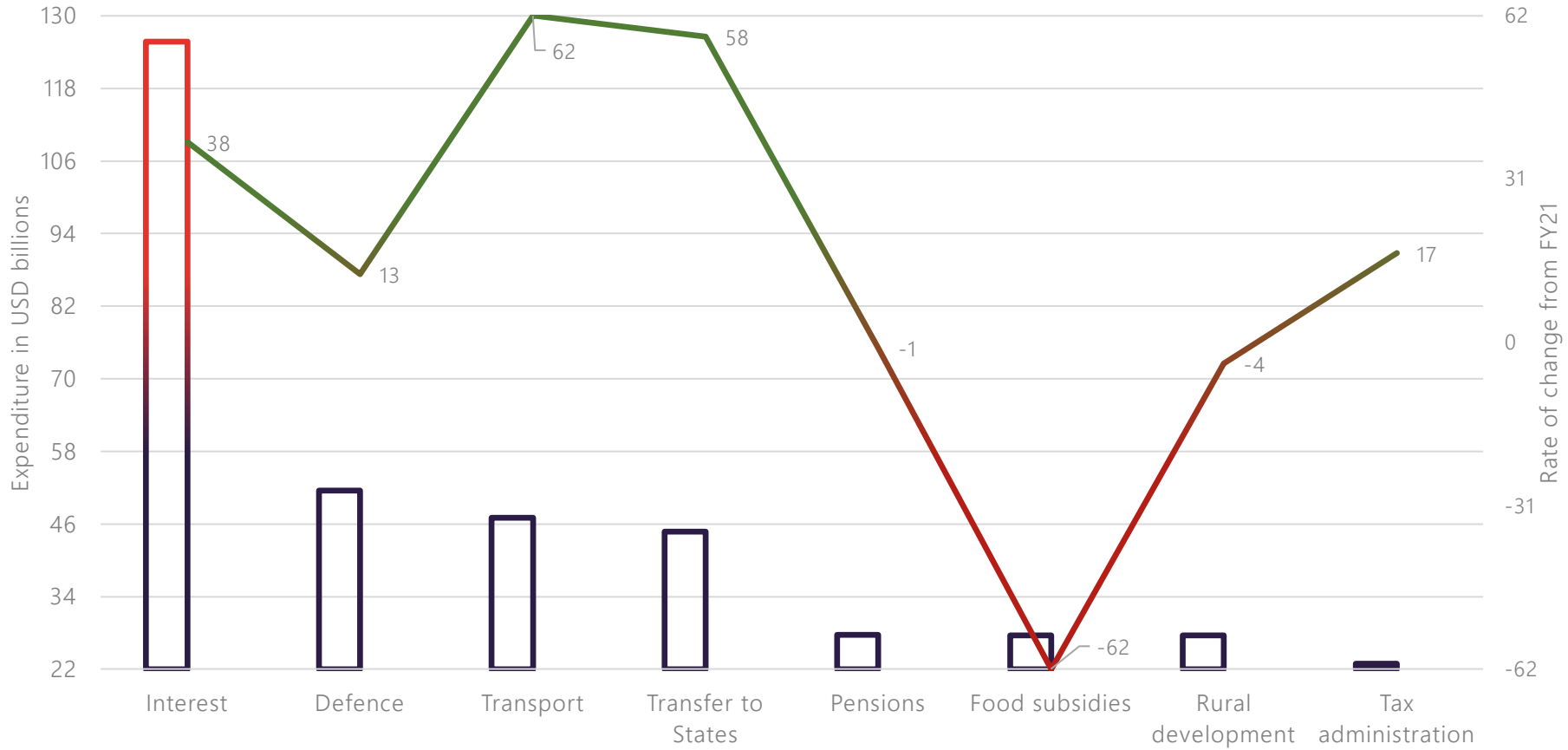


# Union Budget 2022

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## a comprehensive analysis

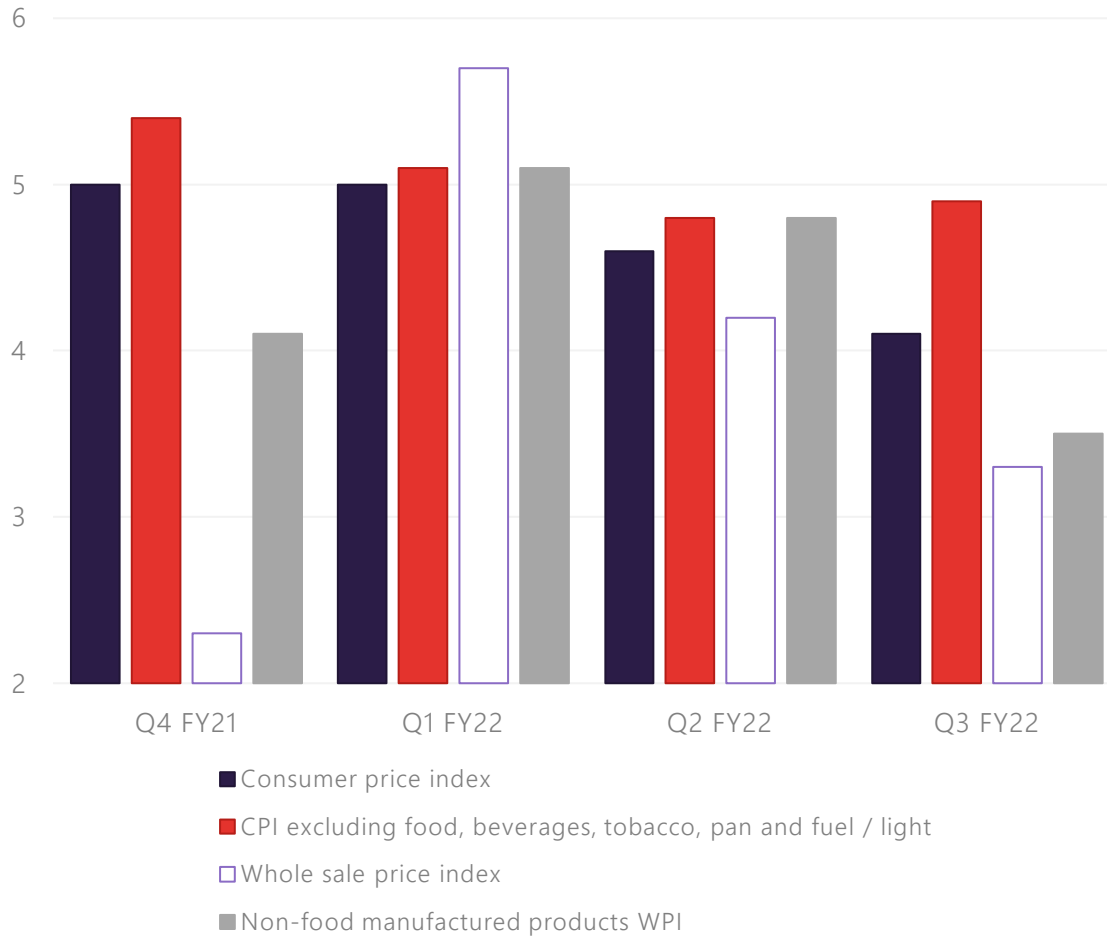
# Expenditure items in Budget 2022-2023



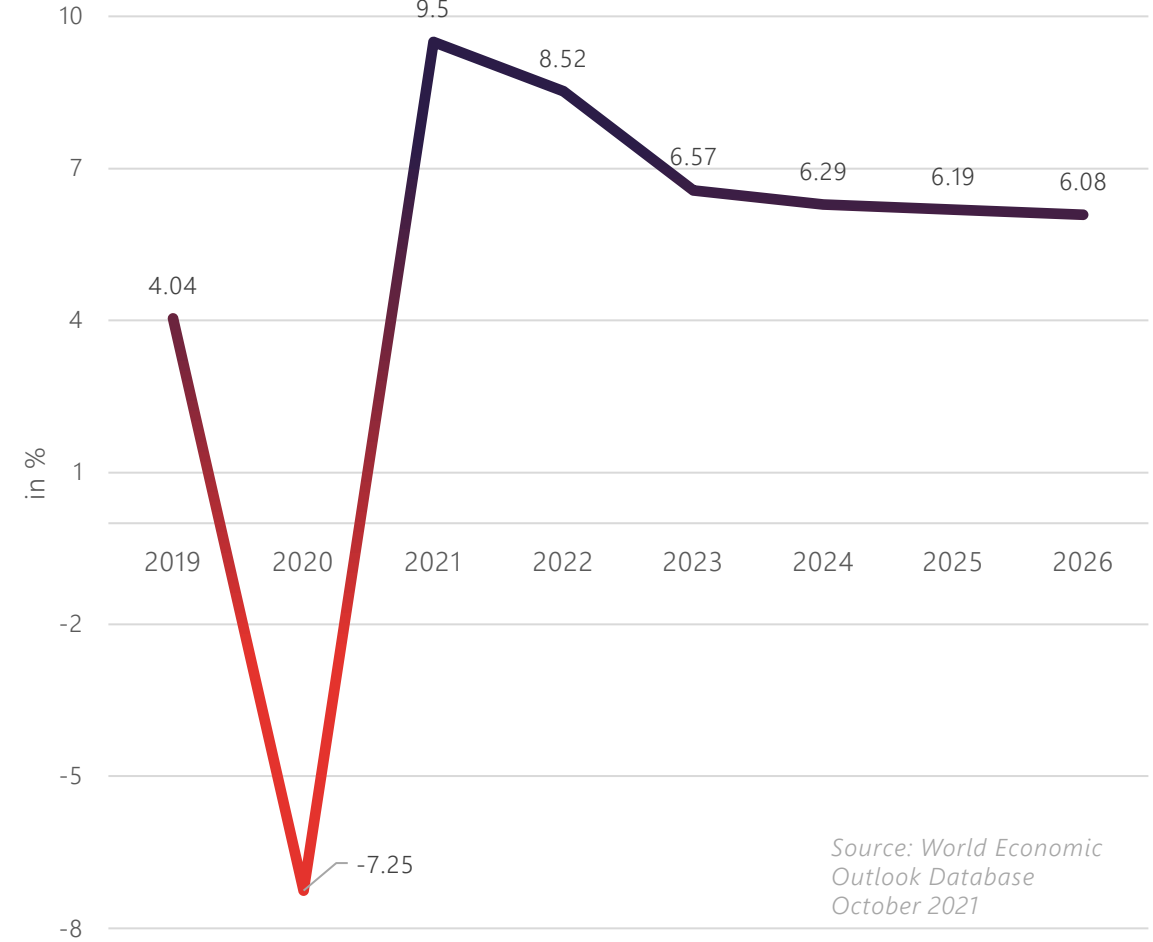
# Inflation and real GDP



Estimated quarterly inflation in India Q4 FY21 - Q3 FY22



Real GDP growth rate from 2016 to 2026

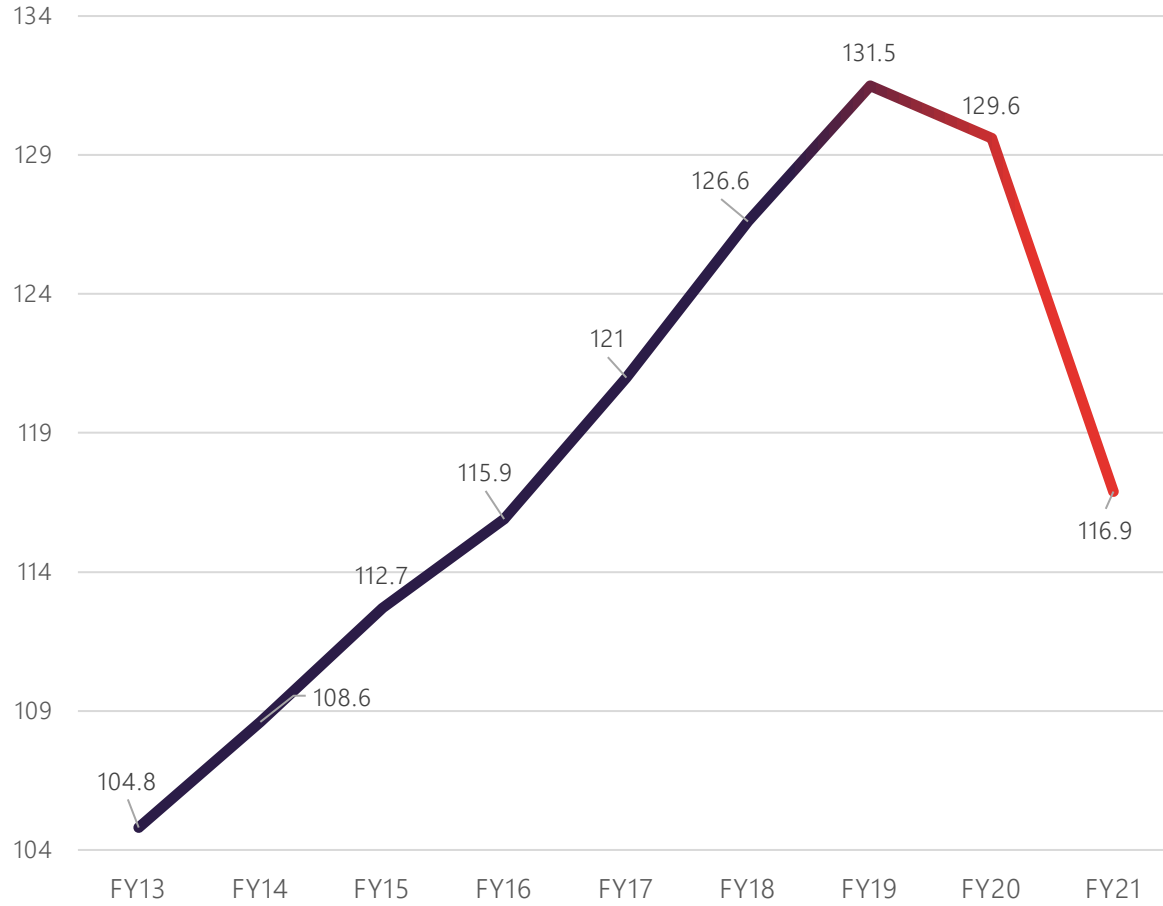


Source: World Economic Outlook Database October 2021

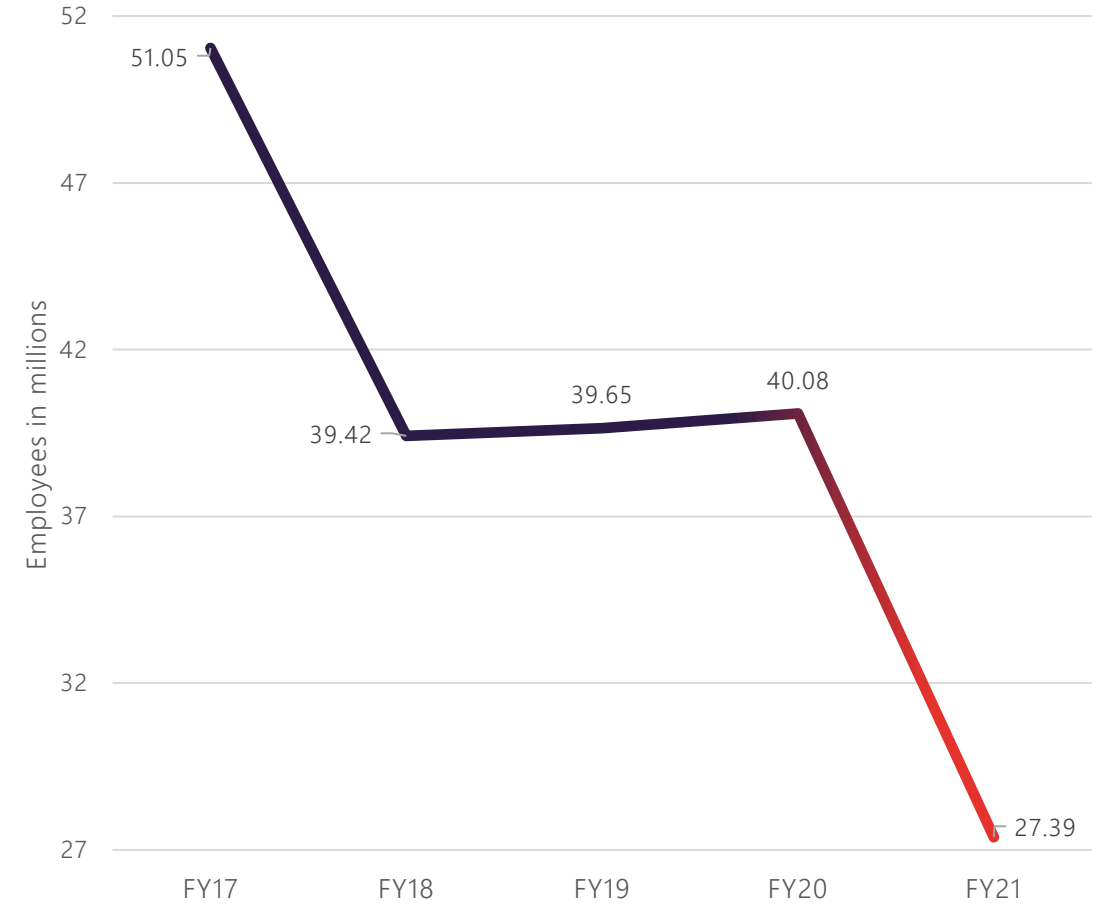
# Industrial production and employment



### Index of industrial production



### Employment across manufacturing sector in India





# Key policy announcements



## PM GatiShakti

- PM GatiShakti is a transformative approach driven by roads, railways, airports, ports, mass transport, waterways, and logistics infrastructure. These will be supported by the complementary roles of energy transmission, IT communication, bulk water & sewerage, and social infrastructure.
- The approach is powered by Clean Energy and Sabka Prayas – the efforts of the Central Government, the State governments, and the private sector together – leading to huge job and entrepreneurial opportunities for all, especially the youth.

## Defence

- The Government is committed to reducing imports and promoting AtmaNirbharta in equipment for the armed forces. 68% of the capital procurement budget will be earmarked for the domestic industry in 2022-23, up from 58% in 2021-2022.
- 25% of the defence R&D budget to be earmarked for industry, start-ups, and academia. Private players to take up R&D of military equipment.
- An independent nodal umbrella body will be set up for meeting wide-ranging testing and certification requirements.

## Railways

- Railways will develop new products and efficient logistics services for small farmers and SMEs, besides taking the lead in the integration of postal and railways networks to provide seamless solutions for the movement of parcels. 'One Station-One Product' concept will be popularized to help local businesses and supply chains.
- 2,000 km of the network will be brought under Kavach, the indigenous world-class technology for safety and capacity augmentation in 2022-2023.
- *Next three years*
  - 400 new-generation Vande Bharat Trains will be developed and manufactured.
  - 100 PM GatiShakti Cargo Terminals for multimodal logistics facilities will be developed.

## Crypto – Rupee

- The introduction of Central Bank Digital Currency (CBDC) will give a big boost to a digital economy. Digital currency will also lead to a more efficient and cheaper currency management system.
- It is proposed to introduce Digital Rupee issued by RBI in 2022-2023.

## EV batteries

- Government to introduce battery swapping policy and inter-operability standards. The private sector to be encouraged to develop innovative business models for 'Battery or Energy as a Service'.

## Solar

- To facilitate domestic manufacturing for the ambitious goal of 280 GW of installed solar capacity by 2030, an additional allocation of INR 19,500 crore for Production Linked Incentive for the manufacture of high-efficiency modules will be made.

## Education

- Due to the pandemic-induced closure of schools, children have lost almost two years of education. The 'One class-one television channel' programme of PM eVIDYA will be expanded from 12 to 200 television channels.
- This will enable all States to provide supplementary education in regional languages. 750 virtual labs in science and mathematics, and 75 skilling e-labs for a stimulating learning environment, will be set up in 2022-2023.
- High-quality e-content in all spoken languages will be developed for delivery. A competitive mechanism for the development of quality e-content by the teachers will be set up.



## Land records management

- › States to adopt Unique Land Parcel Identification Number to facilitate IT-based management of records. The facility for transliteration of land records across any of the Schedule VIII languages will also be rolled out. Linkage with NGDRS with the 'One-Nation One-Registration Software' to be promoted as an option for a uniform process for registration and 'anywhere registration' of deeds and documents.

## Urban planning

- › For urban capacity building, support will be provided to the states. Modernization of building bylaws, TPS, and TOD will be implemented. This should facilitate reforms for people to live and work closer to mass transit systems.
- › The Central Government's financial support for mass transit projects and the AMRUT scheme will be leveraged for the formulation of action plans and their implementation for facilitating TOD and TPS.
- › For developing India specific knowledge in urban planning and design, and to deliver certified training in these areas, up to five existing academic institutions will be designated as centres of excellence.

## Development of northeast India

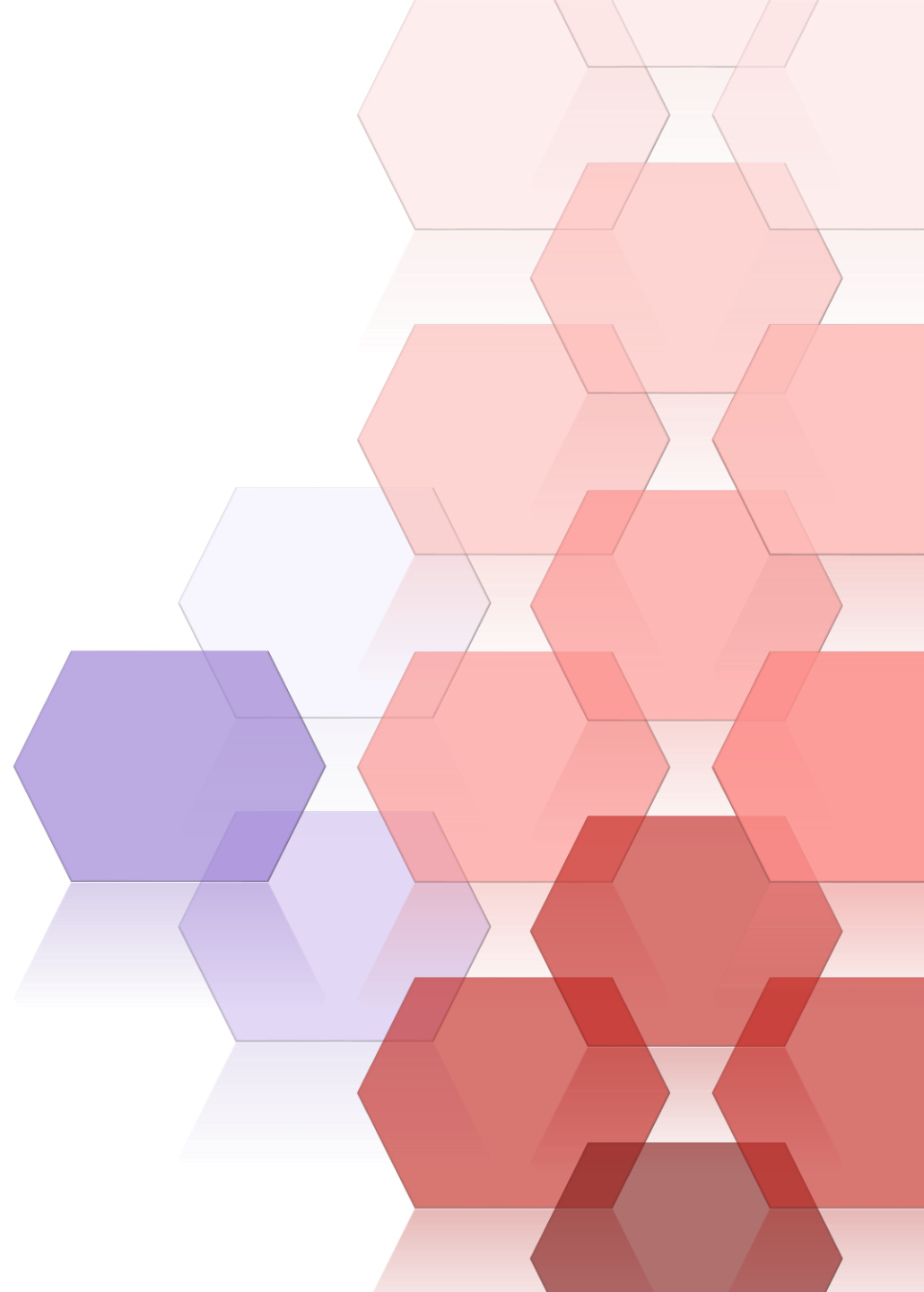
- › Prime Minister's Development Initiative for North-East, PM-DevINE, will be implemented through the North-Eastern Council. It will fund infrastructure, and social development projects based on the needs of the North-East. This should enable livelihood activities for youth and women, filling the gaps in various sectors.
- › While the Central ministries may also pose their candidate projects, priority will be given to those posed by the States.

## Ayushman Bharat and health programme

- › An open platform, for the National Digital Health Ecosystem, will be rolled out. It will consist of digital registries of health providers and health facilities, unique health identity, consent framework, and universal access to health facilities.
- › 'National Tele Mental Health Programme' will be launched. This will include a network of 23 tele-mental health centres of excellence, with NIMHANS being the nodal centre and the International Institute of Information Technology-Bengaluru (IIITB) providing technical support.



Direct taxes







## Personal income tax

No changes have been proposed in the base rates of tax. However, the surcharge on specific AOPs and surcharge on long-term capital gains capped @15%. Accordingly, the rates of tax (including cess and surcharge) as applicable for assessment year 2023-2024 are as tabulated.

Existing rates#				
Income (INR)	Age < 60 Years	Age > 60 Years but less than 80 Years	Age > 80 Years	Alternate regime *
Up to 2,50,000	NIL	NIL	NIL	NIL
2,50,001 - 3,00,000	5.20%	NIL	NIL	5.20%
3,00,001 - 5,00,000	5.20%	5.20%	NIL	5.20%
5,00,001 - 7,50,000	20.80%	20.80%	20.80%	10.40%
7,50,000 - 10,00,000	20.80%	20.80%	20.80%	15.60%
10,00,001 - 12,50,000	31.20%	31.20%	31.20%	20.80%
12,50,001 - 15,00,000	31.20%	31.20%	31.20%	26%
15,00,001 - 50,00,000	31.20%	31.20%	31.20%	31.20%
50,00,001 - 1,00,00,000	34.32%	34.32%	34.32%	34.32%
1,00,00,001 - 2,00,00,000	35.88%	35.88%	35.88%	35.88%
2,00,00,001 - 5,00,00,000	39.00%	39.00%	39.00%	39.00%
Above 5,00,00,000	42.74%	42.74%	42.74%	42.74%
# Rates of tax including Surcharge and Cess @10% to be levied if the total income is between INR 50 lakhs to INR 1 crore. @15% is levied if the total income exceeds INR 1 crore to INR 2 Crore. @25% is levied if the total income exceeds INR2 crore to INR 5 Crore. @37% is levied if the total income exceeds INR 5 crore @4% Health and Education Cess on Income tax including Surcharge				
* Taxpayer opting for this simplified tax regime, will not be eligible for certain deductions under Chapter VI -A, LTA, HRA, standard deduction, interest on home loan, etc.				



<b>Tax Rates#</b>			
<b>Description</b>	<b>Net income INR 0-1 crore</b>	<b>Net income INR 1-10 crore</b>	<b>Net income above INR 10 crore</b>
<b>Domestic companies</b>			
With turnover under INR 400 crores	26%	27.82%	29.12%
Domestic companies covered under Section 115BA	26%	27.82%	29.12%
Domestic companies covered under Section 115BAA	25.17%	25.17%	25.17%
Domestic companies covered under Section 115BAB	17.16%	17.16%	17.16%
With a turnover in excess of INR 400 crores / other domestic companies	31.20%	33.38%	34.94%
Marginal Attributable Tax (MAT)	15.60%	16.69%	17.47%
Buy Back Tax under Section 115QA	23.30%	23.30%	23.30%
<b>Foreign companies</b>			
Foreign companies	41.60%	42.43%	43.68%
<b>Firms and LLP</b>			
Firms and LLP	31.20%	34.94%	34.94%
Alternate Marginal Tax (AMT)	19.24%	21.55%	21.55%
<b>Co-operative societies</b>			
Co-operative societies with incomes above INR 20,000	33.38%	33.38%	33.38%
Alternate Marginal Tax (AMT)	16.69%	16.69%	16.69%
# Rates of tax including Surcharge and Cess @7% to be levied on companies if the total income is between INR 1 crore to INR 10 crore. @12% to be levied on companies if the total income exceeds INR 10 crore @10% to be levied on domestic companies covered under Section 115BAA and Section 115BAB companies irrespective of the amount of total income @12% to be levied on firms and LLPs if the total income exceeds INR 1 crore @4% Health and Education Cess on Income tax including surcharge			

# Rationalization of surcharge



## Individuals, HUFs

- Individuals and HUFs are subject to a maximum rate of surcharge at 37% in respect of entire income, other than capital gains on listed shares and dividends, wherein surcharge is capped at 15%. Finance Bill, 2022 proposes to extend capping of surcharge at the rate of 15% for long-term capital gains arising on sale of any capital asset. The said proposal reduces the maximum effective tax rate on long-term capital gains from 28.5% to 23.92%.

## AOP

- AOP's are taxed at the rates as applicable to individual / HUF's are subject to a maximum rate of surcharge at 37% in respect of entire income. In the cases of a consortium of companies, they suffer from a graded surcharge of 37%, which is a lot more than the surcharge on the individual companies. Hence it is proposed that in case of an association of persons consisting of only companies as its members, the rate of surcharge on the amount of Income-tax shall not exceed 15%.

## Co-operative societies

- Section 115JC, inter alia, provides for the AMT payable by co-operative societies, which is at the rate of 18.5%. However, the MAT rate for companies is 15%.

- Therefore, to provide parity between co-operative societies and companies, it is proposed to modify Section 115JC(4) to reduce the AMT rate at which co-operative societies are liable to pay income-tax to 15%. A consequential amendment is also proposed in clause (b) of Section 115JF in relation to the definition of 'alternate minimum tax'.
- These amendments will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-2024 and subsequent assessment years.

## Vedya analysis

The industry was expecting the government to take some steps to reduce the tax burden on the middle class by way of increase in the threshold of the income tax slabs as well as the increase in the deductions available, to ease the burden on account of rising inflation as well as the rise in fuel prices. However, the government has not provided any such relief leaving the affected desiring for more. A conscious decision has been taken to avoid any such steps that would increase the tax burden of the assessee, no increase in taxes is saving on its own.

A stable tax policy is always a welcome move as it provides ease to taxpayers to plan their incomes and taxes and provides certainty in the minds of the Assessee. However, support is also required in testing times.

# Promoting voluntary tax compliance and reducing litigation



## Introducing new 'Updated return'

- It is proposed to introduce a new provision in Section 139 for filing an updated return of income by any person, whether he has filed a return previously for the relevant assessment year, or not. The proposal for updated return within 24 months from the end of the assessment year.
- These amendments will take effect from 1 April 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

### Vedya analysis

These proposed amendments are in line with the government vision to trust reposed in the taxpayers that will enable the assessee to declare the income that they may have missed out earlier while filing her return. This would on one hand bring the use of huge data with the IT Department to a logical conclusion resulting in additional revenue realization and on the other hand, it will facilitate ease of compliance to the taxpayer in a litigation free environment.

## Litigation management when in an appeal by revenue an identical question of law is pending before jurisdictional High Court or Supreme Court.

- It is proposed to insert a new Section 158AB in the Income-tax Act, to provide that where the collegium (two or more Chief Commissioners or Principal Commissioners or Commissioners of Income-tax, as specified by the board), believes that any question of law arising in the case of an assessee for any assessment year ('relevant case') is identical with a question of law already raised in his case or in the case of any other assessee for an assessment year, which is pending before the jurisdictional High Court or the Supreme Court, against the order, in favour of such assessee ('other case'), it may decide and intimate the Commissioner or Principal Commissioner not to file any appeal, at this stage, to the Appellate Tribunal / Court.
- These amendments will take effect from 1 April 2022 and will accordingly apply to the assessment year 2022-2023 and subsequent assessment years.

### Vedya analysis

While existing Section 158AA applies in a situation where identical question of law arises for the same assessee but in different assessment years and only in relation to appeal before Hon'ble Supreme Court. The proposed Section 158AB is wider in ambit to even cover cases of other assessees and even appeal to High Court(s).

Insertion of Section 158AB shall reduce the amount of time and cost involved in filing an appeal for cases where a question of law is common and where a decision of the jurisdictional High Court, on the same question of law is available leaving more time and scope for speedy disposal of cases. This will help in reducing the repeated litigation between taxpayers and the department..



## DRC

- it is proposed to insert a new sub-Section to this Section to enable the Assessing Officer to pass an order giving effect to the resolution of a dispute by the DRC. However, since DRC is an alternate dispute resolution mechanism itself, a taxpayer may opt for approaching either the Dispute Resolution Panel under Section 144C or the DRC under Section 245MA, and the AO shall pass the final order in conformity with the order by the DRC even in the case of an eligible assessee.
- This amendment will take effect from 1 April 2022.

## Clarification in relation to 'Health and Education cess' as business expenditure

- The income tax is not an allowable expenditure for the computation of business income. This includes tax as well as surcharges.
- The 'Health and Education Cess' is imposed as an additional surcharge on the taxpayer for funding specific government welfare programs.
- However, the Hon'ble Bombay High Court in the case of Sesa Goa Limited Vs. JCIT (2020) and some other high courts, have held that 'education cess' can be claimed as an allowable deduction, which has been relied on by ITAT and has allowed a deduction on account of payment of 'cess'.

- That the aforesaid interpretation is against the intention of the legislature and not in line with the law settled by the Hon'ble Supreme Court, in CIT Vs. K. Srinivasan.' Hence, to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to include an Explanation retrospectively in the Income-tax Act itself to clarify that, the term 'tax' includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax.
- This amendment will take effect retrospectively from 1 April 2005 and will accordingly apply in relation to the assessment year 2005-2006 and subsequent assessment years.

## Successor entity after business reorganization

- A new Section 156A in the Income-tax Act is proposed to be inserted relating to modification and revision of notice in certain cases.
- Where any tax, interest, penalty, fine or any other sum for which a demand notice is issued under Section 156, is reduced as a result of an order of an Adjudicating Authority as defined in the Insolvency and Bankruptcy Code, 2016, the Assessing Officer shall modify the report, in conformity with such order and shall serve a notice of demand specifying the sum payable, if any, and such notice of demand shall be deemed to be a notice under Section 156 and the provisions of this Act shall apply accordingly.

- Section 170(2A) to be inserted to provide a deeming provision to save and validate the proceedings and to hold the assessment or other proceedings pending or completed on the predecessor in the event of a business reorganization, to be held in the hands of the successor
- Furthermore, Section 170A is proposed to be inserted to provide for any return of income that has been furnished by the successor under the provisions of Section 139, such successor shall furnish, within a period of six months from the said order, a modified return.
- This amendment will take effect from 1 April 2023.

## Vedya analysis

The aforesaid amendments bring the Income-tax Act in line with various regulations under the IBC, furthermore, a formal mechanism has been introduced to file revised returns post the order of the adjudicating authority giving effect to the business re-organization for the period between the date of filing and date of the final order.



## **No deduction of expenditure in relation to exempt income**

- Section 14A provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income that does not form part of the total income as per the provisions (exempt income).
- Over the years, disputes have arisen in respect of the issue of whether disallowance under Section 14A can be made in cases where no exempt income has accrued, arisen, or received by the assessee during an assessment year. Some courts have taken a view that if there is no exempt income during a year, no disallowance under Section 14A can be made for that year.
- To make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to Section 14A to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this Section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received and the expenditure has been incurred during the said year in relation to such exempt income.

- It is also proposed to amend sub-Section (1) of the said section, to include a non-obstante clause in respect of other provisions and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.
- This amendment will take effect from 1 April 2022 and will accordingly apply in relation to the assessment year 2022-2023 and subsequent assessment years.

## **Deduction on payment of interest only on actual payment**

- Section 43B provides for certain deductions to be allowed only on actual payment. However, deduction under Section 43B on account of the conversion of interest payable on an existing loan into a debenture on the ground that such conversion is a constructive discharge of interest liability and, therefore, amounted to actual payment which has been upheld by several Courts.
- Given the above, it is proposed to amend Explanation 3C, Explanation 3CA and Explanation 3D of Section 43B to provide that conversion of interest payable under clause (d), (da), (e) of Section 43B, into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been paid.

- This amendment will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-2024 and subsequent assessment years.



## Incentives for manufacturing

- The existing provisions of Section 115BAB provide for an option of concessional rate of taxation @15 % for new domestic manufacturing companies, subject to the condition *inter alia* that the eligible start-up is incorporated after 1 October 2019 and is required to commence manufacturing or production of an article or thing on or before 31 March 2023.
- Due to the COVID pandemic, there have been delays in the setting up of such units. To factor in such delays, it is proposed to amend the provisions of Section 115BAB to extend the date of commencement of manufacturing or production of an article or thing, from 31 March 2023 to 31 March 2024.
- This amendment will take effect from 1 April 2022 and will, accordingly, apply in relation to the assessment year 2022-2023 and subsequent assessment years.

### Vedya analysis

The introduction of Section 115BAB intended to attract investment, create jobs and trigger overall economic growth. However, the cumulative impact of the persistence of the COVID-19 pandemic has resulted in some delay in setting up/registration of new domestic companies and the commencement of manufacturing or production by such companies, The extended benefit is a great initiative to promote Make in India.

## Incentives for start-ups – Extension

- The existing provisions of Section 80-IAC provide for a deduction of an amount equal to 100% of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years, at the option of the assessee, subject to the condition that the eligible start-up is incorporated on or after 1 April 2016 but before 1 April 2022 and the total turnover of its business does not exceed INR 100 Crores.
- Due to the COVID pandemic, there have been delays in the setting up of such units. To factor in such delays and promote such eligible start-ups, it is proposed to amend the provisions of Section 80-IAC to extend the period of incorporation of eligible start-ups to 31 March 2023.
- This amendment will take effect from 1 April 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years.

### Vedya analysis

The extended benefit of tax holiday to larger start-ups and further to addressing the of start-ups which may not have adequate profit in initial years for availing this holiday is a great initiative to promote Start-up India.

## IFSC

- The government has established a world-class financial services centre. Over the past few years several tax concessions have been provided to units located in IFSC to make it a global hub of the financial services sector:
- To further incentivize operations from IFSC, it is proposed to provide the following additional incentives:
  - It is proposed to amend Section 10(4E) to extend the exemption under the said clause to the income accrued or arisen to or received by a non-resident because of a transfer of offshore derivative instruments or over-the-counter derivatives entered with an Offshore Banking Unit of an International Financial Services Centre, referred to in Section 80LA(1A).
  - It is proposed to amend clause (4F) of Section 10 to extend the exemption under the said clause to the income of a non-resident by way of royalty or interest, on account of lease of a ship in a previous year, paid by a unit of an IFSC, as referred to in Section 80LA(1A), if the unit has commenced its operations on or before the 31 March 2024.



- It is proposed to insert Section 10(4G) to provide an exemption to any income received by a non-resident from a portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an Offshore Bank.
- It is proposed to amend the Explanation to Section 56(viib) to provide that specified fund shall also include Category I or a Category II Alternative Investment Fund which is regulated under the International Financial Services Centers Authority Act, 2019.
- It is proposed to amend Section 80LA(2)(d) to provide that in addition to the income arising from the transfer of an asset being an aircraft, the income arising from the transfer of an asset, being a ship, which was leased by a unit of the International Financial Services Centre to any person shall also be eligible for deduction under Section (1A) of the said section, subject to the condition that the unit has commenced operation on or before the 31 March 2024.
- These amendments will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

## Vedya analysis

These proposed amendments are in line with the government vision to promote IFSC and make it attractive for foreign investors. Accordingly, during the past few years, a number of benefits have been introduced under the Income-tax act to make IFSC more attractive as a business enterprise. This budget is no different.

## Incentives to NPS – Parity between employees of State and Central government

- Under the existing provisions, any contribution by the Central Government or any other employer to the account referred to in Section 80CCD (NPS account), shall be allowed as a deduction to the assessee in the computation of his total income, if it does not exceed 14% of his salary where such contribution is made by the Central Government. This limit is presently 10% of the salary in the case of employees of the State government.
- To provide equal treatment to both Central and State government employees, it is proposed to increase the tax deduction limit from 10% to 14% on employer's contribution to the NPS account of State Government employees as well.

- This amendment will take effect retrospectively from 1 April 2020 and will accordingly apply in relation to the AY 2020-2021 and subsequent assessment years; to ensure no additional tax liability arises on any contribution made in excess of 10% during such time.

## Vedya analysis

This would help in enhancing the social security benefits of the state government employees and bring them to par with central government employees.

## Tax relief to persons with disability

- The existing provision of Section 80DD(2) provides that the deduction shall be allowed only if the payment of the annuity or lump sum amount is made to the benefit of the differently-abled dependant, in the event of the death of the individual or the member of the HUF in whose name subscription to the scheme has been made.
- There could be situations where differently-abled dependants may need payment of annuity or lump sum amount even during the lifetime of their parents / guardians.





- Therefore, to remove this genuine hardship, it is proposed to allow the deduction under the said Section also during the lifetime, i.e., upon attaining the age of 60 years or more of the individual or the member of the HUF in whose name subscription to the scheme has been made and where payment or deposit has been discontinued.
- Further, it is proposed that the provisions of sub-Section (3) shall not apply to the amount received by the dependant, before his death, by way of annuity or lump sum by application of the condition referred to in the proposed amendment.
- This amendment will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-2024 and subsequent assessment years.

## **Exemption of amount received for medical treatment and on account of death due to COVID-19**

- To provide the relief, it is proposed to amend the proviso to Section 56(2)(x) and insert two new clauses in the proviso to provide that-
  - Any sum of money received by an individual, from any person, in respect of any expenditure incurred by him on his medical treatment or treatment of any member of his family, in respect of any illness related to COVID-19 subject to such conditions, as may be notified by the Central Government

in this behalf, shall not be the income of such person.

- Any sum of money received by a member of the family of a deceased person, from the employer of the deceased person (without limit), or from any other person or persons to the extent that such sum or aggregate of such sums does not exceed INR 10 Lakhs, where the cause of death of such person is illness relating to COVID-19 and the payment is, received within 12 months from the date of death of such person, and subject to such other conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person.
- These amendments will take effect retrospectively from 1 April 2020 and will accordingly apply in relation to the assessment year 2020-2021 and subsequent assessment years.

## **Facilitating strategic disinvestment of public sector company**

- Section 79 provides for carrying forward and set-off of losses in the case of certain companies. Section 79(1) provides that where a change in shareholding has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off

against the income of the previous year unless, on the last day of the previous year, the shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of year or years in which the loss was incurred. Sub-Section (2) of the said Section provides specified circumstances in which the provisions of sub-Section (1) shall not apply.

- To facilitate the strategic disinvestment of public sector companies, it is proposed to amend Section 79 to provide that the provisions of sub-Section (1) of Section 79 shall not apply to an erstwhile public sector company subject to the condition that the ultimate holding company of such erstwhile public sector company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least 51% of the voting power of the erstwhile public sector company in aggregate.
- It is further proposed to provide that if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-Section (1) shall apply for such previous year and subsequent previous years.



- This amendment will take effect from 1 April 2022 and will accordingly apply in relation to the assessment year 2022-2023 and subsequent assessment years.

## **Vedya analysis**

The proposed amendments are in line with the government on going plan to disinvestment in Public Sector Units, these amendments will facilitate strategic disinvestment of loss-making Public Sector Units by allowing the carry forward and set-off of losses of public sector companies upon their amalgamation. The disinvestment in PSU comes will a lot of criticism and arguments of disharmony of the social structure of a welfare state, however, this argument holds no steam in 2022, in a free market any Public Sector Units should operate as a viable business and not a social enterprise since they are competing with private enterprises.



## **Scheme for taxation of virtual digital assets**

- Virtual digital assets have gained tremendous popularity in recent times and the volumes of trading in such digital assets have increased substantially. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset. The magnitude and frequency of these transactions have made it imperative to provide for a specific tax regime. Accordingly, a new scheme to provide for taxation of such virtual digital assets has been proposed in the Bill.

## **Regulate**

- To define the term 'virtual digital asset,' a new clause (47A) is proposed to be inserted into Section 2. As per the proposed new clause, a virtual digital asset is proposed to mean any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically. Non-fungible tokens and any other token of similar nature are included in the definition.

- Central Government may notify any other virtual digital asset as a virtual digital asset by way of notification in the Official Gazette. The Non-fungible tokens mean such digital assets as notified by the Central Government. Further, Central Government can notify such assets which shall not be considered as virtual digital assets for the proposed section.
- It is proposed to empower the Board to issue guidelines, with the prior approval of the Central Government, to remove any difficulty arising in giving effect to the provisions of the said Section and every such guideline issued by the Board shall be laid before each House of Parliament and shall be binding on the income-tax authorities and on the person responsible for paying the consideration on transfer of such virtual digital assets.

## **Income Tax**

- It is proposed to insert Section 115BBH which seeks to provide that where the total income of an assessee includes any income from transfer of any virtual digital asset, the income-tax payable shall be the aggregate of the amount of income-tax calculated on income on transfer of any virtual digital asset at the rate of 30%, irrespective of the Tax slabs.
- However, 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 while computing income from transfer of such asset.

- Further, no set-off of any loss arising from transfer of virtual digital asset shall be allowed against any income computed under any other provision and such loss shall not be allowed to be carried forward to subsequent assessment years.
- This amendment will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-2024 and subsequent assessment years.

## **TDS**

- Further, to widen the tax base from the transactions so carried out in relation to these assets, it is proposed to insert Section 194S to the Income-tax Act to provide for deduction of tax on payment for the transfer of virtual digital asset to a resident at the rate of 1% of such sum.
- However, in case the payment for such transfer is wholly in kind or exchange of another virtual digital asset or partly in cash and partly in kind, the person before making the payment shall ensure that the tax has been paid in respect of such consideration.
- It is also proposed to provide that if tax has been deducted under Section 194S, then no tax is to be collected or deducted in respect of the said transaction under any other provision of Chapter XVII, including 194-O (TDS on payments made to e-commerce participants).

# Widening and deepening of tax base



- However, no tax is to be deducted where the value or the aggregate of such value of the consideration to a resident is less than INR 10,000 (INR 50,000 in case of individual or HUF) during the financial year.
- This amendment will take effect from 1 July 2022.

## Gift tax

- Further, to provide for taxing the gifting of virtual digital assets, it is also proposed to amend Explanation to Section 56(2)(x) to inter-alia, provide that for the said clause, the expression 'property' shall have the meaning assigned to it in Explanation to clause (vii) and shall include virtual digital asset.
- This amendment will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-2024 and subsequent years.

## Vedya analysis

The step to tax cryptocurrency / Digital Assets is the first to acceptance, this is a major shift from the Crypto Bill introduced in November 2021. It provides some form of Legality and regulation to cryptocurrency / Digital Assets, as the government will not tax illegal activities. It should, however, be understood that cryptocurrency will not be treated as currency but only digital assets or Store of Value. Further, the government has made clear that cryptocurrency such as bitcoin, won't ever become legal tender, for which the government proposes to introduce central bank digital currency – The Digital Rupee.

The Government at this point proposes to tax crypto as a Speculative investment, however as the economy matures there may be a shift to tax the same as a capital asset.

The applicability of TDS would add to the traceability and investments would become KYC compliant, further, the proposal to add tax on gifts would provide a safeguard against misuse.

The government has defined the Digital asset in a very wide manner, keeping sufficient powers in hand to notify and de-notify any cryptocurrency and/ Digital Asset. However, there may be some confusion caused by such a definition as certain assets are held in Digital form such as Digital Gold, which has recently become a preferred form of investment. The broad-based definition may confuse. But overall, a welcome move.

## TDS / TCS on non-filer at higher rates

- Section 206AB and 206CCA in the Income-tax Act provides for a higher rate for TDS for the non-filers of income-tax return, who has not filed the returns of income for both assessment years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected.

- To ensure that all the persons in whose case a significant amount of tax has been deducted do furnish their return of income, it is proposed to reduce two years requirement to one year by amending sections 206AB and 206CCA.
- However, to reduce the additional burden on individual and Hindu undivided family (HUF) taxpayers covered under sections 194-IA, 194-IB and 194M for whom a simplified tax deduction system has been provided without the requirement of TAN, it is proposed that the provisions of Section 206AB will not apply in relation to transactions on which tax is to be deducted under the said sections.
- A consequential amendment is proposed in Section 194-IB(4)
- These amendments will take effect from 1 April 2022.



## Rationalization of provisions of TDS on sale of immovable property

- Section 194-IA provides for deduction of tax on consideration for transfer of any immovable property at the time of credit or payment of such sum to the resident at the rate of 1%
- It is proposed to amend Section 194-IA to provide that in case of transfer of immovable property, TDS is to be deducted at the rate of 1% of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher.
- In case the consideration paid for the transfer of immovable property and the stamp duty value of such property is both less than INR 50 lakhs, then no tax is to be deducted under Section 194-IA.
- This amendment will take effect from 1 April 2022.

### Vedya analysis

This amendment seeks to remove inconsistency, caused by provisions of Section 43CA and Section 50C, which required for the computation of income, the stamp duty value is also to be considered. Thus, there was inconsistency in the provisions of Section 194-IA and Sections 43CA and 50C.

## TDS on benefit or perquisite of a business or profession

- As per Section 28(iv), the value of any benefit or perquisite is to be charged as business income in the hands of the recipient of such benefit or perquisite. However, in many cases, such recipient does not report the receipt of benefits in their return of income, leading to the furnishing of incorrect particulars of income.
- To widen and deepen the tax base, it is proposed to insert a new Section 194R to the Income-tax Act to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall, 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 10% of the value or aggregate of the value of such benefit or perquisite.
- No tax is to be deducted if the value or aggregate value of the benefit or perquisite paid or likely to be paid to a resident does not exceed INR 20,000 during the fiscal year.
- This amendment will take effect from 1 July 2022.

## Reporting by producers of cinematograph films or persons engaged in specified activities

- Under Section 285B, the producer of cinematographic films is obliged to furnish within 30 days from the end of the fiscal year or from the date of completion of the film, whichever is earlier, a statement containing particulars of all payments over IRN 50,000 in the aggregate made by him or due from him to each person engaged by him.
- It is now proposed to widen the scope of Section 285B to include persons engaged in event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may, by notification in the Official Gazette, specify in this behalf, to comply with reporting requirements in Form 52A.
- This amendment will take effect from 1 April 2022.



## **Provisions pertaining to bonus stripping and dividend stripping to be made applicable to securities and units**

- Section 94 contains anti-avoidance provisions to deal with transactions in securities and units of mutual fund which, inter-alia, include dividend stripping and bonus stripping.
- However, the current provisions do not apply to bonus stripping undertaken in the case of securities, units of InvIT or REITs or AIFs.
- Given the above, it is proposed to amend Section 94(8), to make bonus stripping, applicable to securities as well as units of business trusts such as InvIT, REIT and AIF.
- This amendment will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

## **Withdrawal of concessional rate of on dividend income from a foreign company**

- Section 115BBD provides for a concessional rate of tax of 15% on the dividend income received by an Indian company from a foreign company. This rate was aligned to the rate of tax of DDT.

- Finance Act, 2020, abolished the DDT, hence, to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies vis-à-vis dividend received from domestic companies, it is proposed to amend Section 115BBD to provide that the provisions of this Section shall not apply to any assessment year beginning on or after the 1 April 2023.
- This amendment will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-2024 and subsequent assessment years.



## Faceless Schemes under the Income-tax Act

- The Central Government has undertaken several measures to make the processes under the Income-tax Act, electronic. This started with faceless assessment in electronic mode involving no human interface between taxpayers and tax officials. The faceless procedures are being introduced in a phased manner in the Income-tax Act. The Finance Bill, 2022, has proposed to revamp the provisions pertaining to faceless assessment to address various legal and procedural problems being faced by the administration and the taxpayers in the operation of the faceless assessment procedure.

## Amendment to Section 144B

- Under the proposed amendment, an assessment unit is now required to follow the following procedure:
  - First, prepare in writing an income or loss determination proposal in cases where there is no variation prejudicial to the assessee and a show-cause notice in other cases to call upon the assessee to submit why the proposed variation should not be made to the income of the assessee.

- The assessee would then be required to file his reply to the show-cause notice with NaFAC, which shall thereafter forward such reply to the assessment unit or in case of failure of assessee to file a reply within the prescribed time, intimate such failure to the assessment unit.
- The assessment unit shall then prepare an income or loss determination proposal and send it to NaFAC. The NaFAC shall thereafter convey to the assessment unit based on guidelines issued by the Board to prepare a draft order.
- It is only pursuant to NaFAC conveying to the assessment unit to prepare a draft order, that the assessment unit shall be required to prepare a draft order.
- There exists ambiguity pertaining to mandatorily granting a personal hearing in case such a request is received from the assessee or his authorized representative. The CBDT vide its Circular, dated 23 November 2020, which was also made applicable to Faceless Assessment Scheme under Section 144B, had clarified that personal hearing would be granted by the Department to assessee where:
  - The assessee has submitted written submission in response to the Draft Assessment Order; and

- The assessee in his/her written response disputes the facts underlying the proposed modification and requests a personal hearing.
- The said Circular led to the Department taking a view that a personal hearing may be granted only in a case where the dispute was on account of facts. Such ambiguity is sought to be addressed by the proposed amendment using words 'shall allow such hearing' as opposed to the words 'may approve the request for personal hearing' as existing prior to the proposed amendment.

### Vedya analysis

The proposed amendment seeks to address the ongoing dispute pertaining to direct issuance of a draft assessment order before any show-cause notice has been issued, as being violative of principles of natural justice. As per the new procedure, the assessment unit would now be required to first issue a show-cause notice, consider the reply filed by the assessee and only then prepare an income or loss determination proposal, pursuant to which a draft order may finally be issued.



## Refund of deducted tax on any income paid to a non-resident

- Section 248 provides that to obtain a refund of the tax deducted and paid by a person in a case where, under an agreement or other arrangement, a person who has deducted tax on any income paid to a non-resident, other than interest, under Section 195, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.
- It is now proposed that a new Section 239A may be inserted in the Income-tax Act to provide that such a person, who has made the deduction of tax under such an agreement or arrangement and borne the tax liability, when no tax deduction was required, may apply for a refund of such tax deducted before the Assessing officer.
- Such a person can, if he is not satisfied with the order of the Assessing officer, go into appeal against such order before the Commissioner (Appeals), under Section 246A. Accordingly, the provisions of Section 248 will not apply in cases where the date of tax payment, to the credit of the Central Government, is on or after 1 April 2022.
- These amendments will take effect from 1 April 2022.

## Vedya analysis

As per the provisions of Section 248, a taxpayer has no recourse to approach the Assessing officer with such a request. He has to necessarily enter the appellate process by filing an appeal before the Commissioner (Appeals). The proposed new Section 239A removes this hardship.

## Reduction of goodwill from the block of assets to be considered as 'transfer'

- From the assessment year 2021-2022, goodwill is not considered a depreciable asset. In a case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as the cost of acquisition for computation of capital gains under Section 48.
- It is now proposed to clarify that for Section 50, reduction of the amount of goodwill of a business or profession, from the block of the asset in accordance with item (ii)(B) of Section 43(6)(c), shall be deemed to be transfer

- Since the amendment to the effect that goodwill of a business or profession is not a depreciable asset has been made applicable from the assessment year 2021-2022 the above amendment will take effect retrospectively from 1 April 2021 and will accordingly apply in relation to the assessment year 2021-2022 and subsequent assessment years.

## Rationalization of the provision of slump sale

- Slump sale is defined in Section 2(42C), as the transfer of one or more undertaking, by any means, for a lump sum consideration without values being assigned to individual assets and liabilities in such sales. Vide the Finance Act, 2021, the definition of 'slump sale' was amended to expand its scope to cover all forms of transfer under slump sale. However, inadvertently, in the last sentence, there is a reference to the word 'sales' instead of 'transfer'.
- Therefore, it is proposed to carry out consequential amendment by amending the provision of Section 2(42C), to substitute the word 'sales' with the word 'transfer'.
- This amendment will take effect retrospectively from 1 April 2021 and will accordingly apply in relation to the assessment year 2021-2022 and subsequent assessment years.





## **Clarifications on allowability of expenditure for any purpose which is an offence, or which is prohibited by law**

- It is seen that certain taxpayers are claiming deductions on expenditure incurred in offering certain benefits or prerequisite to a person, where the acceptance of such benefit or perquisite by such person violates a law, rule, regulation, or guidelines, governing the conduct of such person.
- Further, some taxpayers are seen to be claiming the deduction on expenses incurred for a purpose which is an offence under foreign law or for compounding of an offence for violation of foreign law, claiming that provisions of Explanation 1 to Section 37(1) applies only to offences which are prohibited by the domestic law of the country.
- To make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert another Explanation to Section 37(1) to further clarify that the expression 'expenditure incurred by an assessee:
  - For any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or
  - To provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person violates any law, rule, regulation, or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or
  - To compound an offence under any law for the time being in force, in India or outside India.
- This amendment will take effect from 1 April 2022.



## Unexplained credits

- Section 68 provides that where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.
- There is a pernicious practice of conversion of unaccounted money by crediting it to the books of assessee through a masquerade of loan or borrowing. However, Certain judicial pronouncements have created doubts about the onus of proof and the requirements of this section, particularly, in cases where the sum is credited as a loan or borrowing.
- It is proposed to amend the provisions of Section 68 to provide that the nature and source of any sum, whether in form of loan or borrowing or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider.
- This amendment will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-2024 and subsequent assessment years.

## Prosecution for TDS / TCS default

- Section 276B provides for prosecution for failure to credit tax deducted at source to the Central Government and Section 276BB provides for prosecution for failure to credit tax collected at source to the Central Government. It is proposed to amend the said Section 278A and 278AA to bring Section 276BB within the purview of said section.
- This amendment will take effect from 1 April 2022.

### Vedya analysis

Sections 278A and 278AA are related to punishment with a prosecution against persons for failure to pay tax to the credit of Central Government for tax deducted at source. However, similar provisions for an offence with respect to tax collected at source under Chapter XVII-BB, providing for punishment with a prosecution. Therefore, it is logical to include Section 276BB under sections 278A and 278AA owing to the similar nature of offences that are punishable under Section 276B and Section 276BB.

## Set off loss in search cases and undisclosed income

- Presently, there is ambiguity regarding set off, of brought forward loss against undisclosed income detected in search operations. It has been observed that in many cases where undisclosed income or suppression of sales etc. is detected, payment of tax is avoided by setting off, losses.
- To bring certainty and to increase deterrence among tax evaders, it is proposed to insert a new Section 79A in the Income-tax Act to provide that notwithstanding anything contained in the Income-tax Act, where consequent to a search initiated under Section 132 or a requisition made under Section 132A or a survey conducted under Section 133A, other than under Section 133A(2A), the total income of any previous year of an assessee includes any undisclosed income, no set-off, against such undisclosed income, of any loss, whether brought forward or otherwise, or unabsorbed depreciation under Section 32(2) shall be allowed to the assessee under any provision of this Act in computing his total income for such previous year.
- This amendment will take effect from 1 April 2022 and will accordingly apply in relation to the assessment year 2022-2023 and subsequent assessment years.



## **Levy penalty in cases involving undisclosed income**

- Sections 271AAB, 271AAC and 271AAD under Chapter XXI contain provisions that give powers to the Assessing officer to levy penalty in cases involving undisclosed income in cases where search has been initiated u/s 132 or otherwise, or for false entry etc. in books of account. It is now proposed to amend the sections 271AAB, 271AAC and 271AAD by enabling the Commissioner (Appeals) to levy penalties under these sections along with the assessing officer.
- These amendments will take effect from 1 April 2022.

## **Liability of directors of private company**

- Section 179 contains provisions that enable Income-tax authorities to recover the tax due from a private company from its directors, under certain circumstances where such tax cannot be recovered from the company itself.
- The Section makes each director of the private company jointly and severally liable for the payment of such tax with certain conditions. However, the title of the Section inadvertently refers to the liability of directors of a private company in liquidation.
- Therefore, to make the title of the Section uniform with its provisions, it is proposed to amend the title of the Section to 'Liability of directors of private company.'

- Further, the Explanation to the Section clarifies that the expression 'tax due' in the Section includes penalty, the interest of any other sum payable under the Income-tax Act. To avoid unnecessary litigation and to provide further clarity, it is also proposed to insert the word 'fees' in the scope of the expression 'tax due' under Explanation to the section.
- This amendment will take effect from 1 April 2022.

## **Powers the Board to issue orders, instructions, and directions to other income-tax authorities for the proper administration**

- Section 119 empowers the Board to issue orders, instructions, and directions to other income-tax authorities for the proper administration. Section 234F which falls under Chapter XVII-F provides that in case a person fails to furnish return of income under Section 139 within the prescribed time, he shall be liable to pay a fee of INR 500. Currently, this Section is not expressly mentioned in Section 119(2)(a).
- Therefore, considering the genuine hardships faced by certain classes of persons in filing return of income and not imposing a fee for a default that is beyond their control, it is proposed to insert Section 234F and includes it in the list of sections mentioned

in Section 119(2)(a), to enable the Board to issue such orders or instructions, as deemed fit.

- This amendment will take effect from 1 April 2022.

## **Authority to enter any place of business to verify the books of accounts**

- Section 133A enables an income-tax authority to enter any place of business or profession or charitable activity within his jurisdiction to verify the books of account or other
- documents, cash, stock or other valuable article or thing, which may be useful for or relevant to any proceeding under this Act. Explanation to Section 133A defines an income-tax authority for this section.
- It is proposed to amend the Explanation to Section 133A to provide that income-tax authority shall be sub-ordinate to Principal Director General or Director-General or Principal Chief Commissioner or Chief Commissioner, as the case may be, specified by the Board.
- This amendment will take effect from 1 April 2022.



- Section 10(23C) is a specific exemption available to certain Government and non-government universities and educational institutions. Amendment to Section 10(23C) are proposed:
  - Clause (iv), (v), (vi) and (via) of Section 10(23C) are proposed to be amended to provide that the prescribed authority for approval of trust or institution referred in these clauses is Principal Commissioner or Commissioner.
  - Explanation 1A is proposed to be inserted to provide that any voluntary contribution received by a trust or institution for renovation or repair of the specified property i.e., temple, mosque, gurudwara, church or other notified place, may optionally be treated as corpus donation, subject to the condition that the trust or the institution:
    - applies such corpus only for the purpose for which the voluntary contribution was made
    - does not apply such corpus for making contribution or donation to any person
    - maintains such corpus as separately identifiable
    - invests or deposits such corpus in the forms and modes specified under Section 11(5)
- Further, Explanation 1B is proposed to be inserted to provide that in case of violation of conditions specified in Explanation 1A, the contributions would be treated as income of such trust or institution of the previous year during which the violation takes place.

The above amendments will take effect retrospectively from 1 April 2021 and will accordingly apply in relation to the assessment year 2021-22 and subsequent assessment year.
- Explanation 3 is proposed to be inserted to provide that where 85% of income received by any fund or institution or trust or any university or other educational institution is not applied wholly and exclusively to the object to which such trust or institution is established during the previous year, but such income is set aside or accumulated for the object to which such trust or institution is established, then such income would not become part of total income subject to compliance with the specified conditions.

This proposed amendment would come into effect from 1 April 2023.
- Explanation 4 is proposed to be inserted to provide that in case any of the above conditions are violated by such trust or institution or the said amount is paid to any trust registered under Section 12AA / 12AA or to any other trust or institution referred under clause
  - (iv), (v), (vi) or (via) of Section 10(23C), then the said amount would be considered as income of such trust or institution of the previous year during which such violation takes place.
  - Explanation 5 added to Section 10(23C) provides that where the accumulated or set aside income deposited or invested in terms of Section 11(5) is not applied for the purpose for which it was accumulated or set aside due to circumstances which are beyond the control of trust or institution as referred in Explanation 3, then the AO may allow such trust or institution to apply such income for such other purpose provided that such other purpose conforms with the object for which such trust or institution is established. This amendment is proposed to be made effective from 1 April 2023.
  - The tenth proviso to Section 10(23C) is proposed to be amended to provide that where the income of the trust or institution as referred to in clause (iv), (v), (vi) or (via) exceeds the basic threshold limit before applying for exemption, such trust or institution shall be required to keep and maintain books of accounts and other documents in prescribed form and manner in addition to getting their accounts audited. This amendment is proposed to be made effective from 1 April 2023.



- The fifteenth proviso to Section 10(23C) is proposed to be substituted to provide for the instances and procedure where the Principal Commissioner or the Commissioner shall call for documents or information from the trust or institution to satisfy himself about the occurrence or otherwise of any specified violation. The Principal Commissioner or the Commissioner shall pass an order in writing either cancelling the registration or refusing to cancel the registration of the trust or institution.
- The Principal Commissioner or the Commissioner shall pass an order in writing either cancelling the registration or refusing to cancel the registration of the trust or institution. Such order shall be passed before the expiry of six months from the end of the quarter in which the first notice was issued calling for information or documents or making an inquiry. This amendment is proposed to be made effective from 1 April 2023.
- The nineteenth proviso to Section 10(23C) is proposed to be substituted to provide that the expression prescribed authority means Principal Commissioner or Commissioner. These amendments will take effect from 1 April 2023.
- Where the trust or institution referred to in clause (iv), (v), (vi) or (via) is not eligible for an exemption due to violation of specified provisions,

- then income chargeable to tax shall be computed after allowing the deduction for expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of prescribed conditions.
- It is also proposed to insert an explanation in the twenty-second proviso to Section 10(23C) to provide that to compute the allowable expenditure, the provisions related to deduction of tax at source and non-payment in cash for expenditure more than INR 10,000 per day; shall apply.
- Lastly, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed under any other provision.

These amendments are proposed to be made effective from 1 April 2023 and will, accordingly, apply in relation to the assessment year 2023-2024 and subsequent assessment year.

- Explanation 3 is proposed to be inserted to clarify that any sum payable by trust referred in clause (iv), (v), (vi) or (via) shall be considered as the application of income in the previous year in which such sum is paid by it irrespective of the previous year in which the liability to pay such sum was incurred according to the method of accounting regularly employed by the trust.

- Lastly, a proviso is proposed to be inserted to the above Explanation to prescribe that where during any previous year, any sum has been claimed to have been applied by a trust, such sum shall not be allowed as the application in any subsequent previous year.

These amendments will take effect from 1 April 2023, and will accordingly apply to the assessment year 2023-2024 and subsequent assessment year.

- Section 115BBI is proposed to be inserted under the Income-tax Act to provide that when the income of an assessee covered under Section 10(23C) (iv), (v), (vi) and (via) or referred in Section 11 includes any specified income, the income tax shall be computed at the rate of 30% on the aggregate of such specified income. It also provides that no deduction or set-off shall be allowed in computing the specified income. This amendment is proposed to come into effect from 1 April 2023, and accordingly would apply in relation to assessment year 2023-24 and thereafter.



## **Amendment to Section 11**

- Explanation 3A is proposed to be inserted to Section 11(1) to provide that any voluntary contribution received by a trust or institution for renovation or repair of the specified property i.e., temple, mosque, gurudwara, church or other notified place, may optionally be treated as corpus donation, subject to the condition that the trust or the institution:
  - applies such corpus only for the purpose for which the voluntary contribution was made
  - does not apply such corpus for making contribution or donation to any person
  - maintains such corpus as separately identifiable
  - invests or deposits such corpus in the forms and modes specified under Section 11(5)
- Further, Explanation 3B is proposed to be inserted to provide that in case of violation of conditions specified in Explanation 3A, the contribution would be treated as income of such trust or institution of the previous year during which the violation takes place.
- The above insertions shall take effect retrospectively from 1 April 2021 and will accordingly apply in relation to the assessment year 2021-22 and subsequent assessment year.
- Section 11(3) is proposed to be amended to provide that where income is accumulated or set apart as per Section 11(2) for application in subsequent years, is not utilized for the purpose for which it is so accumulated or set apart, shall be deemed to be the income of the last previous year of the period, for which the income was accumulated or set apart but not utilized. This amendment will take effect from 1 April 2023 and will accordingly apply in relation to the assessment year 2023-2024 and subsequent assessment year.
- An explanation is proposed to be inserted after Section 11(7), to clarify that at any sum payable by a trust shall be considered as the application of income in the previous year in which such sum is paid by it, irrespective of the previous year in which the liability to pay such sum was incurred according to the method of accounting regularly employed by it. Lastly, a proviso is proposed to be inserted to the above Explanation to provide that where during any previous year, any sum has been claimed to have been applied by the trust, such sum shall not be allowed as the application in any subsequent previous year. These amendments will take effect from 1 April 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment year.
- Section 12 talks about voluntary donation received by a trust for charitable or religious purposes will be income derived from the property held under the trust wholly for the purposes mentioned and can claim exemption. It is proposed to Amendment to Section 12A .
  - Clause (b) of Section 12A (1) is proposed to be substituted to provide that where the total income of the trust or institution exceeds the basic threshold limit before applying for exemption under Section 11 and 12, they shall be required to keep and maintain books of accounts and other documents in the prescribed form and manner.
  - Presently, the trusts or institutions are required to get their accounts audited if the total income exceeds the basic threshold limit, however, there is no specific provision providing for the maintenance of books of accounts.
  - This amendment is proposed to be made effective from 1 April 2023 and will, accordingly, apply in relation to the assessment year 2023-2024 and subsequent assessment year.



## Amendment to Section 12AB

- It is proposed to substitute Section 12AB(4), to provide for the instances and procedure where the Principal Commissioner or the Commissioner shall call for documents or information from the trust or institution to satisfy himself about the occurrence or otherwise of any specified violation. The Principal Commissioner or Commissioner shall pass an order in writing either cancelling the registration or refusing to cancel the registration of the trust or institution.
- It is proposed to substitute Section 12AB(5), to provide that the Principal Commissioner or the Commissioner shall pass the order before the expiry of six months from the end of the quarter in which the first notice was issued, on or after the 1 April 2022, calling for information or documents or making an inquiry.
- This amendment is proposed to be made effective from 1 April 2022.

## Amendment to Section 13

- It is proposed to amend Section 13(1)(c) to provide that only such part of income which has been applied directly or indirectly for the benefit of the trustee or any other specified person referred to Section 13(3), shall be taxed, instead of complete denial of exemption.

- It is proposed to amend Section 13(1)(d) to provide that only that part of income that has been invested in violation of the provisions of the said clause shall be liable to be included in total income.
- It is proposed to insert Section 13(10) to provide clarity in the computation of the income chargeable to tax in a case where the trust or institution is not eligible for exemption - due to violation of specified provisions such as receipts from commercial activity exceeding 20% of the annual receipts, non-audit of books of accounts, etc.
- Income shall be computed after allowing the deduction for expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of prescribed conditions.
- It is also proposed to insert an Explanation to sub-Section (10) to provide that to compute the allowable expenditure, the provisions related to deduction of tax at source and non-payment in cash for expenditure more than INR 10,000 per day shall apply.
- Finally, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed under any other provision.

- These amendments are proposed to be made effective from 1 April 2023 and will, accordingly, apply in relation to the assessment year 2023-2024 and subsequent assessment year.

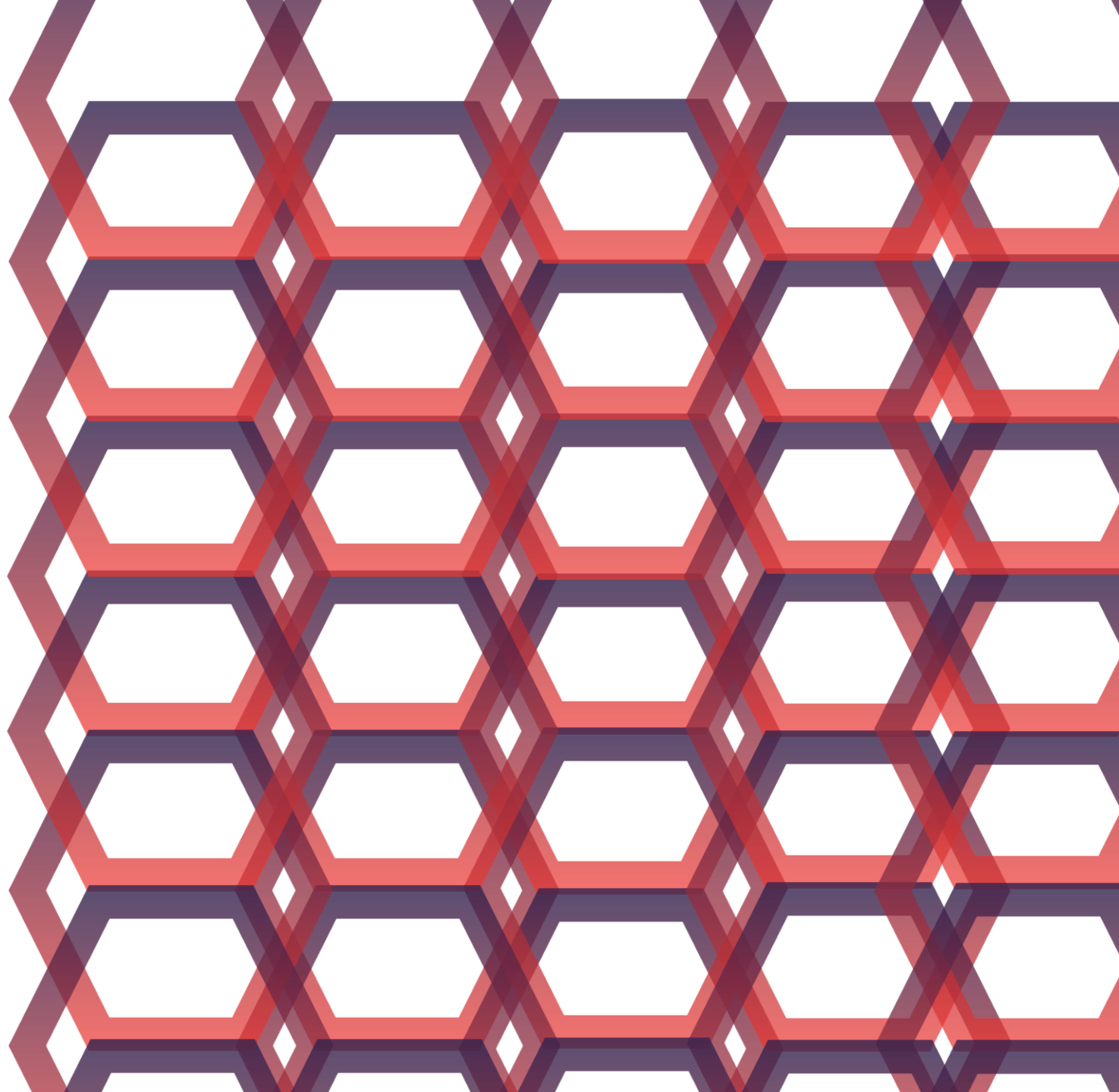
## Vedya analysis

Trusts and exempted institutions have been under the scanner for the past few years, for unregulated activities and no transparency in operations and misuse of public donations. The law as it stands today withdraws exemption on the total income of trust if they pass on unreasonable benefits to or invest in violation of the prescribed manner; irrespective of the amount involved.

These amendments are proposed to rationalize the denial of exemption only to that portion of income that has been applied in violation of the provisions. Further, the ambiguity in relation to computation of total income where the trust or the institution is not eligible for exemption has been resolved by laying down the computation mechanism.



Indirect taxes







## **Expansion of the term 'proper officer'**

- Customs (Preventive) and members of the DRI have been included Customs officers through an amendment in Section 3 of the Customs Act, 1962.
- Section 5(1A), (1B), (4) and (5) have been inserted giving CBIC the power to assign Customs cases to officers of Customs under specified criteria.
- Section 110AA has been introduced empowering Customs officers to transfer the documents to a proper officer. This should be relevant in matters where the inquiry was commenced by Customs (Preventive) team or the DRI team, which were previously not proper officers under the Customs Act.

## **Ratification of action done prior to Finance Bill, 2022**

- Under Section 96 of the Finance Bill, 2022, any duties performed prior to such amendments shall be deemed to be performed correctly.
- Amendments to Section 2, Section 3 and Section 5 shall be deemed to have always been in effect.
- Notifications issued for appointing proper officers shall be deemed to be valid.
- This Section should have substantial impact on matters where it was argued that DRI officers were not 'proper officers' under the Customs Act and judgments favoring the assesseees were passed.

## **Advance rulings**

- The period of applicability of an Advance ruling has been limited to three years or till there is a change in law or facts on which the ruling was made. For existing Advance rulings, the period of three years will commence from the date Finance Bill, 2022 is ratified.
- Explanation in Section 28E and sub-section (h) shall be omitted. These were the definition for joint venture, non-resident company, Indian company and foreign company.
- Section 28H(3) specifying a fee of INR 10,000 for filing of Advance ruling applications has been omitted. It is possible that a revised fee structure for application may be introduced.
- Section 28H(4) has been amended to provide that the applicant may withdraw the application any time before pronouncement of the Advance ruling. Earlier the time limit was 30 days from the date of application.

## **Publishing of import / export data**

- Introduction of Section 135AA makes publishing of information of value / quantity / classification of goods for import / export a punishable offence.
- Punishment may be imprisonment up to six months and / or a fine of INR 50,000.
- Provision not applicable to data published by the Central Government or where a person is required to do so under any law.



## Automotive

- › Stainless steel and coated steel flat products, bars of alloy steel and high-speed steel – ADD and CVD have been revoked on import from Germany, Vietnam, China, Brazil, and Korea w.e.f 1 February 2022.
- › CNG conversion kits for petrol / diesel vehicles – BCD has been increased from 5% to applicable tariff rate w.e.f 1 April 2022.
- › SKD import of EVs – Lower BCD rate of 15% would be available when none of the specified components are inter-connected and not mounted on chassis.
- › Other SKD imports – Concessional rate of 25%-30% shall be applicable.

## Pharmaceuticals

- › Patient Assistance Programme – Validity of Notification no. 16/2017-Customs, dated 20 April 2017, providing exemption for free supply of drugs is limited to 31 March 2023.
- › BCD exemption to drugs – List 3 and List 4 of Notification no. 50/2017-Customs, dated 30 June 2017, and tariff rates rationalized.

## Oil & gas

- › BCD exemption for imports for petroleum operations restricted to specified goods.
- › Procedure simplified by removing condition of producing a certificate from Directorate General of Hydrocarbons.
- › BDC exemption withdrawn for inputs imported for manufacture of goods required for offshore operations.

## Chemicals

- › Applicable BCD rates on chemical sector should operate almost through tariff. This should support domestic manufacturing from Make In India perspective.
- › Tariff and rates to be rationalized. Unconditional concessional rates and exemption notifications are removed.
- › Blending of fuel – To encourage blending of fuel, unblended fuel shall attract an additional differential Excise duty of INR 2 / litre from 1 October 2022.

## Defence

- › Simplified Customs tariff for helicopters, parts of UAVs and manned aircrafts, etc., w.e.f 1 May 2022.

## Agriculture

- › Simplification exercise for agriculture products – W.e.f 1 May 2022 changes to BCD rates to be made in the Customs tariff and the corresponding entries shall be removed in notifications.
  - › Effective BCD rate for such products should remain unchanged.
- › Paddy transplanter, sugarcane harvester, cotton picker etc. – BCD exemption for specific agricultural implements and parts used for their manufacture to be withdrawn w.e.f 1 April 2023.
  - › This is done to support domestic manufacturers.



### Input credit

- Due date for availing input credit for a financial year has been extended to 30 November of the subsequent financial year (amended in Section 16(4) of the CGST Act).
- A new condition for availing input credit has been introduced in Section 16(2)(ba).
  - Input credit shall be available only if the details of input credit are not restricted.
  - This should impact cases where the supplier's output data has been restricted for some reason and the recipient is unable to avail such input credit.
- Section 41 has been substituted
  - It states that where input credit is availed, and the supplier has not paid tax on the same, such input credit is required to be reversed along with interest.
  - Once tax is paid by the supplier, input credit may be availed again.
  - It is pertinent to note that the requirement to reverse and pay interest arises on availment itself. And once payment is made by the supplier, interest would not be paid back to the recipient.
  - *This is regressive and assesseees should insert clauses in their vendor contracts for indemnification against interest payments.*

### Due date for generating credit note / debit note

- Credit notes / debit notes for an invoice issued in a financial year may now be generated up to 30 November of the subsequent financial year.

### Filing of Form GSTR-1

- Section 37(2) shall be omitted.
- Due date for correction of errors in Form GSTR-1 has been extended to 30 November of subsequent financial year.
  - This also applies to Form GSTR-8 (return for e-commerce operators).
- Section 37(4) has been introduced and restricts an assessee from filing Form GSTR-1 in case return for any prior period is not filed.

### Section 38 substituted (Communication of details of inward supplies)

- Statement of inward supplies shall be autogenerated.
- The statement shall mention which input credit is available and which is restricted (wholly or partly).
- Restriction of input credit may be on account of:
  - Period of registration of the supplier.
  - Default of payment by output tax by supplier.
  - Continued default by supplier for a prescribed period.
  - Supplier has availed input credit that exceeds the amount that may be availed.

### Filing of returns

- Due date for filing returns by non-resident taxable persons revised to 13th of following month (earlier it was 20th).
- Due date for correction of errors in Form GSTR-3B has been extended to 30 November of subsequent financial year.
- Section 39(10) has been amended to state that an assessee shall not be able to file Form GSTR-3B if Form GSTR-1 or Form GSTR-3B of any prior period has not been filed.

### Cancellation of registration

- For assesseees under composition levy, if return for a month is not filed within months from the due date, the registration may be cancelled.
- For other assesseees, the period of six months (of non-filing of return to cause cancellation) shall be prescribed.
- Section 42, Section 43 and Section 43A regarding matching of input credit have been omitted.
- Late fee for filing of returns extended to returns under Section 52.
- Various amendments have been made in the CGST Act to make it relevant for the current return filing mechanism.



### Transfer of amounts

- Section 49(10) has been substituted to provide that assesseees may transfer amounts (tax, interest, penalty or fee) from registration to another, under the same PAN.
  - Such transfers shall be permitted in case of any outstanding liability.
- Such tax, interest, penalty or fee may also be transferred to IGST, CGST, SGST or UTGST.
- Section 49(12) has been inserted and states that an assessee or class of assesseees may be instructed to pay only a portion of the output GST through input credit. Such restriction would come on the recommendations of the GST Council.
- Section 50(3) has been substituted to clarify that in case of incorrect utilization of input credit, interest is payable only on utilization and not incorrect availment.

### Rate of interest

- Rate of interest on incorrect utilization of input credit has been reduced from 24% to 18% w.e.f 1 July 2017. [amendment in Notification no. 13/2017-Central Tax and Notification no. 6/2017-Integrated Tax, both dated 28 June 2017, and Notification no. 10/2017-Union Territory Tax, dated 30 June 2017]

### Refunds

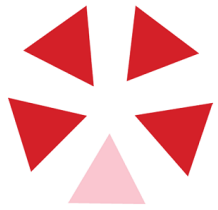
- Due date for filing of refund claims by UN agencies has been increased from six months to two years from the last day of the relevant quarter.
- Section 54(10) has been amended withhold refund or reduce the refund amount in case the assessee has defaulted in filing a return or payment of any amounts.
  - Earlier this provision was applicable only to refund for zero-rated supplies and inverted duty structure.
- The 'relevant date' for computing the due date in case of supplies to SEZ unit or SEZ developer shall be the date of filing Form GSTR-3B. [clause 2(ba) inserted in Explanation to Section 54]

### Grant of alcoholic liquor license to be 'no supply'

- Service by way of grant of alcoholic liquor license to qualify as 'no supply' w.e.f 1 July 2017. [amendment in Notification no. 25/2019-Central Tax (Rate), Notification no. 24/2019-Integrated Tax (Rate) and Notification no. 25/2019-Union Territory Tax (Rate), all dated 30 June 2017]
  - Any tax collected till date is not liable to be refunded.



Term	Full form	Term	Full form
ADD	Anti-dumping duty of Customs	InVIT	Infrastructure Investment Trust
AIF	Alternative Investment Funds	LTA	Leave Travel Allowance
AMT	Alternate Minimum Tax	MAT	Minimum Alternate Tax
AOP	Association of Persons	NaFAC	National Faceless Assessment Centre
BCD	Basic Customs duty	NGDRS	National Generic Document Registration System
CGST	Central Goods and Services Tax	NPS	National Pension Scheme
CNG	Compressed Natural Gas	PM-DeVINE	Prime Minister's Development Initiative for Northeast Region
CVD	Countervailing duty of Customs	RBI	Reserve Bank of India
DDT	Dividend Distribution Tax	REIT	Real Estate Investment Trust
DRC	Dispute Resolution Committee	SEZ	Special Economic Zone
GST	Goods and Services Tax	SGST	State Goods and Services Tax
HRA	House Rent Allowance	TDS	Tax Deduction at Source
HUF	Hindu Undivided Family	TOD	Transit-Oriented Development
IFSC	Tax Incentives to International Financial Services Centre	TPS	Town Planning Schemes
IGST	Integrated Goods and Services Tax	UTGST	Union Territory Goods and Services Tax



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## Thank you

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