



Finance Bill, 2021

CA Bhadresh Doshi

1

Tax Audit

Tax Audit

- ? Exemption from Tax Audit – inserted by FA, 2020
 - ? Total sales, turnover or gross receipts \leq ₹ 5 crore
 - ? Aggregate of all **amounts** received including **amount** received for sales, turnover or gross receipts during the previous year, in cash, does not exceed 5% of the **said amount**
 - ? Aggregate of all **payments** made including amount incurred for expenditure, in cash, during the previous year does not exceed 5% of the **said payment**
- ? Threshold now increased from ₹ 5 crore to ₹ 10 crore
- ? Effective from A.Y. 2021-22

Tax Audit

- ? No change for professionals
- ? Requirement of tax audit as per Sec. 44AD continues
 - ? Turnover below ₹ 2 crore – might be subject to tax audit due to applicability of Sec. 44AD(5)
 - ? Turnover between ₹ 2 to ₹ 10 crore – not subject to tax audit
 - ? Irrespective of % of profits declared
 - ? Subject to condition of cash transactions

Statistics

- ? Tax Audit Reports filed for AY 2019-20 (including 44AD / 44ADA)

Form	Nos.
3CA	2,88,236
3CB	25,37,444
Total	28,25,680

- ? Source – Order dated 11-1-21
- ? Persons who have disclosed business turnover of more than Rs.10 crore in FY 2018-19 = around 3.5 lakh
 - ? Source – Press Release dated 30-9-20

A teal-colored triangle pointing to the right, containing the number 2.

2

ITR

Partner's ITR

- ? If firm is required to furnish the Transfer Pricing Audit Report as required by Sec. 92E –
 - ? Due date to file the ITR by its partner will also be **30th November**
- ? Effective from AY 2021-22

Belated & Revised ITR

- ? Time limit reduced by 3 months
- ? 31st December or before the completion of the assessment, whichever is earlier
 - ? 139(4) – Belated Return
 - ? 139(5) – Revised Return
- ? Effective from AY 2021-22
- ? Amendment wrongly worded

▶ 139(4) - Amended

*Any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the return for any previous year **at any time within three month prior to the end of the relevant assessment year** or before the completion of the assessment, whichever is earlier*

▶ 139(5) - Amended

*If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return **at any time within three months before the end of the relevant assessment year** or before the completion of the assessment, whichever is earlier*

Due Dates

Task	Due Date
Filing of ITR - non-audit cases	31 st July
Furnishing of Tax Audit Report	30 th September
Furnishing of Transfer Pricing Audit Report	30 th October
Filing of ITR - audit cases	31 st October
Filing of ITR - TP Audit cases	30 th November
Filing of Belated or Revised ITR	31 st December



Pre-filled ITR

- ? Scope of pre-filled ITR to be widened
 - ? Capital Gains from listed securities
 - ? Dividend income
 - ? Interest from banks, post office etc.

Intimation – 143(1)

- ? Time limit reduced by 3 months - Effective from 1-4-2021
- ? Revised Time Limit - 9 months from the end of the FY in which the return is filed

INTRODUCING JHATPAT PROCESSING

**FILE KARO JHAT SE
PROCESSING HOGI PAT SE***

*Applicable only if

ITR is Verified | Bank Account is pre-validated
No Arrears | No Income Discrepancy | No TDS or Challan mismatch

PROCESSING STARTED FOR ITR 1 & 4.

RETURN FILING.

CPC 2.0

RETURN PROCESSING.

Processing of ITR

- ? Scope of Adjustments widened
 - ? Adjustment on the basis of information reported in the audit report
 - ? Present – only disallowance of expenditure
 - ? Amended – disallowance of expenditure as well as increase in income
 - ? Disallowance of deductions if return is not filed before the due date
 - ? Present – 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE
 - ? Amended – 10AA or any deductions under Chapter VI-A – Part C
- ? Effective from 1-4-2021

Defective ITR

- ❓ Memorandum –
 - ❓ Large number of returns become defective by application of conditions laid down in Sec. 139(9)
 - ❓ It has resulted in a number of grievances
 - ❓ It creates difficulties for both the taxpayers and the Department
- ❓ CBDT is given power to issue notification
 - ❓ Relaxing or modifying conditions of valid ITR in certain class of assesseees
- ❓ Effective from 1-4-2021

▶ Notice to non-filers

- ? Sec. 142(1)(i) – notice requiring a non-filer to submit his ITR
- ? Persons authorised to issue notice
 - ? Present – only Assessing Officer
 - ? Amended – Assessing Officer or the prescribed IT Authority
- ? Effective from 1-4-2021

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Assessment

► Scrutiny Notice – 143(2)

- ❓ Time limit reduced by 3 months
- ❓ Revised Time Limit - 3 months from the end of the FY in which the return is filed
- ❓ Effective from 1-4-2021

Scrutiny Notice – 143(2)

Assessment Year	Time Limit for Service of Notice	Due Date
2019-20	6 months from FY in which ITR is filed	31-3-2021 [#]
2020-21	3 months from FY in which ITR is filed	30-6-2021

Extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

▶ Assessment Order – 153

- ❓ Time limit reduced by 3 months
- ❓ Revised Time Limit - 9 months from the end of the relevant AY
- ❓ Only for passing of assessment order under Sec. 143(3) or 144
- ❓ Extension of 12 month continues where a reference is made to the TPO
- ❓ Effective from AY 2021-22

Assessment Order – 153

Assessment Year	Time Limit for Service of Notice	Due Date
2018-19	18 months from the end of AY	31-3-2021 [#]
2019-20	12 months from the end of AY	31-3-2021 ^{##}
2020-21	12 months from the end of AY	31-3-2022
2021-22	9 months from the end of AY	31-12-2022

[#] Extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

^{##} To be extended to 30-9-2021 – AlmaNirbhar Announcement

Due Dates

For Assessee		For Department	
Task	Due Date (AY)	Task	Due Date (Next FY)
Filing of ITR – non-audit cases	31 st July	Service of Notice u/s. 143(2) – scrutiny selection	30 th June
Furnishing of Tax Audit Report	30 th September		
Furnishing of Transfer Pricing Audit Report	30 th October	Completion of assessment	31 st December
Filing of ITR – audit cases	31 st October		
Filing of ITR – TP Audit cases	30 th November	Processing of ITR & Sending Intimation	31 st December
Filing of Belated or Revised ITR	31 st December		

Search Assessment

- ? Special Procedure for Assessment in case of –
 - ? Search initiated under Sec. 132
 - ? Books, assets etc. requisitioned under Sec. 132A
- ? Sec. 153A to 153D
- ? Discontinued w.e.f. 1-4-2021
 - ? Search initiated or books etc. requisitioned on or after 1-4-2021
- ? Partially merged with the new procedure for reassessment

Reassessment

- ? New Procedure for Reassessment
- ? New Sec. 147, 148, 148A, 149 & 151
- ? Effective from 1-4-2021
- ? Important Features
 - ? Time limit reduced
 - ? Information based & driven by system
 - ? Making it more transparent – giving opportunity even before issuing notice of reassessment

Primary Section 147

- ? If any income chargeable to tax has escaped assessment for any AY
- ? AO may assess or reassess such income or recompute the loss or the depreciation allowance.....
- ? But, subject to sections 148 to 153
- ? What has changed?
 - ? Present – If the AO has **reason to believe** that any income chargeable to tax has escaped assessment for any AY.....
 - ? Amended – If any income chargeable to tax has escaped assessment for any AY.....

Primary Section 147

? Explanation

- ? AO can assess or reassess the income in respect of any other issue
- ? which comes to his notice subsequently in the course of the proceeding
- ? irrespective of the compliance with the provisions of Sec. 148A (related to initiation of proceeding)

Process Flow

- ? Trigger Point – AO to have information (Sec. 148)
- ? Conducting enquiry (Sec. 148A)
- ? Issuing SCN to assessee – why he should not proceed (Sec. 148A)
- ? Considering reply and deciding whether it is a fit case to proceed (Sec. 148A)
- ? Issuing notice requiring assessee to submit his ITR (Sec. 148)
- ? Proceeding for making the assessment or reassessment (Sec. 147)

▶ Trigger Point - Information

- ❓ AO is permitted to issue notice of reassessment under Sec. 148 only if he has
 - ❓ information which suggests that the income chargeable to tax has escaped assessment
 - ❓ information which..... means –
 - ❓ information flagged in accordance with the risk management strategy formulated by CBDT
 - ❓ final objection raised by CAG to the effect that the assessment has not been made in accordance with the provisions of the Act

Enquiry

- ❓ Sec. 148A(a)
- ❓ AO is authorised to conduct any enquiry with respect to the information which
- ❓ Prior approval of specified authority is required

SCN to Assessee

- ? Sec. 148A(b)
- ? AO needs to provide opportunity of being heard to assessee by issuing a SCN
 - ? Why a notice under Sec. 148 should not be issued
 - ? Mandatory requirement
- ? Limited time to be given for submitting reply
 - ? Not less than 7 days and not exceeding 30 days
 - ? Can be extended on the basis of assessee's request

Decision Making

- ? Sec. 148A(c) & (d)
- ? Reply of assessee to be considered, if any
- ? AO to decide whether it is a fit case for issuing a notice under Sec. 148
 - ? By passing an order
 - ? Copy of order needs to be shared with the assessee along with the notice issued under Sec. 148
- ? Prior approval of specified authority is required
- ? Within 1 month from the end of the month in which reply is received or time to submit reply has expired

Issue of Notice - 148

- ? Notice needs to be issued to the assessee requiring him to furnish his ITR
 - ? Requirement similar as at present
- ? Other provisions to apply as if it was a return required to be furnished under Sec. 139
 - ? Mandatory issue of notice under Sec. 143(2)
- ? Prerequisites for issue of notice
 - ? Information which suggests.....
 - ? Completion of procedure as laid down in Sec. 148A
 - ? Prior approval of specified authority

Special Cases

- ? Special cases –
 - ? Case 1 – Search, requisition, seizure
 - ? Case 2 – Survey
- ? Certain relaxations from –
 - ? Conditions for reopening the assessment
 - ? Information which suggests.....
 - ? Procedure to be followed
 - ? Sec. 148A

Search Cases

- ? Cases covered in this exception –
 - ? Search (132) or requisition (132A) in the assessee's case
 - ? Seizure or requisition in case of other person but –
 - ? Money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to the assessee
 - ? Books of account or documents seized or requisitioned pertain to the assessee or information contained therein relate to the assessee
 - ? Both the above should have taken place on or after 1-4-2021

Search Cases

- ? Information which suggests.....
 - ? Need not be there
 - ? AO shall be deemed to have information which suggests.....
 - ? But only for 3 AYs preceding the AY related to search, requisition etc.
 - ? Search initiated on 1-9-21
 - ? AY 2019-20, 2020-21 & 2021-22
 - ? Mandatory assessments for 3 AYs
 - ? Beyond 3 AYs – AO need to have actual information which.....

Search Cases

- ? Procedure provided in Sec. 148A
 - ? Not applicable in these cases
 - ? For any year – even for beyond 3 AYs
 - ? AO can proceed to issue notice under Sec. 148 without –
 - ? giving SCN to the assessee
 - ? passing order considering it as a fit case

Survey Cases

- ? Cases covered in this exception
 - ? Survey is conducted under Sec. 133A in the assessee's case
 - ? On or after 1-4-2021
- ? Information which suggests.....
 - ? AO shall be deemed to have it
 - ? Only for 3 AYs preceding the AY related to survey
 - ? Similar to search case

Survey Cases

- ? Procedure provided in Sec. 148A
 - ? Applicable like a normal case
 - ? AO is required to –
 - ? give SCN to the assessee
 - ? pass order considering it as a fit case

Time Limit Curtailed

Present Position

Reassessment (Sec. 147)		Search Assessment (Sec. 153A / 153C)	
Type of Case	No. of Years	Type of Case	No. of Years
Any case	4 Years	Any case	6 Years
Escaped Income \geq ₹ 1,00,000	6 Years	Escaped Income \geq ₹ 50,00,000 (can be in aggregate for 7 th to 10 th Year)	10 Years
Escaped income relates to foreign asset	16 Years		

Time Limit Curtailed

Amended Position	
Reassessment (Sec. 147)	
Type of Case	No. of Years
Any case	3 Years
Escaped Income \geq ₹ 50,00,000 (individually for the relevant year)	10 Years

Time Limit

? Time limit for issuing notice under Sec. 148

Type of a case	Time limit for issuing notice under section 148
If the AO has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset , which has escaped assessment amounts to or is likely to amount to ₹ 50,00,000 or more for that year	10 years from the end of the relevant AY
Any other case	3 years from the end of the relevant AY

Time Limit

- ? Transition limitation
 - ? For AY 2021-22 or prior AYs
 - ? If notice could not have been issued under the old provisions
 - ? Then notice can't be issued under the new provision
 - ? Notice for AY 2014-15 can't be issued on 1-5-2021
 - ? Even if escaped income > ₹ 50,00,000
 - ? Since 6 years have already elapsed

Time Limit

Assessment Year	Time Limit for Issue of 148 Notice	Due Date
2013-14	6 years from the end of AY	31-3-2021 [#]
2014-15	6 years from the end of AY	31-3-2021
2015-16 to 2017-18	6 years from the end of AY (Can't be issued beyond 3 years after 31-3-21)	31-3-2021
2018-19	3 years from the end of AY	31-3-2022

[#] Extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

Assumption – Escaped income is more than ₹ 1,00,000 but less than ₹ 50,00,000

Time Limit

- ❓ Exclusion from time limit
 - ❓ Time allowed to the assessee for replying to SCN
 - ❓ Period for which proceedings were stayed by an order of Court

Prior Approval

- ? A0 needs prior approval of specified authority –
 - ? For conducting enquiry – Sec. 148A(a)
 - ? For issuing show cause notice to assessee – Sec. 148A(b)
 - ? For passing order deciding whether it is a fit case or not – Sec. 148A(c)
 - ? For issuing notice under Sec. 148

Prior Approval

? Specified Authority

Type of a case	Specified Authority
If three years or less than three years have elapsed from the end of the relevant assessment year	Principal Commissioner or Principal Director or Commissioner or Director
If more than three years have elapsed from the end of the relevant assessment year	Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General

4

Faceless



▶ Faceless so far

- ? Assessment
- ? Reassessment
- ? First Appeal
- ? Penalty
- ? Rectification
- ? Revision
- ? ALP Determination by TPO
- ? DRP
- ? Inquiry or Valuation
- ? Collection of Information
- ? Appeal Effect Orders
- ? Initiation of Prosecution
- ? Granting Approval / Registration
- ? Collection and Recovery of Tax

ITAT to become faceless

- ? Scheme to be notified for disposal of appeals by the ITAT in a faceless manner
 - ? On similar line of other faceless schemes
- ? Other provisions may be modified or may made non-applicable by notification
- ? Effective from 1-4-21

5

Dispute Resolution

Dispute Resolution Scheme

- ? A permanent scheme as part of the Act
- ? New Sec. 245MA
- ? CG to constitute Dispute Resolution Committee (DRC)
 - ? One or more

Dispute Resolution Scheme

- ? Who can approach DRC?
 - ? Persons as specified by the CBDT
 - ? Not eligible if there is detention, prosecution or conviction under various laws as specified
 - ? If prescribed conditions are satisfied
 - ? For resolution of dispute arising from any variation in the 'specified order'

Dispute Resolution Scheme

? Specified Order

- ? Any order (including draft order) – as specified by CBDT
- ? Having variances \leq ₹ 10,00,000
- ? Returned income \leq ₹ 50,00,000
- ? Not based on search or requisition (even if it is in other's case)
- ? Not based on survey
- ? Not based on information received under DTAA

Dispute Resolution Scheme

- ? What would the assesse get?
 - ? DRC has powers
 - ? To reduce or waive any penalty imposable
 - ? To grant immunity from prosecution
 - ? No clarity on other aspects of disputes like interest etc.
- ? Proceeding to be conducted in a faceless mode

Other Changes

- ? Settlement Commission discontinued w.e.f. 1-2-21
 - ? Interim Board for Settlement to be constituted for settlement of pending applications
 - ? In a faceless manner
- ? AAR is replaced by Board for Advance Ruling (BAR)
 - ? Consisting of officer not below the rank of Chief Commissioner
 - ? With effect from the notified date

6

TDS

TDS on Purchase of Goods

- ? New Section 194Q is inserted – w.e.f. 1st July, 2021
- ? Payer = 'Buyer'
 - ? any person
 - ? even individual or HUF is covered
 - ? whose total sales, gross receipts or turnover from the business carried on by him exceed ₹ 10 crore during the preceding FY
 - ? CG may issue notification exempting a person from the requirement of TDS – subject to specified conditions

TDS on Purchase of Goods

- ? Payee = Person resident in India
- ? Transaction subject to TDS
 - ? Payment of **any sum**
 - ? for purchase of **any goods**
 - ? of the value or aggregate of such value exceeding ₹ 50,00,000 in any previous year
 - ? to be seen at PAN level

TDS on Purchase of Goods

- ? Timing of deduction of tax at source – credit or payment whichever is earlier
 - ? Credit to any other account shall be deemed to be the credit to the payee's account
- ? Rate of TDS
 - ? Seller provides his PAN or Aadhaar – 0.1%
 - ? Else – 5%
 - ? Consequential amendment to Sec. 206AA

TDS on Purchase of Goods

- ? Amount subject to TDS
 - ? No TDS on first ₹ 50,00,000
 - ? TDS only on sum exceeding ₹ 50,00,000
- ? Exemption from TDS
 - ? If tax is deductible under other provisions on the same transaction
 - ? No double TDS
 - ? If tax is collectible under Sec. 206C on the same transaction
 - ? Excluding sub-section(1H)

TDS on Purchase of Goods

? TDS vs. TCS

- ? Buyer is liable for TDS – Sec. 194Q
- ? Seller is also liable for TCS – Sec. 206C(1H)
- ? Only buyer needs to deduct TDS
- ? Seller is exempted from TCS
 - ? Provided buyer has actually deducted TDS

TDS on Purchase of Goods

? TDS vs. TCS

? Buyer

- ? Check applicability of TDS at his level
- ? Deduct TDS if applicable
 - ? Credit or payment whichever is earlier

? Seller

- ? Check applicability of TCS at his level
- ? Check whether buyer is liable for and has deducted TDS
- ? Collect TCS accordingly
 - ? Only at the time of receipt of consideration

TDS on Purchase of Goods

- ? TDS vs. TCS
 - ? Buyer is liable for TDS – Sec. 194Q
 - ? Seller is also liable for TCS – Sec. 206C but excluding (1H)
 - ? Sub-sec. (1) – scrap, timber, liquor etc.
 - ? Sub-sec. (1F) – motor vehicle of the value exceeding Rs.10 lakh
 - ? Only seller needs to collect TDS
 - ? Buyer is exempted from TDS

TDS on Purchase of Goods

- ❓ CBDT may issue guidelines for removing difficulties arising
 - ❓ With previous approval of CG
 - ❓ To be laid before each House of Parliament
 - ❓ Binding on the IT Authorities and the person liable to deduct tax

TDS on Purchase of Goods

- ? GST – to be included or excluded?
 - ? TCS – to be included – Circular No. 17 of 2020
 - ? 206C(1H) – any amount as **consideration** for sale of any goods
 - ? 194Q – any **sum** for purchase of any goods
 - ? Circular No. 23/2017 dated 19-7-2017- no TDS on ‘GST on services’ component
 - ? If indicated separately in the contract
 - ? Can it be extended to ‘GST on goods’?

TDS on Purchase of Goods

- ? Threshold of ₹ 50,00,000 – Purchases from 1-4-21 to 30-6-21 to be included?
 - ? Yes – Circular No. 17 of 2020
- ? Whether a non-resident buyer is liable to deduct tax at source on purchase of goods from resident seller?
 - ? Import of goods – specifically excluded from TCS in Sec. 206C(1H)
- ? Disallowance under Sec. 40(a)(ia) – in case of default
 - ? 30% of Purchases are liable for disallowance
- ? TDS on advance payment?

TDS on Purchase of Goods

- ❓ Goods to include securities?
 - ❓ Included as per definition under Sale of Goods Act
 - ❓ Excluded as per definition under GST Act
 - ❓ Circular No. 17 of 2020 – for TCS
 - ❓ Exemption from TCS if –
 - ❓ traded through recognised stock exchanges, or
 - ❓ cleared and settled by the recognised clearing corporation

▶ Non-filers vis-à-vis TDS

- ? New provisions – effective from 1-7-2021
 - ? Section 206AB – TDS
 - ? Section 206CCA – TCS
- ? Applicable if the deductee or collectee is a 'specified person'
 - ? Non-filer of ITR for two immediately preceding AYs
 - ? TDS/TCS on 1-12-21 – AY 20-21 & 21-22
 - ? Time limit of filing ITR under Sec. 139(1) has expired
 - ? Aggregate of TDS & TCS in his case \geq ₹ 50,000 in each of two preceding AYs

▶ Non-filers vis-à-vis TDS

- ? If applicable –
 - ? TDS/TCS at the higher of the following rates –
 - ? @ twice the applicable rate
 - ? @ 5%
- ? If higher rate is applicable due to non-submission of PAN (or Aadhaar)
 - ? TDS/TCS at the higher of the following rates –
 - ? @ rate applicable as per Sec. 206AA / 206CC
 - ? @ rate applicable as per new provisions (Sec. 206AB / 206CCA)

▶ Non-filers vis-à-vis TDS

- ? Non-resident not having a PE in India needs to be excluded from 'specified person'
- ? Not applicable for TDS under Sections
 - ? 192 – Salary
 - ? 192A – PF Withdrawals
 - ? 194B – Winnings from lottery etc.
 - ? 194BB – Winnings from horse race
 - ? 194LBC – Securitization Trust
 - ? 194N – Cash withdrawals


▶ Non-filers vis-à-vis TDS

- ? Which 2 AYs need to be considered?
 - ? Payment in July-21
 - ? AY 2021-22 can't be considered as due date has not yet expired
 - ? AY 2019-20 & 2020-21
 - ? Payment in August-21 to October-21
 - ? How would payer know which due date is applicable to payee?
 - ? Payment in January-22
 - ? AY 2020-21 & 2021-22
 - ? Changing status of same person for the same year – its effect?

▶ Non-filers vis-à-vis TDS

- ? TDS & TCS \geq ₹ 50,000
 - ? Only from transactions between the payer and the payee?
 - ? From all transactions of payee?
 - ? How would the payer know?
- ? Likely that verification utility will be made available on the portal
 - ? Onerous task of verifying at the time of every TDS/TCS transaction

Non-filer Verification – 194N



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Verification of applicability u/s 194N

PAN *

Mobile Number *

I hereby declare that I will be using above information only for the purpose of deducting TDS u/s 194N on behalf of banking company/Co-operative Society/Post office. I agree that I will be liable for misuse of the information.

Non-filer Verification – 194N



The screenshot shows the e-Filing portal header with the Income Tax Department logo and navigation links. The main content area displays the verification status for Section 194N.

Income Tax Department, Government of India

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Verification of applicability u/s 194N

✔ TDS is deductible @ 2% if cash withdrawal exceeds Rs.1 Crore.



The screenshot shows the e-Filing portal header with the Income Tax Department logo and navigation links. The main content area displays the verification status for Section 194N, including a warning about compliance requirements.

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Verification of applicability u/s 194N

✔ TDS is deductible @ 2% if cash withdrawal exceeds Rs. 20 Lakhs and @ 5% if it exceeds Rs. 1 Crore as the taxpayer has not complied with requirements of Section 194N.

Bonanza for Sr. Citizen

- ? New Section 194P
- ? Applicable to a specified senior citizen (pensioner)
- ? Specified bank (having pension account)
 - ? To compute the total income of SSC
 - ? After giving effect to the deductions and rebate
 - ? Compute the tax liability of SSC on the basis of rates in force
 - ? Deduct the whole of income-tax as TDS

Bonanza for Sr. Citizen

- ❓ Specified Senior Citizen
 - ❓ Resident in India
 - ❓ Age of 75 years or more at any time during the PY
 - ❓ Having only specified income – no other income
 - ❓ Pension
 - ❓ Interest from any account maintained with the same bank in which pension is received (specified bank)
 - ❓ Has furnished declaration to the specified bank in a prescribed form

Bonanza for Sr. Citizen

- ? SSC is not required to file his ITR
 - ? Provisions of section 139 shall not apply.....
 - ? Can't he file ITR even on a voluntary basis?
- ? Specified Bank
 - ? Banking company to be notified for this purpose

Bonanza for Sr. Citizen

? Issues

? Objective – relaxation from filing ITR

? But declaration needs to be filed with the specified bank

? Filing of ITR would be better than dealing with bank!

? Lesser liquidity

? If ITR to be filed – tax payment only at that time

? No time limit prescribed for filing of declaration

? Manner of deducting TDS by SB not specified – whether on a pro-rata basis?

Bonanza for Sr. Citizen

? Issues

- ? Whether the Sr. Citizen will be allowed to opt for Sec. 115BAC?
 - ? TDS on the basis of the 'rates in force'
 - ? Rates of 115BAC \neq 'rates in force'
 - ? CBDT had to clarify for TDS under Sec. 192 – Circular No. C1 of 2020
 - ? Whether filing of Form 10-IE would be required?
- ? Whether he would be regarded as 'non-filer' – new Sec. 194Q?

7

Capital Gain

▶ Restructuring of Firm

- ? Existing sub-section (4) of Sec. 45
 - ? transfer of a capital asset
 - ? by way of distribution of capital assets
 - ? on the dissolution of a firm or otherwise
 - ? chargeable to tax as the income of the firm of the PY in which the said transfer takes place
 - ? FMV of the asset as on the date of such transfer shall be deemed to be the full value of consideration

Restructuring of Firm

- ? Taxability of outgoing partner not covered - Receiving assets or cash in excess of capital balance
 - ? Supreme Court
 - ? CIT vs. Mohanbhai Pamabhai [1987] 165 ITR 166, Tribhuvandas G. Patel vs. CIT [1999] 236 ITR 515, CIT vs. R. Lingmallu Raghukumar [2002] 247 ITR 801
 - ? Bombay High Court
 - ? Prashant S. Joshi vs. ITO [2010] 324 ITR 154, CIT vs. Riyaz A. Sheikh [2014] 41 taxmann.com 455, PCIT vs. R.F. Nanigrani HUF [2018] 93 taxmann.com 302 (Bombay), PCIT vs. Hemlata S. Shetty
 - ? Several other High Courts
 - ? Contrary view being taken in some cases by Tribunal by distinguishing mode of settlement

▶ Restructuring of Firm

❓ Memorandum

*In this regard, it has been noticed that there is uncertainty regarding applicability of provisions of aforesaid sub-section to a situation where assets are revalued or self-generated assets are recorded in the books of accounts and **payment is made to partner or member which is in excess of his capital contribution.***

▶ Restructuring of Firm

- ? Two sub-sections in Sec. 45
 - ? Sub-section (4) – replaced
 - ? Sub-section (5) – inserted
- ? Specified Person (SP)
 - ? A person who is partner of a firm or member of AOP/BOI
- ? Specified Entity (SE)
 - ? A firm or AOP/BOI

▶ Restructuring of Firm

- ? Sub-section(4) – Trigger Point
 - ? A SP receives **any capital asset**
 - ? at the time of dissolution or reconstitution of the SE
 - ? which **represents the balance in his capital account** in the books of SE at that time
 - ? to be calculated without taking into account increase due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset

▶ Restructuring of Firm

❓ Sub-section (4) – Outcome

- ❓ Profits or gains arising from receipt of such capital asset by the SP
- ❓ shall be chargeable to tax as income of the SE under the head Capital Gains
- ❓ shall be deemed to be the income of the PY in which such capital asset was received by the SP

▶ Restructuring of Firm

- ❓ Sub-section (4) – Alteration to computation
 - ❓ Notwithstanding anything to the contrary contained in the Act
 - ❓ For the purpose of Sec. 48
 - ❓ FMV of the capital asset on the date of receipt (by the SP) shall be deemed to be the full value of consideration
 - ❓ received or accruing as a result of the transfer of such capital asset
 - ❓ Cost of acquisition – as per general provisions

▶ Restructuring of Firm

- ? Sub-section(4A)– Trigger Point
 - ? A SP receives **any money or other asset**
 - ? at the time of dissolution or reconstitution of the SE
 - ? which is **in excess of the balance in his capital account** in the books of SE at that time
 - ? to be calculated without taking into account increase due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset

▶ Restructuring of Firm

- ❓ Sub-section(4A)– Outcome
 - ❓ Profits or gains arising from receipt of such money or other asset by the SP
 - ❓ shall be chargeable to tax as income of the SE under the head Capital Gains
 - ❓ shall be deemed to be the income of the PY in which such money or other asset was received by the SP

▶ Restructuring of Firm

- ❓ Sub-section (4A) – Alteration to computation
 - ❓ Notwithstanding anything to the contrary contained in the Act
 - ❓ For the purpose of Sec. 48
 - ❓ Value of money or FMV of other asset on the date of receipt (by the SP) shall be deemed to be the full value of consideration
 - ❓ received or accruing as a result of the transfer of such capital asset
 - ❓ Balance in capital account of the SP at the time of dissolution or reconstruction shall be deemed to be the cost of acquisition

Particulars	Sub-sec. (4)	Sub-sec. (4A)
When does it apply?	Receipt by a partner from a firm	Receipt by a partner from a firm
Occasion for receipt	At the time of dissolution or reconstitution	At the time of dissolution or reconstitution
What should have been received?	Capital asset	Money or other asset
Co-relation between what is received and the capital balance	It should represents the capital balance	It should be in excess of the capital balance
Who is taxable?	Firm	Firm
Full Value of Consideration	FMV of capital asset	Money and FMV of other asset
Cost of Acquisition	Cost of that asset	Capital balance

▶ Restructuring of Firm

- ? How to determine short-term or long-term?
 - ? Taxability is due to a receipt by a partner
 - ? Not due to a transfer by a firm
 - ? Taxable person is a firm and not a partner
 - ? Whether period of holding of capital asset in the hands of the firm will decide the nature of capital gain?
 - ? What if it is a pure monetary settlement – for the purpose of sub-section 4A?

Restructuring of Firm

- ? Are they mutually exclusive?
 - ? If equal to or less than capital balance – sub-sec. (4)
 - ? If more than capital balance – sub-sec. (4A)
 - ? What was presently taxable might become non-taxable!
- ? Alternatively, CG needs to be divided between two provisions?
 - ? To the extent of capital balance – sub-sec. (4)
 - ? Language does not support breaking the value of asset!
 - ? In excess of capital balance – sub-sec. (4A)

▶ Restructuring of Firm

- ? No definition of reconstitution
- ? Making it taxable in the hands of firm – refuses the exemptions which could have been claimed by partner otherwise (like 54F)
- ? What if the continuing partners are paying directly to the retiring partner?
 - ? Anik Industries Ltd. vs. DCIT [2019] 116 taxmann.com 385 (Mum)
- ? Impact of Sec. 50C for determination of FMV
- ? Cash flow issues
- ? Issues where settlement is spread over more than one year

▶ Restructuring of Firm

- ? Consequential amendment to Sec. 48
- ? Deduction while computing CG
 - ? In the hands of SE
 - ? Amount included in its total income under sub-sec. (4A)
 - ? which is attributable to the capital asset being transferred
 - ? to be calculated in the prescribed manner

Restructuring of Firm

? Memorandum

This is to mitigate the double taxation which may have happened but for this provision in a situation where an asset which was revalued and for which income under the proposed sub-section (4A) of section 45 of the Act was brought to tax is transferred subsequently by the specified entity.

? Applies only in a case where

? Revalued asset is retained by the firm

? Revalued amount was taken into consideration for the purpose of settlement in cash



8

Business

Goodwill

- ? CIT v. Smifs Securities Ltd. 348 ITR 302 (SC)
 - ? Goodwill arising on amalgamation qualifies to be treated as an intangible asset eligible for depreciation
- ? Subsequently controversy arose about applicability of 6th Proviso to Sec. 32(1)(ii)
 - ? Against - United Breweries Ltd. v. Addl. CIT, TS-553-ITAT-2016(Bang)
 - ? Favourable - Mylan Laboratories Ltd. v. DCIT TS-691-ITAT-2019(Hyd)

Goodwill

? Amendments

? Sec. 2(11) – Definition of ‘block of assets’

? Goodwill of a business or profession excluded from the intangible assets

? Sec. 32(1)

? Suitably amended to exclude goodwill of a business or profession from the intangible assets

Goodwill

? Amendments

? Sec. 50 – Capital Gains in case of depreciable asset

? If block of asset as on 1-4-19

? includes goodwill of a business or profession

? depreciation thereon is obtained

? WDV & STCG to be computed in a prescribed manner

Goodwill

- ? Amendments
 - ? Sec. 55(2)(a) – Defining ‘cost of acquisition’
 - ? Reference to goodwill of a profession included in addition to goodwill of a business
 - ? If depreciation is claimed on goodwill in past (till AY 20-21), then total of depreciation obtained needs to be reduced from its cost
- ? All amendments are effective from AY 2021-22

Goodwill

- ? Goodwill is made ineligible for depreciation
 - ? Whether arising due to amalgamation etc. or even otherwise
- ? Whether depreciation will be available to the goodwill which has already entered the block before 1-4-20?
 - ? Intention appears to be to deny
 - ? No adjustment provided for redetermination of WDV of block
 - ? Whether a separate block for goodwill or one block for all intangibles?
 - ? ITR Form provides for a block of all intangibles

▶ 36(1)(va) vs. 43B

- ? Contributions to PF, SAF or other welfare funds
 - ? Sec. 2(24)(x) – Employee's contribution treated as income
 - ? Sec. 36(1)(va) – Deduction is allowed subject to its payment on or before the due date
 - ? Due date – as per the relevant law applicable to that fund
 - ? Sec. 43B – Employer's contribution – deductible on payment basis
 - ? On or before the due date of ITR
- ? Courts taking a view that employee's contribution deductible in accordance with Sec. 43B

36(1)(va) vs. 43B

? Favourable

- ? Aimil Ltd (2010) 321 ITR 508 (Delhi)
- ? State Bank of Bikaner and Jaipur (2014) 265 CTR 471 (Raj)
- ? Kichha Sugar Co Ltd (2013) 356 ITR 351 (Uttarakhand)
- ? Nipso polyfabriks Ltd (2013) 350 ITR 327 (Himachal Pradesh)
- ? Ghatge Patil Transports (2014) 368 ITR 749 (Bombay)
- ? Rajasthan State Beverages Corpn. Ltd. [2017] 84 taxmann.com 173 (Raj.)
 - ? SLP was dismissed by the SC

▶ 36(1)(va) vs. 43B

❓ Against

- ❓ Merchem Ltd [2015] 280 CTR 381 (Kerala)
- ❓ Gujarat Transport Corporation (2014) 366 ITR 170 (Guj)
- ❓ Unifac Management Services (India) Pvt. Ltd. (2019) 307 CTR 168 (Mad)

▶ 36(1)(va) vs. 43B

- ? Amendments
 - ? Insertion of Explanation to Sec. 36(1)(va)
 - ? Sec. 43B does not apply for determination of 'due date'
 - ? Insertion of Explanation to Sec. 43B
 - ? It doesn't apply to the employee's contribution
- ? Effective from AY 2021-22
 - ? Whether it will apply to prior AYs?
 - ? CIT vs. Vatika Township (SC – Full Bench)

9

Real Estate

▶ Boosting Real Estate

- ? Announced in Atmanirbhar Bharat Package 3.0 on 12-11-20
 - ? Press Release dated 13-11-20
- ? Amendments proposed in Finance Bill
- ? Sec. 43CA
 - ? Tolerance limit increased from 10% to 20%
 - ? No impact if SDV \leq 120% of Agreement Value

▶ Boosting Real Estate

? Sec. 43CA

? Subject to conditions –

? Only for a residential unit

? Defined

? Period of transfer = 12-11-20 to 30-6-21

? Transfer is by way of **first time allotment**

? Consideration \leq ₹ 2 crore

▶ Boosting Real Estate

- ❓ Corresponding amendment to Sec. 56(2)(x)
 - ❓ No taxability in the hands of a buyer
- ❓ No amendment to Sec. 50C
 - ❓ Relief only for Builders & Developers
- ❓ Applicable only for AY 2021-22 & 2022-23

Deductions

- ? Sec. 80-IBA – tax holiday for affordable housing project
 - ? Extended to affordable rental housing project
 - ? As notified
 - ? Approval period for housing project expiring on 31-3-21 extended to 31-3-22
- ? Sec. 80EEA – deduction for interest on housing loan
 - ? Period for getting loan sanctioned extended by 1 year – to 31-3-22

10

Deductions & Exemptions

ULIP

- ? Maturity or surrender value from ULIP qualifies for exemption
 - ? Subject to 10% cap on annual premium
- ? HNIs claiming exemption by investing in ULIP with huge premium
- ? Amendments
 - ? Sec. 10(10D) – denying exemption in certain cases
 - ? Sec. 2(14), 45, 112A – providing for taxability under capital gains
- ? Applicable only to policies issued on or after 1-2-21

ULIP

- ? Denial of exemption under Sec. 10(10D)
 - ? If annual premium $> ₹ 2,50,000$
 - ? In any year during the term of policy
 - ? If multiple policies having premium $\leq ₹ 2,50,000$
 - ? Exemption available only for policies of which the aggregate annual premiums $\leq ₹ 2,50,000$ in any year
- ? Exemption continues to apply to sum received on death

ULIP

- ? Taxability
 - ? Included in the definition of 'capital asset'
 - ? Sec. 45(1B) – deemed to be the capital gain
 - ? To be computed in a prescribed manner
 - ? Included in the definition of 'equity oriented fund'
 - ? Subject to investment of minimum 65% in equity
 - ? Sale, surrender or redemption made subject to STT
 - ? Beneficial treatment under Sec. 111A or 112A available

ULIP

? Issues

- ? STT applicable for all policies (even where 65% not invested in equity)
 - ? Sec. 111A or 112A applicable subject to minimum 65% investment in equity
- ? ULIPs not eligible for exemption otherwise (annual premium >10%)
 - ? New scheme of taxation is not applicable
 - ? How will they be taxed?

Interest on PF

- ? Present provision exempts PF withdrawals fully including whole of the interest
 - ? Sec. 10(11)– Statutory PF
 - ? Sec. 10(12)– Recognised PF
- ? Statistics
 - ? Top 100 HNIs have more than ₹ 2,000 crore
 - ? Top 20 HNIs have more than ₹ 825 crore
 - ? Top most HNI has more than ₹ 103 crore

Interest on PF

- ? Amendment – Proviso inserted in both
 - ? Denying exemption to interest accrued during the PY
 - ? To the extent it relates to assessee's contribution exceeding ₹ 2,50,000
 - ? Contribution made only after 31-3-21 to be considered
 - ? Needs to be computed in a prescribed manner
- ? Effective from AY 2022-23

Interest on PF

? Issues

- ? Conflicting with the provisions of Rule 6 of Schedule IV-A
 - ? It creates charge of tax only on interest credited in excess of notified rate
- ? Taxable in which year?
 - ? Year of withdrawal or year of accrual?

PF on Radar

? FA, 2020

? Employer's contribution in excess of ₹ 7,50,000 and interest thereon made taxable

? Threshold to be applied in aggregate for PF, SF & NPS

? FB, 2021

? Interest on employee's contribution exceeding ₹ 2,50,000 made taxable

LTC

- ? LTC could not be availed due to COVID-19 pandemic
- ? Scheme of cash allowance of LTC fare
 - ? Govt. Employees – Office Memorandum dated 12-10-20
 - ? Non-govt. Employees – Press Release dated 29-10-20
- ? Corresponding amendment to Sec. 10(5) – only for AY 21-22
 - ? Exemption extended to value in lieu of any LTC
 - ? Subject to prescribed conditions (for incurring necessary expenditure)

LTC

- ❓ Conditions likely to be prescribed (listed in Memorandum)
 - ❓ Option needs to be exercised for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21
 - ❓ Exemption = lesser of ₹ 36,000 (per person) or 1/3rd of specified expenditure incurred

LTC

- ? Conditions likely to be prescribed (listed in Memorandum)
 - ? Specified expenditure
 - ? To be incurred by assessee or his family on goods or services which are liable for GST @12% or above
 - ? No double benefit for the same expenditure by more than one person
 - ? Only from GST registered persons
 - ? Only during period from 12-10-20 to 31-3-21
 - ? Tax Invoice needs to be obtained
 - ? Payment in prescribed modes

Start-ups

- ? Sec. 80-IAC – tax holiday
 - ? Required to be incorporated before 1-4-21
 - ? Extended by one year – to 1-4-22
- ? Sec. 54GB – capital gain exemption
 - ? Only for residential property transferred before 1-4-21
 - ? Extended by one year – to 1-4-22

11

Trusts

Trusts

- ? Exemption subject to application of income for charitable or religious purposes
 - ? Whether the source of funds from which income is applied is relevant?
 - ? Sourced from corpus donations
 - ? Receipt is exempt
 - ? Application claimed as exemption against the other income
 - ? Sourced from loan or borrowing

Trusts

- ? Amendments to –
 - ? Sec. 10(23C)
 - ? Sec. 11
- ? Exemption for corpus donation – Sec. 11(1)(d)
 - ? Only if it is invested or deposited in specified modes
 - ? Specified in Sec. 11(5)
 - ? To be maintained specifically for corpus
 - ? Identified account

Trusts

- ? New Explanations
 - ? Application of income for charitable or religious purposes
 - ? Should not be out of –
 - ? Corpus donations claimed as exempt
 - ? Loan or borrowing

Trusts

? New Explanations

? If applied out of such sources – it shall be allowed to be treated as application for the purpose of exemption

? In the PY in which –

? Corpus donation deposited or invested in specified mode

? Loan or borrowing repaid

? Only if out of income of that PY

Trusts

- ? New Explanations
 - ? No set off or deduction or allowance of any excess application of any preceding PY
 - ? While computing the income required to be applied during the current PY
- ? Effective from AY 2022-23

Trusts

- ? Adjustment on the basis of source of application already provided in the ITR-7

E	Source of fund to meet revenue expenditure		E	
	1	Income derived from the property/income earned during previous year	1	
	2	Income deemed as application in any preceding year under clause 2 of explanation 1 of section 11(1) (applicable only when exemption is claimed u/s 11 and 12)	2	
	3	Income of earlier years upto 15% accumulated or set apart	3	
	4	Borrowed Fund	4	
	5	Any other (Please specify)	5	
F	Total Amount applied during the previous year – Revenue Account [A16 + B10 - E2 - E3 - E4 - E5		F	

Trusts

- ? Exemption under Sec. 10(23C)
 - ? (iiiad) – educational institution
 - ? (iii ae) – medical institution
- ? Subject to aggregate annual receipts \leq ₹ 1 crore
- ? Threshold increased to ₹ 5 crore
 - ? Trust having both the institutions – threshold will apply in aggregate
- ? Effective from AY 2022-23

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Miscellaneous

Interest – 234C

- ? Advance tax liability on dividend cannot be estimated
- ? Amendment to Sec. 234C
 - ? Dividend income added to the list of incomes in first proviso
 - ? Advance tax needs to be paid in remaining instalments
 - ? Not applicable to deemed dividend as per Sec. 2(22)(e)
- ? Applicable from AY 2021-22

44ADA - Applicability

- ? Type of assessee covered
 - ? Memorandum to FB, 2016 - only for individual, HUF or firm excluding LLP
 - ? LLP needs to maintain books of account as per LLP Act
 - ? Section - did not specify so
- ? Amendment to make it explicit
 - ? Applies only to individual, HUF or firm excluding LLP
- ? Effective from AY 2021-22
 - ? Past years - ITR utility did not allow LLP to offer under Sec. 44ADA!

False Entry

- ? FA, 2020
 - ? Sec. 271AAD
 - ? Penalty for –
 - ? a false entry
 - ? an omission of any entry
 - ? Person making it or person who causes such person to make it
 - ? Equivalent to aggregate amount of such false or omitted entry

False Entry

- ? Sec. 281B amended
 - ? Extending power of AO to make provisional attachment over any property
 - ? Proceeding for imposition of penalty under Sec. 271AAD is covered
 - ? Where the amount or aggregate of amounts of penalty likely to be imposed exceeds ₹ 2 crore
- ? Effective from 1-4-2021

Other Amendments

- ? MAT
- ? Slump Sale
- ? Liable to tax
- ? Equalisation Levy
- ? Vivad se Vishwas
- ? Income Declaration Scheme

THANKS!

CA Bhadresh Doshi

98 33 60 50 80

bhadresh@bhadreshdoshi.com