EEA for the interest on housing loan is allowed if such loan is sanctioned on or before 31-03-2021. The Finance Bill proposes to extend the said outer date for sanction of such housing loan by one year to 31-03-2022.

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## **Miscellaneous**

### **Relief from interest for any deficit in the advance tax liability due to dividend income**

If the shortfall in the advance tax instalment or the failure to pay the same on time is on account of dividend income, it has been proposed that no interest under section 234C shall be charged provided the assessee has paid full tax in subsequent advance tax instalments.

### **Provisional attachment of assets in Fake Invoice cases**

The Finance Bill, 2021 proposes that Assessing Officer is empowered to provisionally attach the property of assessee during the pendency of proceedings under Section 271AAD (Penalty for Fake Invoices) if the amount or aggregate of amounts of penalty imposable is likely to exceed Rs. 2 crores.

### **No interest on refund of the excess sum paid under IDS**

The Finance (No. 2) Act, 2019, has empowered the Board to specify a class of persons who can claim a refund of excess tax paid under the IDS. It is now proposed to clarify that the excess amount of tax, surcharge or penalty paid in pursuance of a declaration made under the Scheme shall be refundable to the specified class of persons without payment of any interest thereon.

### **Clarification regarding the scope of VivadSe VishwasAct, 2020**

It has been proposed to clarify that the appellant for VivadSe VishwasAct, 2020, does not include a person in whose case a writ petition or special leave petition or any other proceeding has been filed before an appellate forum, arising out of an order of the Settlement Commission and such petition or appeal is either pending or is disposed of. Similarly, the term disputed tax does not include any sum payable under an order passed by the Settlement Commission.

### **Issuance of Zero-Coupon Bond by Infrastructure Debt Fund**

Definition of 'Zero-Coupon Bond' as provided under Section 2(48) shall be amended to enable infrastructure debt fund to issue such bonds. Further, a consequential amendment has also been proposed under Section 194A to provide

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relaxation from deduction of tax on income payable in such respect of such bonds.

### Definition of the term “Liable to tax”

The term “liable to tax” has been proposed to be added. ‘Liable to tax’ in relation to a person means that there is a liability of tax on him under any law for the time being in force in any country. It shall include a case where subsequent to the imposition of tax liability, an exemption has been provided.

## AMENDMENTS IN GST LAWS

- 1. Definition of Zero-rated supply has been proposed to be amended.** As per this, only notified class of persons and notified class of goods or services can make zero rated supply with payment of IGST.
- 2. Foreign exchange realization would be mandatory for refund of unutilized ITC for zero rated supply of goods.** In case of non-realisation, benefit of refund would be deposited along with interest
- 3. Condition that supply of goods or services to SEZ developer and SEZ unit** only must be for ‘authorised operations’ has been included in the CGST Act
- 4. Mandatory requirement of getting annual accounts audited and furnishing of Reconciliation Statement has been done away with.** Further, furnishing of annual return with self-certified reconciliation statement has been facilitated. The Commissioner has been empowered to exempt a class of taxpayers from the requirement to file annual return
- 5. Definition of ‘self-assessed tax’ has been amended** to provide that it shall include the tax payable in respect of outward supplies furnished in Form GSTR-1, but not included in Form GSTR-3B
- 6. With the insertion of new clause under section 7 of CGST Act 2017, the scope of supply has now been extended** to the activities or transactions which involves supply of goods or services or both by any person such as

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clubs to its members or vice-versa for cash, deferred payments or other valuable consideration

7. **Retrospective amendment** (with effect from July 01, 2017) under proviso to Section 50(1) of the CGST Act has proposed to provide that **Interest under GST to be charged on 'Net Cash Liability' component retrospectively**
8. A new condition has been proposed to be inserted for availment of Input tax credit. **Input tax credit on invoice or debit note can be availed only when the details of such invoices/debit notes has been furnished by the supplier in Form GSTR 1.**
9. Provisions for filing appeal against order of detention of goods or conveyance by proper officer has been proposed to be amended to provide **that 25% of the penalty is required to be paid before filing of any appeal**

## AMENDMENTS IN THE CUSTOMS LAWS

1. **A new cess , Agriculture Infrastructure and Development Cess ('AIDC')** has been introduced with effect from February 2, 2021, on the import of goods specified in First Schedule (such as apples, various types of coals, silver/gold dore, cotton, etc.). Simultaneously, BCD has been reduced on some of these items, so as to avoid any additional burden on the consumer. The rate of cess varies from 1.5% to 100%.
2. **Customs Common Portal is proposed to be introduced which would provide the following facilities:**
  - a. Facilitation of Registration
  - b. Filing of Bill of Entry ('BOE'), Shipping Bills('SB')
  - c. Payment of DutiesThe service of Notices, Order, Summons, etc. would also be available through the Common Portal.
3. FM proposed to review more than 400 old exemptions under the Custom Laws. Further, with effect from October 1, 2021, revised Custom tariff structure would be introduced.

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4. Conditional Exemptions under the Customs laws are proposed to be valid for a period of 2 years from the date of grant or variation (unless otherwise specified/varied/rescinded). Further, all existing conditional exemptions would be valid upto March 31, 2023.
5. Provisions relating to Bill of entry ('BOE') are amended to provide that it would now be required to be filed before the day of arrival of goods at Customs stations. Further, the CBIC, in few specified cases as it may deem fit, may notify time period for filing BOE.
6. To ensure timely completion of inquiries/investigations, law has been proposed to be amended to provide that Show Cause Notices for inquiries/investigations is be issued within 2 years from the date of initiation of such inquiry/investigation. However, such time limit of 2 years can be further extended by 1 year by the Commissioner. Notably, provision would apply to fresh proceedings only.
7. Provisions relating to confiscation of goods are proposed to be amended to include wrongful claim of any remission/refund of any tax or duty within its scope
8. Penalty provision would be included in the Customs Act where refund has been claimed by way of fraudulent utilization of Input Tax Credit through fake invoices, against any duty or tax on goods exported out of India. In this case penalty would be levied maximum up to 5 times of the refund claimed.