



SYNTHESIZING MAJOR TAX PROPOSALS UNION BUDGET 2021-22



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1.	Pillars of The Union Budget 2021-22
2.	Judgment of 'Smifs Securities Ltd' Overturned
3.	'Slump Exchange' brought under the tax net
4.	Amendment to Sec. 45(4)/45(4A)
5.	Tax Audit u/s 44AB & ITR
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10.	Increase in safe harbor limit Sec. 43CA & 56(2)(x)
11.	Taxation of High Premium ULIP
12.	Miscellaneous Proposals

6 Pillars of Union Budget 2021



UNION BUDGET 2021

2.0 Landmark SC Judgment in case of 'Smifs Securities Ltd' overturned [w.e.f. AY 2021-22]

2.1 Background

- ❖ The Hon'ble Apex Court in case of *CIT -vs.- Smifs Securities Ltd [2012] 348 ITR 302 [SC]* allowed depreciation u/s 32(1) by considering 'goodwill' as a depreciable asset
- ❖ This judgment ignited a plethora of cases wherein valuation of goodwill was performed and assessee claimed depreciation for computing their total income.
- ❖ The Memorandum to the Finance Bill, 2021 explains that there may not be a justification in considering 'goodwill' as a depreciable asset and thus, not qualifying for depreciation u/s 32.
- ❖ Thus, the Finance Bill, 2021 proposes to amend a host of provisions of the I.T. Act, 1961 to categorically exclude 'goodwill' from the block of assets, thereby being ineligible for depreciation.

2.2 Our Remarks

- ❖ The above proposal shall adversely affect several cases of corporate amalgamation, mergers and acquisitions wherein depreciation on 'goodwill' was being contemplated to be claimed in A.Y. 2021-22 and subsequent years

3.0 **'Slump Exchange' brought under the tax net [A.Y. 2021-22]**

3.1 Background

- ❖ 'Slump Exchange' involves transfer of an asset in lieu of another asset thereby being non-monetary in nature
- ❖ These transactions have gained prominence in the last few years for not triggering provisions of Sec. 50B r.w.s. 2(42C) of the I.T. Act, 1961
- ❖ The Finance Bill, 2021 proposes to amend the definition of Sec. 2(42C) to include all categories of 'transfer' as defined in Sec. 2(47) to bring into tax net the 'slump exchange' transactions
- ❖ The rationale behind the proposal stems from the fact that such transactions are 'in effect and substance' by way of 'sale' and hence, should be governed by Sec. 50C

3.2 Our Remarks

- ❖ This proposal shall overturn various judicial pronouncements including that of Hon'ble SC in case of *Vatsala Shenoy -vs.- JCIT [2016] 389 ITR 519 [SC]* and Hon'ble Bombay HC in case of *CIT -vs.- Bharat Bijlee Ltd [2014] 365 ITR 258 [Bom]*
- ❖ This step is also expected to have a detrimental impact on corporate transactions of selling entities as going concern without any tax implications

4.0 Payment to Partner in excess of Capital Contribution - Sec. 45(4)/45(4A) [w.e.f. AY 2021-22]

APPLICABILITY

- ✓ Assets are revalued or, self-generated assets are recorded in the books of accounts
- ✓ Payment is made to partner/member in excess of their capital contribution
- ✓ Asset is received by partner/member at the time of dissolution or, reconstitution



MODE OF COMPUTATION

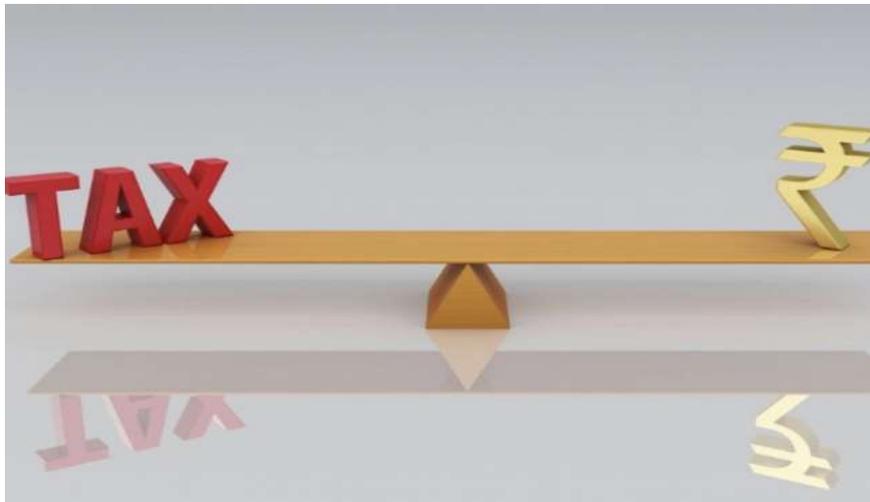
Particulars	Sec. 45(4)	Sec. 45(4A)
Nature of Asset	Capital Asset	Money/ Other Asset
Full Value of Consideration	FMV on date of receipt of asset	FMV on date of receipt of asset
Less : Cost of Acquisition	As per Act	Balance in the Capital Account
Taxable Capital Gain	XXX	XXX

OUR REMARKS

The effect of this proposal shall overturn the judgment delivered by the Hon'ble Apex Court in case of *Thirubuvandas G. Patel -vs- CIT [1999] 236 ITR 515 [SC]* wherein sum paid to partner in excess of balance in his capital account was held not liable to tax.

5.0 Tax Audit u/s 44AB & ITR [w.e.f. AY 2021-22]

- ❖ Relief to senior citizen above 75 years of age from filing of ITR subject to conditions therein
- ❖ Time limit for filing of belated return u/s 139(4) and revised return u/s 139(5) to be filed three months before end of AY or, completion of assessment, whichever is earlier
- ❖ Relaxation from levy of int. u/s 234C on dividend income other than Sec. 2(22)(e)



- ❖ Threshold for audit u/s 44AB proposed to be enhanced from Rs. 5 Cr to Rs. 10 Cr if at least 95% of total receipts and total expenditure are in modes other than cash
- ❖ It is proposed to amend Sec 36(1)(va) and Sec. 43B to allow payment by employer of 'employee contribution' to PF/ESI etc. on or before due date under respective acts. Pursuant to this proposal, decision of the Hon'ble Cal HC in *Peerless General Finance & Investment Co. -vs.- CIT [ITA No. 600 of 2005 dtd. 08-08-2018]* stands reversed

6.0 Reassessment u/s 147 - Revamped [w.e.f. AY 2021-22]

PROCEDURE AS PER NEWLY INSERTED SEC. 148A

- ☞ Before issuance of notice u/s 148, AO shall conduct enquiries and provide an opportunity of being heard to assessee
- ☞ The enquiries shall be conducted after seeking approval from PCIT/PDIT/CIT/DIT if less than 3 years have lapsed from end of AY. For beyond 3 years, approval from PCCIT/PDGIT/CCIT/DGIT shall be required
- ☞ After considering reply of assessee, AO shall decide by passing an order whether the case is fit for issuing notice u/s 148 and then serve a copy along with notice to assessee

TIME LIMIT U/S 149 FOR ISSUANCE OF NOTICE U/S 148

- ☞ Within 3 Years from end of AY. Notice beyond 3 years but not beyond 10 years may be issued if income escaping assessment in form of an asset is Rs. 50 Lacs or more
- ☞ The above shall not apply in any search or requisition cases initiated before 31-03-2021

7.0 Speedy Assessment & Dispute Resolution

PROPOSALS FOR SPEEDY ASSESSMENT

- ✓ Time limit for issuance of notice u/s 143(2) to be reduced to 3 months from end of FY [w.e.f. 01-04-2021]
- ✓ Time limit for passing order u/s 143(3) / 144 to be reduced to 9 months from end of AY [w.e.f. 01-04-2021]



EXPEDITIOUS & TRANSPARENCY IN DELIVERY OF JUSTICE

- ❖ It is proposed to constitute a 'Dispute Resolution Committee' as per Sec. 245MA where returned income is upto Rs. 50 Lacs and aggregate variation proposed is upto Rs. 10 Lacs [w.e.f. 01-04-2021]
- ❖ It is further proposed to constitute a 'Board for Advance Ruling' [w.e.f. 01-04-2021]
- ❖ Faceless proceedings before the ITAT to be notified by a scheme as per Sec. 255 [w.e.f. 01-04-2021]
- ❖ Discontinuance of Income Tax Settlement Commission [w.e.f. 01-02-2021]

8.0 Extension of Tax Holiday

Particulars	Sec. 80-IBA	Sec. 80-EEA	Sec. 80-IAC
Description of deduction	100% deduction of profit derived from business of developing and building affordable housing project	Deduction of upto Rs. 1.50 Lacs in respect of interest on loan taken for residential house property	100% deduction of profit derived from an eligible business by an eligible start-up
Existing Enactment	Approval from Competent Authority is required to be obtained between 01-06-2016 to 31-03-2021.	One of conditions stipulate that loan must be sanctioned on or before 31-03-2021	Start-up must be incorporated on or before 31-03-2021
Proposed Amendment	Approval from Competent Authority may be obtained upto 31-03-2022	The loan may be sanctioned on or before 31-03-2022	The start-up may be incorporated on or before 31-03-2022
Effective From	AY 2022-23	AY 2022-23	AY 2021-22

9.0 Insertion of new Sec. 194Q for TDS [w.e.f. 01-07-2021]

APPLICABILITY

- ✓ Turnover exceeds Rs. 10 Cr in the preceding FY
- ✓ If purchases made from the seller has exceeded Rs. 50 Lacs during the year
- ✓ If transaction is subjected to TCS u/s 206C(1H), then only TDS shall be carried out
- ✓ TDS @ 0.1% if PAN is furnished, else TDS @ 5%
- ✗ If transaction is subjected to TDS/TCS under any Other provision of the Act, then TDS shall **NOT** apply



OUR REMARKS

- ❖ Though the rate of TDS has been kept very low, it will still create compliance issues amongst the deductors falling within the ambit of this section
- ❖ A detailed guideline on the framework of this section shall be largely beneficial to avoid any unnecessary lapses

10.0 Increase in Safe-Harbor Limit for the purpose of Sec. 43CA [w.e.f. AY 2021-22]

BACKGROUND

- ❖ Presently, safe harbor limit of 10% is provided under the provisions of Sec. 43CA, 50C and 56(2)(x)
- ❖ This limit of 10% protects the buyer as well as seller from any tax implication in the event land and/or building is transacted at lower of stamp duty value
- ❖ It is proposed to enhance the limit from **10%** to **20%** for provisions of Sec. 43CA and Sec. 56(2)(x) on fulfilment of the following conditions -
 - ✓ Transfer of residential unit takes place between 12-11-2020 to 30-06-2021
 - ✓ Transfer is by way of 1st time allotment of residential unit to any person
 - ✓ Consideration as a result of such transfer does not exceed Rs. 2 Cr

OUR REMARKS

- ❖ It is a welcome step for the real estate sector and should be seen as a prospective sign for investors at large
- ❖ The increased safe harbor limit is restricted to Sec. 43CA and not applicable to Sec. 50C. In other words, the benefit of indexation shall not be available in such cases and income shall be treated as PGBP

11.0 Taxation of High Premium ULIP [w.e.f. AY 2021-22]

BACKGROUND

- ❖ Presently there is no cap on amount of premium paid by a person by investing in ULIP
- ❖ It is proposed to deny exemption u/s 10(10D) on proceeds of ULIP issued on or after 01-02-2021 if the premium paid against the policy exceeded Rs. 2.50 Lacs a year
- ❖ It is further proposed to provide for deemed taxation of capital gain on redemption of ULIP as per Sec. 45(1B)



OUR REMARKS

ULIP has been one of the most attractive investment option which also gave an insurance cover to the assessee. Pursuant to the proposed amendment, HNWI may now consider alternate options to park their funds

12.0 Miscellaneous Proposals

- ❖ It is proposed to amend to the definition of a 'small company' as per Sec. 2(85) of the Companies Act, 2013 to enhance the limits as stated below –

Particulars	Present (in Rs.)	Proposed (in Rs.)
<i>Paid up Capital</i>	<i>0.50 Crs</i>	<i>2.00 Crs</i>
<i>Turnover</i>	<i>2.00 Crs</i>	<i>20.00 Crs</i>

- ❖ It is proposed to insert a new clause (aa) in Sec. 7(1) of the CGST Act, 2017 to ensure levy of tax on activities involving supply of goods or services by any person other than an individual to its members for cash, deferred payment or other valuable consideration.

Our Remarks - There has been much conjecture on this issue and its taxability or otherwise in GST. The proposed amendment is in sharp contrast to a recent judgment delivered by the Hon'ble Apex Court in case of Calcutta Club Limited (Civil Appeal No. 4184 of 2009)

- ❖ It is proposed to insert a new clause (aa) in Sec. 16(2) of the CGST Act, 2017 to allow ITC to recipient when the details of such invoice/debit note has been furnished by the supplier in GSTR-1.

Our Remarks – Under the GST regime it seemed a herculean task to keep a check if the supplier has actually paid necessary taxes or not. The proposed amendment will compel the registered person to perform timely reconciliation with Form GSTR-2A while claiming any ITC.

- ❖ It is proposed to omit the requirement of furnishing a GST audit report and self-certify the annual reconciliation by the registered person.

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