

NEWSLETTER NO 23 – UNION AND STATE BUDGET 2021

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INCOME TAX RELATED IMPORTANT AMENDMENTS IN UNION BUDGET 2021:

Amendments Applicable from FY 2021-22

- 1. This was third full budget presented by FM Mrs Nirmala Sitaraman. It was presented on Feb 1, 2021.**
- Unless otherwise provided, these proposed amendments shall be applicable from financial year 2021-22, ie, assessment year 2022-23.
- 3. Lok Sabha passed the Finance Bill, 2021 on Mar 23, 2021 with more than 100 changes. President assented on Mar 28, 2021.**
- The existing tax structure is maintained as it is including EC, surcharge etc.

An additional and optional scheme of taxation was introduced in Budget 2020 in which lower rate of tax is proposed by abolishing many deductions which are otherwise available in old regime. This would become operational from FY 20-21.

5. Sec 2(11): Definition of Block of assets amended so as to exclude Goodwill from the its definition. So, henceforth, depreciation would not be allowed on amount of Goodwill and will rest many litigations related to it.
6. Sec 2(14): Definition of capital asset expanded. ULIP to which Sec 10(10D) not applicable (ie, where premium exceeds Rs 2.50 lacs) would be covered under definition of capital asset and would accordingly be taxed as short term or long term capital gain.
7. Sec 2(19AA): Explanation added to definition of Demerger for public sector company.



8. Sec 2(29A) has been renumbered as Sec 2(29AA) and new Sec 2(29A) inserted: Definition - 'Liable to tax' in relation to a person would mean liable to pay tax under any law for the time being in force in any country and shall also include a case where subsequent to imposition of tax liability, an exemption has been provided. This would have consequences for persons having income from outside India, especially from tax heavens.
9. Sec 2(42C): Definition of slump sale expanded to include transfer by any means. Earlier it covered transfer as a result of sale only.
10. Sec 2(48): Definition of zero coupon bond expanded to include bonds issued by infrastructure debt fund also.
11. Certain modification in Sec 9A which describes certain activities which do not constitute business connection in India.
12. Important: Sec 9B inserted – If any partner or member of firm or AOP receives any capital asset or stock in trade on its reconstitution, then profit on the same shall be taxable in the hands of firm or AOP in the year in which transfer takes place.

Profit shall be taxable as Profits and Gains of Business or Profession or Capital gains as the case may be and fair market value on the date of transfer shall be treated as full value of consideration.

Amount of capital balance (except revaluation, self generated goodwill/assets etc) shall be treated as cost of acquisition.

Issues: If such taxation is in the hands of firm/ AOP, then what would be accounting treatment in the hands of partner/ member? How would he disclose this income as exempt since it is taxed in the hands of firm/ AOP?

13. Sec 10(5): During Covid 19 pandemic, certain relaxations were given relating to Leave Travel concession or assistance. Amendment incorporated to give effect to the same.
14. Important: Sec 10(10D): Unit linked insurance policies (ULIP) having premium of more than Rs 2,50,000 per annum (whether one or more policies) issued after Feb 1, 2021 would not be exempt u/s 10(10D). If there are multiple policies and aggregate premium is more than Rs 2.50 lacs, then exemption would be restricted to policies having aggregate premium upto Rs 2.50 lacs.

Those would be treated as capital assets and would be taxed accordingly.



However, if amount is received by nominee on death of insured, it would be exempt.

15. Important: Sec 10(11) and Sec 10(12): Interest attributable to employees contribution to provident fund in excess of Rs 2.50 lacs in a year shall no more be exempt under these sections. It would be regular income and taxable.

If there was no contribution to the fund by employer and entire contribution was done by employee, then in such case, the above limit of Rs 2.50 lacs would be read as Rs 5 lacs.

The provision is applicable to contributions made on or after Apr 1, 2021.

16. Important: Clauses (iiiad) and (iii ae) of Sec 10(23C): Limit of gross receipts of Rs 1 crore for claiming exemption for educational institution or hospital raised to Rs 5 crore. Further, **very important** explanation added to clarify that if any person has both educational and hospital activities, then the limit of Rs 5 crore would apply to both activities put together.

For the purposes of clauses (iv), (v), (vi) or (via) of Sec 10(23C), it was clarified vide Finance Act 2020 that corpus donations shall not form part of income. Now it is stated that provided these corpus donations are invested in any of the modes specified in Sec 11(5).

It is also clarified that application for charitable or religious purposes from corpus shall not be treated as application of income. It shall be treated as application in the year in which that amount is invested back in any of the modes specified u/s 11(5) out of the income of that year.

Important: It is also clarified that application for charitable or religious purposes from loan or borrowing shall not be treated as application of income. It shall be treated as application in the year in which that loan or borrowing is repaid back out of the income of that year.

After 20th proviso, it is clarified that for the purpose of calculation of application of income, only current year application shall be considered without giving benefit of any excess application of any of the earlier years.

17. Sec 10(23FE): Some relaxation for claiming exemption in case of certain foreign investments.
18. New Sec 10(23FF): Some relaxation to non residents from capital gains on transfer of shares in certain conditions.



19. New Sec 10(48D) and 10(48E) inserted: Income tax exemption for certain years to institution established for financing the infrastructure and development set up under an Act of Parliament.
20. Important: Some good clarifications in Sec 11:
 - a. Amendment in Sec 11(1)(d): Corpus fund received should also be invested in any of the modes specified in Sec 11(5).
 - b. Application of money from corpus fund shall not be considered for normal application of income.
 - c. Application from any loan or borrowing shall not be treated as application of income. However, repayment of loan shall be treated as application of income.
 - d. It is clarified that excess application of any previous year shall be ignored and no benefit of it can be attached to any subsequent year.
21. Sec 32: Depreciation shall no more be allowed on Goodwill of a business or profession.
22. Sec 36(1)(va): It is clarified that provisions of Sec 43B shall not apply and shall be deemed never to have applied for determining 'due date' for this clause. It means, if any sum (PF, ESI etc) is considered as income here, it shall not be allowed on payment basis u/s 43B. This might be because of contradictory judgements that have come recently.
23. Amendment in definition of written down value (WDV) u/s 43(6) – Adjustment on account of non allowability of depreciation on goodwill.
24. Sec 43B: Similar retrospective clarification as inserted in Sec 36(1)(va) above.
25. Sec 43CA: Actual transaction value is acceptable if stamp duty value is not more than 110% of transaction value. Otherwise, taxation is applicable as per stamp duty valuation. This relaxation of 10% is increased to 20% in case of **residential unit** if following conditions are satisfied:
 - a. Transfer takes place between Nov 12, 2020 to Jun 30, 2021.
 - b. It is first time allotment to buyer.
 - c. Consideration does not exceed Rs 2 crore.
 - d. Such residential unit should be an independent housing unit.
26. Sec 44AB: In case where cash transactions are less than 5% of total transactions, limit for audit was raised to Rs 5 crore. Now, from FY 21-22, it is further raised to Rs 10 crore.



27. Scope of Sec 44ADA reduced: Earlier it was applicable to any Indian resident person. Now, this section would be applicable only for Individual, HUF or Partnership Firm (other than LLP), who is resident in India.
28. Sec 44DB: Special provision for computing deductions in the case of business reorganization of co-operative banks to include resultant banking company besides successor co-operative bank.
29. Sec 45(1B): If any amount is received under ULIP for which exemption is not available u/s 10(10D), then it would be taxable as capital gains.
30. Important: Sec 45(4) replaced: Provisions related to capital gain where capital asset is received at the time of dissolution or reconstitution of firm, AOP or BOI are explained.
31. Sec 47: There is amendment in Sec 44DB to include resultant banking company. Consequential changes in clauses (vica) and (vicb).
32. Sec 50B: Sub section (2) amended to state that in case of slump sale, fair market value (calculated in the prescribed manner) of the capital assets as on the date of transfer shall be deemed to be full value of consideration.
33. Sec 54GB: Deduction may be claimed under this Section by investing in eligible start up upto Mar 31, 2021. This sunset date is extended to Mar 31, 2022.
34. Sec 55(2)(a): Some clarification for ascertaining cost of acquisition in certain cases.
35. Sec 80EEA: Interest deduction under this section is allowable if loan is sanctioned upto Mar 31, 2021. It is extended to Mar 31, 2022.
36. Sec 80IAC: Sunset date for claiming deduction for eligible start up extended from Mar 31, 2021 to Mar 31, 2022.
37. Sec 80IBA: Sunset date for claiming deduction for eligible housing projects extended from Mar 31, 2021 to Mar 31, 2022.

Also, benefit extended for developing and building rental housing projects. But meaning of rental housing project is yet to be notified.
38. New Sec 89A: If a resident person had opened account in a notified country while he was resident of that country, then any income accruing thereon (if it is to be



- taxed on receipt basis in that country) would be taxed in India in such manner as may be prescribed.
39. Sec 112A: Amount received under ULIP which is not exempt u/s 10(10D) would be taxable under this Section @ 10% on gain in excess of Rs 1 lac.
 40. Sec 115JB: Dividend has now become taxable. There is consequential amendment for calculation of profit for MAT.
 41. Sec 139: Extended due date for filing of return is applicable for audited firms and its partners. Such extended would also be applicable to wives of such partners if provisions of Sec 5A (apportionment of income between spouses governed by Portuguese Civil Code) are applicable to such spouse.
 42. Important: Sec 139(4): Belated return could be filed upto end of AY (ie Mar 31). Now, this time limit is reduced to Dec 31 (ie by three months) of the AY.
 43. Important: Sec 139(5): Return filed u/s 139(1) or 139(4) could be revised upto end of AY (ie Mar 31). Now, this time limit is also reduced to Dec 31 (ie by three months) of the AY.
 44. Important: Sec 143(1):
 - a. Time limit for sending intimation was one year from end of financial year in which return is made. Now it is reduced to nine months.
 - b. Scope of disallowance as per clause (v) of Sec 143(1)(a) is increased. If return is filed beyond due date u/s 139(1), then there shall be applicable disallowance u/s 10AA or any Section under Chapter VIA Part C – ie Sec 80H to 80TT.
 45. Important: Sec 143(2): Notice for scrutiny assessment could be served upto six months from end of FY in which return is furnished (ie September). Now it is reduced to three months (ie June).
 46. Important: Provisions related to income escaping assessment u/s 147, 148 have been replaced.
 - a. Assessing officer may also assess on any fresh issue which comes to his notice subsequently in the course of proceedings u/s 147. Thus, scope of section is increased considerably.
 - b. Information with AO which suggests that income chargeable to tax has escaped assessment has been explained. It is different from erstwhile section.
 - c. New Sec 148A which deals with inquiry before issuing notice u/s 148 and opportunity of being heard.



47. Important: Sec 149: Time limit for issue of notice u/s 148 reduced to three years if income escaped is less than Rs 50 lacs. It is however increased to ten years if escaped assessment is Rs 50 lacs or more.
48. Sec 151 related to sanction for issue of notice u/s 148 or 148A replaced.
49. Important: Sec 153: Time limit for completion of assessment u/s 143 or 144 is further reduced from AY 2021-22 onwards. Accordingly, a time barring chart may be prepared as below:

Sl	AY	Time limit for completion of assessment	Remarks
1	2017-18	Dec 31, 2019	21 months from end of AY
2	2018-19	Sep 30, 2020 (however, extended due to Covid)	18 months from end of AY
3	2019-20	Mar 31, 2021	12 months from end of AY
4	2020-21	Mar 31, 2022	12 months from end of AY
5	2021-22	Dec 31, 2022	9 months from end of AY

50. Important. New Sec 194P: In case of specified senior citizen (age > 65 years), TDS shall be computed by specified bank after giving deductions under chapter VIA and rebate u/s 87A. Such specified senior citizen would not be required to file return u/s 139. Conditions are:
- Applicable to individual, who is resident of India and who has 65 years or more at any time during previous year.
 - Such individual has only pension income and interest income and both these are in the same specified bank.
 - Such individual has furnished a prescribed declaration to the specified bank.
51. Important and draconian: New Sec 194Q applicable from July 1, 2021: Buyer shall be required to deduct TDS @ 0.1% at the time of credit or payment to the seller, if purchases exceed Rs 50 lacs during the year. This section would be applicable to buyer if its turnover during the preceding financial year is more than Rs 10 crore.

This section is not applicable if TDS provision is applicable under any other provision of the Act or TCS is applicable under any provision, other than u/s 206C(1H).



It means if TDS provisions are applicable u/s 194Q, then TCS on sales u/s 206C(1H) would not be applicable.

Rate of 0.1% would be applicable where PAN of seller is available. If PAN of seller is not available, TDS would be applicable @ 5% as per Sec 206AA.

Issue: What is meant by turnover? Whether net of GST or inclusive of GST?

52. Important and draconian: New Sec 206AB wef July 1, 2021: Where TDS is applicable and deductee fulfils following conditions:

- He has not filed ITR for two (both) immediately previous years for which due date for filing ITR u/s 139(1) has expired.

It means if deductee has filed return for even one year out of preceding two, then provisions of this section shall not be applicable.

- Aggregate of TDS and TCS in each of the above two previous years is equal to or more than Rs 50 thousand.

It means if amount of TDS and TCS is less than Rs 50,000 in any one year out of preceding two, then provisions of this section shall not be applicable.

Also, in my opinion, it is important to note that total of TDS and TCS is not with respect to deductor but total amount for that deductee from all deductors put together. How to identify the same can be a task. Deductor may require copy of 26AS of deductee.

Then TDS would be applicable at higher of the following rates:

- i. Twice the rate specified in the relevant provision of the Act,
- ii. At twice the rate or rates in force,
- iii. At the rate of five percent, or
- iv. If provisions for Sec 206AA are applicable, rate of TDS as per Sec 206AA.

Provisions of this Section are not applicable TDS under Sections – mainly 192 and 194N and others - 192A, 194B, 194BB, and 194LBC. Also, provisions of this section shall not be applicable to non-resident who does not have a PE in India.

53. Important and draconian: New Sec 206CCA wef July 1, 2021: It is for TCS on same lines as Sec 206AB for TDS.

Where TCS is applicable and collectee fulfils following conditions:



- He has not filed ITR for two (both) immediately previous years for which due date for filing ITR u/s 139(1) has expired.
- Aggregate of TDS and TCS in each of the above two previous years is equal to or more than Rs 50 thousand;

Then TCS would be applicable at higher of the following rates:

- v. Twice the rate specified in the relevant provision of the Act,
- vi. At the rate of five percent, or
- vii. If provisions for Sec 206CC are applicable, rate of TCS as per Sec 206CC.

Provisions of this section shall not be applicable to non-resident who does not have a PE in India.

54. Sec 234C: Interest on deferment of advance tax would not be applicable dividend income, except dividend income u/s 2(22)(e).
55. Sec 234F amended to delete the clause related to late fee of Rs 10,000 if return is filed beyond Dec 31 because it would not be possible to file return beyond Dec 31 from AY 2022-23.
56. Sec 234H inserted – Late fee of Rs 1,000 for default relating to intimation of Aadhar number after the due date.
57. 245A, 245AA etc: Provision for constitution of one or more Interim Boards for Settlement wef Feb 1, 2021. Existing Income-tax Settlement Commission shall cease to exist wef Feb 1, 2021.
58. New Chapter XIX-AA inserted consisting of Section 245MA regarding constitution and working of one or more Dispute Resolution Committee in certain cases.
59. Important: Sec 255: Scheme for Faceless Appellate Tribunal introduced.
60. Sec 281B: Scope of provisional attachment to protect revenue enhanced. Now, it can be done even in cases of penalty u/s 271AAD (penalty for false entry etc in books of accounts) where amount of penalty is likely to exceed Rs 2 crore.



GST RELATED IMPORTANT AMENDMENTS IN UNION BUDGET 2021:

All amendments related to CGST and IGST shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Central Goods and Service Tax, 2017

1. Important: Clause (aa) added in Sec 7(1) related to scope of supply: Activities or transactions by a person to its members or constituents or vice versa shall be covered in the definition of supply. This seems to be introduced to remove anomaly due to different judgements related to Rotary Club etc.
2. Sec 16(2): One more condition added for claiming set off – supplier must have filed GSTR 1 and included details of such supply in his GSTR 1.
3. Important: Sec 35(5) omitted: Provision of GST audit in Form GSTR 9C removed. It seems to be wef FY 2021-22. Therefore, GST audit should be applicable for FY 2020-21.
4. Sec 44: Annual return - Since reconciliation statement in Form 9C is removed, it is recommended that annual return in Form GSTR 9 may include a self certified reconciliation statement.
5. Important: Sec 50(1): Interest – Proviso amended with retrospective effect from July 1, 2017 to state that Interest would be applicable on net liability payable in cash, except in case where return is furnished after commencement of any proceeding u/s 73 or 74.
6. Important: Sec 75(12) – Explanation inserted to say that tax liability as per outward supplies (GSTR 1) filed u/s 37 but not included in return furnished u/s 39 (GSTR 3B) would be treated as 'self-assessed tax'.
7. Sec 83(1) substituted: After initiation of Chapter XII (assessment), chapter XIV (inspection, search, seizure etc), chapter XV (demand and recovery), provisional attachment of property may be done to protect revenue.
8. Sec 107(6): No appeal shall be filed against an penalty order u/s 129(3) (ie penalty in case of detention or seizure of goods or conveyances) unless 25% of such penalty is paid.



9. Sec 129(1): Penalty amount in case of detention of goods and conveyance increased in both cases where owner of goods comes forward for payment of such tax and where he does not come forward.
10. Sec 129(3): Time limits of 7 days from detention of goods or conveyance for issuance of penalty notice and 7 days from issuance of notice for issuance of penalty order have been prescribed.
11. Sec 129(4): Opportunity of being heard shall not be provided for determining tax and interest. It shall now be provided only for determining penalty.
12. Sec 129(6): If penalty is not paid within 15 days of date of receipt of penalty order, goods or conveyance may be sold or disposed of to recover the penalty.

However, transporter may get his vehicle released on payment of penalty or Rs 1 lakh, whichever is less.

If goods are perishable or hazardous, then period of 15 days may be reduced by proper officer.

13. Sec 152: Bar on disclosure of information – Till now, information collected u/s 150 or 151 could not be used for the purpose of any proceedings under this Act. But now, it could be so used after giving the person an opportunity of being heard.
14. In view of amendment in Sec 7(1), para 7 in Schedule II of CGST Act is deleted wef July 1, 2017.

Integrated Goods and Service Tax, 2017

15. Sec 16(1): Zero rated supply – supply to SEZ developer or unit shall be considered as zero rated only if it is for authorized operations.
16. Sec 16(3): Person making zero rated supply had an option to supply without payment of tax under LUT and claim refund of ITC or on payment of IGST and claim refund of the same.

Now, this option is withdrawn. It has to be under LUT only. Only the class of persons or goods or services, as may be specified, would be eligible to supply on payment of IGST.



Also, if proceeds of zero rated supply are not realized, then the registered person shall be liable to deposit the refund received along with interest under Section 50.

IMPORTANT AMENDMENTS PROPOSED IN MAHARASHTRA BUDGET 2021:

1. Maharashtra State budget was presented by FM Mr Ajit Pawar on Mar 8, 2021. Following are important amendments:
 - Concession of 1% in stamp duty on house property if house is purchased in the name of a woman.
 - State excise duty on branded country liquor increased to 220% of manufacturing cost or Rs 187 per proof litre, whichever is high.
 - VAT on sale of liquor as prescribed in Schedule B is increased from 60% to 65%. And VAT on sale of liquor as prescribed in Sec 41(5) is increased from 35% to 40%.

Disclaimer:

All efforts have been made to ensure correctness of data. However, readers are advised to confirm from their own sources also. Interpretations given above are our personal opinions at M/s Umesh Agrawal and Associates. We are not responsible for any loss arising due to the above information.

