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Snippets of changes made in Finance Bill, 2022 as passed by the Lok Sabha

By Editorial Team

The Lok Sabha has passed the Finance Bill 2022 on March 25, 2022 [hereinafter called 'Finance Bill (Lok Sabha)']. The Bill has been passed with more than 35 changes in the Finance Bill as introduced on February 01, 2022. New amendments have been made, and some proposed amendments have been removed or modified.

A snippet of all the changes made in the Finance Bill, 2022 as passed by the Lok Sabha viz-a-viz the Finance Bill, 2022 is presented hereunder:

1. Loss from one Virtual Digital Asset (VDA) cannot be set-off against income from another VDA

The Finance Bill, 2022 proposed a new section 115BBH to provide the method of computation and the tax rate for the income arising from the transfer of Virtual Digital Asset (VDA).

Sub-section (2) of Section 115BBH starts with a non-obstante clause and contains the following two clauses:

(a) Clause (a) provides that no set-off of any loss shall be allowed to the assessee in computing the income arising from transfer of any VDA; and

(b) Clause (b) provides that no set-off of loss from the transfer of the VDA shall be allowed against income computed under any **other** provision of this Act, and such loss shall not be allowed to be carried forward to succeeding assessment years.

Both the clauses 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 Bill (Lok Sabha) 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).

2. Definition of 'transfer' shall apply even if VDA is not held as a capital asset

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 Bill (Lok Sabha) 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.

3. Section 115BBH to override all other provisions to tax income from transfer of VDA at 30%

Section 115BBH proposed by the Finance Bill, 2022 contained two sub-sections, i.e., sub-section (1) and sub-section (2). Sub-section (1) provides for the tax rate (30%) on income arising from the transfer of VDA. Sub-section (2) provides for the computation of income from the transfer of VDA. Further, it restricts set-off and carry forward of loss arising from transfer of VDA.

Sub-section (2) starts with a *non-obstante* clause. Thus, it overrides all other provisions of this Act. However, the *non-obstante* clause was missing in sub-section (1) which could lead to an argument that it does not override other provisions of the Act. The tax rate (30%) provided under section 115BBH(1) may not apply in the case where the lower tax rate is provided under any other section of the Act.

To avoid any controversy on this aspect, the Finance Bill (Lok Sabha) has amended sub-section (1) of section 115BBH to insert a *non-obstante* clause therein. Thus, income from the transfer of VDA shall be taxed at 30%, notwithstanding anything contained in any other provision of the Income-tax Act.

4. Computation provision of section 115BBH would not fail even if there is no cost of acquisition of VDA

Clause (a) of sub-section (2) of Section 115BBH provides that no deduction in respect of any expenditure (other than the cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing the income from transfer of VDA. In other words, while computing the income from the transfer of VDA, an assessee is allowed to claim the deduction of only the cost of acquisition thereof. However, there could be situations where the cost of acquisition of VDA could be 'nil' or cannot be determined or ascertained (like VDA acquired under a slump sale agreement, airdrop of VDA, mining of VDA etc.)

It has been held by the various courts, including the Supreme Court in the case of *CIT v. B.C. Srinivasa Setty [1981] 5 Taxman 1 (SC)* that if there is no cost of acquisition of any capital asset, then computation provision will fail and, therefore, no capital gains can be computed.

To avoid any such controversy in the case of VDA, the Finance Bill (Lok Sabha) has amended clause (a) of sub-section (2) of Section 115BBH to insert the words "if any" after the cost of acquisition. Thus, income from transfer of VDA shall be computed as per section 115BBH even if the cost of acquisition thereof is 'nil' or 'cannot be computed'.

5. Deductor to ensure that tax is deducted under section 194S where consideration for VDA is in-kind

Any person responsible for paying to a resident any sum by way of consideration for transfer of VDA is required to deduct tax at source under Section 194S as proposed by the Finance Bill, 2022.

The *proviso* to Section 194S(1) provides that in the following cases, before releasing the consideration for transfer of VDA, the person responsible for paying such consideration shall **ensure that tax has been paid** in respect of such consideration:

(a) Where consideration is wholly in kind;
(b) Where a transaction is in exchange for another virtual digital asset, and there is no part in cash; or
(c) Where consideration is partly in cash and partly in kind, but the part in cash is not sufficient to meet the liability of deduction of tax in respect of the whole of such transfer.

The use of the words "*ensure that tax has been paid*" in the *proviso* to section 194S(1) was quite confusing as the same could also be understood to mean that payer's responsibility to deduct tax is fulfilled if the payee has paid tax on income arising from transfer of VDA.

To avoid any confusion in this respect, the Finance Bill (Lok Sabha) has inserted the words "required to be deducted" after the words "ensure that tax". Thus, the payer shall be required to ensure that tax required to be deducted under section 194S has been deducted.

6. Transaction in VDA can attract TDS under other provisions even if tax has been deducted under section 194S

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

(a) Where a transaction is subject to TDS under Section 194-O and Section 194S, tax shall be deducted under Section 194S [sub-section (8)].

(b) 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 Bill (Lok Sabha) 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.

7. Restriction on filing of updated return in case of search, survey or requisition

The Finance Bill 2022 has introduced a new scheme for filing of an updated return in Section 139(8A). Situations under which an updated return cannot be filed have been listed in the first, second and third provisos to section 139(8A).

The *second proviso* to section 139(8A) restricts the filing of an updated return under the following circumstances:

(a) Where a search has been initiated under section 132 or books of account or other documents or any assets are requisitioned under section 132A in the case of the person; or
(b) Where a survey has been conducted under section 133A, other than sub-section (2A) of that section, in the case of the person; or
(c) Where a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or section 132A in the case of any other person belongs to the person; or
(d) Where a notice has been issued to the effect that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, the person.

Section 139(8A), as proposed by the Finance Bill 2022, provides that, in the aforesaid circumstances, a person shall not be able to file the updated return for the assessment year relevant to the previous year in which such search is initiated or survey is conducted or requisition is made and two assessment years preceding such assessment year.

The Finance Bill (Lok Sabha) substitutes the words "two assessment years" with "any assessment year". Thus, a person shall not be able to file the updated return for the assessment year relevant to the previous year in which such search is initiated or survey is conducted, or requisition is made and any assessment years preceding such assessment year.

In simple words, a person falling under the *second proviso* to section 139(8A) shall not be able to file the updated return for the previous year in which action (i.e., search, survey, or requisition) is made and for any preceding previous year.

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

The Finance Bill (Lok Sabha) 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.

9. Filing of updated return consequent to a reduction in carried forward losses, depreciation or MAT/AMT credit

The Finance Bill (Lok Sabha) 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:

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

This proviso is explained through the following examples:

Example 1, Mr. A had reported the following income or loss in the income-tax return filed for the following assessment years:

Particulars	*AY 2021-22*	*AY 2020-21*	*AY 2019-20*
Income (or loss) under the head Business or Profession	80,00,000	10,00,000	(20,00,000)
Less: Set-off of loss (AY 2019-20)	(10,00,000)	(10,00,000)	-
Total Income	**70,00,000**	**-**	**-**
Loss carried forward for adjustment in subsequent years	-	10,00,000	20,00,000

Mr. A filed an updated return for Assessment Year 2020-21 declaring the additional business income of Rs. 25,00,000. He set off the entire loss of AY 2019-20 (Rs. 20,00,000) against the business income reported in such an updated return. As declaring of additional income in updated return for AY 2020-21 results in the reduction of loss carried forward to subsequent year (i.e., AY 2021-22), Mr. A shall be required to furnish an updated return for AY 2021-22 as well. The revised computation of income or loss in updated returns shall be as under:

	Updated Return AY 2021-22	Updated Return AY 2020-21
Income (or loss) under the head Business or Profession disclosed in earlier return	80,00,000	10,00,000
Additional business income disclosed in updated return	-	25,00,000
Less: Set-off of loss (AY 2019-20)	-	(20,00,000)
Total Income	**80,00,000**	**15,00,000**
Loss carried forward for adjustment in subsequent years	-	-

Tax payable on filing of updated return shall be paid along with interest for default or deferment in payment of advance tax.

Example 2, ABC Ltd. filed the income-tax return for the Assessment Year 2021-22 and Assessment Year 2020-21 with the following book profit, total income and tax liability:

	AY 2021-22	AY 2020-21
Book profit	80,00,000	70,00,000
Total income	60,00,000	40,00,000
Tax on total income (including cess) [A]	15,60,000	10,40,000
MAT on book profit (including cess) [B]	12,48,000	10,92,000
Gross tax payable [C= A or B, whichever is higher]	**15,60,000**	**10,92,000**

Less: MAT Credit	52,000	-
Tax Payable	**15,08,000**	**10,92,000**
MAT credit carried forward for adjustment in subsequent years [C – A]	-	52,000

ABC Ltd. filed an updated return for Assessment Year 2020-21 declaring the additional income of Rs. 10,00,000. However, the book profit remains same.

As a result of the filing of the updated return, the tax on total income computed as per normal provisions increased to Rs. 13,00,000. As tax so computed was higher than the MAT, the assessee was liable to pay tax as normal provision and, accordingly, MAT credit was not available. Thereby, MAT credit claimed in return filed for AY 2021-22 got reduced to 'Nil'. Thus, ABC Ltd. shall be required to furnish an updated return for AY 2021-22 as well. The revised computation of income and tax in updated returns shall be as under:

	Updated Return AY 2021-22	Updated Return AY 2020-21
Book profit	80,00,000	70,00,000
Total income reported in earlier return [A]	60,00,000	40,00,000
Additional income reported in updated return [B]	-	10,00,000
Total income reported in updated return [C = A + B]	60,00,000	50,00,000
Tax on total income reported in updated return (including cess) [D]	15,60,000	13,00,000
MAT on book profit (including cess) [E]	12,48,000	10,92,000
Gross tax payable [F= D or E, whichever is higher]	**15,60,000**	**13,00,000**
Less: MAT Credit	-	-
Tax Payable	**15,60,000**	**13,00,000**
MAT credit carried forward for adjustment in subsequent years [F – D]	-	-

Tax payable on filing of updated return shall be paid along with interest for default or deferment in payment of advance tax.

10. Recomputation of income due to disallowance of surcharge/cess [Section 155]

10.1. Background

Section 155 of the Act contains provisions for the amendments in the assessment order. The provision provides that the assessment of a person shall be modified if, due to change in certain circumstances, his income is required to be re-computed.

10.2. Amendment proposed by the Finance Bill 2022

Section 40 of the Act provides that certain transactions/payments are not eligible for deduction while computing profits and gains from business or profession. Section 40(a)(ii) states that any sum paid on account of any 'rate' or 'tax' levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains shall not be eligible as a deduction. Provision of Section 40(a)(ii) does not expressly use the term *'cess'* or *'surcharge'* and accordingly, taxpayers used to claim deduction on account of *'cess'* or *'surcharge'* under section 40. Courts have upheld this view in a few judgments.

The Finance Bill 2022 proposed to insert an *Explanation 3* with retrospective effect from assessment year 2005-06 that for Section 40(a)(ii), the term '*tax*' shall include and be deemed to have always included '*surcharge*' or '*cess*'. Accordingly, even for the past period, the deduction for '*cess*' or *'surcharge'* shall not be available.

10.3. Amendment proposed by the Finance Bill (Lok Sabha)

Consequent to the amendment proposed in Section 40(a)(ii), the Finance Bill (Lok Sabha) has inserted a new sub-section (18) to section 155 to provide the following:

10.3-1. Claim of 'surcharge' or 'cess' in any previous year shall be deemed as under-reporting of income

If an assessee has claimed the deduction on account of 'surcharge' or 'cess in any previous year and such deduction is not allowable under section 40, it shall be deemed that assessee has under-reported income for such previous years for the purpose of Section 270A(3).

It has been further provided that the provisions of sub-section (6) of section 270A, which provides exceptions to under-reported income, shall not be applicable in this case.

10.3-2. AO to re-compute total income

The Assessing Officer has been empowered to re-compute the total income of the assessee for such a previous year in which he claimed deduction of surcharge or cess.

The income so computed shall be treated as under-reported income, and the assessee shall be liable to pay tax on it along with a penalty of 50% of the amount of tax payable on under-reported income.

However, *proviso* to Section 155(18) provides relief from considering the addition so made as under-reported income, if the following conditions are satisfied:

(a) The assessee makes an application in the prescribed form and prescribed time to the Assessing Officer;
(b) The application is filed to request the AO for recomputation of the total income of the previous year without allowing the deduction of surcharge or cess; and
(c) The assessee pays the amount due within the specified time.

10.3-3. Time limit for rectification

Section 154 authorises the Income-tax authorities to rectify any mistake in the order. The power to rectify the mistake may be exercised by the authority concerned *suo motu* or when a mistake is brought to his notice by the assessee concerned. Sub-section (7) of Section 154 deals with the limitation period for making such rectification. It provides that an order of rectification is required to be passed within 4 years from the end of the financial year in which the order (sought to be rectified) was passed.

Sub-section (18) of Section 155 provides that the period of 4 years specified under Section 154(7) to be reckoned from the end of the previous year commencing on the 01-04-2021.

11. Clarificatory amendment on taxation of long-term capital gains referred to in Section 112A for non-resident [First Schedule to Finance Act 2022]

Section 112A provides that long-term capital gains arising from transfer of an equity share, or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10%. The tax shall be levied on capital gains exceeding Rs. 1 lakh. Part-II of the First Schedule of the Finance Act provides rates for deduction of tax at source (TDS) from various incomes paid or payable to a resident and non-resident.

In respect to TDS from the income of a non-resident person, Part II provides for 10% TDS from income by way of long-term capital gains referred to in section 112A. As per the literal reading of this, the tax was required to be deducted on the total long-term capital gains and not in excess of Rs. 1 lakh.

The Finance Bill (Lok Sabha) has plugged the gap by allowing deduction of tax from the long-term capital gains in excess of Rs. 1 lakh.

12. Cancellation provisions extended for provisionally approved institutions [Section 10(23C)]

The Finance Bill 2022 proposes to substitute *fifteenth proviso* to section 10(23C) providing for the cancellation of approval of fund or institution referred to in Section 10(23C) (iv)/ (v)/ (vi)/ (via). The substituted proviso provides that PCIT or CIT may cancel the approval to a covered Institution in the following circumstances:

(a) the PCIT/ CIT has noticed the occurrence of one or more specified violations during any previous year;
(b) the PCIT or CIT has received a reference from the Assessing Officer under the second proviso to section 143(3) for any previous year; or
(c) Such a case has been selected according to the risk management strategy, formulated by the Board from time to time, for any previous year.

The PCIT or CIT shall call for such document or information from the institution or make such inquiry as he thinks necessary to satisfy himself about the occurrence or otherwise of any specified violations. If the PCIT or CIT proposes to cancel the approval, he shall afford the institution a reasonable opportunity to be heard.

If the PCIT or CIT is satisfied that one or more specified violations have taken place, he shall pass an order in writing cancelling the approval for such previous year and all subsequent previous years. On the other hand, if he is not satisfied about the occurrence of one or more specified violations, he shall pass an order in writing refusing to cancel the approval. However, no specific reference was made for the cancelling of provisional approval of such institutions.

The Finance Bill (Lok Sabha) has addressed this issue by inserting the word 'provisionally approved' to the *fifteenth proviso* to section 10(23C). Thus, now the PCIT/CIT has been empowered to cancel the final as well as provisional approval granted to the institutions referred under Section 10(23C) (iv)/ (v)/ (vi)/ (via).

13. Restriction on the simultaneous benefit of Section 10(23C) and Section 10(46)

Any income of fund or institution established for charitable or religious purposes or educational institution or hospital shall be exempt from tax under Section 10(23C). The exemption under Section 10(23C) (iv)/(v)/(vi)/(via) is available if these institutions are approved by PCIT/CIT.

Section 10(46) provides for exemption of specified income if the following conditions are fulfilled:

(a) The income arises to a specified entity that has been established or constituted by or under a specified Act or constituted by Central/State Government.
(b) The specified entity is established or constituted with the object of regulating or administering any activity for the benefit of the general public.
(c) The specified entity is not engaged in any commercial activity.
(d) The specified entity is notified by the Central Government in the Official Gazette for the purposes of section 10(*46*).

The Finance Bill (Lok Sabha) inserted an *Explanation* to the *nineteenth proviso* to section 10(23C). It provides that if an institution approved under Section 10(23C) (iv)/(v)/(vi)/(via) is notified under Section 10(46), the approval or provisional approval granted to such institution shall become inoperative from the date of notification of under Section 10(46).

Thus, the institutions cannot take the simultaneous benefit of exemption under Section 10(23C) and Section 10(46). Once they get notified under Section 10(46), the approval granted under Section 10(23C) shall become inoperative and therefore, they shall only be able to claim the benefit of Section 10(46).

14. Application of income for the benefit of interested persons

Hitherto, section 10(23C) did not have any provision similar to section 13(1)(c) regarding benefits to interested parties.

The Finance Bill 2022 proposed to insert *twenty-first* proviso imposing restriction to apply the income of a 10(23C)(iv)/(v)/(vi)/(via) institution for the benefit of an interested person referred to in section 13(3).

Such income shall be deemed to be the income of the said institution which has provided the benefit. However, the Finance Bill inadvertently mentioned that such benefit should become income of that person to whom the benefit is provided.

The Finance Bill (Lok Sabha) has corrected the error by providing that such income shall be deemed to be the income such fund or institution of the previous year in which it is so applied.

15. Overriding effect to provisions of Section 115BBI

Hitherto, there was no specific section for taxing the certain income of a charitable institution at a specific prescribed rate.

The Finance Bill 2022 proposes to insert Section 115BBI with effect from the assessment year 2023-24 to provide that where the total income of any "specified charitable institution" includes any "specified income", the income-tax payable shall be the aggregate of:

(a) the amount of income-tax calculated at the rate of 30% on the aggregate specified income; and
(b) the amount of income tax with which the assessee would be chargeable if the assessee's total income is reduced by the aggregate specified income referred to in clause (a).

Section 115BBI provides that the income which does not enjoy exemption under section 11 is taxable at the rate of 30%. On the other hand, *proviso* to section 164(2) providing for taxation of a charitable trust at maximum marginal rate (MMR) is not deleted. Hence, literally, both the provisions apply to a trust. Thus, it was not clear whether section 115BBI or section 164(2) should apply to a trust for taxation of certain incomes.

The Finance Bill (Lok Sabha) provided that notwithstanding anything contained in any other provision of the Act, the specified incomes shall be taxable under Section 115BBI. Thus, the provisions of section 115BBI would have an overriding effect over anything contrary contained in the Act. Hence, the provisions of section 115BBI shall now prevail for the rate of tax in case of income specified therein.

16. No exemption if a person as referred to in section 13(3) receives gifts from trust [Section 56(2)(x)]

16.1. Background

Section 56(2)(x) deals with deeming provisions when a person receives gifts or acquires an immovable property or specified moveable assets without consideration or for inadequate consideration.

Clauses (VI) and (VII) of *proviso* to Section 56(2)(x) provide that the deemed income shall not arise under section 56(2)(x) if any sum of money or any property is received:

(a) From any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in Section 10(23C); or
(b) From or by any trust or institution registered under section 12A/12AA/12AB.

16.2. Amendments by the Finance Bill (Lok Sabha)

The Finance Bill (Lok Sabha) has inserted a *second proviso* to section 56(2)(x) to provide that, the clauses (VI) and (VII) of the first proviso shall not apply if any sum of money or property has been received by any person referred to in section 13(3).

Section 13 of the Act denies the benefit of exemption to a charitable or religious trust or institution if any part of its income or property is used or applied for the benefit of interested persons. Even if only a small portion of the income is used or applied for the benefit of an interested person, the entire income of the trust is denied exemption.

The interest persons have been defined under section 13(3) as follows:

(a) The author of the trust or the founder of the institution;
(b) Any person who has made a total contribution up to the end of the relevant previous year of an amount exceeding Rs. 50,000;
(c) Where author, founder or substantial contributor is an HUF, a member of the HUF;
(d) Any trustee of the trust or manager of the institution;
(e) Any relative of such author, founder, substantial contributor, member, trustee or manager as aforesaid; and
(f) Any concern in which any of the persons referred to above has a substantial interest.

The legislature has plugged the loophole wherein the interested person enjoys tax exemption on receiving gifts from the trust. After the amendment, trust will lose the exemption if any sum/property is gifted to an interested person or for inadequate consideration, and such sum/property shall be taxable in the hands of the interested person as well. This amendment is effective from Assessment Year 2023-24.

17. Validation of proceedings completed on predecessor entity [Section 170]

Section 170 the Act governs the procedure of taxation in case of succession to business 'otherwise than on death'. The Finance Bill 2022 has proposed to insert a new sub-section (2A) to section 170 to provide that in case of **business reorganisation,** the assessment, reassessment or other proceedings **made** on the predecessor during the course of pendency of such **reorganisation** shall be deemed to have been made on the successor. In other words, all proceedings made on the predecessor entity shall be validated, which are made between the following periods:

(a) Commencing from the date of filing of an application for such **reorganisation of business** before the High Court or Tribunal or the date of admission of an application for corporate insolvency resolution by the Adjudicating Authority; and
(b) Ending with the date on which the order of such High Court or Tribunal or such Adjudicating authority, as the case may be, is received by the Principal Commissioner or the Commissioner.

17.1. Amendment by the Finance Bill (Lok Sabha)

The Finance Bill (Lok Sabha) has made the following changes in the above proposals:

17.1-1. 'Business Reorganisation' changed to 'Succession'

The word 'Business Reorganisation' used in the proposed sub-section (2A) to section 170 has been replaced with the word 'succession'. Further, the meaning of the expression of 'business reorganisation' in the Explanation to Section 170(2A) has been removed.

The term 'succession' is wider than the term 'business reorganisation'. 'Succession' means an end of an entity carrying on the business, and its place has been taken by an entirely new entity to run, in continuity and as a going concern, the same business. Succession involves a change of ownership - the transferor goes out, and the transferee comes in. It connotes that the whole business is transferred and also implies that substantially the identity and the continuity of the business are preserved *[CIT v. K. H. Chambers, (1965) 55 ITR 674 (SC)]*. In a recent case, the Mumbai ITAT held that transfer of an undertaking by way of a slump sale will be considered as succession *[ITO v. Archroma India (P.) Ltd. [2021] 124 taxmann.com 432]*[1].

Thus, the assessment or other proceedings initiated or completed on the predecessor in the event of succession shall be deemed to have been made on the successor. Section 170(2A) plugs the lacuna which existed under the earlier laws and validates the assessment or other proceedings initiated or completed on the predecessor. All such proceedings shall now be deemed to be in the name of the successor entity.

17.1-2. Proceedings initiated during pending of succession also covered

[1] For Section 32(1)

The Finance Bill 2022 proposed to validate the assessment, reassessment or other proceedings **made** on the predecessor. It did not cover the situation where such assessments or proceedings have been initiated during the pendency of reorganisation (now succession) and completed later. The Finance Bill (Lok Sabha) has covered this situation by including the words **'made or initiated'** in sub-section (2A) to section 170.

18. 'Business reorganisation' and 'successor' defined for purpose of filing of modified return by successor entity [Section 170A]

The Finance Bill 2022 has proposed to insert a new section 170A to enable the entities going through business reorganisation to file modified returns for the period between the date of effectivity of the order and the date of issuance of the final order by the competent authority. Such modified return shall be furnished by the 'successor' in the prescribed form and manner within 6 months from the end of the month in which the said order was issued.

The expression 'successor' was not defined in Section 170A. Further, the meaning of the term 'business reorganisation' was not defined in Section 170A but a cross-reference was given to *Explanation (i)* to Section 170(2A).

Since the term 'business reorganisation' has been removed from sub-section (2A) to 170, the Finance Bill (Lok Sabha) has removed the cross-reference to Section 170(2A) and inserts the meaning of 'business reorganisation' in Section 170A itself. Further, the term 'successor' has also been defined.

18.1. Meaning of Business Reorganisation

It means the reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons.

In a general sense, business reorganisation is a comprehensive process by which a company can consolidate/diversify its business operations and strengthen its position for achieving its short-term and long-term corporate objectives. Business reorganisation can happen through merger, acquisitions, amalgamation, consolidations, tender offers, purchase of assets, and management buy-out. However, for the purpose of this provision, only amalgamation and merger/de-merger should be covered in the expression business reorganisation. Acquisition of an entity by acquiring 100% of the shareholding or by way of a slump-sale or by any other mode, will not be covered under this provision.

The meaning of 'amalgamation' and 'de-merger' as defined in Section 2(1B) and Section 2(19AA) of the Act, respectively, may not be referred to for the purpose of this provision. It can be argued that these clauses of Section 2 define the terms only 'in relation to companies', but Section 170(2A) covers the amalgamation or de-merger of business of one or more persons. It may be intended that the amalgamations and de-mergers not satisfying the conditions of Section 2(1B) or Section 2(19AA) should also be included in the expression of business reorganisation.

The meaning of the business reorganisation for the purpose of this provision should be limited to the corporate entities and not other non-corporate entities. In support of this it can be submitted that approval from the Court/Tribunal/Authorities are required for the business reorganisation of corporate entities only and not for non-corporate entities. Further, as the meaning of the 'successor' covers only resulting company, it supports this conclusion.

18.2. Successor

It means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

19. Modification in limitation period for completion of assessment, reassessment and recomputation [Section 153]

19.1. Background

Section 153 provides timelines within which assessment, reassessment, recomputation under the various provisions must be completed. Section 153(1) provides the following time limit for completion of assessment under Section 143(3) and Section 144:

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
Assessment Year 2019-20 and 2020-21	Within 12 months from the end of the Assessment Year in which income was first assessable
For Assessment Year 2018-19	Within 18 months from the end of the Assessment Year in which income was first assessable
Up to Assessment Year 2017-18	Within 21 months from the end of the Assessment Year in which income was first assessable

19.2. Amendment by Finance Bill (Lok Sabha)

The Finance Bill (Lok Sabha) 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
Assessment Year 2020-21	Within 18 months from the end of the Assessment Year in which income was first assessable

Assessment Year 2019-20	Within 12 months from the end of the Assessment Year in which income was first assessable
For Assessment Year 2018-19	Within 18 months from the end of the Assessment Year in which income was first assessable
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.

20. Modification in Time limit for completion of assessment in search and requisition cases [Section 153B]

20.1. Background

Section 153A deals with assessment in case of search or requisitions. The Finance Act, 2021 had introduced a sunset clause and accordingly, the provisions of section 153A were made inapplicable from 01-04-2021. Section 153B provides a time limit for completion of assessment and reassessment in search or requisition cases, i.e. cases covered under section 153A. The general time limit provided under sub-section (1) is 21 months from the end of the financial year in which the last authorisation of search or requisition was executed. The provisos to sub-section (1) provide for reduced time limits for different assessment years.

20.2. Amendment by Finance Bill (Lok Sabha)

The Finance Bill (Lok Sabha) proposes to insert a sixth proviso to sub-section (1) of section 153B. The newly inserted proviso provides that the assessment in the following cases for the assessment year 2021-22 shall be made on or before 30-09-2022:

(a) where last authorisation for search under section 132 or requisition under section 132A was executed at any time during the financial year commencing from 01-04-2020; or
(b) in the case of a person referred to in section 153C, the books of accounts or documents or assets seized or requisitioned were handed over to the AO having jurisdiction over the person at any time during the financial year commencing from 01-04-2020.

It is to be noted that where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A, on or after the

01-04-2021, the assessment in such cases shall be made as per Section 147 read with Section 153.

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

21. Avoidance of Repetitive Appeal [Section 158AB]

21.1. Background

The Finance Bill 2022 proposed a sunset date in section 158AA and the insertion of new section 158AB for the new provision relating to avoidance of repetitive appeals.

21.2. Amendment by Finance Bill (Lok Sabha)

Section 158AB allows avoidance of repetitive appeal before Income-tax Appellate Tribunal or to the Jurisdictional High Court. Such a decision to avoid the repetitive appeal is taken by the collegium. On receipt of communication from the collegium, the PCIT/CIT may direct the AO to make an application to the ITAT or the High Court in a prescribed form within 60 days from the date of receipt of the order of CIT(A) or within 120 days from the date of receipt of the order of Tribunal.

The Finance Bill (Lok Sabha) makes the following changes in Section 158AB:

(a) It expressly provides that the provisions of section 158AB shall override the respective provisions providing time limits and procedural directions for filing an appeal to ITAT or the High Court;

(b) The time limit within which the application is to be filed with the ITAT has been increased to 120 days from the proposed 60 days;

(c) It is also expressly provided that all the provisions of Part B (Appeal to ITAT) and Part CC (appeal to High Court) of Chapter XX shall apply, as the case may be, when an appeal is being filed under section 158AB(4).

22. Provider of benefit or perquisite has to "ensure that tax required to be deducted has been deducted" [Section 194R]

22.1. Background

Section 194R, proposed in the Finance Bill 2022, provides that provider of any benefit or perquisite to a resident, whether convertible into money or not, arising from business or the exercise of a profession, **shal**l, 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** at the rate of ten per cent. of the value or aggregate of value of such benefit or perquisite: The words "**shall…ensure that tax has been deducted in respect of such benefit or perquisite"** created a lot of confusion. Besides, the question was how to value the benefits and perquisites for section 194R purposes.

22.2. The Finance Bill (Lok Sabha)

To remove confusion on how section 194R is to be complied with, the following changes has been made in the Finance Bill (Lok Sabha):

(a) the words "ensure that tax has been deducted" in section 194R, are replaced with words "ensure that tax required to be deducted has been deducted";
(b) the provision of section 194R, as originally proposed, is renumbered as sub-section (1);
(c) sub-section (2) is inserted to empower the CBDT to issue guidelines for removal of difficulties if any difficulty arises in giving effect to the provisions of the section;
(d) Sub-section (3) is inserted to provide that guidelines issued by the CBDT under section 119 for removal of difficulties shall be binding on the assessee and the assessing authority.

CBDT guidelines will presumably provide guidance on how to ensure that tax has been deducted if the benefits or perquisites are in kind and what shall be the value of such benefit or perquisite.

As has been the practice over the last 3 to 4 years with provisions like sections 9B, 45(4), 194-O, 194Q, 194N and 206C(1H), the CBDT will issue these guidelines through a Circular.

Though circulars issued under section 119 can be challenged as Section 119 nowhere says that Circulars issued under Section 119 are binding on the assessee. However, circulars issued under sub-section (2) of section 194R are binding on the assessee by virtue of sub-section (3).

23. Availability of section 10(4D) exemption to specified fund if its non-resident unitholder becomes resident in the subsequent year

Section 10(4D) of the Act provides the exemption in respect of certain incomes of the specified fund.

Specified fund is defined under clause (c) of the *Explanation* to section 10(4D) to mean:

(a) a Category-III Alternative Investment Fund (AIF) located in any International Financial Services Centre (IFSC); or

(b) an investment division of an offshore banking unit which has been granted a certificate of registration as a Category-I foreign portfolio investor (FPI)

A specified fund, being a Category-III AIF located in IFSC, is allowed exemption under section 10(4D) subject to the condition that its all the units (other than unit held by a sponsor or manager) are held by non-residents.

The Finance Bill (Lok Sabha) has relaxed this condition to provide that if the non-resident unit holder(s) becomes resident under clause (1) or clause (1A) of section 6 in any previous year subsequent to the year in which units were issued to him, the exemption shall continue to be available to specified fund provided such unitholder does not hold more than 5% of the total units issued by the specified fund. Further, other conditions, as may be prescribed, shall also be required to be fulfilled.

24. Books of accounts include books maintained/kept in electronic or digital form [Section 2(12A)]

Section 2(12A) of the Income-tax Act defines the meaning of 'books or books of account'. It includes ledgers, day-books, cash books, account books and other books, whether kept in the written form or as print-outs of data stored in:

a) Floppy,
b) Disc,
c) Tape; or
d) Any other form of electro-magnetic data storage device.

The Finance Bill (Lok Sabha) has amended this definition to include books of account kept in electronic form or in digital forms as well. This should now cover books of accounts maintained and stored in software installed on a computer or maintained and stored on a cloud or website.