Corporate, Tax and Business Advisory Law Firm

Analysis of Finance Bill, 2025

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Rates of income-tax & Personal Taxation

Rates of Income-tax

[Clauses 2, 37 & First Schedule] ***(w.e.f. 01.04.2026)***

Particulars	Tax rate	Whether any change proposed in Finance Bill, 2025
Individual (opting for old regime), HUF, AOP, BOI and artificial juridical person	As per existing slab rates [stated *infra]*	No
Individual (opting for new regime)	As per proposed new slab rates [discussed *infra]*	Yes
Firms and local authorities	30%	No
Domestic companies		
- Companies Opting section 115BAA	22% plus surcharge @ 10%	No
- Companies Opting section 115BAB	15% plus surcharge @ 10%	
- Companies not opting for sections 115BAA & 115BAB and turnover for FY 2023-24 does not exceed Rs.400 crores	25% plus surcharge @ 7%/12%	
- Other companies	30% plus surcharge @ 7%/12%	
Foreign company	35%	No

Section 115BAC - New Regime

[Clause 37] *(w.e.f. 01.04.2026)*

Slab rates under the old regime vs new regime

Old regime (Age<60 years)		New Regime (AY 2025-26)		New Regime (AY 2026-27)	
Income (in Rs.)	**Rate**	**Income (in Rs.)**	**Rate**	**Income (in Rs.)**	**Rate**
Up to 2,50,000	Nil	Up to 3,00,000	Nil	**Up to 4,00,000**	**Nil**
From 2,50,001 to 5,00,000	5%	From 3,00,001 to 7,00,000	5%	**From 4,00,001 to 8,00,000**	**5%**
From 5,00,001 to 10,00,000	20%	From 7,00,001 to 10,00,000	10%	**From 8,00,001 to 12,00,000**	**10%**
Above 10,00,000	30%	From 10,00,001 to 12,00,000	15%	**From 12,00,001 to 16,00,000**	**15%**
Note: All deductions/ exemptions available as compared to new regime		From 12,00,001 to 15,00,000	20%	**From 16,00,001 to 20,00,000**	**20%**
		Above 15,00,000	30%	**From 20,00,001 to 24,00,000**	**25%**
				Above 24,00,000	**30%**
Note: Education cess @ 4% shall apply in all cases. Surcharge as prescribed shall also be additionally applicable.					

Comments/ Observations:

Annual income (in Rs.)	Effective Tax rate for AY 2025-26 (including cess)	Effective Tax rate for AY 2026-27 (including cess)
12,00,000	6.93%	0%
16,00,000	11.05%	7.80%
18,00,000	13.29%	9.24%
20,00,000	15.08%	10.40%
25,00,000	18.30%	13.73%
50,00,000	24.75%	22.46%

❖ The thrust of the Government, thus, seems to be to make the new taxation regime more attractive and gradually phase out the old regime.

Rebate under section 87A – New Regime

[Clause 2, 20, 24 & First Schedule] ***(w.e.f. 01.04.2026)***

Section 87A

In terms of section 87A, individual residents whose total income does not exceed certain amounts as specified therein, are eligible to get rebate of 100% of tax or specified amount, whichever is lower. Rebate under that section is set out hereunder:

❖ ***Under the old regime*** **-** Where total income does not exceed Rs.5,00,000, rebate upto Rs.12,500 is available, resulting in income upto Rs.5,00,000 being tax free.

❖ ***Under the new regime –***

* **For AY 2025-26 –** Where total income does not exceed Rs.7,00,000, rebate upto Rs.25,000 is available, resulting in income upto Rs.7,00,000 being tax free.

* **For AY 2026-27 –** Where total income does not exceed Rs.12,00,000, rebate upto Rs.60,000 is available, resulting in income upto Rs.12,00,000 being tax free. However, rebate shall not be available on income from capital gains or lotteries or any other income on which special rate of tax is provided under the Act.

Marginal Relief:

In a situation where income of the individual resident exceeds Rs.12,00,000, tax liability of the assessee shall not exceed the component of income exceeding Rs.12,00,000.

Income	Tax payable without marginal relief	Tax payable after marginal relief
12,10,000	61,500	10,000
12,30,000	64,500	30,000
12,50,000	67,500	50,000
12,70,000	70,500	70,000
12,75,000	71,250	71,250

		[no marginal relief]

What is beneficial – Old Regime vs New (Default) Regime? [Clause 37]

❖ **Example 1**

Particulars	Old Regime	New regime (AY 2026-27)
Gross Total Income	12,00,000	12,00,000
Less: Deduction under Chapter VI-A		
- Section 80C	1,50,000	-
Total Income	**10,50,000**	**12,00,000**
Tax on above	1,27,500	60,000
Less: Rebate under section 87A	-	(60,000)
Tax Liability	**1,27,500**	**0**

❖ **<u>Example 2:</u>** Individual claims HRA of Rs.6,00,000

Particulars	(With HRA)		(Without HRA)	
	Old regime	New Regime	Old Regime	New regime
Income from salary	30,00,000	30,00,000	30,00,000	30,00,000
Less: HRA	6,00,000	--	--	--
Less: LTA	10,000	--	10,000	--
Less: Standard deduction [sec 16(ia)]	50,000	75,000	50,000	75,000
Taxable salary income	23,40,000	29,25,000	29,40,000	29,25,000
Income from savings bank interest	25,000	25,000	25,000	25,000
Taxable Income	23,65,000	29,50,000	29,65,000	29,50,000
Less: Deduction under Chapter VI-A				
- Section 80C	1,50,000	--	1,50,000	--
- Section 80D	50,000	--	50,000	--
-Section 80TTA	10,000	--	10,000	--
Gross Total Income	**21,55,000**	**29,50,000**	**27,55,000**	**29,50,000**
Tax on above (excluding cess @ 4%)	4,59,000	4,65,000	6,39,000	4,65,000

❖ **Example 3:** Salary income is more than Rs.5 crores; HRA is Rs.1.5 crores

Particulars	(With HRA)		(Without HRA)	
	Old regime	New Regime	Old Regime	New regime
Income from salary	10,00,00,000	10,00,00,000	10,00,00,000	10,00,00,000
Less: HRA	1,50,00,000	--	--	--
Less: Standard ded. [section 16(ia)]	50,000	75,000	50,000	75,000
Taxable salary income	8,49,50,000	9,99,25,000	9,99,50,000	9,99,25,000
Income from savings bank interest	5,00,000	5,00,000	5,00,000	5,00,000
Taxable Income	8,54,50,000	10,04,25,000	10,04,50,000	10,04,25,000
Less: Ded. under Chapter VI-A				
- Section 80C	1,50,000	--	1,50,000	--
- Section 80D	50,000	--	50,000	--
- Section 80TTA	10,000	--	10,000	--
Gross Total Income	**8,52,40,000**	**10,04,25,000**	**10,02,40,000**	**10,04,25,000**
Tax on above (surcharge + cess)	3,61,67,835	3,86,19,750	4,25,79,435	3,86,19,750

❖ **Tax payable by individual in new regime – AY 2025-26 vs AY 2026-27**

Total Income (Other than special rate income)*	Total tax payable (AY 2025-26)	Total tax payable (AY 2026-27)	Total Savings
12,00,000	83,200	Nil	83,200
16,00,000	1,76,800	1,24,800	52,000
20,00,000	3,01,600	2,08,000	93,600
24,00,000	4,26,400	3,12,000	1,14,400
28,00,000	5,51,200	4,36,800	1,14,400

Increase in the limits on the income of the employees for the purpose of calculating perquisites

[Clause 9] ***(w.e.f. 01.04.2026)***

- Sub-clause (c) to section 17(2)(iii) of the Act provides that 'perquisite' includes the value of any benefit or amenity granted or provided free of cost or at concessional rate by any employer (including a company) to an employee, exceeding Rs.50,000.

- Further, clause (vi) to the proviso to section 17(2) of the Act provides that any expenditure incurred by the employer for travel outside India on the medical treatment of an employee or any member of the employee's family shall not be included in 'perquisite', subject to the condition that the gross total income of such employee does not exceed Rs.2,00,000.

- Vide the Finance Bill, 2025, it is proposed that the aforesaid limits of Rs.50,000 and Rs.2,00,000 will be adjusted by taking into account changes in standard of living and economic conditions and prescribed subsequently.

Deduction under section 80CCD for contributions made to NPS Vatsalya

[Clause 6 & 17] ***(w.e.f. 01.04.2026)***

- NPS Vatsalya Scheme, officially launched on 18.09.2024, enables parents and guardians to start a National Pension Scheme (NPS) account for their children.

- The salient features of the aforesaid Scheme are as under:

  - Designed exclusively for minors;
  - Operated by the parent/ guardian for the exclusive benefit of the minor till they attain majority;
  - Once minor attains 18 years of age, account will continue to be operational; the same will be transferred in the child's name with the accumulated corpus and will be shifted into NPS-Tier 1 Account - All Citizen Model or other non-NPS scheme account.

- It has been proposed that deduction under section 80CCD of the Act be allowed to the assessee opting for old regime of taxation, as under:

- Deduction shall be allowed to parent/ guardian;
- Amount of deduction shall be lower of amount deposited or Rs.50,000, as mandated under section 80CCD(1B) of the Act;
- In case of withdrawal of amount deposited in NPS Vatsalya for which deduction has been claimed or amount accrued thereon, the amount withdrawn shall be chargeable to tax, whenever such amount is withdrawn;
- In case of death of the minor, the amount received by the parent/ guardian on closure of the account shall not be deemed to be the income of the parent/ guardian, even if deduction under section 80CCD was claimed qua such amount.

❖ In case of partial withdrawal from minor's account to address certain contingencies, viz., minor's education and treatment of specified illness or disability (>75%), it is proposed that the amount partially withdrawn shall not be clubbed with the income of the parent/ guardian, to the extent it does not exceed 25% of the amount of contribution made by him.

Income on redemption of Unit Linked Insurance Policy ("ULIP")

[Clause 3, 12 & 22] ***(w.e.f. 01.04.2026)***

❖ Section 10(10D) of the Act exempts sum received under life insurance policy, including bonus on such policy, provided that premium payable for any of the years during the term of the policy did not exceed 10% of the actual capital sum assured.

❖ Vide Finance Act, 2021, the aforesaid section was amended to restrict the benefit of aforesaid exemption to small and genuine cases of life insurance, such that exemption shall not be available with respect to any ULIP issued after 01.02.2021, if the aggregate amount of premium payable during the term of such policy or policies exceeds Rs.2,50,000.

❖ To rationalize the provisions related to ULIP, it is proposed to provide that where exemption under section 10(10D) of the Act is not available, redemption of ULIP shall be taxable as under:

- ULIP will be treated as capital asset [Section 2(14)];

- Profit and gains from redemption of ULIP will be chargeable to tax as capital gains [Section 45(1B)];
- ULIP shall be included in the definition of equity-oriented fund [clause (a) of Explanation to section 112A].

House Property

Annual value of the self-occupied property simplified

[Clause 10] *(w.e.f. 01.04.2025)*

- Section 23 deals with the determination of the Annual Value of a house property for the purpose of taxation. Under the existing provisions of section 23(2), where house property (i) is in the occupation of the owner for the purposes of his residence **or (ii) owner cannot actually occupy it due to his employment, business or profession carried on at any other place**, in such cases, the annual value of such house property shall be taken to be nil. As per section 23(4), the benefit of having a nil annual value is only available in respect of **two house properties** of the owner which are to be specified by the owner.

- It is now proposed to substitute section 23(2) to provide that the annual value of a self-occupied property will be considered nil, if the owner occupies it for his own **residence or cannot actually occupy it due to any reason,** i.e., owner lives in the house or is unable to occupy it for any reason. **The owner will no longer be required to provide a reason for not occupying the property.** However, the provision of Section 23(4), which allows only two properties to claim this nil annual value benefit, will still continue to apply.

Comments/ Observations

- The amendment has been proposed to simplify the provisions of section 23 of the Act and now the taxpayer owning two house properties (from which no rent or any other benefit is derived), can claim benefit of nil ALV without needing to comply with the additional condition of not being able to reside therein due to his business or employment or profession.

Taxation of Business Trust/ SPV

Rationalization in Taxation of Business Trusts

[Clauses 25] *(w.e.f. 01.04.2026)*

❖ Finance (No.2) Act, 2014 introduced a special taxation regime for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) to address financing challenges in infrastructure. These business trusts invest in Special Purpose Vehicles (SPVs) through equity or debt instruments.

❖ Section 115UA of the Act provides pass-through status to business trusts for interest income, dividend income (from SPVs for both REITs & InvITs), and rental income (for REITs) and such income is taxable in the hands of unit holders unless specifically exempted.

❖ Sub-section (2) of Section 115UA states that the total income of a business trust is taxed at the Maximum Marginal Rate (MMR), except for capital gains covered under section 111A (short-term capital gains on listed securities) and section 112 (long-term capital gains on certain assets).

❖ Section 112A imposes a 10% long-term capital gains (LTCG) tax on listed equity shares, equity-oriented mutual funds, and business trusts. The absence of reference of section 112A in section 115UA(2) of the Act resulted in uncertainty regarding concessional tax treatment.

❖ The proposed amendment rectifies the said omission by expressly incorporating section 112A into section 115UA(2), thereby ensuring that LTCG arising from business trust units are eligible for concessional tax rates, in parity with equity investments.

Comments/ Observations:

❖ The amendment clarifies that LTCG under section 112A of the Act shall be taxed at 12.5% instead of MMR for business trusts.

❖ Although the prevailing interpretation was that section 112A, being a specific provision, would override general taxation rules, ensuring that LTCG was taxed at concessional rates, the

amendment removes any ambiguity by explicitly including section 112A under section 115UA(2) of the Act. However, since the amendment is prospective, effective from AY 2026-27, the tax treatment of LTCG for prior years remains unsettled, leaving room for potential disputes.

Extension of investment deadline & tax rationalization for Sovereign Wealth Funds (Swfs) and Pension Funds (Pfs)

[Clause 6] ***(w.e.f. 01.04.2025)***

- Clause (23FE) of section 10 of the Act provides tax exemption to SWFs, PFs, and other specified persons on income from dividends, interest, long-term capital gains, and certain other investments in India, subject to conditions prescribed by the Central Government.
- The provision was introduced through the Finance Act, 2020 to encourage foreign investments in India's infrastructure sector.
- The existing provision required investments to be made between April 1, 2020, and March 31, 2025, to qualify for the exemption.
- Representations were received suggesting that, given the long-term nature of infrastructure investments, extending the investment deadline would provide stability and facilitate greater foreign participation.
- Finance (No. 2) Act, 2024, amended Section 50AA, reclassifying capital gains from unlisted debt securities as short-term capital gains, irrespective of the holding period. This change revoked the earlier exemption available to SWFs and PFs under Clause (23FE) for long-term capital gains on unlisted debt securities.
- To address the aforesaid impact, clause (23FE) is proposed to be amended to:

  (a) continue the exemption on long-term capital gains, even if such gains are deemed short-term under section 50AA of the Act; and

  (b) extend the investment deadline from March 31, 2025, to March 31, 2030, allowing more time for global investors to contribute to infrastructure development.

Comments/ Observations:

- ❖ The amendment ensures tax neutrality for SWFs and PFs, preserving their long-term capital gains exemption and providing a longer investment window to boost infrastructure financing in India.

- ❖ The amendment is proposed to take effect from AY 2025-26 to counteract the impact of the amendment introduced in section 50AA of the Act, which became effective from July 23, 2024.

Charitable Trusts & Institutions

Rationalisation of 'specified violation' for cancellation of registration of trusts or institutions

[Clauses 7] *(w.e.f. 01.04.2025)*

❖ Section 12AB(4) provides that registration or provisional registration of a charitable trust can be cancelled by the PCIT/ CIT if he notices occurrence of one or more 'specified violations' during any previous year.

❖ Presently, an application for registration which 'is not complete' is treated as specified violation [refer clause (g) in Explanation below section 12AB(4)]. Thus, even minor default in application may result in cancellation of registration, resulting in imposition of tax on accreted income as per Chapter XII-EB.

❖ It is proposed to amend Explanation to provide that incomplete application for registration of trust or institution shall not be treated as specified violation under section 12AB(4), thereby, saving draconian repercussions of such minor default.

Period of registration of smaller trusts or institutions:

❖ Presently, under section 12AB registration is granted to a trust or institution for a period of 5 years and provisional registration (where activities have not commenced) for a period of 3 years.

❖ To reduce compliance burden for smaller trusts, it is proposed to ***increase the period of validity of registration from 5 years to 10 years***, in cases where the ***total income of trust***, without giving effect to the provisions of sections 11/ 12, ***does not exceed Rs.5 crores during each of the two previous years***, preceding to the previous year in which such application is made.

Comments/ Observations:

❖ Pertinently, prior to amendment/ introduction by Finance Act 2020 as substituted by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 in section 12AA/AB, registration was granted only once, which was then replaced by the statutory scheme

for grant of registration for 5/ 3 years, thereby, increasing compliance on account of requirement of making application for renewal before expiry of said period.

❖ Proposed amendment is therefore a welcome amendment as the same would reduce recurring compliance for seeking renewal of registration by smaller trusts.

❖ Amendment shall apply to applications considered/ disposed off on or after 01.04.2025.

❖ Post registration, if total income before exemption u/s 11/12 exceeds Rs.5 crores the same would not have any impact on registration already granted.

❖ Similar amendment not proposed for registration u/s 80G for smaller trust- The same appears to have inadvertently been missed?

Rationalization of persons specified u/s 13(3):

[Clause 8] ***(w.e.f. 01.04.2025)***

❖ Section 13, *inter alia*, provides that benefit of exemption u/s 11/ 12 shall not apply, if such income enures, or such income or property of the trust is used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3).

❖ Currently, clauses (b), (d) and (e) of section 13(3), inter alia, include the following persons:

- Any person who has made a substantial contribution to the trust, i.e., contribution exceeding Rs.50,000 upto end of the relevant previous year
- Any relative of any such person as aforesaid
- Any concern in which any such person has a substantial interest [twenty percent voting power in case of a company].

❖ The aforesaid section is proposed to be amended to provide that any person who has made a substantial contribution to the trust, i.e., total contribution during the relevant previous year exceeding Rs.1,00,000 ***OR*** in aggregate upto the end of the relevant previous year exceeding Rs.10,00,000, shall only be considered as specified person.

❖ It is also proposed that persons specified under section 13(3) shall ***not include***:

- any relative of any such person (substantial contributor) as aforesaid
- any concern in which any such person (substantial contributor, as aforesaid) has a substantial interest

Comments/ Observations

❖ It is clarified that relaxation is limited to relatives of and 'concerns' in which substantial contributor has specified interest. Such relaxation is not applicable to author, founder of trust, trustees, member or manager of the trusts. Thus, relatives of and concerns in which such person have substantial interest shall continue to be treated as specified person [refer FAQs].

❖ Proposed amendment is a welcome, as it was difficult and at times almost impossible for trusts to track relatives and concerns relating to persons who simply make contribution/ donation to the trust and have otherwise no role in trust's administration.

Taxation of Non-residents

Scheme of presumptive taxation extended for non-resident providing services for electronics manufacturing facility

[Clauses 11] *(w.e.f. 01.04.2026)*

- ❖ In order to position India as the global hub for Electronics System Design and Manufacturing, a comprehensive program for the development of semiconductors and display manufacturing ecosystem in India was approved by Government of India. Ministry of Electronics and Information Technology has notified Schemes for setting up of such facilities in India.

- ❖ Various foreign companies will be providing support in setting up of such electronics manufacturing facilities by deploying the technology and providing support services

- ❖ In order to ensure certainty and promotion of this industry, it is proposed to provide a presumptive taxation regime for non-residents engaged in the business of providing services or technology, to a resident company which are establishing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronic goods, article or thing in India, under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology and satisfies such conditions as prescribed in the rules.

- ❖ Finance Bill, 2025 proposes to introduce section 44BBD to provide that where an assessee, being a non-resident, engaged in the business of providing services or technology in India, for the purposes of setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India–

  a. to a resident company which is establishing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronic goods, article or thing in India, under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology; and

  b. the resident company satisfies the conditions prescribed in this behalf,

  a sum equal to 25% of the aggregate receipts of such non-residents are deemed to be profits and gains from business of the non-resident.

Comments/ Observations:

- Introduction of section 44BBD will provide a simplified taxation mechanism to the non-residents engaged in the business of providing services or technology in India, for the purposes of setting up an electronics manufacturing facility thereby encouraging foreign participation in India's semiconductor and electronics manufacturing industry.

- Presently, the license fee payable for (i) grant use of the technology/ know-how and (ii) fee for rendering technical services is taxable @ 20 percent on gross basis under section 115A of the Act.

- Chargeability to tax in India of income arising to a non-resident is, however, determined by the provisions of the Act or the relevant double tax treaty between India and the country of residence of the non-resident, whichever is more beneficial to the non-resident, as provided in section 90(2) of the Act

- Accordingly, the rate of tax of royalty and fee for technical services earned by a non-resident may stand reduced to 10/15 percent under the relevant tax treaty. Further, if the Article in the tax treaty dealing with fee for technical services contains 'make available' clause then fee for technical services may not be taxable in India if the said 'make available' clause is not satisfied.

- Further, in case the non-resident constitutes a Permanent establishment (PE) in India and such royalty or fee for technical services is effectively connected to such PE then the said income will be taxed at 38.22% (if the income is more than Rs. 10 crore) in the hands of the PE in India.

- Consequently, income of the non-resident asseesee falling within the ambit of section 44BBD would be taxable as under:

  Scenario 1: In case the Non-resident entity constitutes a PE in India - The income will be taxable @ 9.55 percent (by applying tax rate of 38.22 percent to 25% of the aggregate receipts)

  Scenario 2: In case the Non-resident entity does not constitute a PE in India and such royalty or fee for technical services is taxable @ 10/15 percent under the tax treaty – The assessee may opt to be taxed under section 44BBD since the tax rate would be 9.55 percent (by applying tax rate of 38.22 percent to 25% of the aggregate receipts)

Scenario 3: In case fee for technical services is exempt by way of make available clause in the tax treaty - the taxpayer may continue to claim exemption of such fee for technical service under the tax treaty.

Rationalisation of taxation of capital gains on transfer of capital assets by non-residents

[Clauses 23] ***(w.e.f. 01.04.2026)***

- The existing provisions of section 115AD of the Act provide that where the total income of a specified fund or Foreign Institutional Investor includes—

  a. income received in respect of securities (other than units referred to in section 115AB); or
  b. income by way of short-term or long-term capital gains arising from the transfer of such securities,

  the income-tax on the income by way of long-term capital gains referred to in clause (b), if any, included in the total income, shall be calculated at the rate of ten per cent.

- Various amendments were carried out in the above provisions by the Finance (No.2) Act, 2024. The rate of taxation on long-term gains arising from the transfer of capital assets was increased to 12.5 per cent in the case of all assessees.

- Though the rates of taxation in the case of specified fund or FIIs in case of long-term gains under section 112A of the Act have been brought to parity with the rates applicable for residents, the rate of income-tax calculated on the income by way of long-term capital gains not referred to in section 112A were retained at 10 per cent vide Finance (No.2) Act, 2024.

It is proposed to amend the provisions of section 115AD to provide that income-tax on the income by way of long-term capital gains on transfer of securities (other than units referred to in section 115AB) not referred to in section 112A, if any, included in the total income, shall be calculated @ 12.5 percent.

Significant Economic Presence (SEP)

Harmonisation of Significant Economic Presence applicability with Business Connection

[Clauses 4] *(w.e.f. 01.04.2026)*

- Section 9 of the Act provides for income which shall be deemed to accrue or arise in India. Clause (i) of section 9, inter alia, provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India shall be deemed to accrue or arise in India.

- Clause (b) of Explanation 1 to clause (i) of sub-section (1) of section 9 provides that in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export. In other words, non-residents simply purchasing goods in India for the purpose of export are not considered as having 'business connection' in India.

- Explanation 2A to clause (i) of sub-section (1) of section 9, inter alia, provides that the Significant Economic Presence (SEP) of a non-resident in India shall constitute business connection in India and SEP for this purpose shall inter alia mean transaction in respect of any goods carried out by a non-resident with any person in India.

- An issue arose that definition of SEP may lead to denial of the specific exclusion provided in the case of a non-resident, for income arising through or from operations which are confined to the purchase of goods in India for the purpose of export may be denied and such income may also be treated as income deemed to accrue or arise in India.

- In order to harmonise definition of SEP with the Explanation 1 to clause (i) of sub-section (1) of section 9, Finance Bill, 2025 has proposed to insert second proviso to Explanation 2A of section 9 to provide that the transactions or activities of a non-resident in India which are confined to the purchase of goods in India for the purpose of export shall not constitute SEP of such non-resident in India.

Comments/ Observations

❖ The Organisation for Economic Cooperation and Development ('**OECD**') as part of its BEPS Action Plan issued a Report in 2015 "Addressing the Tax Challenges of the Digital Economy" (Action Plan 1), in order to identify the main difficulties that the digital economy poses for the application of existing international tax rules which include ability of a company to have a significant digital presence in the economy of another country without being liable to taxation, due to the lack of nexus considered a pre-requisite for taxation under the existing international tax laws. In order to address the broad direct tax challenges of the digital economy, the OECD recommended the following options:

- A new nexus based on the concept of significant economic presence;
- A withholding tax on digital transactions;
- Introducing an 'equalisation levy'.

❖ In the aforesaid background, Explanation 2A to section 9(1)(i) was inserted in the statute by the Finance Act, 2018, introducing the concept of 'significant economic presence', applicable w.e.f. 01.04.2019

❖ In the Memorandum explaining the provisions of the Finance Bill 2018, the background behind introduction of SEP provisions was stated to be to place more reliance on economic allegiance rather than physical location of businesses and to bring emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India within the tax net. The rationale for the aforesaid amendment has been explained as under:

> *"**The scope of existing provisions of clause (i) of sub-section (1) of section 9 is restrictive as it essentially provides for physical presence based nexus rule for taxation of business income of the non-resident in India**. Explanation 2 to the said section which defines 'business connection' is also narrow in its scope since it limits the taxability of certain activities or transactions of non-resident to those carried out through a dependent agent. **Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India,** is not covered within the scope of clause (i) of sub-section (1) of section 9 of the Act.*

❖ The proposal by Finance Bill, 2025 to insert second proviso to Explanation 2A of section 9 will ensure that transactions or activities of a non-resident in India which are confined to the

purchase of goods in India for the purpose of export shall not constitute SEP of such non-resident in India.

- ❖ The proposed substantive amendment is effective from 01.04.2026, thereby creating ambiguity about the years preceding the aforesaid period.

- ❖ It may be noted that chargeability to tax in India of income arising to a non-resident is, however, determined by the provisions of the Act or the relevant double tax treaty between India and the country of residence of the non-resident, whichever is more beneficial to the non-resident, as provided in section 90(2) of the Act.

- ❖ Since the Tax Treaty contains the conventional concept of constitution of Permanent Establishment de hors the expanded scope of 'business connection' as per the Act, the SEP provisions enshrined in section 9 of the Act cannot be read into the Tax Treaty. In other words, a non-resident can choose to be governed by the beneficial provisions of the Tax Treaty, therefore, provisions of SEP would not be applicable to such non-resident.

Even though Finance Bill, 2025 has sought to provide some clarity but the provisions of SEP continue to be marred with various controversies/ issues.

Business Reorganisation

Rationalization of provisions relating to carry forward of losses in case of Amalgamation & Business Reorganization

[Clause 14 & 15] *(w.e.f. 01.04.2026)*

❖ Section 72A and section 72AA of the Act allows carry forward and set-off of accumulated losses and unabsorbed depreciation in cases of amalgamation or business reorganization by treating such losses as those of the successor entity in the year of amalgamation.

❖ Section 72 of the Act restricts the carry forward of business losses (excluding speculation losses) to maximum period of eight assessment years from the year in which the loss was first computed.

❖ The absence of a similar limitation in section 72A and section 72AA led to indefinite carry forward of losses through successive amalgamations, enabling entities to evergreen losses and extend tax benefits beyond the prescribed period.

❖ The proposed amendment restricts carry forward, ensuring that any loss transferred from the amalgamating entity to the successor entity cannot be carried forward beyond eight assessment years from the year it was originally computed in the hands of the predecessor entity.

Comments/ Observations

❖ The Delhi High Court in the case of **Mahindra & Mahindra Ltd. v. Union of India (1983) 141 ITR 174 (Del)** [approved by the Supreme Court in 15 Taxman 1 (SC)] held that by a deeming fiction under tax law, the accumulated losses and unabsorbed depreciation of the amalgamating company are treated as losses or depreciation of the amalgamated company in the previous year in which the amalgamation takes effect. The Court emphasized that the said statutory fiction ensures seamless continuity of tax benefits and allows the amalgamated company to carry forward and set off such losses and depreciation as if they were its own. This interpretation aligned with the legislative intent behind provisions governing mergers and amalgamations, ensuring that genuine business restructurings do not suffer unintended tax consequences [refer : Memorandum explaining Finance (No. 2) Bill, 1977: 107 ITR 167 (St)].

- The Mumbai bench of Tribunal in case of **Supreme Industries Ltd. v. DCIT (17 SOT 476)** distinguished the treatment of investment allowance from carry forward of business losses and depreciation, holding that investment allowance is restricted to 8 years from its first computation, whereas business losses and depreciation follow the deeming fiction of section 72A of the Act, which allows such losses to be treated as losses of the amalgamated company in the year in which amalgamation takes effect.

- The proposed amendment overrides the aforesaid judicial precedents and aligns section 72A and section 72AA with section 72 of the Act, preventing perpetual tax benefits from amalgamated losses through successive amalgamations and ensuring that loss set-off provisions remain time-bound and equitable.

- The proposed amendments shall apply to any amalgamation or business reorganization effected on or after April 1, 2025. As per the Supreme Court's ruling in **Marshall Sons & Co. (India) Ltd. v. ITO (223 ITR 651 SC)**, the scheme of amalgamation takes effect from the appointed date specified in the scheme, unless modified by the Court. An ambiguity, however, persists regarding allowability of carry forward of accumulated losses and unabsorbed depreciation (of amalgamating companies) in the hands of the amalgamated company in cases where the appointed date precedes April 1, 2025, but the scheme is sanctioned and comes into effect thereafter. In such cases, whether the amalgamated company would be eligible for fresh carry-forward period as per the provisions applicable prior to the amendment or be restricted to the remaining unexpired period?

International Financial Services Centre (IFSC)

Tax incentives for IFSC

The IFSC serves as a specialized jurisdiction offering financial services to non-residents and eligible residents in currencies other than the Indian Rupee, as permitted under existing regulations. To promote the development of a world-class financial ecosystem in India, the government has introduced various tax concessions for IFSC units under the Act in recent years.

To further enhance the attractiveness of IFSC as a global financial hub, the following amendments are proposed:

Extension of sunset dates for several tax concessions pertaining to IFSC:

[Clauses 6, 13 & 19] ***(w.e.f. 01.04.2025)***

The extension of the sunset dates for several tax concessions is tabulated hereunder:

Section	Particulars	Existing sunset dates	Proposed sunset dates
Section 9A	Certain activities not to constitute business connection in India – Commencement of activities by the eligible fund manager.	March 31, 2024	March 31, 2030
Section 10(4D)	Income of Investment Division of an Offshore Banking Unit (OBU) located in IFSC – Commencement of operations of the Investment Division of the OBU.	March 31, 2025	March 31, 2030
Section 10(4F)	Income of non-resident by way of Royalty and Interest on lease of an Aircraft or a Ship by a unit located in IFSC – Commencement of operations of the unit located in IFSC.	March 31, 2025	March 31, 2030
Section 10(4H)	Capital gains arising to a non-resident or a unit located in IFSC engaged in the business of leasing aircraft or a ship – Commencement of operations of the unit located in IFSC, engaged primarily in the business of leasing aircraft or a ship.	March 31, 2026	March 31, 2030
Section 47(viiad)	Relocation of funds to IFSC – Transfer of capital assets by a shareholder or unit holder in a relocation of funds to IFSC.	March 31, 2025	March 31, 2030

Section 80LA(2)(d)	Tax deduction for IFSC units – Commencement of operations of units in IFSC eligible for tax deductions.	March 31, 2025	March 31, 2030

Exemption on life insurance policy from IFSC Insurance offices

[Clause 6] *(w.e.f. 01.04.2025)*

- ❖ Section 10(10D) of the Act provides tax exemption on sums received under life insurance policy, including bonuses, subject to specified conditions and also applies to policies issued by IFSC Insurance Offices.
- ❖ Existing restrictions under the fourth, fifth, sixth, and seventh provisos limit tax exemption if the annual premium exceeds ₹2.5 lakh for Unit Linked Insurance Plans (ULIPs) and ₹5 lakh for other life insurance policies.
- ❖ To ensure parity for non-residents purchasing life insurance from IFSC Insurance Offices compared to other foreign jurisdictions, section 10(10D) of the Act is proposed to be amended to remove the premium cap for policies issued by IFSC insurance intermediaries, thereby allowing full tax exemption on proceeds.
- ❖ The amendment removes tax disadvantages for non-residents using IFSC-based life insurance policies, making IFSC a more attractive global financial hub.

Exemption to capital gains and dividend for ship leasing units in IFSC

[Clause 6] *(w.e.f. 01.04.2025)*

- ❖ Section 10(4H) of the Act provides capital gains tax exemption to non-residents and IFSC units engaged in aircraft leasing on the transfer of equity shares of domestic IFSC-based aircraft leasing companies.
- ❖ Section 10(34B) of the Act provides dividend exemption for IFSC units engaged in aircraft leasing when received from another IFSC aircraft leasing unit.

❖ Since ship leasing businesses operate similarly to aircraft leasing, with Special Purpose Vehicles (SPVs) created for vessels to protect investor interests, the same tax exemptions are now proposed to be extended to ship leasing units in IFSC under:

- Section 10(4H) of the Act to exempt capital gains tax for non-residents and IFSC units engaged in ship leasing; and
- Section 10(34B) to exempt dividends paid by an IFSC ship leasing unit to another IFSC ship leasing unit.

❖ The above proposed amendments aligns the tax treatment of ship leasing with aircraft leasing, strengthening IFSC's position as a global hub for maritime financing and leasing activities.

Rationalisation of the definition of 'dividend' for treasury centres in IFSC

[Clause 3] ***(w.e.f. 01.04.2025)***

❖ Section 2(22)(e) of the Act treats certain loans and advances as deemed dividends, including payments made by closely held company to beneficial shareholders (holding not less than 10% of the voting power) or their related concerns, to the extent of accumulated profits.

❖ Section 2(22)(ii) currently excludes loans made in the ordinary course of business, where lending money is a substantial part of the company's business.

❖ Concerns were raised that borrowings by corporate treasury centres in IFSC from group entities could trigger deemed dividend taxation, creating unintended tax consequences.

❖ To address the aforesaid issue, section 2(22) of the Act is proposed to be amended to exclude loans and advances between group entities from deemed dividend provisions, provided:

- one of the group entities is Finance Company or Finance Unit in IFSC, set up as global or regional treasury centre;
- the parent or principal entity of the group is listed on foreign stock exchange (except for jurisdictions specified by the Board); and
- specific conditions for group entities, parent entities, and principal entities will be prescribed.

- The amendment removes tax hurdles for treasury operations in IFSC, facilitating efficient fund management within multinational group entities while maintaining tax clarity and compliance.

Simplified regime for fund managers based in IFSC

[Clause 5] ***(w.e.f. 01.04.2025)***

- Section 9A of the Act provides that fund management activities in India do not create business connection if carried out through an eligible fund manager acting on behalf of an eligible investment fund, subject to specified conditions.

- Presently, Indian resident participation in an eligible investment fund cannot exceed 5% of the corpus under section 9A(3)(c) of the Act. Section 9A(8A) of the Act allows the Central Government to modify or exempt certain conditions for eligible funds and fund managers in IFSC, provided operations commence on or before March 31, 2024.

- Representations have highlighted the need for an explicit framework for IFSC-based fund managers managing foreign funds to enhance global competitiveness. To address the same, the proposed amendment rationalizes the 5% Indian resident participation condition by determining compliance biannually (April 1 & October 1) with a four-month rectification period if exceeded. The 5% participation limit will now apply uniformly to all eligible investment funds and their IFSC-based fund managers, without further modifications.

- Additionally, the deadline for fund managers in IFSC to qualify for relaxed conditions under section 9A(8A) of the Act is proposed to be extended to March 31, 2030.

Amendment of Section 10 related to Exempt income of Non-Residents

[Clause 6] ***(w.e.f. 01.04.2026)***

- Section 10(4E) of the Act presently exempts income earned by non-residents from the transfer of non-deliverable forward contracts, offshore derivative instruments (ODIs), over-the-counter derivatives, or the distribution of income on ODIs when transacted with an offshore banking unit (OBU) in an IFSC under section 80LA(1A) of the Act.

- To further promote IFSC operations, the exemption is expanded to include similar transactions conducted with Foreign Portfolio Investors (FPIs) operating as IFSC units, subject to prescribed conditions.

Inclusion of retail schemes and Exchange Traded Funds (ETFs) in the existing relocation regime of funds of IFSCA

[Clause 13] (w.e.f. 01.04.2026)

- Section 47(viiad) of the Act provides tax neutrality for fund relocations to IFSC, ensuring that the transfer of shares, units, or interests in an original fund in exchange for those in resultant fund in IFSC is not considered taxable transfer for capital gains purposes.

- The definition of "resultant fund" presently includes Category I, II, and III Alternative Investment Funds (AIFs) registered in IFSC and subject to specified conditions.

- Retail schemes and Exchange Traded Funds (ETFs) in IFSC, regulated under the International Financial Services Centres Authority Act, 2019, were granted tax exemption under section 10(4D) via Finance (No.2) Act, 2024.

- To ensure tax neutrality for fund relocations, the proposed amendment includes retail schemes and ETFs within the definition of "resultant fund" under section 47(viiad) of the Act, allowing tax-free transfers of original fund assets to these funds in IFSC.

Updated Return

Extending the time-limit to file the updated return

[Clauses 39 & 40] ***(w.e.f. 01.04.2025)***

❖ Concept of updated return introduced vide Finance Act, 2022, whereby section 139(8A) was inserted providing an assessee who has filed or not filed original/ belated/ revised income-tax return to file updated return within additional time of 24 months from the end of assessment year.

❖ It is now proposed to amend sub-section (8A) to increase the aforesaid time-limit for filing updated returns from 24 months to 48 months from the end of relevant assessment year.

❖ A proviso is proposed to be inserted in sub-section (8A) to provide that no updated return shall be furnished where any notice u/s 148A is issued after 36 months from end of the relevant assessment year. However, where subsequently an order is passed u/s 148A(3) dropping reassessment, updated return may be filed upto 48 months from end of relevant AY.

❖ It is also proposed to amend section 140B(3) to levy additional tax in respect of updated return, as under:

Where updated return is furnished beyond	Additional tax
After the expiry of time limit for filing belated or revised return, upto 12 months from the end of relevant AY	25% of aggregate of tax and interest payable
12 months, upto 24 months from the end of relevant AY	50% of aggregate of tax and interest payable
24 months, upto 36 months from the end of relevant AY (proposed)	***60% of aggregate of tax and interest payable***
36 months, upto 48 months from the end of relevant AY (proposed)	***70% of aggregate of tax and interest payable***

Comments/ Observations:

- The amendment is in line with Government's philosophy of 'Trust First' [refer FAQs] and is intended to enhance voluntary compliance by taxpayer, reduce litigation cost and time for taxpayer and administration.

- Time to file updated return for AY 2021-22 which expired on 31.03.2024 (already expired prior to proposed amendment) shall stand extended to 31.03.2026.

However, benefit/ option to file updated return shall not be available for AY 2020-21 and earlier years, as four years shall lapse on 31.03.2025 or earlier and amendment is effective from 01.04.2025.

Tax Deduction/ Collection At Source

Rationalization of provisions of TDS and TCS

[Clauses 51 to 64, 67] *(w.e.f. 01.04.2025)*

❖ To enhance ease of doing business and facilitate compliance by taxpayers, following amendments are proposed to rationalize the applicable rates and thresholds for deduction of tax at source (TDS)/ collection of tax at source (TCS):

*(A) **Rationalization of rates***

Section	Existing TDS/ TCS Rate	Proposed TDS/ TCS Rate
194LBC – Income in respect of investment in securitization trust	25% if payee is Individual or HUF and 30% otherwise	10%
206C(1) – TCS on (i) timber or any other forest produce (not being tendu leaves) obtained under a forest lease and (ii) timber obtained by any mode other than under a forest lease	2.5%	2%
206C(1G) - TCS on remittance under LRS for purpose of education, financed by loan from financial institution **TCS on overseas tour program package**	0.5% after Rs.7 lakhs	Nil 0.5% after Rs.10 lakh
206C(1H) – TCS on sale of any goods of value or aggregate value exceeding Rs.50 lakh	0.1% of sale consideration	Nil

(B) ***Rationalization of threshold amount***

Section	Current threshold	Proposed threshold
193 – Interest on securities	(i) Rs.5,000 on debentures issued by company in which public is substantially interested (ii) NIL in any other case	Rs.10,000
194 – Dividends	Rs.5,000	Rs.10,000
194A – Interest other than 'Interest on securities'	(i) Rs.50,000 for senior citizens (ii) Rs.40,000 in case of others when payer is bank, co-operative society and post office (iii) Rs.5,000 in any other case	(i) Rs.1,00,000 for senior citizens (ii) Rs.50,000 in case of others when payer is bank, co-operative society and post office (iii) Rs.10,000 in any other case
194B – Winning from lottery or crossword puzzle, etc	Aggregate of amounts exceeding Rs.10,000 during the financial year	Limit of Rs.10,000 to be seen in respect of single transaction
194BB – Winnings from horse race		
194D – Insurance Commission	Rs.15,000	Rs.20,000
194G – Commission, etc., on sale of lottery tickets	Rs.15,000	Rs.20,000
194H – Commissioner of brokerage	Rs.15,000	Rs.20,000
194I – Rent	Rs.2,40,000 in a financial year	Rs.50,000 per month or part of month
194J – Fees for professional or technical services	Rs.30,000	Rs.50,000

194K – Income in respect of units	Rs.5,000	Rs.10,000
194LA – Payment of compensation on acquisition of certain immovable property	Rs.2,50,000	Rs.5,00,000

❖ For the purpose of section 206C(1), the term 'Forest produce' is proposed to have the same meaning as defined in any State Act for the time being in force, of in the Indian Forest Act, 1927.

Comments/ Observations:

❖ The increase in threshold under various sections, particularly the increase in amount of rent subjected to TDS and the removal of TCS on overseas remittance from education loans, aligns with the Government's objective of reducing compliance burdens and boosting spending among small and middle-class taxpayers.

❖ The overlap between deduction of TDS in terms of section 194Q vis-à-vis collection of TCS in terms of section 206C(1H) on sale of goods created significant challenges for sellers at large, imposing additional obligation on them to ensure deduction of TDS. The proposal to remove levy of TCS on sale of goods is a welcome move bringing ease of compliance and relief to sellers.

Elimination of higher TDS/ TCS for non-filers of return of income

[Clause 65, 66 & 68] (w.e.f. 01.04.2025)

❖ Section 206AB provides for deduction of TDS at higher rates when the deductee is a non-filer of income tax return. Similarly, section 206CCA provided for collection of TCS at higher rates where collectee is a non-filer of income tax return.

- The aforesaid requirement posed additional compliance burden on deductors/ collectors of tax, requiring them to verify whether income tax return is being filed by the deductee/ collectee or not at such point in time.

Comments/ Observations:

- The proposed amendment comes as a welcome move reducing compliance burden on deductors/ collectors of tax.

- TDS/ TCS compliance, however, is still required to be made at higher rates in case of invalid PAN or where the deductee/ collectee does not have a PAN.

Decriminalization of delay in payment of TCS

[Clause 84] ***(w.e.f. 01.04.2025)***

- Presently, the provisions of section 276BB provide that where a person fails to deposit the tax collected at source or under Chapter XVII-B to the Central Government, he shall be punishable with rigorous imprisonment for a term of minimum 3 months and maximum 7 years along with a fine.

- It is proposed to amend section 276BB of the Act to provide for exemption from prosecution to a person covered under the said section, if the payment of tax collected in respect of a quarter has been made to the credit of the Central Government at any time on or before the time prescribed for filing the statement of such quarter under sub-section (3) of section 206C of the Act.

Comments/ Observations:

The proposed amended aligns TCS provisions with similar decriminalization provisions introduced in respect of delay in deposit of TDS in the last Budget.

Search & Seizure

[Amendments in the provisions of Block Assessment for search and requisition cases under Chapter XIV-B]

[Clauses 46, 47, 48, and 49] *(w.e.f. 01.02.2025)*

❖ Finance (No. 2) Act, 2024 re-introduced the concept of block assessments under Chapter XIV–B (viz. Sections 158B to 158BI) in cases where search under section 132 is initiated or requisition under section 132A is made, on or after 01.09.2024.

❖ Transition of different search assessment regimes over the year(s) is tabulated as under:

Search Date	Relevant Section(s)	Remarks
1.07.1995 to 01.06.2003	Section 158BC – In case of searched person Section 158BD - In case of 'other than searched person'	▪ Single assessment for assessment of 'undisclosed income' of 'block period' comprising of 6 AYs preceding PY in which search conducted /requisition made; ▪ Assessment restricted to undisclosed income discovered from 'material found during search'; ▪ Block assessment in addition to normal assessment(s) of period(s) falling in 'block period' i.e., Dual/ parallel assessment concept. ▪ Scope of 'undisclosed income' *inter-alia* included '**false'** claim of expense, deduction or allowance claimed under the Act.
01.06.2003 to 31.03.2021	Section 153A – In case of searched person Section 153C- In case of 'other than searched person'	▪ Separate assessments for assessment of 'undisclosed income' of each of the 6 AYs preceding PY in which search conducted /requisition made – subsequently, limit extended to 10 years; ▪ Assessments pending as on the date of search abated; ▪ Assessment restricted only to incriminating material found during search, except in case of abated year(s).

01.04.2021 to 31.08.2024	Section 147 and 148 - Based on information for each assessment year	▪ Separate search assessment regime abolished and subsumed into reassessment provisions u/s 147; ▪ In case of search/survey, deemed that AO had information to reopen assessment; ▪ Reopening permitted upto a period of 10 years, if escaped income in the form of asset and likely to amount more than Rs. 50 lakhs; ▪ Assessment restricted only to escaped income i.e., incriminating material found during search ▪ No concept of abatement – Dual assessment revived
01.09.2024 onwards	Section 158BC – searched person; Section 158BD - 'other person'	▪ Single block assessment to be made for entire 'block period' and all parallel pending assessment(s) to abate; ▪ Block period restricted to 6 years as against 10 years in its earlier regime; ▪ Undisclosed income widely defined to include even claims/ allowances which may be construed as 'incorrect' by the AO; ▪ Scope of assessment widened; ▪ Higher tax rate proposed to be levied on entire undisclosed income, which may also include adjustments other than search related adjustments.

❖ Various amendments have been proposed by the Finance Bill, 2025 to remove certain ambiguities and to streamline the provisions of Block Assessment.

Specific inclusion of 'Virtual Digital Assets' in the definition of undisclosed income

❖ The existing provisions of section 158B of the Act define 'undisclosed income' to include '*any money, bullion, jewellery, or other valuable article or thing*'.

- The said section is now proposed to be amended to specifically include '***virtual digital assets***' alongside 'money, bullion, jewellery, or other valuable article or thing'.

Comments/ Observations:

- The proposed amendment appears to be clarificatory in nature to avoid any ambiguity regarding taxability of undisclosed 'crypto-assets' found during search action.

- As a sequitur, any undisclosed virtual digital asset found during search action would now be taxed at the higher rate of 60% [plus surcharge] provided under section 113 of the Act.

Effect of second search action on the pending block assessments

- As per existing section 158BA(4) of the Act where any "**block assessment**" pursuant to first search action is '**pending**' on the **date when a subsequent search is initiated** under section 132 or subsequent requisition is made under section 132A, the block assessment pursuant to first search action is required to be completed and thereafter, the block assessment in respect of the second/ subsequent search or requisition is to be made under the provisions of Chapter XIV-B of the Act.

- Pertinently, block assessment pursuant to first search does not abate as a result of initiation of second search action, but is required to be completed as specifically mandated in section 158BA(4) of the Act. Accordingly, the aforesaid section 158BA(4) is proposed to be amended to substitute the word "pending" with the words "required to be made".

- It is thus, clarified that where any block assessment is '***required to be made***' pursuant to first search action as on the date of initiation of second/ subsequent search or requisition, the block assessment of first search shall be completed and thereafter, the block assessment pursuant to the second/ subsequent search shall be made.

Extension of time-limit to complete block assessment

- Under section 158BE, the time limit for completion of block assessment is twelve months from the end of the month in which the last of the authorizations for search under section 132 was executed or requisition under section 132A was made.

- ❖ It is now proposed to relax the aforesaid limitation from 12 months from the **end of the month** to 12 months **from end of the quarter** in which last of the authorization for search under section 132 was executed or requisition under section 132A was made.

Comments/ Observations:

- ❖ **Illustration**: Suppose a search is initiated against an assessee on 10.08.2025 and the last of the authorization for search is executed on 05.10.2025, the AO shall be required to complete the block assessment by 31.12.2026 [i.e., 12 months from end of December 2025].

- ❖ Pertinently, even in case of second search, the time-limit for completion of the block assessments would be computed in the aforesaid manner as provided in section 158BE. AO shall have to first complete block assessment initiated pursuant to first search within 12 months as provided in section 158BE and shall, thereafter, be required to complete block assessments initiated pursuant to second search within 12 months from the end of quarter in which last authorizations of second/ subsequent search was executed.

Inclusion of the phrases 're-computation or reference' in provisions relating to revival of abated assessments

- ❖ Section 158BA(2) provides that the assessment or reassessment or **re-computation** pending on the date of initiation of search under section 132 or making of requisition under section 132A **shall abate**.

- ❖ Section 158BA(5) provides that where any proceeding under Chapter XIV-B is **annulled in appeal or any legal proceedings**, the '***assessment or re-assessment***' which abated under section 158BA(2) shall **stand revived**. The word "**re-computation"** was, however, not mentioned.

- ❖ Accordingly, the provisions of section 158BA(5) are proposed to be amended to align the same with section 158BA(2) to provide that if any proceedings under Chapter XIV-B stands annulled in appeal or any legal proceedings, then, the **re-computation or reference** which abated under section 158BA(2) shall also stand revived.

Scope of 'total income' and 'undisclosed income' for the purpose of applicability of higher rate of tax @ 60% - Section 158BB

❖ The existing provisions of section 158BB(1) provide that the total income of the block period shall be aggregate of the following:

a) **Total income disclosed in return** furnished under section 158BC;
b) **Total income earlier assessed** under section 143/ 147/ 153A/ 153C; and
c) **Total income declared in regular return of income** and not covered by (a) and (b) above; and
d) **Total income based on entries in books** in respect of year where the **previous year has not ended**; and
e) '**undisclosed income**' as computed under section 158BB(2) of the Act [i.e. (i) income on the basis of evidences found during search/survey/requisition, (ii) income based on such other materials or information as available with the AO, and (iii) income based on such other materials or information as comes to notice of AO during proceedings].

❖ The aggregate of **'total income'** relating to entire block period (*irrespective of the year(s) to which it relates*) as determined under section 158BB(1) of the Act reduced by **total incomes referred to in (b), (c) and (d) above** are charged to tax @ **60%** as per sections 158BA(7) and 158BB(5) r.w. section 113 of the Act.

❖ It is proposed to substitute the existing section 158BB(1) to provide that the total income of the block period shall be aggregate of the following:

(a) **Undisclosed income** declared in the return of income filed under section 158BC;

(b) **Income assessed** under section 143(3)/ 147/ 144/ 153A/ 153 of the Act prior to date of initiation of search or date of requisition;

(c) **Income declared in the regular return of income** filed under sections 139/ 142/ 148 prior to the date of initiation of search or date of requisition and not covered by (a) and (b) above; and

(d) Income determined in respect of the following:

i. the previous year where such **previous year has ended and the due date for furnishing the return for such year has not expired prior to the date of initiation** of the search or the date of requisition - on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course before the date of initiation of search or the date of requisition;

ii. the **period commencing from 1st day of April of the previous year in which the search is initiated or requisition is made and ending on the day immediately preceding the date of initiation of search or requisition** - on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course for such period on or before the day immediately preceding the date of initiation of search or the date of requisition;

iii. the **period commencing from the date of initiation of the search or the date of requisition and ending on the date of the execution of the last of the authorisations for search or requisition**, on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course for such period on or before the date of the execution of the last of the authorisations;

(e) **<u>Undisclosed income</u>** determined by AO under section 158BB(2) of the Act.

- ❖ Pursuant to the proposed amendment, the special rate of tax of 60% shall be levied on the aggregate of total income as computed under section 158BB(1) as reduced by incomes referred to in **(b), (c), and (d) above**.

- ❖ As a consequence, the special tax rate of 60% would be applicable to (a) **<u>undisclosed income declared in the return of income</u>** filed under section 158BC of the Act and (b)**<u>undisclosed income determined by the AO</u>** under section 158BB (2) of the Act.

- ❖ The scope of **undisclosed income** has been defined under section 158A(1)(b) to include:

(a) **Money, bullion, jewellery, or virtual digital asset**, or any other valuable article or thing **wholly or partly not disclosed** under the Act;

(b) **Any expenditure or income based on entries in books of account** or other documents or transactions **wholly or partly not disclosed** under the Act; and

(c) Any **expense, deduction, or allowance** claimed under the Act that is ***found to be 'incorrect'*** during the block period.

Comments/ Observations:

- **Importantly**, the anomaly of taxation of routine adjustments/ disallowances duly recorded in the books of account under the scheme of block assessment in its new avatar at the higher rate of 60%, despite the proposed amendment, continue to exist, which is primarily on account of following fundamental distinction in the scheme of block assessment in its old avatar vis-à-vis the new avatar:

    (a) Earlier block assessment, as existing up to 31.5.2003, only covered undisclosed income computed strictly on the basis of search evidence and routine/ declared income was separately/ independently assessed in normal assessment;

    (b) Block assessment, in its present avatar, however, provides for abatement of normal pending assessment and merger of such pending assessment with block assessment.

- Though, it can be argued that any disallowance/ adjustment (other than those arising due to search material) should not be covered under the definition of '**undisclosed income**' and *accordingly*, should not be subjected to special tax rate of 60%, there, however, exists anomaly in the computation mechanism set out in section 158BB.

- Ramifications/ impact of inclusion of non-search related additions/ disallowances i.e., routine legal claims is demonstrated as under:

Particulars	Amount
ROI filed by assessee for AY 2024-25 *inter-alia* claiming exemption of Rs.10 crore u/s 10AA of the Act.	Rs.50 crores
When regular assessment proceedings initiated and also TP reference already made and pending, search initiated u/s 132 (*say 01.12.2025)*	
Regular assessment stands abated and assessee obligated to file return u/s 158BC of the Act, wherein again claim of exemption is made u/s 10AA of the Act	Rs.50 crores
AO proceeds to determine 'total income' after making following additions: (a) Addition of Rs.15 crores on the basis of search material (b) Denial of exemption claimed u/s 10AA of Rs.10 crores [*Adjustment @ point (b) above made on pure legal grounds in the absence of any information pertaining to the said issues being found during search*]	Rs.100 crores
Net income of block period (Rs.10 crores on denial of exemption, and search related addition of Rs. 15 crores)	**Rs.25 crores**
Tax on undisclosed income @60%	**Rs.15 crores**

❖ In the above example, routine addition of Rs.10 crores on account of denial of tax exemption is also subjected to tax @60%, even though the said addition is not based on any search material.

❖ Memorandum explaining the Finance Bill, 2025, in this regard, notes as under:

> *"5……….It is also proposed to amend clause (iv) of sub-section (1) to provide the clarity over computation of the income pertaining to the previous year which has ended but the due date for furnishing the return for such year has not expired prior to the date of initiation of the search or requisition so that income pertaining to books of account maintained in normal course for the said period is taxed under the normal provisions."*

❖ From the aforesaid, it is discernible that the proposed amendment addresses the anomaly to the limited extent of excluding routing income/ additions in respect of the year of search and immediately preceding year, for which the due date of filing the return has not expired.

- Thus, the proposed amendment fails to address the anomaly wherein adjustments (other than search related adjustments) such as repetitive additions/ disallowances on legacy issues in respect of the block period would be taxed at special tax rate of 60%, resulting in unintended/ harsh consequences.

Exclusion of 'income' relating to international transaction or specified domestic transaction for the specified period from block assessments

- As per section 158BB(3), "**evidence**" found as a result of search/ requisition relating to any 'international transaction' or 'specified domestic transaction', *pertaining to period beginning from 1st April of PY in which last of authorisations executed and ending with date on which last of authorisations executed*, **to be excluded** for the purposes of determination of total income of block period and such evidence to be considered in assessment made under other provisions of the Act.

- It is proposed to amend section 158BB(3) of the Act to replace '**evidence**' with '**income**' found as a result of search/ requisition relating to any **international transaction** or **specified transaction** to be excluded for the purposes of determination of total income of block period and such income to be considered in assessment made under other provisions of the Act.

Loss arising in the return filed under section 158BC not to be allowed for set-off against income of the block period

- As per existing provisions, **the benefit of following losses are not allowed while computing income for the block period** but are allowed to be carried forward for set off in the year subsequent to AY in which block period ends:

  - Losses returned/ assessed relating to the PY's forming part of the block period [Section 158BB(6)];

  - Losses and unabsorbed depreciation brought forward from earlier years prior to first year of the block period [Section 158BB(7)];

- It is proposed to amend section 158BB(6) of the Act to bring the said section in-line with the proposed amendments in section 158BB(1)(i), viz. if the undisclosed income declared in the return filed under section 158BC is a loss, the same shall be ignored.

No amendment has been proposed to provide set off of losses and unabsorbed depreciation with income of the block period pertaining to routine additions/ disallowances, having no fundamental character of “undisclosed income”.

Penalty and Prosecution

Time limit to impose penalties rationalized

[Clauses 69 & 83] *(w.e.f. 01.04.2025)*

- Presently, section 275 has multiple timelines for imposition of penalties.
- It is proposed to substitute section 275 to set a ***uniform time limit of six months from the end of the quarter*** in which the connected proceedings are completed or the relevant order is received or issued.
- The proposed timelines beyond which **no penalty order** shall be passed passed after expiry of six months as under:

Sub-section / clause	Particulars	Six months from end of quarter in which
1(a)	Whether assessment is completed, and **no appeal is filed**	Assessment is completed
1(b)	Whether assessment is revised u/s 263 or 264	Passing of revisionary order
1(c)	If assessment challenged in appeal before CIT(A) and no further appeal filed before ITAT	CIT(A) order is received by jurisdictional PCIT
1(d)	Whether assessment/ CIT(A) order challenged in appeal before ITAT	ITAT order is received by jurisdictional PCIT
1(e)	Residual cases	Notice for imposition of penalty is issued

- In computing limitation, following period is to be excluded (refer sub-section 5):
    - Time taken in giving opportunity to assessee to be reheard under proviso to section 129 (on change in incumbent officer)
    - Period commencing on the date on which stay on penalty proceedings is granted by any Court *upto date on which certified copy of order vacating stay is received by PCIT*

- Consequential amendment is also proposed in section 246A to reflect the aforesaid change.

<u>Comments/ Observations:</u>

- The proposed amendment will simplify tracking of time limits set for imposing penalties.

- Under the current law, especially in view of first proviso to section 275(1), there was ambiguity as to whether the penalty connected with the assessment is required to be imposed within one year from end of financial year in which order of CIT(A) is received by PCIT, irrespective of whether the same has been challenged in appeal before the Tribunal; the said issue has been subject matter of judicial interpretation [refer **CIT v. Mohair Investment and Trading Co. P. Ltd.: 345 ITR 51 (Del), Rayala Corporation P. Ltd vs. Union of India: 288 ITR 452 (Mad)].**

  The aforesaid ambiguity no longer survives since by virtue of the amendment, the assessing officer must, after disposal of first appeal, await the outcome of appeal before the ITAT.

- Proposed amendment is effective from 01.04.2025. It is, however, not clear whether the same would apply in cases where penalty is pending to be imposed as on 31.03.2025, even though quantum order has been passed prior to that date or only to cases where penalty notice is issued on or after 01.04.2025.

- Presently, for residual cases covered under clause (c) of section 275(1), period of limitation is six months from end of the month in which <u>action for imposition of penalty is initiated</u>. In contrast, proposed clause (e) of section 275(1), six months period is considered from <u>issuance of notice for imposing penalty</u>. There is, thus, a marked change in the language of the provisions pre and post amendment.

- In various cases, the assessment order also record violation of sections 269SS/ 269T and refers to initiation of consequential penalty under sections 271D/271E. Since penalty in such cases are generally levied by JCIT, limitation is governed by clause (c) of section 275(1)

  Post- amendment, there could, in such cases, be ambiguity whether the limitation for imposing penalty shall be governed by– (i) residual clause (e), which provides for levy of penalty within six months from end of quarter in which notice for imposition of penalty is issued [irrespective

of date of assessment order]; or (ii) the clause(s) determine limitation linked to date of order of assessment or appeal(s) thereagainst.

Certain penalties to be imposed by the Assessing Officer:

[Clauses 69 and 76 to 82] ***(w.e.f. 01.04.2025)***

- Presently, for violation under the following provisions, penalty shall be imposed by the Joint Commissioner (JCIT), though corresponding assessment in such cases may have been completed by an officer of lower rank (ITO/ ACIT/ DCIT):

Section	Levy of penalty for
271C	Failure to deduct tax at source
271CA	Failure to collect tax at source
271D	Failure to comply with section 269SS
271DA	Failure to comply with section 269ST
271DB	Failure to comply with section 269SU
271E	Failure to comply with section 269T

- It is proposed to amend the aforesaid sections so that after 01.04.2025 penalty shall be imposed by the AO, irrespective of rank, in place of JCIT. However, in cases where penalty amount exceeds the limit specified under section 274(2) [Rs.10,000 by ITO and Rs.20,000 by ACIT/DCIT], prior approval of the JCIT shall be required [refer FAQs].

- Section 271BB providing for imposition of penalty for the failure to subscribe to the eligible issue of capital, is proposed to be omitted.

Comments/ Observations:

- Considering that amendments are proposed to be made effective from 01.04.2025, it needs to be clarified:

  - in cases where penalty proceedings initiated by JCIT are pending as on 31.03.2025, penalty shall, post amendment, be passed by the AO would pass order or shall be passed by the JCIT;

- where default is recorded in the assessment order passed prior to 1.04.2025, whether penalty proceedings would be initiated and necessary order be passed by AO or by JCIT.

❖ Practically, in all cases, approval of JCIT would be required by virtue of section 274(2) as monetary threshold is quite low.

Extending period for processing of application seeking immunity from penalty and prosecution:

[Clause 74] (w.e.f. 01.04.2025)

❖ Section 270AA provides, inter-alia, procedure of granting immunity by the AO from imposition of penalty or prosecution, subject to fulfillment of certain conditions as mentioned therein.

❖ Sub-section (2) of the said section provides that an application for granting immunity from imposition of penalty shall be made within one month from the end of the month in which the order referred to in clause (a) of sub-section (1) of the said section has been received by the assessee.

❖ Sub-section (4) of the said section provides that AO shall pass an order accepting or rejecting the application, within a period of one month from the end of the month in which the application requesting immunity is received. ***This period of one month for processing application is proposed to be extended to three months.***

Comments/ Observations:

❖ Being benevolent provision relaxing time limit, for applications pending on 31.3.2025, extended time limit of three months should apply.

Non-applicability of section 271AAB:

[Clause 75] (w.e.f. 01.09.2024)

❖ The existing provisions of sub-section (1A) of section 271AAB relates to penalty in respect of searches initiated after 15.12.2016. It is proposed to amend section 271AAB to provide that its provisions shall not be applicable to the assessee in whose case search has been initiated under section 132 on or after 1.09.2024.

- ❖ Pertinently, penalty in terms of existing section 158BFA (introduced/ substituted vide FA 2024) is leviable on an assessee in whose case search has been initiated under section 132 on or after 01.09.2024 [refer FAQs]

Exemption from prosecution for delayed payment of TCS in certain cases:

[Clause 84] ***(w.e.f. 01.04.2025)***

- ❖ Section 276BB provides for prosecution in case of ***failure to pay*** the tax collected at source to the credit of Central Government.

- ❖ Proviso is proposed to be inserted in section 276BB to provide that the ***prosecution shall not be instituted if the payment of the TCS is made at any time on or before the time prescribed for filing the quarterly statement*** under proviso to sub-section (3) of section 206C in respect of such payment.

- ❖ If TCS is not paid within the aforesaid time, person is amenable to prosecution [refer FAQs].

Transfer Pricing

Three-Year Block Approach For Determining Arms' Length Price

Current Framework

Transfer pricing provisions under the Act require income arising from international transactions or specified domestic transactions (SDTs) between associated enterprises to be computed having regard to the arm's length price (ALP). The Act also provides a detailed methodology for determining the ALP in such transactions. The assessment proceedings of such taxpayers involve the Assessing Officer (AO) referring the determination of ALP to the Transfer Pricing Officer (TPO). Once the TPO determines the ALP, the AO adjusts the taxpayer's total income in accordance with the TPO's order. Currently the procedure of making reference to the TPO and determination of ALP by the TPO is undertaken on yearly basis. It is now proposed to introduce the concept of block assessments for transfer pricing to minimize compliance burdens and litigation.

[Clause 21] ***(w.e.f.- 01.04.2026)***

Proposed Amendment: Introduction of Section 92CA(3B)

❖ Taxpayers frequently engage in same or similar international or specified domestic transactions on yearly basis. Consequently, the process of referring these transactions to the TPO and that of determination of arm's length price is repeated annually. Given the complexity and administrative burden of this process, the Bill proposes to introduce sub section (3B) to Section 92CA, providing an option to taxpayers to apply the same ALP to similar international or specified domestic transactions for a block of three years. The proposed section provides as under:

- Taxpayers must file a prescribed form within the specified timeframe to exercise the option.
- The TPO will assess the validity of the option and issue an appropriate order within one month, determining whether the transactions are similar.
- Once confirmed, the ALP determined in respect of an international or specified domestic transaction for a given year will be applied by the AO to similar transactions for the two consecutive years immediately following the year for which the ALP is determined.

- ❖ This benefit, however, is not extended to search cases separately dealt with under Chapter XIV-B.

[Clause 45] *(w.e.f. 01.04.2026)*

- ❖ Sub-section (21) is proposed to be inserted in section 155, to provide that where the ALP is determined in respect of an international or specified domestic transaction for any previous year and the TPO has declared an option exercised by the assessee under sub section (3B) of section 92CA of the Act as valid, in that case:

(I) the AO shall recompute the total income of the assessee for two consecutive previous years following the previous year for which the ALP is determined, by amending the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143,–

- in conformity with the ALP so determined by the TPO under sub-section (4A) of section 92CA in respect of such transaction and;
- taking into account the directions issued under sub-section (5) of section 144C, if any, for such previous year;

(II) such recomputation shall be done within three months from the end of the month in which the assessment is completed in the case of the assessee for such previous year;

(III) such recomputation shall be made within three months from the end of the month in which order of assessment or any intimation or deemed intimation is made, in case that is not made before the period of three months as mentioned above.

Comments/Observations:

- ❖ This amendment marks a positive step in reducing compliance burdens and redundancy in transfer pricing proceedings by minimizing the need for multiple ALP determinations for the same or similar transactions across years. However, several practical aspects remain unclear:

  - Whether the provisions apply to TP proceeding where reference to the TPO was made prior to April 1, 2025 but the TP Proceedings are still pending?

- The option need not be availed in respect of all the international or specified domestic transaction entered into by the taxpayer and the taxpayer may avail the option in respect of specific transactions.
- The scope of 'similar transaction/(s)' is not defined under the proposed section and may have to be clarified by way of amendment to the Rules. The memorandum indicates that factors to be taken into consideration includes the enterprises with whom such transaction is done, proportionate quantum of transaction, location of associated enterprises etc.
- Once the option is exercised and is approved by the TPO, the taxpayer cannot opt out and the order of the TPO for the first year will be binding for the subsequent two years in respect of transaction for which the option is exercised.
- The taxpayers may need to evaluate expected changes in business/economic/geo-political environment before exercising the option under the proposed section.
- The appellate procedure to be followed by the taxpayer in case the option under sub section (3B) to section 92CA is availed is not clearly defined. It may be noted that no corresponding amendment has been made either in section 144C or section 254. Therefore, separate appeal will have to be filed in respect of adjustment, if any, made in the subsequent two years even in respect of transactions for which option is availed by the taxpayer.

Miscellaneous

Clarification regarding commencement date and end date of the period stayed by the Court

[Clauses 41, 43, 44, 49, 50, 67, 72, 73 & 86] *(w.e.f. 01.04.2025)*

- Presently, under the following provisions laying down time limits for completion of specified action/ proceedings, **period during which the relevant proceedings are stayed by an order or injunction of any Court,** is excluded:

Section / Rule	Particular of section
144BA	Reference to Approving Panel for application of GAAR Provision. The section also lays down timeline within which Approving Panel shall give directions
153	Time limit for completion of assessment, reassessment and recomputation
153B	Time limit for completion of assessment u/s 153A/ 153C
158BE	Time limit for completion of block assessment
158BFA	Levy of interest and penalty in certain cases; also lays down time limit for passing of order for imposing penalty
206C(7A)	Time for passing order considering 'assessee in default' for collection of tax at source
263	Revision of order prejudicial to Revenue; also lays down time for PCIT to pass revisionary order
264	Revision of other orders; also lays down time for PCIT to pass order (cannot be prejudicial to assessee)
Rule 68B of Schedule II	Time limit for sale of attached immovable property

- It is now proposed to amend the provisions to clarify/ enhance the period to be excluded when proceedings are stayed. It is proposed provide that the **excluded period will – (i) commence** on the **date on which the stay is granted** by an order or injunction of Court and **(ii) end on the date** on which the **certified copy** of the order vacating the stay **is received** by the jurisdictional Principal Commissioner or Commissioner (Approving panel in case of section 144BA of the Act).

- In section 206C(7A), first proviso is inserted to provided that relevant provisions of section 153 [sub-sections (3), (5), (6) of and Explanation 1] would apply.

Comments/ Observations:

- ❖ The Memorandum states that the amendment is proposed to clarify the ambiguity regarding the commencement date and the end date of the period stayed which was required to be excluded.

- ❖ Applying the settled legal position that extended period of limitation applies to all pending proceedings where the limitation subsists on the date of extension, the proposed amendment should apply to all cases where the limitation subsists/ remains and has not expired as on 1.04.2025.

- ❖ Since date of receipt of certified copy of the order vacating the stay shall not ordinarily be known to the Taxpayer, the same would result in difficulty for the Taxpayer in determining whether the proceedings have been concluded within limitation or not.

- ❖ Additionally, certain Courts (such as High Court) issues certified copy to the litigant only after an application is filed. In case, there is an inordinate delay in obtaining certified copies of the order vacating stay by the Court on part of the Revenue, it may result in unwarranted delay in closure of the proceedings.

- ❖ Since receipt of certified copy of the order by **jurisdictional** Pr. Commissioner is to be considered as the relevant date, receipt of order by any other officer such as Commissioner (Judicial) or even the date of pronouncement of order (vacating stay) by the Court would now not be relevant for determining limitation in the aforesaid cases [refer CIT v. Odeon Builders (P) Ltd.: 393 ITR 27 (Del)].

Removing date restrictions on framing the schemes in certain cases

[Clauses 21, 42, 70 & 71] ***(w.e.f. 01.04.2025)***

- ❖ Faceless schemes were introduced under sections 92CA [Transfer Pricing Assessment], 144C [Dispute Resolution Panel] and 253 [Income tax Appellate Tribunal] through the Taxation and Other Laws (Relaxation and Amendment) Act, 2020 (TOLA), with effect from 1st November, 2020. The time limit for notifying faceless schemes was last extended to 31st March, 2025 due to challenges in the implementation of these schemes.

❖ It is now proposed to remove the deadline for issuance of notification of faceless schemes under sections 92CA, 144C, 253 and 255 of the Act.

Comments/ Observations:

❖ The proposed amendment allows the government to issue directions after 31.03.2025, with no cut-off date prescribed, providing the government flexibility in notifying faceless schemes as needed keeping in mind the challenges in implementation and other issues.

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