Significant Direct Tax Proposals in the Finance Bill, 2022

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Rates of Tax and Surcharge

Rates of Tax

In the Union Budget, 2022, there is no proposal for changing the rates of tax applicable for individuals or HUFs or AOPs or BOIs or Artificial Juridical persons or Firms or Co-operative societies or companies. Therefore, tax rates applicable for such persons would remain unchanged for the A.Y. 2023-24. Likewise, the basic exemption limit of Rs. 2,50,000/ Rs.3,00,000/ Rs. 5,00,000 would continue to be same for individuals /HUFs /AOPs /BOIs.

Alternate minimum tax rate to be reduced for co-operative societies

Under section 115JC, a cooperative society is required to pay alternate minimum tax at the rate of 18.5% of adjusted total income, if the regular income-tax payable is less than alternate minimum tax. However, under section 115JB, a company is required to pay the minimum alternative tax @15%. To provide a level playing field between co-operative societies and companies, it is proposed to reduce alternate minimum tax rate for the cooperative societies to 15%.

Withdrawal of enhanced surcharge of 25% or 37% on long term capital gains taxable under section 112

Long-term capital gains on listed equity shares, units of an equity-oriented fund or a unit of business trust taxable u/s 112A are liable to maximum surcharge of 15%, while the other long term capital gains taxable u/s 112 are subjected to enhanced surcharge of 25% or 37%, depending on the quantum of gains. It is proposed to restrict the surcharge on long term capital gains taxable u/s 112 at 15%.

Reduced rate of surcharge for co-operatives societies

Rate of surcharge is proposed to be reduced from 12% to 7% of income-tax in case the total income of a cooperative society exceeds Rs. 1 crore but does not exceed Rs. 10 crores. The existing rate of surcharge of 12% of income-tax would continue to be levied in case of a co-operative society having a total income exceeding Rs. 10 crores.

Cap of 15% surcharge in case of AOPs comprising of only companies as its members

The enhanced rate of surcharge of 25% or 37%, as the case may be, is applicable to an AOP, if its total income exceeds Rs. 2 crores or Rs. 5 crores, respectively. It is proposed to restrict the maximum rate of surcharge, in case of an association of persons consisting of only companies as its members, to 15%.

Personal Taxation

Deduction in respect of Employer's contribution to the extent of 14% of salary extended to State Government employees also

The State Government can contribute towards National Pension System (NPS) to the extent of 14% of the salary of its employees. Section 80CCD(2), however, provides for deduction to the extent of 14% of the salary in case of Central Government employees only and to the extent of 10% of salary in any other case. To maintain parity between Central and State government employees, it is proposed to increase the tax deduction limit from 10% to 14% for State Government employees as well in respect of employer's contribution to the NPS account.

Condition for claiming deduction under section 80DD liberalised

Section 80DD provides for a deduction to an individual or HUF, who is a resident in India, in respect of, *inter alia*, amount paid to LIC or any other insurer or administrator or specified company in respect of a scheme for the maintenance of a disabled dependant.

However, deduction would be available to the individual or HUF only if the lump sum payment or annuity is available to the disabled dependant on the death of the individual or the member of HUF being the subscriber.

In case the dependant with disability, predeceases the individual or the member of the HUF, the amount deposited in such scheme would be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

To remove the genuine hardship of differently abled dependants of need of payment of annuity or lump sum amount during the lifetime of their parents/guardians, it is proposed to allow the deduction under the said section even if the lump sum payment or annuity is available to the disabled dependant on attaining the age of 60 years or more of the individual or the member of the HUF in whose name subscription to the scheme has been made and where payment or deposit has been discontinued.

Further, it is proposed that the deeming provisions would not apply, to the amount received by the dependant, before his death, by way of annuity or lump sum by application of the above proposed condition.

Extension in Terminal Dates

Extension of terminal date for setting up of start-ups eligible for claiming deduction under section 80-IAC

The eligible start-up is required to be incorporated between 1.4.2016 and 31.3.2022 in order to be eligible for deduction under section 80-IAC.

In view of Covid Pandemic, the outer time limit for incorporation is proposed to be extended from 31.3.2022 to 31.3.2023, to be eligible for deduction under section 80-IAC.

Extension of terminal date for commencement of manufacturing or production of article or thing for companies eligible to claim concessional tax regime under section 115BAB

To become eligible for a concessional tax regime under section 115BAB providing for tax rate of 15%, a company is required to be set up and registered on or after 1.10.2019 and commenced manufacturing or production of an article or thing on or before 31.3.2023. It is proposed to extend this last date for commencement of manufacturing or production under section 115BAB by one year i.e., from 31st March, 2023 to 31st March, 2024.

Taxability of Virtual Digital Assets

Scheme for taxation of virtual digital assets

There has been a phenomenal increase in transactions in virtual digital assets. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset. Accordingly, for the taxation of virtual digital assets, a new scheme is proposed to be inserted. Proposed section 115BBH provides that any income from transfer of any virtual digital asset would be taxed at the rate of 30%. However, no deduction in respect of any expenditure or allowance would be allowed while computing such income except cost of acquisition. Further, no set off of any loss is allowed from such income or *vice a versa*.

Section 194S proposed to be inserted to provide for tax deduction at source on payment made to a resident in relation to transfer of virtual digital asset @1% of such consideration at the time of credit of such sum or payment, whichever is earlier.

However, no tax would be required to be deducted in case

- the payer is the specified person and the value or the aggregate of such value of consideration to a resident does not exceed Rs. 50,000 during the financial year.
- In any other case, such value of consideration to a resident does not exceed Rs. 10,000 during the financial year.

Specified person means a person,

- being an individual or HUF whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed Rs. 1crore or Rs. 50 lakhs,

respectively, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;

- being an individual or HUF having income under any head other than the head 'Profits and gains of business or profession'.

The provisions of section 203A related to TAN and 206AB related to higher rate of tax in case of non-filers of income-tax return would not be applicable in case of specified persons mentioned above.

Virtual digital asset would mean

(a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value 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 including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically.

(b) a non-fungible token or any other token of similar nature, by whatever name called.

(c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify.

However, the Central Government may, by notification in the Official Gazette, exclude any digital asset from the definition of virtual digital asset subject to such conditions as may be specified therein.

Further, in order to tax gift of virtual digital asset in the hands of the recipient, it is also proposed to amend section 56 to include virtual digital asset within the definition of property.

Minimising Tax Litigations

Voluntary tax compliance - Updated return

To provide an opportunity to taxpayers, who have committed omissions or mistakes in correctly estimating their income for tax payment, sub-section (8A) in section 139 is proposed to be inserted to permit them to file an Updated Return on payment of additional tax.

Taxpayer could file an updated return of income, whether he has filed a return previously for the relevant assessment year, or not within 24 months from the end of the relevant assessment year.

However, the updated return provisions would not be applicable if the updated return

- is a return of loss or
- has the effect of decreasing the total tax liability determined or

- results in refund or
- increases the refund due.

The additional tax, payable at the time of furnishing the updated return would be 25% of aggregate of tax and interest payable, if such return is furnished after expiry of the time available under sub-section (4) or sub-section (5) of section 139 and before completion of 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 would be 50% of aggregate of tax and interest payable.

Deferment of appeal by the Department in case of identical question of law pending before HC/SC

At present, section 158AA provides that if any question of law arising in the case of an assessee is identical with a question of law arising in **his case for another assessment year** which is pending in appeal before the Supreme Court against an order of High Court which was in favour of assessee, the filing of further appeal would be deferred till such question of law is decided by the Supreme Court, subject to the acceptance of the same by the assessee that the question of law is identical.

To reduce the number of litigations on identical question of law, this principle could be applied to cases where a question of law is common and where a decision of the jurisdictional High Court, on the same question of law is available. Accordingly, it is proposed to insert a sunset clause in section 158AA and insert new section 158AB to provide that, if a question of law in the case of an assessee is identical to a question of law which is pending in appeal **before the jurisdictional High Court or the Supreme Court in his case for any other assessment year or in the case of any other assessee for any assessment year**, the filing of further appeal in the case of this assessee by the department shall be deferred till such question of law is decided by the jurisdictional High Court or the Supreme Court.

Tax Deduction at Source

TDS on higher of actual consideration or stamp duty value under section 194-IA

Section 194-IA provides for deduction of tax by any person responsible for paying to a resident any sum by way of consideration for transfer of immovable property being land (other than agricultural land) or any building or part of a building @1% of such sum. However, no deduction of tax is required to be made where the consideration for the transfer of an immovable property is less than Rs.50 lakhs.

In order to remove inconsistency in section 43CA, 50C and 194-IA related to stamp duty value, it is proposed to amend section 194-IA to provide that in case of transfer of an immovable property (other than agricultural land), tax is required to be deducted @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 Rs. 50 lakhs, then no tax is to be deducted under section 194-IA.

Section 194R to be inserted for deducting tax at source on benefit or perquisite of a business or profession

Section 28(iv) provides that the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is chargeable to tax as business income in the hands of the recipient of such benefit or perquisite.

In order to widen and deepen the tax base, a new section 194R is proposed to be inserted 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, would, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite@10% of the value or aggregate of value of such benefit or perquisite.

However, no tax is required to be deducted if the value or aggregate value of the benefit or perquisite paid or likely to be paid to a resident does not exceed Rs. 20,000 during the financial year. Further, the provisions of the said section shall not apply to an individual or a HUF, whose total sales, gross receipts or turnover does not exceed Rs.1 crore in case of business or Rs. 50 lakhs in case of profession during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided.

Scope of sections 206AB and 206CCA limited

Section 206AB provides for deduction of tax at source at higher rate on any sum or income or amount paid or payable by a person to a specified person. However, this provision is not applicable in case of tax deduction at source under section 192, 192A, 194B, 194BB, 194LBC or 194N.

Similarly, section 206CCA provides for tax collection at source at higher rate on any sum or amount received by a person from a specified person.

Specified person means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted or collected, for which the time limit of filing return of income under section 139(1) has expired; and the aggregate of tax deducted at source and tax collected at source in his case is Rs. 50,000 or more in each of these two previous years.

In order to reduce the additional burden on individual and HUF liable to deduct tax under section 194-IA, 194-IB and 194M, it is proposed that the provisions of section 206AB would not be applicable in case of tax deduction at source under the said sections.

To widen the tax base, it is proposed to reduce the requirement of 2 years to 1 year by substituting the definition of specified person as a person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted, for which the time limit for furnishing the return of income under section 139(1) has expired; and the aggregate of tax deducted at source and tax collected at source in his case is Rs. 50,000 or more in the said previous year.

Clarificatory and Other Tax Proposals

Cess and surcharge not allowable as deduction

Section 40(ii)(a) provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". However, certain taxpayers are claiming deduction on account of 'cess' or 'surcharge' under section 40 of the Act claiming that 'cess' has not been specifically mentioned in section 40(a)(ii) and, therefore, cess is an allowable expenditure.

In order to make the intention of the legislation clear and to make it free from any misinterpretation, an Explanation is proposed to be inserted retrospectively with effect from A.Y. 2005-06 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.

Conversion of interest into debentures not tantamount to actual payment

Section 43B of the Act provides for certain deductions to be allowed only on actual payment. Explanation 3C, 3CA and 3D of this section provides that a deduction of any sum, being interest payable on loan or borrowing from specified financial institution/NBFC/scheduled bank or a co-operative bank under clause (d), clause (da), and clause (e) of this section respectively, shall be

allowed if such interest has been actually paid and any interest referred to in these clauses which has been converted into a loan or borrowing or advance shall not be deemed to have been actually paid.

However, certain taxpayers are claiming deduction under section 43B on account of conversion of interest payable on an existing loan into a debenture on the ground that such conversion is a constructive discharge of interest liability and, therefore, amounted to actual payment which has been upheld by several Courts. Such interpretation is against the intent of legislation.

Accordingly, Explanation 3C, Explanation 3CA and Explanation 3D of section 43B proposed to be amended, to provide that conversion of interest payable under clause (d), clause (da), and clause (e) of section 43B, 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.

Withdrawal of concessional rate of 15% applicable on dividend income received by an Indian company from a specified foreign company

Section 115BBD provides for a concessional rate of tax of 15 % on the dividend income received by an Indian company from specified foreign company, being a foreign company in which the said Indian company holds 26% or more in nominal value of equity shares. However, dividend received by an Indian company from domestic companies is chargeable to tax at normal rates applicable to such company.

In order to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies *vis a vis* dividend received from domestic companies, it is proposed that concessional rates provided under section 115BBD would not be applicable with effect from A.Y. 2023-24.

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