

UNION BUDGET – 2021

ANALYSIS OF DIRECT TAX PROPOSALS

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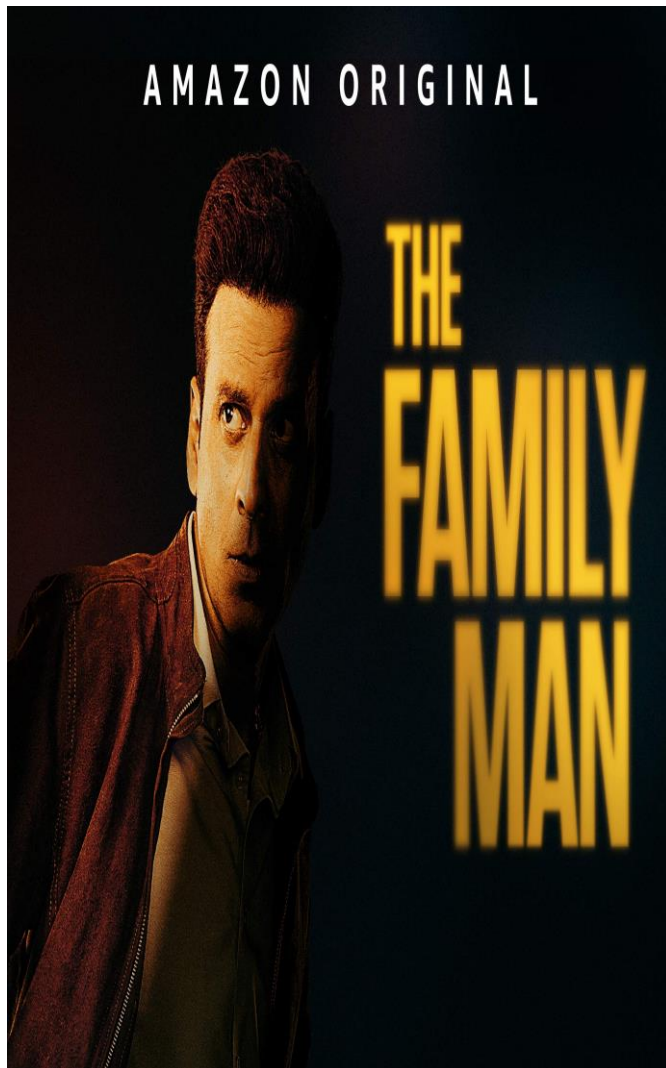
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DISCLAIMER



- *This will not be a very long presentation. Or just might be, depends on your interest, really*
- *During Lockdown, people have been totally busy watching web-series and multi-lingual films at home*
- *This presentation seeks to use Web Content Titles only for the purpose of adding humour and grouping the various aspects of the Budget and the changes in relevant baskets and does not constitute an endorsement or an advertisement or use for any purpose*
- *All SOPs were followed while preparing this presentation.*
- *There is no guarantee that this will be the only season (Budget) and multiple seasons are possible*
- *Understanding amendments is injurious to health and contributes to wealth*

TAX RATES – PERSONAL TAXATION



- Major expectations from middle class
- Covid impact and financial crunch at individual levels
- Low interest rates
- *Major increase in threshold hoped for*
- **No change in the rate of tax or slabs for the Assessment Years 2021-22**
- New proviso proposed to be inserted to Section 10(5) w.e.f. 01.04.2021 for AY 2021-22 to provide that the value in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt under this clause subject to fulfilment of prescribed conditions
- Exemption under Section 10(11) (payment from a PF) and Section 10(12) (accumulated balance due to an employee) not available w.e.f. 01.04.2022 to interest income accruing during the PY in the account of the person if aggregate contributions made to the PF by the person exceeds Rs. 2.50 lakhs.

EMPLOYEE CONTRIBUTION TO PF, ETC.

THE WORLD OF BEAUTY
IS ABOUT TO GET UGLY

LIKE A
BOSS



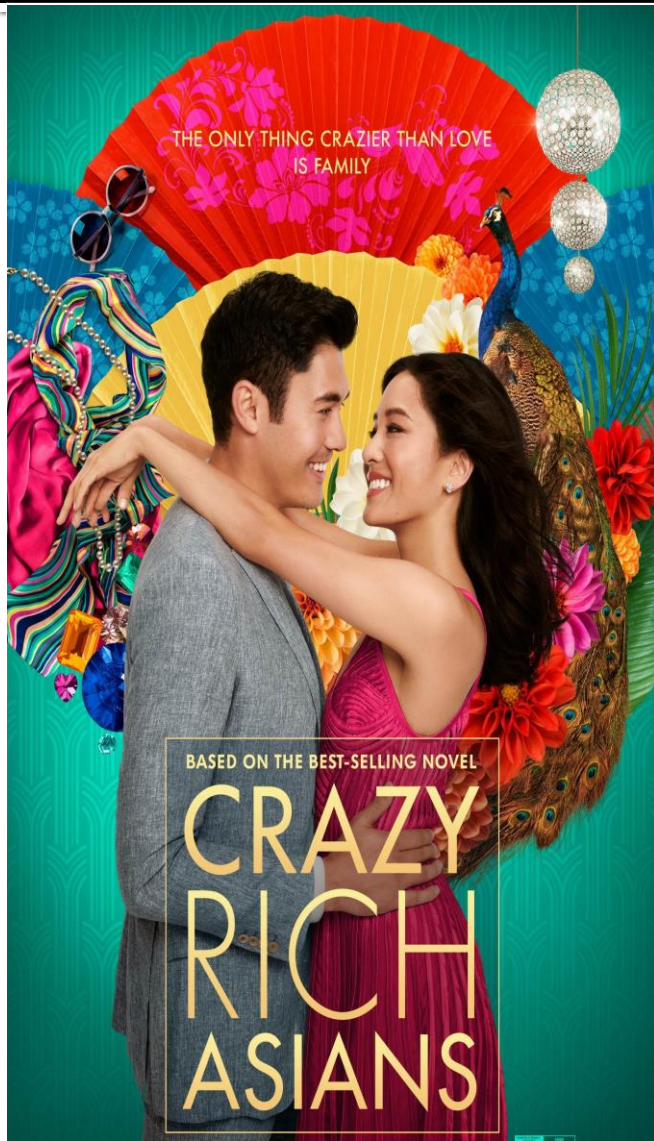
- Employee's contribution to PF or superannuation or ESI etc. is income in the hands of the employer but deductible under Section 36 when credited to the employee's account in the relevant fund.
- Section 43B deals with deductions on actual payment
- Section 43B covers employer's contribution and deduction available so long as amount is paid by the due date for furnishing return
- The Supreme Court in the case of **Vinay Cements** had held that deduction is available where the employee contribution is paid by the due date for filing return..
- Karnataka, Patna, Rajasthan High Courts had held that Section 43B would prevail and there can be no disallowance if the sums are paid prior to the due date for filing returns
- Single judge of the Madras HC in the case of **Unifac** had held that contribution of employees will have to be paid by the due date in the said enactment; Gujarat HC held that due date refers to specific enactments
- Explanation inserted to clarify that provisions of section 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the "due date" under this clause
 - *Litigation on whether prospective or retrospective?*

SENIOR CITIZENS



- Section 194P w.e.f. 01.04.2021
- The specified bank would compute the income of such senior citizen after giving effect to the deduction and rebate under the Act, for the relevant assessment year and deduct income tax on the basis of rates in force.
- Applicable to specified senior citizens who need not file returns
- Conditions applicable
 - The citizen is resident in India;
 - Age is 75 or more during the previous year;
 - He has only pension income
 - In addition he may have also have interest income from the same bank in which he is receiving his pension income;
 - This bank is a specified bank which will be notified by the Government
 - He shall be required to furnish a declaration to the specified bank

ULIP



- Currently, sum received under ULIP is exempt where premium payable during term does not exceed 10% of the capital sum assured
- Exemption not applicable for ULIP issued on or after 01.02.2021, if the annual premium exceeds Rs. 2.5 lakhs and the income would be taxable as capital gains in the year of receipt
 - *Rationale for the amendment is that it has come to the notice of the Government that HNIs are claiming exemption by investing in ULIP with huge premium and allowing exemption for policies with huge premium defeats the legislative intention*

SLUMP SALE

- Bombay HC in the case of ***CIT Vs. Bharat Bijlee*** had held that transfer of division of undertaking under scheme of arrangement in exchange for issue of preference share and bonds is exchange and not a sale and hence not a slump sale
- Amendment proposed to Section 2(42C) which defines 'slump sale'.
- Currently, 'slump sale' means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.
- Amendment to definition of 'slump sale' to cover transfer of one or more undertaking, *by any means*
- All types of transfer will form part of a slump sale transaction and not only transfer by way of a 'sale'
- 'Transfer' will derive its meaning from Section 2(47) of the Act.
- **Amendment** effective from 01.04.2021
 - ***Will effect transactions effected during PY ending 31.03.2021***

DEPRECIATION ON GOODWILL



- SC in the case of *CIT Vs. SMIFS Securities Ltd.* had held that goodwill would fall under Explanation 3(b) to Section 32 of the Income Tax Act and therefore would be eligible for depreciation. The said Explanation defines 'assets'. In other words, goodwill has been considered as a depreciable asset in the segment of any other business or commercial rights of a similar nature
- Goodwill of a "business or profession", specifically excluded from the definition of 'block of assets' w.e.f. **01.04.2021**
- Where there is a purchase of goodwill and the previous owner had claimed depreciation, cost of acquisition would be the purchase price reduced by the depreciation obtained
- Amendment to Section 50 to provide that in case goodwill formed part of block of assets as on 01.04.2020 and depreciation has been claimed, WDV of the block and short-term capital gains if any shall be determined in the manner prescribed

GOODWILL

- Section 55 provides meaning of terms "adjusted", "cost of improvement" and "cost of acquisition".
- Section 55(2)(a) is proposed to be substituted to provide that cost of acquisition in relation to goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,—
 - in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and
 - in the case falling under sub-clauses (i) to (iv) of Section 49(1) and where such asset was acquired by the previous owner by purchase, means the amount of the purchase price for such previous owner; and
 - in any other case, shall be taken to be nil.

FAKE INVOICES

FROM THE CREATOR OF THE CLOSER
MAJOR CRIMES
PREMIERING ON TNT THIS SUMMER



- Section 271AAD was inserted vide the Finance Act, 2020 imposing penalty on a person or a person who causes such person to make a false entry or omit an entry from his books of accounts
- To protect the interest of Revenue, it is proposed to amend section 281B w.e.f. 01.04.2021 to enable the AO to exercise the powers under this section during the pendency of proceedings for imposition of penalty under section 271AAD, if the aggregate of amounts of penalty imposable is likely to exceed Rs. 2 crore
- This provision facilitates provisional attachment of property
- The said section allows the assessee to furnish a bank guarantee of the value of the property so attached for revocation of the provisional attachment.
- The above bank guarantee shall be invoked if the assessee fails to pay his tax demand on time.

TDS ON PURCHASE OF GOODS



- **Section 194Q is proposed to be inserted w.e.f. 01.07.2021**
- A buyer responsible for paying any sum to any resident seller for purchase of any goods aggregating to Rs. 50 lakhs in any previous year, **shall deduct TDS at the rate of 0.1% at the time of payment.**
- 'buyer' means a person whose total turnover from the business carried on by him **exceeds Rs. 10 crores during the preceding financial year.**
- The provisions shall not apply to a transaction on which—
 - TDS is deductible under any other provisions of this Act; and
 - Tax is collectible under the provisions of section 206C **other than a transaction** to which Section 206C(1H) applies.
- Corresponding amendment to Section 206AA(1) to insert the second proviso to provide for higher rate of TDS of 5% for non-furnishing of PAN
 - *No useful purpose except increase the time and costs spent on compliance*

ADVANCE TAX - INTEREST

- Section 234C provides for payment of interest by an assessee who does not pay or fails to pay on time the advance tax instalments.
- Section 234C gives certain exclusions where such interest will not be charged.
- The exclusions under Section 234C is now proposed to include dividend income but not deemed dividend under Section 2(22)(e) w.e.f. 01.04.2021
 - *Beneficial amendment given the fact that it would not be possible to estimate dividend*

DISPUTE RESOLUTION



- New Section 245MA proposed w.e.f. 01.4.2021
- To ensure lesser disputes from fresh assessments, and to provide early tax certainty to small and medium taxpayers
- For preventing new disputes and settling the issue at the initial stage
- Only disputes where the returned income is Rs. 50 lakhs or less (if there is a return) and aggregate amount of variation proposed in specified order is Rs. 10 lakhs or less shall be eligible to be considered by the DRC
- If the order is consequential to a search initiated under section 132 or requisition made under section 132A or a survey initiated under 133A or information received under an agreement referred to in section 90 or section 90A, such specified order shall not be eligible for being considered by the DRC

SETTLEMENT COMMISSION

HOUSE 
of CARDS



- Settlement Commission shall cease to operate on or after 1st February, 2021
- The Central Government shall constitute one or more Interim Board for Settlement for settlement of pending applications
- Interim Board shall consist of three members, each being an officer of the rank of Chief Commissioner
- If the members of the Interim Board differ in opinion on any point, the point shall be decided according to the opinion of majority
- Where the option for withdrawal of application is not exercised by the assessee the pending application shall be resolved by the Interim Board
- Scheme for settlement of pending applications through eliminating interface between Interim Board and assessee using technology
- *Pending applications to be heard by the Interim Board*
- *Assessee can withdraw pending applications within 3 months from commencement of FA 2021 and the income tax authority cannot use the materials or information provided by the assessee before the Settlement Commission.*

HOUSING



- Sunset clause in existing Section 80-IBA which covers developing and building affordable housing projects extended to 31.03.2022
- Deduction under Section 80-IBA is now proposed to be extended w.e.f. 01.04.2022 to profits and gains derived from business of developing and building specified rental housing project
- Rental Housing project and conditions to be notified
- The existing provision of the section 80EEA provides a deduction in respect of interest on loan taken for a residential house property from any financial institution up to Rs. 1.5 lakhs subject to the condition that the loan has been sanctioned during 01.04.2019 to 31.03.2021 which has now been extended to 31.03.2022.

LAND AND BUILDING – STAMP DUTY VALUATION – 43CA



- Where consideration is less than the value adopted for stamp duty, the stamp duty value is deemed to be the full value of consideration under Section 43CA
- The section provides that if the value does not exceed 110% of the consideration, the consideration will still be accepted
- The safe harbour of 10% is increased to 20% subject to the following conditions
 - The transfer of residential unit takes place during 12.11.2020 to 30.06.2021
 - The transfer is by way of first time allotment of the residential unit to any person
 - The consideration received or accruing as a result of such transfer does not exceed Rs. 2 crores
- “residential unit” means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.’
- Relief to buyers by way of amendment to Section 56(2)(x) by increasing the safe harbour limit from 10% to 20%
- **Effective from 01.04.2021**

LIABLE TO TAX

- In a number of decisions such as *Green Emirate Shipping, Bhagvan T Shivlani*, the ITAT had held that the expression 'liable to tax' used in Indo-UAE DTAA does not necessarily imply that the person to be a resident in the contracting state should be actually liable to pay tax in that State. So long as the contracting state has a right to tax such person it is enough
- New Section 2(29A) inserted to define 'liable to tax'
- "liable to tax", in relation to a person, means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided;

ADVANCE RULINGS



- Central Government shall constitute one or more Boards for giving advance rulings
- Board for Advance Rulings (BAR) as against Authority for Advance Rulings from a date to be notified
- AAR shall cease to operate from notified date and all pending applications shall move to the Board for Advance Rulings
- Board shall comprise of two members each being an officer not below the rank of the Chief Commissioner as may be nominated by the Board
- Central Government may notify a scheme for giving advance rulings by the Board using technology
- Appeal to High Court against the order of the Board for Advance Rulings by both assessee or Revenue
 - *AAR was presided over by a retired judge and BAR comprises of sitting officers*
 - *AAR manned by officers in the GST regime has seen rulings mostly in favour of the Revenue*

PARTNERS SHARE OF INCOME



- Bombay High Court in the case of *Electroplast Engineers* had held that mere distribution of money to retiring partners upon reconstitution does not result in transfer. Reconstitution was not considered to fall within the scope of Section 45(4)
- Section 45(4) substituted w.e.f. 01.04.2021
- Where a partner receives a capital asset representing his capital, during dissolution or reconstitution of the firm, the profit and gains arising shall be chargeable to 'capital gains' in the hands of the firm.
- Section 45(4A) is proposed to be inserted w.e.f. 01.04.2021
- Where a partner receives any money or other asset during dissolution or reconstitution of the firm in excess of the balance in his capital account in the books of accounts of the firm, then any profits or gains shall be chargeable as "Capital gains" in the hands of the firm during the previous year in which such money or other asset was received by the partner.

HIGHER TDS RATES



- New section 206AB and Section 206CCA
- **Provides for higher rate for TDS and higher rate of TCS for the non-filers of income-tax return**
- Section 206AB to apply on any sum or income or amount paid, or payable or credited, by a person to a specified person.
- Not applicable where TDS is made under sections 192, 192A, 194B, 194BB, 194LBC or 194N
- The proposed TDS rate in this section is higher of the followings rates:-
 - twice the rate specified in the relevant provision of the Act; or
 - twice the rate or rates in force; or
 - 5%
- Similar provisions inserted for Section 206CCA with respect to TCS.
- If the provision of section 206CC is applicable to a specified person, in addition to the provision of Section 206CCA, TCS at higher of the two rates
- **The specified person is a person who has not filed the returns of income for both of the two 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, as the case may be.**
- **Further, the time limit for filing the return must have expired for both the AYs**
- Specified person shall not include NRI who does not have a permanent establishment in India.
- The aggregate of TDS or TCS in his case is Rs. 50,000 or more in each of these two previous years.
- **Amendment effective from 01.07.2021**

MAT

- Section 115JB of the Act provides for MAT at the rate of 15%.
- Where income is included in the books of account during a previous year on account of APA or secondary adjustment, the AO shall, on application, recompute the book profit of the past year(s) and tax payable, if any, during the PY, in the prescribed manner.
- The provision of section 154 shall apply and the period of 4 years shall be reckoned from the end of the FY in which the said application is received by the AO.
- Amendment to provide similar treatment to dividend as already applicable for capital gains on transfer of securities, interest, royalty, FTS.

INCOME ESCAPING ASSESSMENT



- New Section 147
- AO may assess or re-assess income in respect of any issue which has escaped assessment and *such issue comes to his notice subsequently in the course of proceedings under Section 147 even though Section 148A has not been complied with*
- New Section 148A requires conducting enquiry and providing opportunity before issue of notice under Section 148
- Exceptions are inbuilt
- Order has to be passed under Section 148A as to whether it is a fit case for notice under Section 148A
- **Explanation defines information with the AO which suggests that income chargeable to tax has escaped assessment**
 - Information flagged in accordance with risk management strategy formulated by the Board
 - Any final objection raised by CAG to the effect that assessment is not in accordance with the Act
- Deeming provision under certain circumstances that AO shall be deemed to have information (search, survey, seizure etc.)

INCOME ESCAPING ASSESSMENT



- Section 149 of the Act amended
- No notice may be issued after 3 years; for periods over 3 years, only in specific cases
- Limitation period is greater than 3 years but less than 10 years, if evidence suggests that income greater than Rs. 50 Lakhs has escaped assessment
- If no notice could be issued due to limitation period on or before 01.04.2021, then no notice may be issued at all
- Time period of 'stay or injunction' granted by courts shall be excluded for computing period of limitation.
- Specified Authority for getting prior permission to conduct reassessment shall be;
 - Principal Commissioner or Principal Director or Commissioner or Director; for up to 3 years
 - Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than three years have elapsed

BENEFITS UNDER DTAA

- Foreign Institutional Investors are taxed on their income arising from securities or capital gains arising from their transfer as per Section 115AD.
- Section 196D prescribes TDS @ 20% as the rate of tax applicable on Foreign Institutional Investors.
- Section 196D has been amended through Finance Bill, 2021, with a new Proviso, to give effect to the DTAA's entered into by India with other nations, by allowing the rate of tax to be the lower of the two rates, i.e. the rate prescribed under Section 196D and the rates as prescribed under the specific DTAA as applicable.
- The payee on furnishing a certificate as under Section 90(1) or 90A(1) shall be entitled to avail the rate of 20% or the rate prescribed under the DTAA, whichever is lower.

FACELESS ITAT



- Amendment to Section 255
- Government to notify a scheme for disposal of appeals by ITAT
- Greater efficiency, transparency and accountability by,—
 - **eliminating the interface between the ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible;**
 - optimising utilisation of the resources through economies of scale and functional specialisation;
 - **introducing an appellate system with dynamic jurisdiction.**
- It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31.03.2023
- *Too early to go for faceless ITAT when faceless assessment and faceless first appeal are still under trial*
- *Not clear as to what is faceless*
- *ITAT being the last fact binding body, requires personal hearing and proper procedure to be followed*

CHARITABLE TRUST



- Even amounts received towards corpus to be invested or deposited in the mode specified in Section 11(5)
- Amount spent out of corpus shall not be considered as application for charitable or religious purposes
- When invested or deposited back in any of the modes specified, the amount shall be allowed as application in the PY in which it is deposited back to corpus to the extent of such deposit or investment
- Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and Section 11(a) and (b). However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.
- While computing income, applied or accumulated in a PY, no set off or deduction or allowance of any excess application of any year preceding the PY shall be allowed
- Amendments effective from 01.04.2022

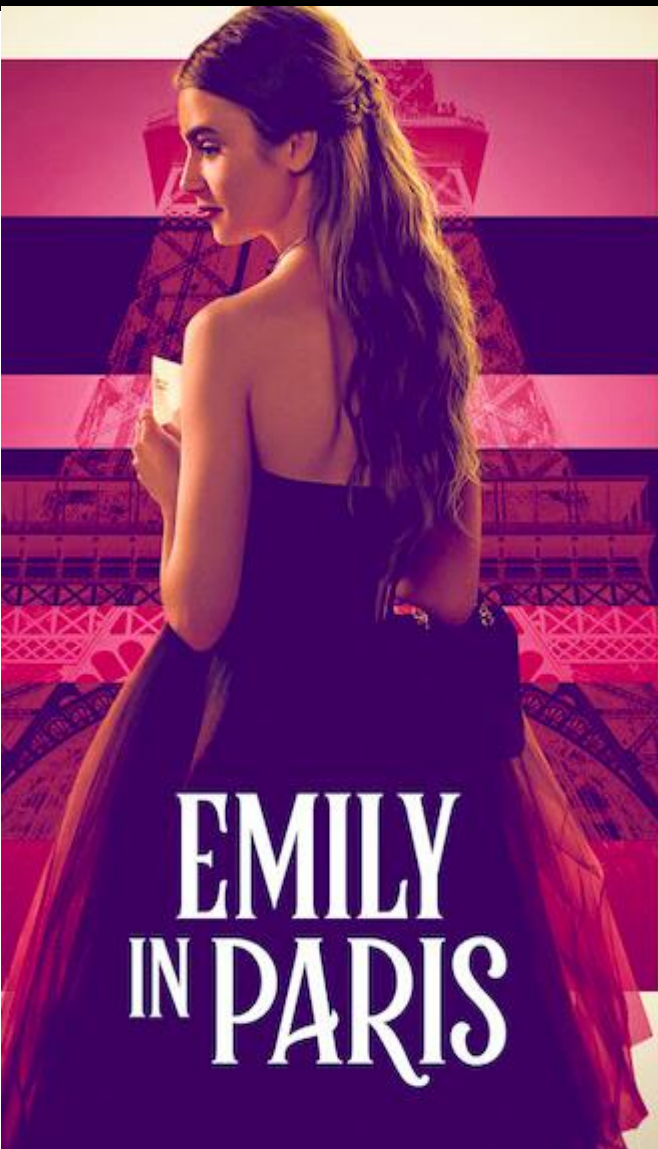
TIME LIMIT FOR ASSESSMENT

- Section 153 provides for time-limit for completion of assessment, reassessment and re-computation.
- The time limit for completion of assessment proceedings u/s 143 or 144 was reduced to 18 months for A.Y. 2018-19 and 12 months for A.Y. 2019-20 and subsequent assessment years vide the Finance Act, 2017
- Time limit for completion of assessment proceedings reduced further by three months
- Thus the time for completing of assessment is proposed to be nine months from the end of the assessment year in which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years

OTHER AMENDMENTS

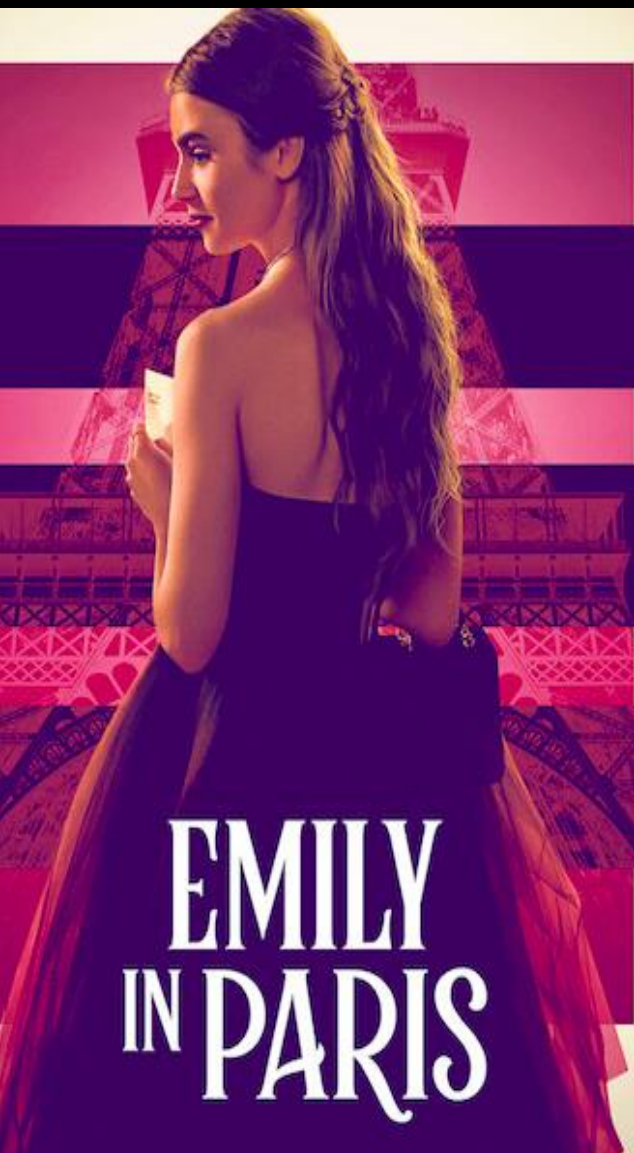
- Section 80-IAC proposed to be amended to extend the outer date of incorporation to before 01.04.2022
- It is proposed to amend the provisions of section 54GB of the Act to extend the outer date of transfer of residential property from 31.03.2021 to 31.03.2022
- The Finance Act, 2020 increased the threshold limit for a person carrying on business from Rs. 1 crore to Rs. 5 crore, for the purpose of tax audit, in cases where aggregate of all receipts and payments in case do not exceed 5% of such receipts or payments.
- **This threshold limit is proposed to be increased from Rs.5 crores to Rs. 10 crores w.e.f. 01.04.2021**

EQUALISATION LEVY



- First introduced through Finance Act, 2016 on online advertisement
- FA, 2020 expanded the scope significantly and attracted action from the US under Section 301
- Section 10(50) provided that any income arising from any e-commerce supply or service provided or facilitated on or after 01.04.2021 and chargeable to EL will not form part of income
- While EL came into force from 01.04.2020, exclusion u/s 10 was from 01.04.2021
- *This has been rectified by providing for the exclusion from 01.04.2020*
- *However, an explanation has been inserted to provide that the income referred to shall not include and shall be deemed never to have been included any income which is chargeable to tax as royalty or FTS in India under the Act read with DTAA.*

EQUALISATION LEVY



- Proviso inserted to Section 163(3) of FA 2016 to provide that consideration which is taxable as royalty or FTS under the Act read with DTAA shall not be subject to EL
- An Explanation inserted to Section 164(cb) of FA, 2016 to provide that “online sale of goods” and “online provision of services” shall include one or more of the following online activities
 - acceptance of offer for sale; or
 - placing of purchase order; or
 - acceptance of the purchase order; or
 - payment of consideration; or
 - supply of goods or provision of services, partly or wholly
- Section 165A of FA, 2016 has been amended to provide that consideration received or receivable from ecommerce supply or services shall include—
 - consideration for sale of goods irrespective of whether the e-commerce operator owns the goods;
 - consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.”
- All amendments effective from 01.07.2020

EQUALISATION LEVY

- *Consensus is elusive on taxation of digital economy*
- *Scope of equalisation levy has the potential to go beyond e-commerce*
- *No distinction between a digital supply of goods as against physical supply of goods where the transaction may be concluded through a web based portal*
- *A transaction cannot become an e-commerce supply merely on the ground that the purchase order was placed online and the acceptance was online*
- *Huge potential for disputes*

THANK YOU

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