



PROVISIONS RELATING TO DIRECT TAXES FOR AN INDIVIDUAL, HUF, ASSOCIATION OF PERSONS, BODY OF INDIVIDUALS, ARTIFICIAL JURIDICAL PERSON, CO- OPERATIVE SOCIETIES, FIRMS, LOCAL AUTHORITIES AND COMPANIES FOR THE ASSESSMENT YEAR 2021-22.

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Abstract

The provisions of Finance Bill, 2021 (hereafter referred to as "the Bill"), relating to direct taxes seek to amend the Income-tax Act, 1961 (hereafter referred to as 'the Act'), Prohibition of Benami Property Transactions Act, 1988 (hereafter referred to as - PBPT Act), Finance Act, 2004 and Finance Act, 2016 and the Direct Tax Vivad se Vishwas Act, 2020 to continue reforms in direct tax system through tax-incentives, removing difficulties faced by tax payers and rationalization of various provisions.

Keywords: Rates of income-tax, Tax incentives, removing difficulties faced by taxpayers, Rationalisation of various provisions.

Introduction to Taxation:

Income tax is a very important direct tax. It is an important and most significant source of revenue of the Government. The government needs money to maintain law and order in the country, safeguard the security of the country from foreign powers and promote the welfare of the people. Since our government is wedded to socialistic patterns of society it is foremost duty of the Government to bring out such welfare and development programmes which will bridge the gap between the rich and poor. All this requires mobilization of funds from various sources. These sources may be direct or indirect. Income Tax, being a direct tax, is an important tool to achieve balanced socio-economic growth by providing concessions and incentives in income tax for various developmental purposes.

Direct Tax:

Direct Tax is paid by person on whom it is legally imposed. It is levied on persons who can bear the Tax. The burden cannot be shifted to others. In other words a taxpayer can pay directly to the Government within a specific period of time. Examples of Direct tax are – Income Tax, Wealth Tax and Gift Tax.

Definitions of Direct Tax: It is clear that a direct tax is one imposed directly on the tax payer and paid directly to its Government by the person on whom it is imposed. The burden of direct tax cannot be shifted by the tax payer to others.

With a view to achieving the above, the various Act and Clauses for amendments are organized under the following heads:-

- (A) Rates of income-tax.
- (B) Tax incentives.
- (C) Removing difficulties faced by taxpayers.
- (D) Rationalisation of various provisions.

A. RATES OF INCOME-TAX

I. Rates of income-tax in respect of income liable to tax for the assessment year 2021-22.

In respect of income of all categories of assessee liable to tax for the assessment year 2021-22, the rates of income-tax have either been specified in specific sections (like section 115BAA or section 115BAB for domestic companies, 115BAC for individual/HUF and 115BAD for cooperative societies) or have been specified in Part I of the First Schedule to the Bill. There is no change proposed in tax rates either in these specific sections or in the First Schedule. The rates provided in sections 115BAA or 115BAB or 115BAC or 115BAD for the assessment year 2021-22 would be same as already enacted. Similarly rates laid down in Part III of the First Schedule to the Finance Act, 2020, for the purposes of computation of —advance tax||, deduction of tax at source from —Salaries|| and charging of tax payable in certain cases for the assessment year 2021-22 would now become part I of the first schedule. Part III would now apply for the assessment year 2022-23 and would remain unchanged except that it would also apply to proposed section 194P.

(1) Tax rates under section 115BAC and section 115BAD

From the assessment year 2021-22 (FY 2020-21), individual and HUF tax payers have an option to opt for taxation under section 115BAC of the Act and the resident co-operative society has an option to opt for taxation under the newly inserted section 115BAD of the Act. On satisfaction of certain conditions as per the provisions of section 115BAC, an individual or HUF shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:

Total Income	Rate
From Rs. 0 to Rs. 2,50,000	Nil
From Rs. 2,50,001 to Rs. 5,00,000	5 per cent
From Rs. 5,00,001 to Rs. 7,50,000	10 per cent
From Rs. 7,50,001 to Rs. 10,00,000	15 per cent
From Rs. 10,00,001 to Rs. 12,50,000	20 per cent
From Rs. 12,50,001 to Rs. 15,00,000	25 per cent
Above Rs. 15,00,001	30 per cent

Similarly, a co-operative society resident in India shall have the option to pay tax at 22 per cent for assessment year 2021-22 onwards as per the provisions of section 115BAD, subject to fulfilment of certain conditions.

(2) Tax rates under Part I of the first schedule applicable for the assessment year 2021-22

a. Individual, HUF, association of persons, body of individuals, artificial juridical person.

Paragraph A of Part-I of First Schedule to the Bill provides following rates of income-tax:

- (i) The rates of income-tax in the case of every individual (other than those mentioned in (ii) and (iii) below) or HUF or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act (not being a case to which any other Paragraph of Part III applies) are as under:

Up to Rs. 2,50,000	Nil.
Rs. 2,50,001 to Rs.5,00,000	5 percent.
Rs. 5,00,001 to Rs.10,00,000	20 percent.
Above Rs. 10,00,000	30 percent.

(ii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year.

Up to Rs. 3,00,000	Nil.
Rs. 3,00,001 to Rs.5,00,000	5 percent.
Rs. 5,00,001 to Rs.10,00,000	20 percent.
Above Rs. 10,00,000	30 percent.

(iii) in the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year.

Up to Rs.5,00,000	Nil.
Rs. 5,00,001 to Rs.10,00,000	20 percent.
Above Rs 10,00,000	30 percent.

b. Co-operative Societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Bill. They remain unchanged at (10% up to Rs 10,000; 20% between Rs 10,000 and Rs 20,000; and 30% in excess of Rs 30,000)

c. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part I of the First Schedule to the Bill. They remain unchanged at 30%

d. Local authorities

The rate of income-tax in the case of every local authority has been specified in Paragraph D of Part I of the First Schedule to the Bill. They remain unchanged at 30%.

e. Companies

The rates of income-tax in the case of companies have been specified in Paragraph E of Part I of the First Schedule to the Bill. In case of domestic company, the rate of income-tax shall be twenty five per cent. of the total income, if the total turnover or gross receipts of the previous year 2018-19 does not exceed four hundred crore rupees and in all other cases the rate of Income-tax shall be thirty per cent. of the total income. In the case of company other than domestic company, the rates of tax are the same as those specified for the FY 2019-20.

(3) Surcharge on income-tax

The amount of income-tax shall be increased by a surcharge for the purposes of the Union,—

- (a) in the case of every individual or HUF or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act, including an individual or HUF exercising option under section 115BAC, not having any income under section 115AD of the Act.

- (i) having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent. of such income- tax; and
- (ii) having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding one crore rupees but not exceeding two crore rupees, at the rate of fifteen per cent. of such income-tax.
- (iii) having a total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax.
- (iv) having a total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding five crore rupees, at the rate of thirty-seven per cent. Of such income-tax.
- (v) having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees, but is not covered under clause (iii) or (iv) above, at the rate of fifteen per cent of such income tax.

(4) Marginal Relief

Marginal relief has also been provided in all cases where surcharge is proposed to be imposed.

(5) Education Cess

For assessment year 2021-22, —Health and Education Cess|| is to be levied at the rate of **four** per cent. on the amount of income tax so computed, inclusive of surcharge wherever applicable, in all cases. No marginal relief shall be available in respect of such cess.

B. Tax Incentives

Exemption for LTC Cash Scheme

Under the existing provisions of the Act, clause (5) of section 10 of the Act provides for exemption in respect of the value of travel concession or assistance received by or due to an employee from his employer or former employer for himself and his family, in connection with his proceeding on leave to any place in India. In view of the situation arising out of outbreak of COVID pandemic, it is proposed to provide tax exemption to cash allowance in lieu of LTC.

Hence, it is proposed to insert second proviso in clause 5 of section 10, so as to provide that, for the assessment year beginning on the 1st day of April, 2021, the value in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt under this clause subject to fulfilment of conditions to be prescribed. It is also proposed to clarify by way of an Explanation that where an individual claims and is allowed exemption under the second proviso in connection with prescribed expenditure, no exemption shall be allowed under this clause in respect of same prescribed expenditure to any other individual.

The conditions for this purpose shall be prescribed in the Income-tax Rules in due course and shall, inter alia, be as under:

- (a) The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21.
- (b) Specified expenditure|| means expenditure incurred by an individual or a member of his family during the specified period on goods or services which are liable to tax at an aggregate rate of twelve per cent or above under various GST laws and goods are purchased or services procured from GST registered vendors/service providers.
- (c) Specified period|| means the period commencing from 12th day of October, 2020 and ending on 31st day of March, 2021.

(d) The amount of exemption shall not exceed thirty-six thousand rupees per person or one-third of specified expenditure, whichever is less.

(e) The payment to GST registered vendor/service provider is made by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under Rule 6ABBA and tax invoice is obtained from such vendor/service provider.

(f) If the amount received by, or due to an individual as per the terms of his employment, from his employer in relation to himself and his family, for the LTC is more than what is allowable to such person under the above discussed provisions, the exemption under the proposed amendment would be available only to the extent of exemption admissible under above listed provisions. This amendment will take effect from 1st April, 2021 and will, apply in relation to the assessment year 2021- 2022 only.

C. Removing difficulties faced by taxpayers

Increase in safe harbour limit of 10% for home buyers and real estate developers selling such residential units.

Section 43CA of the Act, inter alia, provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration. The said section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

Clause (x) of sub-section (2) of section 56 of the Act, inter alia, provides that where any person receives, in any previous year, from any person or persons on or after 1st April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head income from other sources. It also provide that where the assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds ten per cent of the consideration or fifty thousand rupees, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head Income from other sources.

In order 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, it is proposed to increase the safe harbour threshold from existing 10% to 20% under section 43CA of the Act, if the following conditions are satisfied:-

- The transfer of residential unit takes place during the period from 12th November, 2020 to 30th June, 2021
- The transfer is by way of first time allotment of the residential unit to any person
- The consideration received or accruing as a result of such transfer does not exceed two crore rupee

Further it is proposed to provide the consequential relief to buyers of these residential units by way of amendment in clause (x) of sub-section (2) of section 56 of the Act by increasing the safe harbour from 10% to 20%. Accordingly, for these transactions, circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

Relaxation for certain category of senior citizen from filing return of income-tax

Section 139 of the Act provides for filing of return of income. Sub-section (1) of the section provides that every person being an individual, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income.

In order to provide relief to senior citizens who are of the age of 75 year or above and to reduce compliance for them, it is proposed to insert a new section to provide a relaxation from filing the return of income, if the following conditions are satisfied:-

- (i) The senior citizen is resident in India and of the age of 75 or more during the previous year;
- (ii) He has pension income and no other income. However, in addition to such pension income he may have also have interest income from the same bank in which he is receiving his pension income;
- (iii) This bank is a specified bank. The Government will be notifying a few banks, which are banking company, to be the specified bank; and
- (iv) He shall be required to furnish a declaration to the specified bank. The declaration shall be containing such particulars, in such form and verified in such manner, as may be prescribed.

Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A of the Act, for the relevant assessment year and deduct income tax on the basis of rates in force. Once this is done, there will not be any requirement of furnishing return of income by such senior citizen for this assessment year. This amendment will take effect from 1st April, 2021.

D. Rationalisation of various provisions.

Payment by employer of employee contribution to a fund on or before due date

Clause (24) of section 2 of the Act provides an inclusive definition of the income. Sub-clause (x) to the said clause provide that income to include any sum received by the assessee from his employees as contribution to any provident fund or superannuation fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of such employees.

Section 36 of the Act pertains to the other deductions. Sub-section (1) of the said section provides for various deductions allowed while computing the income under the head 'Profits and gains of business or profession'.

Clause (va) of the said sub-section provides for deduction of any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. Explanation to the said clause provides that, for the purposes of this clause, "due date" to mean the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued there-under or under any standing order, award, contract of service or otherwise.

Section 43B specifies the list of deductions that are admissible under the Act only upon their actual payment. Employer's contribution is covered in clause (b) of section 43B. According to it, if any sum towards employer's contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees is actually paid by the assessee on or before the due date for furnishing the return of the income under sub-section (1) of section 139, assessee would be entitled to deduction under section 43B and such deduction would be admissible for the accounting year. This provision does not cover employee contribution referred to in clause (va) of sub-section (1) of section 36 of the Act.

Though section 43B of the Act covers only employer's contribution and does not cover employee contribution, some courts have applied the provision of section 43B on employee contribution as well. There is a distinction between employer contribution and employee's contribution towards welfare fund. It may be noted that employee's contribution towards welfare funds is a mechanism to ensure the compliance by the employers of the labour welfare laws. Hence, it needs to be stressed that the employer's contribution towards welfare funds such as ESI and PF needs to be clearly distinguished from the employee's contribution towards welfare funds. Employee's contribution is employee own money and the employer deposits this contribution on behalf of the employee in fiduciary capacity. By late deposit of employee contribution, the employers get unjustly enriched by keeping the money belonging to the employees. Clause (va) of sub-section (1) of Section 36 of the Act was inserted to the Act vide Finance Act 1987 as a measures of penalizing employers who mis-utilize employee's contributions.

Accordingly, in order to provide certainty, it is proposed to

(i) amend clause (va) of sub-section (1) of section 36 of the Act by inserting another explanation to the said clause to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the due date|| under this clause, and

(ii) amend section 43B of the Act by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

Rationalisation of provisions of Minimum Alternate Tax (MAT)

Section 115JB of the Act provides for MAT at the rate of fifteen per cent of its book profit, in case tax on the total income of a company computed under the provisions of the Act is less than the fifteen per cent of book profit. Book profit for this purpose is computed by making certain adjustments to the profit disclosed in the profit and loss account prepared by the company in accordance with the provisions of the Companies Act, 2013. Representations were received that the computation of book profit under section 115JB does not provide for any adjustment on account of additional income of past year(s) included in books of account of current year on account of secondary adjustment under section 92CE or on account of an Advance Pricing Agreement (APA) entered with the taxpayer under section 92CC. Representation has also been received that since dividend income is now taxable in the hand of shareholders, dividend received by a foreign company on its investment in India is required to be excluded for the purposes of 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 in the Double Taxation Avoidance Agreement (DTAA). Hence it is proposed to

- (i) provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recomputed the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner. Further, the provision of section 154 of the Act shall apply so far as possible and the period of four years specified in sub-section (7) of section 154 shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.
- (ii) to provide similar treatment to dividend as already there for capital gains on transfer of securities, interest, royalty and Fee for Technical Services (FTS) in calculating book profit for the purposes of section 115JB of the Act, so that both specified dividend income and the expense claimed in respect thereof are reduced and added back, while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA. This amendment will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

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