

NEWSLETTER NO 27 – UNION AND STATE BUDGET 2022

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INCOME TAX RELATED IMPORTANT AMENDMENTS IN UNION BUDGET 2022:

Maximum amendments would be Applicable from FY 2022-23

- 1. This was fourth full budget presented by FM Mrs Nirmala Sitaraman. It was presented on Feb 1, 2022. She was kind enough to sum it up in 1 hour 35 minutes this time.**
- The proposed amendments shall be largely applicable from financial year 2022-23, ie, assessment year 2023-24. Amendments related to CGST Act shall be applicable from the date of their notification in the official gazette.
- 2. Lok Sabha passed the Finance Bill, 2022 on Mar 25, 2022 with more than 35 changes. President assented on Mar 30, 2022.**
- No change in income tax rates. The same old and new options continue.
- There is change in surcharge in some cases. SC on LTCG capped at 15%. Earlier, it was capped only for listed equity shares and mutual funds. But now it is extended to all financial assets. but details not clear to me.
- Sec 2(47A): Concept of virtual digital assets (eg crypto currencies) introduced.
- Sec 13(10) and 13(11) inserted: If conditions of 12A are violated, then income shall be calculated after considering normal expenditures.
- Sec 17(2) perquisites shall not include any expenditure by employer in respect of any illness relating to Covid 19 subject to such conditions as may



be prescribed. Such expenditure may be incurred on any employee or any member of his family.

8. Sec 40(a)(ii): Income-tax is not an allowable expense. Surcharge and education cess shall also not be an allowable expense – retrospective amendment by way of insertion of an explanation. Claim of surcharge or cess shall be treated as under-reporting of income u/s 270A(3) and exceptions as provided u/s 270A(6) shall not be applicable to such assessee.
9. As per Sec 56(2)(x), any benefit received in excess of Rs 50,000 from non-relatives is taxable. Exceptions added to this clause wef 1-4-2000 (ie retrospectively from FY 19-20) to state that –
 - Any amount received by an individual from any person for his or any of his family members' Covid treatment. It would be subject to such conditions as may be prescribed.
 - Any amount received by the family from employer of deceased employee due to Covid.
 - An amount upto Rs 10 lacs received by the family from any person in case of death due to Covid. Such amount should be received within 12 months of death and exemption would be subject to such conditions as may be prescribed.

For the purpose of above, family would mean spouse, children and wholly or mainly dependent parents, brothers or sisters of the individual.

10. Virtual digital asset (eg cryptocurrency) also included in definition of property for the purpose of Sec 56(2)(x).
11. Very big amendment: Sec 68 – Till now, if there was any credit in the books of a Company, then the person in whose name credit is appearing also had to offer an explanation about the nature and source of such sum and such explanation should be to the satisfaction of Assessing Officer.

Now, this provision is extended to all persons. It means if any proprietorship, partnership or LLP etc obtains any unsecured loan or any money on chitthi, then he will have to prove the source of giver also. Otherwise that amount would be added to his income and tax @ 75% would have to be paid and penalty @ 10% of such amount.



The above frightening provision would be applicable from FY 22-23.

12. If any income is found to be undisclosed income consequent to search u/s 132, requisition of books u/s 132A or survey u/s 133A (other than TDS survey), then such income shall not be allowed to set off against any loss or unabsorbed depreciation, whether of the same year or earlier years.
13. U/s 80CCD, employer contribution in case of state government employees was not taxable upto 10% of salary. Now, it is retrospectively amended from FY 19-20 to 14% (ie at par with central government employees).
14. Sec 80DD: If anyone has any dependent with disability and that person has contributed any sum under any scheme by LIC or other insurer for maintenance of dependent, then deduction of such contribution was allowable only if the scheme provided for payment to dependent after death of the subscriber.

Now, it is also provided that the deduction would be allowable even if the scheme allows payment to dependent if subscriber has attained age of 60 years and contribution to the scheme has been discontinued.

Further, the annuity or lumpsum received by dependent if above condition is satisfied would not be taxable in the hands of the subscriber.

15. Sunset date for Sec 80IAC (startups) extended from March 31, 2022 to March 31, 2023.
16. Sec 115BAB: To avail concessional tax rate of 15% for new manufacturing companies which commence production after Oct 1, 2019, last date of commencement of production extended from March 31, 2023 to March 31, 2024. If anyone has own money (not borrowed from anyone) and can handle some complexities of company act, then this provision is really good.
17. Sec 115 BBH inserted: Tax on income from transfer of virtual digital asset shall be taxed at 30%. No allowance for any expenditure shall be allowed, no set off of loss and loss shall not be allowed to be carried forward. Quite a harsh provision.



Issue: Whether loss on account one VDA would be allowed against gain from another VDA – Answer seems No. Although Dr CA Girish Ahuja in his comments on budget has stated that it would be allowed.

Both the clauses (a) and (b) of Sec 115BBH(2) attempt to ring-fence the losses arising from VDA. It neither allows any loss to set-off against income from VDA nor allows loss from VDA to set-off against any other income. However, would such prohibition also apply to set-off losses from one category of VDA with income from another or the same category of VDA was not clear from the literal interpretation of sub-section (2) of section 115BBH.

To make this clear, the Finance Act 2022 has omitted the word “other” from clause (b) of sub-section (2) of section 115BBH. Thereby, loss from the transfer of VDA shall not be allowed to be set off against income computed under any provision of this Act. As the expression used in clause (b) is now “any provision of this Act”, it would include even income computed under section 115BBH, i.e., income from transfer of VDA. Thus, in simple words, any loss arising from the transfer of VDA would be a dead loss. It will not be allowed to be adjusted even against income arising from the transfer of another VDA (whether of the same category or not

The income from VDA shall be taxable under Section 115BBH only if it arises on the transfer of VDA. The word ‘transfer’ is defined under section 2(47) of the Income-tax Act in relation to capital asset. As ‘transfer’ is defined under the Act only in the context of the capital asset, it could be argued that section 115BBH would not apply in cases where VDA has been held as a trading asset and income from transfer thereof is taxable under the head of business or profession.

To avoid any controversy as to the applicability of section 115BBH in a case where VDA is not held as a capital asset, the Finance Act 2022 has inserted sub-section (3) under section 115BBH to provide that the definition of transfer shall apply to any VDA, whether held as a capital asset or not. Thus, income from VDA shall be computed and taxed as per section 115BBH irrespective of the fact whether such income is covered under the head business or profession, capital gain, or other sources.



18. Sec 115BBI inserted: Any income which becomes taxable under clauses (iv), (v), (vi) or (via) of Sec 10(23C) shall be taxable at 30%. No allowance for any expenditure shall be allowed, no set off of loss shall be allowed.
19. Sec 115JC: AMT in case of co-operative societies reduced to 15% from 18.50%.
20. Some changes have been made in Sec 115TD (tax on accreted income at MMR). Basic thing remains same that accreted income shall be taxable at MMR.
21. Important: Sec 139(8A) inserted: An updated return may be filed upto 24 months from the end of relevant AY, whether or not return is filed u/s 139(1), (4) or (5). However, return of loss or a return having effect of decreasing the tax liability cannot be filed under this section. Such return can also not be filed if it results in refund or increase in amount of refund claimed. Such return can also not be filed in certain situations as mentioned. Such return should be accompanied by proof of payment as mentioned in Sec 140B.

As per Sec 140B, 25% of additional tax and interest shall be payable if return is filed upto 12 months from end of relevant AY. 50% would be payable if return is filed beyond 12 months upto 24 months. Legitimate advance tax, TDS, TCS, relief etc would be allowed while calculating additional tax and interest.

In case of a person against whom search, survey or requisition u/s 132, 132A or 133A [other than Sec 133A(2A)] has been initiated, then such person cannot file updated return for the previous year in which it is initiated or any earlier year.

Return of loss filed under section 139(3) can also be updated:

The Finance Act 2022 has inserted the *fourth proviso* to section 139(8A) to provide that where a person has furnished a return of loss under section 139(3), he shall also be allowed to furnish an updated return. However, such an **updated return should be a return of income**. In other words, the updated return should not be a return of loss.



For example, if a person had filed a return of loss under section 139(3) claiming carry forward of loss under the business or profession of Rs. 10,00,000. Now, he wants to disclose the additional business income of Rs. 8,00,000 in the updated return. Whether he would be able to file an updated return in such a case, assuming he didn't have any income or loss under any other head?

No, the person shall not be allowed to file an updated return in this case because after adjustment of carried forward business loss (Rs. 10,00,000) against additional business income (Rs. 8,00,000), the loss of Rs. 2,00,000 will remain, and an updated return cannot be a return of loss.

However, if, in this case, the additional business income is more than Rs. 10,00,000, then the person shall be allowed to file the updated return because after adjustment of carried forward loss against additional business income, the return will be a return of income and not a return of loss.

The Finance Act 2022 has inserted the *fifth proviso* to section 139(8A) to provide that **if** as a result of furnishing of an updated return for a previous year, the following is reduced for any subsequent year, then the person shall be required to file the updated return for each such subsequent year:

- loss or any part thereof carried forward under Chapter VI; or
- unabsorbed depreciation carried forward under sub-section (2) of section 32; or
- tax credit carried forward under section 115JAA; or
- tax credit carried forward under section 115JD

22. Sec 144B: This section related to faceless assessment changed completely.

23. Sec 148: Grounds of reopening of assessment increased.

24. Sec 149: Important change: Time limit for reopening of assessments was changed wef 1-4-2021. It is 3 years for income escapement upto Rs 50 lacs and 10 years for above Rs 50 lacs. Income escapement (in case of more than Rs 50 lacs) had to be represented in the form of an asset. But now its scope is increased to asset, expenditure in respect of a transaction or in relation to an event or occasion; or any entry or entries in the books of account. Further such as asset is acquired in two or more years, or where an expenditure is incurred in two or more years, then notice u/s 148 shall be issued for every such assessment year.



25. Sec 153: Modification of time limit for assessment for AY 2020-21:

The Finance Act 2022 has increased the time limit for completion of assessment of assessment year 2020-21 from 12 months to 18 months. The revised time limit for completion of assessment under Section 143(3) and Section 144 shall be as under:

Assessment Year	Time limit for completion of assessment
Assessment Year 2021-22 and onwards	Within 9 months from the end of the Assessment Year in which income was first assessable. For eg. For AY 21-22, it is Dec 31, 2022.
Assessment Year 2020-21	Within 18 months from the end of the Assessment Year in which income was first assessable, ie Sep 30, 2022
Assessment Year 2019-20	Within 12 months from the end of the Assessment Year in which income was first assessable, ie Mar 31, 2021
For Assessment Year 2018-19	Within 18 months from the end of the Assessment Year in which income was first assessable, ie Sep 30, 2020
Up to Assessment Year 2017-18	Within 21 months from the end of the Assessment Year in which income was first assessable

This amendment extends the time limit for completion of assessment for assessment year 2020-21, which is ending on 31-03-2022 [excluding the extension available under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the notification issue therein, if any], to 30-09-2022. It is to be noted that the extension is for the assessment year 2020-21, and the time limit for completion of assessment for assessment years 2021-22 or 2019-20 has not been amended.

26. Sec 153A:



The limitation period for completion of assessment in search/requisitioned cases is given in the below table:

Date of search	Limitation period
On or after 01-04-2021	Within 12 months from the end of the financial year in which notice was served
Between 01-04-2020 and 31-03-2021	On or before 30-09-2022
Before 01-04-2019 and 31-03-2020	Within 12 months from the end of the financial year in which last of the authorisations for search/requisition was executed

27. Sec 158AB: Inserted to avoid repetitive appeals.
28. Important change in Sec 194IA: TDS @1% is applicable in case of property transaction of more than Rs 50 lacs. It was applicable on transaction value. Now, it is proposed that it would be on transaction value or stamp duty value (SDV), whichever is higher.

Thus, TDS would be applicable if SDV is more than Rs 50 lacs even if transaction value is less than Rs 50 lacs. Also, it would cause difference in your reported value and amount appearing on 26AS, thereby leading to notices.

29. Another important change: Sec 194R inserted wef July 1, 2022 – if any benefit or perquisite is given arising from business or profession exceeding Rs 20,000 in a year is given, then TDS @10% would be applicable. In case benefit is given in kind, cash would have to be recovered for payment of TDS before release of benefit.

Above provision would not be applicable if deductor is an individual/ HUF and his turnover is less than Rs 1 crore (business) or Rs 50 lacs (profession) in previous year.



This would affect free gifts received by doctors, tour packages received by businessmen, any other non cash benefit received like motor cycle, car etc.

30. Sec 194S inserted wef July 1, 2022: TDS on payment for virtual digital asset (eg cryptocurrency) @1% would be applicable from 1-7-2022 if aggregate value of consideration exceeds Rs 10,000 during a financial year.

In case of specified person, it would be applicable if aggregate value of consideration exceeds Rs 50,000 during FY.

Provisions of Sec 203A (requirement of TAN), Sec 206AB (special provisions for non-filers of ITR) would not be applicable to specified person. Specified person means an individual/ HUF whose turnover is less than Rs 1 crore (business) or Rs 50 lacs (profession) in previous year.

TDS is applicable even if consideration is given in kind. The payer has to ensure that TDS is properly deducted and paid.

If provisions of Sec 194O (payment of certain sums by e-commerce operator or e-commerce participant) and provisions of this section are simultaneously applicable, then TDS would be deducted under this Section.

Another very important change at the time of passing of Finance Act 2022:

Sub-section (8) and sub-section (4) of section 194S of Finance Bill 2022 provide as under:

- Where a transaction is subject to TDS under Section 194-O and Section 194S, tax shall be deducted under Section 194S [sub-section (8)].
- Where a transaction in respect of which tax has been deducted under section 194S, no tax shall be deducted or collected under any other provision of the Act [sub-section (4)].

The Finance Act 2022 has omitted sub-section (8), and sub-section (4) is substituted with the exact language used in omitted sub-section (8). In other words, proposed sub-section (8) substitutes sub-section (4). Thereby, if a transaction is subject to TDS under section 194S, the deduction or collection of tax in respect of such transaction can also be made under any other provision of the Act except section 194-O.



For example, if an architect receives bitcoin from his client as consideration for services, then the architect shall be liable to deduct tax under section 194S as he is giving the consideration in the form of architecture services to the client transferring the VDA and, on the other side, the client may also be liable to deduct tax under section 194J as he is making payment in the form of VDA for services provided by the architect.

Question: Whether it means that cryptocurrency is legalized? Answer seems 'No'.

31. Important change: Sec 206AB (special provisions for non-filers of ITR): This section was not applicable to TDS under Sec 192 (salary), 194N (cash withdrawal from bank) and some more sections. Three more sections added to this list – Sec 194IA (transfer of immovable property), 194IB (rent by certain Individuals/ HUFs) and 194M (payment of contract, commission, professional fees etc paid by certain Individuals/ HUFs).

Under this section, TDS is deductible at higher of double the regular rate or 5%.

Another important change is - Earlier, this section was applicable if deductee had not filed ITR for two years and TDS/ TCS was more than Rs 50,000 in each of the two years. Now, it is stated that this provision would be applicable where ITR is not filed even for one year for which due date u/s 139(1) has elapsed and amount of TDS/ TCS is more than Rs 50,000.

Similar amendment in Sec 206CCA (special TCS provisions in case of non-filers of ITR). Earlier, this section was applicable if collectee had not filed ITR for two years and TDS/ TCS was more than Rs 50,000 in each of the two years. Now, it is stated that this provision would be applicable where ITR is not filed even for one year for which due date u/s 139(1) has elapsed and amount of TDS/ TCS is more than Rs 50,000.

32. Sec 239A inserted: Where as per written agreement, TDS u/s 195 is to be borne by payer, then after payment of such TDS if payer claims that no TDS was deductible, then he may apply for refund within 30 days of payment. AO may allow or reject the same.

Appeal provision u/s 248 (appeal to CIT in above cases) deleted wef 1-4-2022 in view of above amendment.



33. Sec 271AAB – Penalty in case of search could be levied by AO. Now, it can be levied by CIT (Appeal) also.
34. Sec 271AAC – Penalty in case of income determined u/s 68, 69, 69A, 69B, 69C or 69D (ie undisclosed income) could be levied by AO. Now, it can be levied by CIT (Appeal) also.
35. Sec 271AAE – penalty provisions inserted in case of certain defaults by trust. It would be 100% (200% in case of repeat violation) in case of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of Section 13.
36. Penalty u/s 272A (Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.) increased from Rs 100 per day to Rs 500 per day.



GST RELATED IMPORTANT AMENDMENTS IN UNION BUDGET 2022:

Some 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: Sec 16(2):** Earlier there were four conditions for availing ITC. Fifth condition that ITC should be reflected in GSTR 2B is added wef 1-1-2022. Now, sixth condition is added that 6 more conditions as specified u/s 38 should be satisfied.
2. **Relaxation: Sec 16(4) -** Time limit for availing any left over ITC related to a FY was upto Oct 20 of subsequent FY. Now, it is relaxed by 40 days upto Nov 30. This is a very important change since people come to know of their left over ITC only during audit in Sep-Oct and by that time, time limit is already over.

Similar is the change proposed in Sec 34(2) for claiming credits related to debit or credit notes and in Sec 37(3) related to rectification of errors. There are also other consequential amendment wherever applicable.

3. **Sec 29(2)(b):** Registration of a composition person may be cancelled if he fails to file annual return upto 3 months from due date. Since due date of filing annual GSTR 4 is April 30, it means, registration may be cancelled if return is not filed upto July 31.
4. **Sec 29(2)(c):** Registration of a taxable person could be cancelled if he fails to furnish returns for 6 continuous months. Now, it is stated that 'such continuous tax period as may be specified'. Thus, now they may prescribe any smaller period by way of notification and definitely it would be smaller than 6 months.
5. **Sec 37:** In GST, it is found that many provisions are introduced by way of rules or notifications which do not have legal backing from sections. One such thing was not allowing to file GSTR 1 if GSTR 3B is not filed. Now, it is given statutory backing.



The entire two way communication system which was initially proposed by way of GSTR 1, 2 and 3 is scrapped. GSTR 2 is scrapped and GSTR 1 has been made supreme.

Sec 37(4) inserted – GSTR 1 of any tax period cannot be filed if any of earlier periods GSTR 1 are not filed.

6. Sec 38 which earlier related to furnishing of details of inward supplies is totally changed. Six additional conditions for claiming ITC introduced and these are:
 - i. For such period of taking new registration as may be prescribed.
 - ii. For any person who has defaulted in payment of tax for such period as may be prescribed.
 - iii. Where liability as per GSTR 1 exceeds liability as per GSTR 3B by such limit as may be prescribed.
 - iv. Where ITC is claimed exceeding such limit as may be prescribed.
 - v. Where registered person has defaulted on payment of tax as per Sec 49(12) subject to such conditions and restrictions as may be prescribed.
 - vi. For such of persons as may be prescribed.
7. Sec 39(5): Due date of furnishing returns by non-resident taxable person is reduced from 20th to 13th of next month.

Important - Sec 39(10) – GSTR 3B of any tax period cannot be filed if any of the earlier tax periods 3B is not filed or GSTR 1 of earlier tax period is not filed. It means if GSTR 1 of June 2022 is not filed, then GSTR 3B of July 2022 cannot be filed.

8. Sec 41 replaced: If ITC is claimed and supplier has not paid taxes, then recipient shall reverse ITC along with applicable interest. If subsequently, supplier has paid taxes, recipient may re-avail the ITC.

However, it is not clear what would be time limit for this. In my opinion, there should not be any time limit for this. Restriction of time limit is on claiming ITC u/s 16.

9. Sec 42, 43 and 43A omitted - related to Matching, reversal and reclaim of input tax credit; Matching, reversal and reclaim of reduction in output tax liability and Procedure for furnishing return and availing input tax credit.



10. Sec 47: Late fee in respect of TCS returns (e-commerce operator) introduced.
11. Important: Sec 49(10): Subject to some conditions, balance in electronic cash ledger may be transferred to distinct person also.
12. Sec 49(12) inserted: Restriction on utilization of maximum amount of ITC under electronic credit ledger for discharging output liability (eg Rule 86B) may be prescribed.
13. Very important - Sec 50(3): Interest would be applicable on ITC wrongly availed and utilized. It would be effective retrospectively from July 1, 2017.
14. Sec 52(6): Corrections in TCS returns may done upto Nov 30 of next year (earlier it was allowed upto Oct 20 of next year).
15. Sec 54 – meaning of relevant date changed little bit for refund in case of zero rated supplies to SEZ unit or developer.
16. Worst part of the budget is no roadmap given for establishment of Tribunal. GST tribunal not set up even after four and half years of its implementation now. Small taxpayers are not able to afford reaching High Courts.

Integrated Goods and Service Tax, 2017

1. All amendments in IGST are corresponding amendments of CGST. No separate change than proposed in CGST Act.

OTHER IMPORTANT AMENDMENTS PROPOSED/ ANALYSIS IN UNION BUDGET 2022:

1. RBI proposes to introduce its own cryptocurrency.
2. India proposes to carbon neutral by 2030 and zero carbon by 2070. So, industrial incentives may be in that direction.
3. Solar energy target is – 200 GW by year 2030.



4. Next year target of 25000 km of national highway.
5. Not a populist budget even after elections in 5 states - no increase in basic ex limit, mediclaim, 80C, home loan interest etc.
6. Fiscal deficit is at 6.9% which is good.
7. MAT on co-op soc brought at par with companies at 15%.
8. Sovereign green bonds would be introduced for financing sustainable economy.
9. Battery swapping policy for electric vehicles.
10. Rationalisation (reduction/ exemption) of basic custom duty on raw materials, input and component for local manufacturing to boost Make in India.
11. Mobiles, Big TV, certain Polished Diamonds to become cheaper.
12. 5 trillion economy target by 2025.
13. Repeal existing SEZ Act and come up with new SEZ Act for more participation of central and state govt.
14. Highest ever GST collection of over 1.40 lakh crore for month of Dec 2021. It may also have effect of inflation.

IMPORTANT AMENDMENTS PROPOSED IN MAHARASHTRA BUDGET 2022:

1. Maharashtra State budget was presented by FM Mr Ajit Pawar on Mar 11, 2022. Following are important amendments:
 - Amnesty scheme for VAT (Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2022) introduced during the period 1-4-22 to 30-9-22. Full exemption upto arrears of Rs 10,000. For waiver in other cases, refer to Annexure A and B to the Settlement Act.
 - VAT on Natural Gas reduced from 13.5% to 3%.



- Time period in which stamp duty paid on earlier deed to be adjusted against subsequent deed, is increased from one year to three years as per the provision of article 5 (g-a) (ii) of Maharashtra Stamp Act.
- Amnesty Scheme under Stamp Act is proposed from 1st April 2022 to 30th November, 2022 for pending penalty dues.
- It is proposed to waive the current Stamp Duty of 0.1 percent levied under the Maharashtra Stamp Act on gold-silver delivery order documents imported into the State of Maharashtra.
- Tax levied by the Maharashtra Maritime Board is being waived for three years.

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.

