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Income Tax & GST
Analysis of Union Budget 2022-23

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A. INCOME TAX - SUMMARY OF PROPOSED KEY CHANGES

1. Rates of Tax

1.1 Slab Rates

- No changes have been proposed vide Budget 2022 in tax slabs for any of the assessee, including MAT rates for companies and LLP's.

1.2 Tax Rates

- No changes have been proposed vide Budget 2022 in tax rates for any of assessee, including MAT rates for companies and LLP's.

- The Alternative Minimum Tax (AMT) rate as applicable to a cooperative society has been reduced to 15% from 18.5%.

1.3 Surcharge

- Surcharge rates have been reduced for individuals and some of the association of the person w.r.t. some income streams.

  - **Individuals & HUF's**
    A summary of the streams of income along with a cap on surcharge @ 15% is as follows:

Nature of Income	AY 2022-23	AY 2023-24
Short Term Capital Gain u/s 111A	Capped @ 15%	Capped @ 15%
Other Short Term Capital Gain	No Capping	No Capping
Long Term Capital Gain u/s 112A	Capped @ 15%	Capped @ 15%
Other Long Term Capital Gain	***No Capping***	***Capped @ 15%***
Dividend Income	Capped @ 15%	Capped @ 15%
Any Other Income	No Capping	No Capping

  - **AOP**
    The maximum surcharge has been capped @ 15% only in cases where all members forming part of AOP are companies. This amendment is w.e.f. from AY 2023-24.

2. Applicable to Individuals

2.1 Incentives to National Pension System (NPS) subscribers for state government employees

Existing provision	New Provision
Upto 14% of the salary as a Contribution to NPS by the central government to the Employee's account is exempt, for state government employees, said amount was exempt only to the tune of 10% of the salary.	To remove the said anomaly, section 80CCD is amended to make state government employees at par.

Our Comments

- ✓ This amendment will take effect retrospectively from 1st April 2020 and will accordingly apply in relation to the assessment year 2020-21 and subsequent assessment years; to ensure no additional tax liability arises on any contribution made over 10% during such time.
- ✓ Any other type of employee rate of 10% of salary will continue.

2.2 New tax relief for parents of disabled under Sec 80DD

Existing provision	New Provision
The present law provides for a deduction to the parent or guardian only if the lump-sum payment or annuity is available to the differently-abled person on the death of the subscriber i.e., parent or guardian.	Such annuity was made taxable if received during the lifetime of their parents/guardians. Representation was made, that such a differently-abled person may require money during the lifetime of the parent guardian and hence could become taxable under the exiting section. Thus, to remove this hardship amendment is made in section 80DD to allow the payment of annuity and lump sum amount to the differently-abled dependent during the lifetime of parents/guardians as exempt.

This amendment will take effect from 1st April 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

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

New provision introduced in the budget.

Vide press statement dated: 25.06.2021 central government had announced that income-tax shall not be charged on the amount received by a taxpayer for medical treatment from the employer or any person for treatment of COVID-19 during FY 2019-20 and subsequent years. Further, any amount received from the employer on account of death was made exempt and an amount up to Rs. 10 Lacs received from any other person Other than the employee was made exempt.

Such announcement of the press release has been incorporated into the law by amending sections 17(2) and 56(2)(x) of the ITA 1961.

3. Option of Filing updated Return

3.1 New sub-section inserted in section 139 of ITA,1961:

- Introduction of sub-section 8A of Section 139 to Income Tax Act, 1961 -
  (Filing of updated return)

- Applicable for all assessees **from AY 2022-23.**
  Hence, to sum up, "Updated Return" cannot be filed for AY 2020-21 and AY 2021-22.

- Assessee may furnish an updated return of income within twenty-four months from the end of the assessment year.

- **Updated returns shall not apply in the following cases if,: -**

  - Is a Loss Return.
  - Results in decreasing total tax liability.
  - Results in a refund or increasing refund amount.

- **Ineligible to file updated returns for preceding two assessment years as and for the current year in which: -**

  - Search has been initiated u/s 132 or requisitioned u/s 132A of Income Tax Act.
  - Survey has been conducted under section 133A of the Income Tax Act.

- Notice has been issued where any money, bullion, jewelry, or valuable article or thing has been seized or requisitioned under section 132 or section 132A of the Income Tax Act.
- Notice has been issued where any books of accounts or documents have been seized or requisitioned under section 132 or section 132A of the Income Tax Act.

➢ **No updated return shall be furnished by any person in the following cases:**

- Updated return filled u/s 139(8A) is final & the said return cannot be revised, subsequently.
- Any proceeding for assessment or reassessment or re-computation or revision of income under the Act is pending or has been completed for the relevant assessment year.
- Assessing Officer before the date of filing updated return informs provisions of possession of Black Money Act 2015, Prevention of Money Laundering Act 2002 and Prohibition of Benami Property Transaction Act 1988, etc is invoked.
- Incriminating Information w.r.t assessee has been received under DTAA before the date of filing updated return.
- Prosecution proceedings have been initiated before the date of filling updated return by the assessee.

➢ **The updated return shall treated defective, if corresponding taxes u/s 140B of Income Tax Act, 1961 are not paid as per the section.**

3.2 New section 140B inserted in Income Tax Act,1961:

➢ Introduction of section 140B of Income Tax Act, 1961 -
(Additional Tax Calculation & Payment)

➢ Additional Tax is required to be paid for filing an updated return. Computation of the Additional tax as per section 140B is as follows.

No Return of Income was furnished earlier	Return of Income Furnished but now updated return is being filed
Tax Calculation- **Section 140B(1)** Total tax payable on updated return **less** a) Amt of Tax already paid including Advance Tax. b) TDS/TCS. c) Tax relief u/s 89.	**Tax Calculation-** **Section 140B(2)** Total Aggregate tax payable on updated return **less** a) Taxes & other credits along with interest, if any, claimed in original/belated/revised return

No Return of Income was furnished earlier	Return of Income Furnished but now updated return is being filed
d) Tax relief under DTAA on account of tax paid in a country outside India. e) Tax relief under 90A on account of tax paid in any specified territory outside India. f) MAT credit/ AMT credit claimed to be set off. Will be aggregate tax payable	b) TDS/TCS which has **not** been claimed in the original return. c) Tax relief u/s 89 which has **not** been claimed in the original return. d) Tax relief under DTAA has **not** been claimed in the original return. e) Tax relief under 90A has **not** been claimed in the original return. f) MAT credit/ AMT credit setoff which has **not** been claimed in the original return. g) Increased in a refund, if any, issued in the original return. Will be aggregate tax payable

- **Additional income-tax payable at the time of furnishing the updated return shall be equal to –**

  - 25% of aggregate tax (including surcharge) & interest payable, if return furnished after the due date but within 12 months from the end of the assessment year.
  - 50% of aggregate tax (including surcharge) & interest payable, if return furnished after 12 months but within 24 months from the end of the assessment year.

- **Payment of Tax Proof –**

  - The updated return shall be accompanied by proof of payment of such tax, additional income tax, interest, and fee.

Our Comments

- ✓ **Welcome measure considering increasing complexities and I-T network situation**
- ✓ **Settlement Scheme in a diluted manner**
- ✓ **Such Updated Return is also subject to scrutiny**

4. Taxation of Virtual Digital Currency (Crypto Currencies)

- ***What is a Virtual Digital Currency*** - Virtual digital currency generally known as cryptocurrencies is traded on digital platforms. A cryptocurrency is an encrypted data string that denotes a unit of currency. It is monitored and organized by a peer-to-peer network called a blockchain, which also serves as a secure ledger of transactions, e.g., buying, selling, and transferring. Unlike physical money, cryptocurrencies are decentralized, which means they are not issued by governments or other financial institutions.

- ***Top 10 commonly traded cryptocurrencies***

Bitcoin (BTC)

Ethereum (ETH)

Tether (USDT)

Binance (BNB)

US Dollar Coin (USDC)

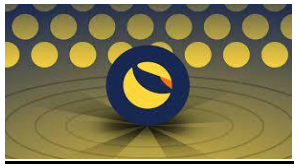
Cardano (ADA)

Solana (SOL)

XRP (XRP)

Polkadot (DOT)

Terra (LUNA)



- ***How to compute the income from Virtual Digital Asset*** – While computing income on sale/transfer ***no deduction/allowance*** of any expenditure shall be allowed as deduction while computing the taxable income ***except for the actual cost of acquisition***.

- ***What is the proposed rate of tax on Virtual Digital Asset*** - Proposed tax rate is **30%** on the income from transfer of Virtual Digital Asset as per the newly introduced section 115BBH.

- ***What happens if Loss arises on the sale/transfer of a Virtual Digital Asset*** – Such losses can ***neither be set off*** with any other income ***nor is the same available to be carried forward*** to any subsequent year.

- ***TDS applicability on sale of a Virtual Digital Asset*** – Each sale would be subject to TDS u/s 194S ***@ 1% on the full value of consideration if the same exceeds Rs. 10,000/-*** (the limit is Rs. 50,000/- in case of specified Individuals / HUFs).

- Gifting of the virtual digital asset will also be taxed under section-56(2)(x) of the Income Tax Act, 1961 (w.e.f. A.Y.2023-24)

Our Comments

- ✓ On a first reading, it appears, Loss on sale of one Virtual Digital Asset can be set-off with profit on the sale of other Virtual Digital Asset (even if the said transactions take place in the same year); but not against any other sources of income

- ✓ Deduction of TDS could lead to a lot of practical difficulties. Further, there is no clarity in the case of aggregators/marketplace apps like BINANCE where payment on account of sale is directly received from the Customers and the APP provider has nothing to do with the whole transaction.

- ✓ In almost all cases of purchase of VDAs, buyer does not know seller and vice-versa. In real time, when the transactions happen in split-second, effecting TDS is a virtual impossibility, leading to a compulsive infraction of related TDS provision

- ✓ Not permitting carry forward of losses seems to be a harsh move.

- ✓ For Crypto Miners, the profitability could be 40-50% of the sale value, the deduction for genuine expenses like electricity bills, Software expenses, hardware cost, etc. won't be allowed, since such Crypto Miners could also be covered under this provision

- ✓ Fair value concept still not applicable to Virtual Digital Assets. In the future rule, 11UA might get amended.

5. Applicable to Corporates

5.1 Amendments related to successor entity after business reorganization

Assessment in case of amalgamating company.

Existing provision	New Provision
Section 170, governs the procedure of taxation in case of succession to business in the event of reorganization or restructuring of the business. During the pendency of the court proceedings, the income tax proceedings and assessments are carried on and often completed on the predecessor entities only. Courts have held such proceedings and consequent assessments illegal as the predecessor assessee ceases to exist in the midst of a perfectly valid and legal proceeding.	*Section 170(2A) is proposed to be inserted to provide that the assessment or other proceedings pending or completed on the predecessor in the event of a business reorganization, shall be deemed to have been made on the successor.*

Our Comments

- ✓ Such provision was bought to overrule the decision of the supreme court in the case Maruti Suzuki India Ltd 107 Taxmann.com 375 wherein the Hon'ble Court has held that a notice issued in the name of the amalgamating entity after amalgamation is void because the amalgamating entity ceases to exist, and this is substantive illegality and not a procedural violation. Upon the amalgamating company ceasing to exist, it cannot be regarded as a person under **section 2(31)** against whom assessment proceedings can be initiated or order of assessment passed.
- ✓ Now with the amendment, above technical view appears to be diluted
- ✓ It is claimed that, this amendment is proposed to remove anomaly. Issues may arise whether, this amendment will be retroactive

Modified return in pursuance to the financials of the Merged Entity

Existing provision	New Provision
Often on account of Amalgamation/business reorganization, the effective date is a past date wherein the appointed date/date of order is different. Further, as per the Companies Act, 2013 amended Financials statements are	New Section 170A is being proposed to be inserted to allow the filing of Modified Return of Income of the merged entity within

Existing provision	New Provision
required to be filed with ROC as well as Income Tax return also needs to be amended and filed. Currently, there is no system/mechanism to file the return of Income of the merged entity.	6 months from the date of receipts of the order of High Court / NCLT or any authority.

Our Comments

- ✓ In absence of any such provisions for modified return, currently, the physical returns are being filed with the jurisdictional assessing officer wherein manual intervention was needed to give effect to the return in the Systems.
- ✓ In the current mechanism of online filling, there were lots of issues w.r.t the transfer of Tax credits from one PAN to another.
- ✓ Now hopefully, if a single modified return of Income is filed of the reorganized entity then tax credits and other effects would be taken care of in online systems and manual intervention would be avoided.

New section 156A

Outstanding demand in case of business reorganization under Insolvency and Bankruptcy Code, 2016.

As a part of the restructuring process, often NCLT under IBC 2016, recast the entire liability to ensure the future viability of such bankrupt entities. In such a reorganization process, due to NCLT order, the tax demand created vide various proceedings in the past, by the Income Tax department as well. Under the current system, there is no mechanism provided in the Act to reduce such Demand from the system, and hence new section 156A is inserted. Under the new Section 156A, the assessing officer will modify the demand as per the directions of the NCLT or any other adjudicating authority.

5.2 Extension of Sunset clause dates

Amendment to Section 115BAB for new Companies into manufacturing

Existing provision	New provision
For new domestic manufacturing companies, Section 115BAB of the Income-tax Act provides for an option of concessional rate of taxation @ 15 % provided	However, due to the persistent COVID pandemic, many company's CAPEX plans were disturbed and are facing

Existing provision	New provision
- company is required to be set up and registered on or after 01.10.2019 - is required to commence manufacturing or production of any article or thing on or before 31st March 2023	difficulties in adhering to the deadline of commencement of manufacturing before 31-Mar-2023. To provide relief to such companies the last date for manufacturing has been extended to 31-Mar-2024

Extension of date of incorporation for an eligible start-up for exemption

Existing provision	New provision
Eligible start-ups can get 100% of the profit-based exemption u/s 80IAC for consecutive 3 years out of 10 years from the date of incorporation, subject to the following criteria - turnover of its business does not exceed one hundred crore rupees - holding a certificate of eligible business from the Inter-Ministerial Board of Certification - is incorporated on or after 1st day of April 2016 but before 1st day of April 2022	However, due to persistent COVID pandemic, there has been a delay in setting up of such companies, and hence to provide relief to such start-ups the last date for incorporation has been extended to **31-Mar-2023**

5.3 Withdrawal of concessional rate of taxation on dividend income u/s 115BBD

Existing provision	New provision
Dividend Income received from the Foreign Entity was earlier taxable @15% subject to satisfaction of the certain condition.	Said section is now removed, to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies vis a vis dividend received from domestic companies,

Our Comments

- ✓ Effective tax outflow for most of the companies may increase by 10% due to this amendment.
- ✓ Said amendment is applicable from AY 2023-24 and hence eligible assessee can plan declaration of the dividends before 31st March 2022.

6. Profits & Gains from Business Profession

6.1 Education Cess- Disallowance Section 40(a)(ii)

Existing provision	Amended provision
Income tax is not a tax-deductible expenditure. In some judicial rulings, a view was taken that health and education cess is not really income-tax and can be claimed as business expenditure.	As was expected, the FM has announced that such a view is against the intention of the Government and has thus provided that no deduction can be claimed for such cess.

Our Comments

- ✓ **This amendment is proposed to take effect retrospectively from 1st April 2005 and will accordingly apply in relation to the assessment year 2005-06 and subsequent assessment years**
- ✓ This will settle controversy and tax litigation on this point
- ✓ A lot of corporates had started making this claim resulting in litigation at various levels.
- ✓ Despite verbose justification, new debatable issues do arise. Court decisions relied upon to justify this retrospective amendment appears controversial considering difference in purpose i.e. Income-tax (and super-tax, etc.) as against "cess" levied for education pursuit

6.2 Disallowance u/s Section 14A

Existing provision	Amended provision
Income tax is not a tax-deductible expenditure. In some judicial rulings, a view was taken that health and education cess is not really income-tax and can be claimed as business expenditure.	To overcome the decision in Maxopp Investment Ltd. v. CIT, it is clarified that Disallowance under section-14A of the income tax act, 1961 shall attract even though exempt income has not been accrued or arisen or received during the previous year in which expenditure has been incurred to earn the exempt income

Our Comments

- ✓ The Proposed clarification on applicability of Section 14A even if no exempt income is earned may put an additional burden on the assesses.
- ✓ The budget proposals continue the trend of updating the tax laws to counter favorable rulings which denied the applicability of 14A when no exempt income was earned for where deductions were judicially allowed.
- ✓ In short, any investment in an instrument where exempt income where there is the possibility of earning an exempt Income will be liable of disallowance as per rule 8D i.e. 0.5% on a monthly average basis.
- ✓ **However, issues arise where, some exempt income is accrued / arisen / received, then, expenditure disallowance is confined to the extent of such income only. Hence, the amendment covers cases of "NIL" income and not "some" exempt income cases**

6.3 Clarifications on the allowability of expenditure under section 37.

Existing provision	Amended provision
Explanation 1 of sub-section (1) of section 37 of the Act provides that if any expenditure incurred by an assessee for any purpose which is an offense or which is **prohibited by law** shall not be deemed to have been incurred for business or profession and no deduction or allowance shall be made in respect of such expenditure.	Section 37 has been amended to add a new explanation to provide that amount spent for any **offense under** or **to compound an offense** under any law for the time being in force in **India or outside India** or to provide and acceptance of any such benefit or perquisite, to a person, is in violation of any law will not be allowed as business expenditure

Our Comments

- ✓ Gifts, compliments, and other benefits provided by pharma companies to doctors would not be allowed as a business deduction. Likewise, the amount paid towards the compounding offense is also not allowed as a business deduction.
- ✓ Some of the judicial rulings have held that amount paid for any offense or compounding of any offense outside India was not under the purview of section 37 of ITA 1961, which is now neutralized.
- ✓ Freebies / gifts / compliments appear to have been deemed as offenses in the hands of Pharma companies extending the same. It is peculiar that, such acts are not offenses under other regulatory laws. Moot question arises, whether an offense can be deemed under ITA for the first time; or; whether an offense should travel from other regulatory law
- ✓ This amendment will take effect from 1st April 2022. i.e. from AY 2022-23

6.4 Deduction u/s 43B of ITA 1961 for conversion of Interest into a loan.

Existing provision	Amended provision
Certain taxpayers are claiming deduction under section 43B on account of the conversion of interest payable on an existing loan into a debenture on the ground that such conversion is a constructive discharge of interest liability and, therefore, amounted to actual payment which has been upheld by several Courts.	Conversion of interest into not only loan and borrowing but also into debentures or any other instruments will attract disallowance under Section 43B

Our Comments

- ✓ Supreme Court Decision in M M Aqua Technologies Limited has been neutralized wherein it has been held that issue of debentures against the outstanding interest liability as a final discharge of liability would be treated as actual payment of interest and such amount need not be disallowed under Section 43B.
- ✓ Many companies in past have undergone a restructuring of the loan wherein such type of conversion has taken place and education has been claimed by the assessee. Fortunately, this amendment is prospective in nature.
- ✓ This amendment will take effect from 1st April 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

6.5 Disinvestment of public sector companies - Amendment to section 79 of the Act

Existing provision	Amended provision
Under existing provisions, carry forward of loss is not allowed if there is a change in 51% shareholding of the Company in which the public are not substantially interested. Such restrictive provision is a deterrent to for disinvestment of many unlisted public sector companies.	In order to have more interest in the strategic disinvestment government proposes to amend provisions of sub-section (1) of section 79 wherein said amended provision shall not apply to an erstwhile public sector company subject to the condition that the ultimate holding company of such erstwhile public sector company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least fifty-one percent of the voting power of the erstwhile public sector company in aggregate.

Our Comments

- ✓ This amendment will take effect from 1st day of April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.
- ✓ Welcome provision by the government which will increase the interest in the Public sector companies.
- ✓ Recent disinvestment of AIR-India and Neelanchal Ispat Limited would be eligible for such amendment.

6.6 Cash credits under section 68 of the Act

Existing provision	Amended provision
Vide Finance Act, 2012, it was provided that the nature and source of any sum, like share application money, share capital, share premium, or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder. However, in the case of loan or borrowing, the judicial decisions have held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the	**Explaining the source of source under Section 68 is made mandatory for loan or borrowing.** To overcome and nullify such numerous judgments, it has been proposed in the Finance Bill 2022 to amend the provisions of section 68 of the Act to provide that the nature and source of any sum, whether in form of loan or borrowing or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry

Existing provision	Amended provision
credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor.	provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well-regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

Our Comments

- ✓ For a borrower, soliciting credentials of lender and passing the stringent test now proposed, will be a difficult task
- ✓ Lenders may / may not extend the desired compliance related papers
- ✓ Ideally, such a situation is not akin to "unaccounted income" etc.
- ✓ Hence, some leverage ought to have been retained as regards the capacity of borrower in discharging his onus
- ✓ In absence of this, amendment appears quite harsh
- ✓ Also may lead to double taxation

6.7 Reduction of Goodwill from a block of assets to be considered as 'transfer' and definition of the Slump Sale

Our Comments

- ✓ Reduction of goodwill will be deemed as transfer and amendment in the definition of slump sale by substituting the word "sales" with the word "transfer" in the definition towards the end. Both the amendments to be applicable with retrospective effect from 1 April 2021

7. TDS and TCS Provisions

7.1 Amendment in provisions of section 194IA – TDS on Immovable Properties

As per Section 194IA of the Act, a buyer of immovable property other than agricultural land is required to deduct TDS before making payment to the seller

Existing Provision	Amended Provision
(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any ***sum by way of consideration for transfer*** of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, ***deduct an amount equal to one percent of such sum as income-tax thereon***. (2) No deduction under sub-section (1) shall be made where the consideration for the transfer of ***immovable property is*** less than fifty lakh rupees.	(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any ***sum by way of consideration for transfer*** of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, ***deduct an amount equal to one percent of such sum or the stamp duty value of such property, whichever is higher as income-tax thereon***. (2) No deduction under sub-section (1) shall be made where the consideration for the transfer of ***immovable property and the stamp duty value of such property, are both,*** less than fifty lakh rupees.

Our Comments

- ✓ After the proposed amendment, TDS will have to be deducted on Stamp Duty Value in case the same is higher than the actual sale consideration
- ✓ Cases where Stamp Duty Value is more than Rs. 50 lakhs but the actual consideration is less than Rs. 50 lakhs will also get covered post above amendment
- ✓ Post amendment inconsistency of 194IA with provisions of section 43CA and 50CA gets resolved.

7.2 New Section 194R introduced – TDS on benefits/perquisites in cash or kind

As per this section now TDS would be applicable even on non-cash benefits or perquisites. A Summary of the proposed Section 194R are as follows:

- ***Who is required to deduct TDS*** – A specified person extending any type of benefit or prerequisite (whether convertible into money or not), to a resident to whom the said benefit or perquisite is arising from carrying out of a business or exercising of a profession by such resident.

- ***Whose TDS is required to be deducted*** – A resident to whom any benefit or perquisite arises from carrying out of a business or exercising of a profession

- ***Exemption Limit*** – TDS is not required to be deducted if the aggregate value of the benefit or prerequisite does not exceed ***Rs. 20,000/-*** during the financial year.

- ***Rate of TDS*** – TDS is required to be done ***@ 10%.***

- ***Effective Date*** – Amendment will take effect from 1st July 2022

Our Comments

- ✓ Determining the actual value of the perquisite/ benefit being transferred would result in practical challenges.

- ✓ A difficulty would arise while deducting TDS in the case where prerequisite/benefit being transferred is not in Cash

7.3 New Section 194S introduced – TDS on Virtual Digital Assets

As per this section TDS would be an applicable purchase of Virtual Digital Asset. A Summary of the proposed Section 194S are as follows:

- ***Who is required to deduct TDS*** – Any person responsible for paying to a resident any sum by way of consideration for transfer of a virtual digital asset.

- ***Exemption Limit*** – TDS is not required to be deducted if the aggregate value of such consideration does not exceed ***Rs. 10,000/-*** during the financial year. However, the exemption limit is Rs. 50,000/- in the case of specified Individuals / HUFs.

- ***Rate of TDS*** – TDS is required to be done ***@ 1%.***

- ***Effective Date*** – Amendment will take effect from 1st July 2022

Our Comments
Who would be the person responsible for deducting TDS: - A person purchasing the digital asset, - the agent, or - the exchange As of now, no clarity is available w.r.t. the above. ✓ No clarity if every person purchasing such virtual digital assets would be required to avail a TAN and file returns or the process will be similar to that of 194IA ✓ A difficulty would arise while deducting TDS in a case where one digital asset is purchased by selling some other digital asset.

7.4 Amendment in provisions of Section 206AB and 206CCA

The above provisions were introduced bide Finance Act 2021 wherein higher rates of TDS were applicable for payments being made to specified persons. The definition of specified persons has been changed vide the Finance Bill 2022. A comparative summary of the same is as follows:

Existing Provision	Amended Provision
The definition of a specified person is as follows: *"specified person" means a person who has not* ***filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is*** *rupees fifty thousand or more* ***in each of these two previous years****:*	The definition of a specified person is as follows: *"specified person" means a person who has not* ***"furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted, for which the time limit for furnishing the return of income under sub-section (1) of section 139 has expired and the aggregate of tax deducted at source and tax collected at source in his case is*** *rupees fifty thousand or more* ***in the said previous year:***

Our Comments

- ✓ The present ***amendment has widened the scope of TDS*** under provisions of Section 206AB and 206CCA since now these provisions would get invoked even if the specified person fails to file the **ITR of a single year**

7.5 Insertion of new Section 239A – For claiming refund of incorrect TDS deposited u/s 195 directly from the AO

Before insertion of the above section, in a case where excess TDS u/s 195 is deposited, the only option available with an assessee was to file an appeal before the appellate authority and request for the claim of refund.

However, post-insertion of the above section, now the assessee can approach the assessing officer and request him for grant of eligible refund.

Consequential amendments have also been made in section 248, to enable the assessee to file an appeal in case of receipt of an unsatisfactory order from the AO.

Our Comments

- ✓ This is a welcome move that will help an assessee to avoid entry into the appellate process unless necessary.

7.6 Provisions of prosecution now made applicable even in case of non-deposit of TCS

Failure to adhere to the TCS provisions were not liable for persecution now vide amendment in section 278A and 278AA whole chapter XVII-BB relating to TCS provision is bought under prosecution gamut.

8. Search & Survey related

8.1 Set off of a loss in search cases – Section 79A

- Introduction of **section 79A** to Income Tax Act, 1961 -
  (No set of off losses consequent to search, requisition, and survey)

- No set of off brought of loss or unabsorbed depreciation against the undisclosed income included in the total income of the assessee, in consequent to
  - search u/s 132 or
  - requisition u/s 132A or
  - survey u/s 133A (except for 133(2A))

- Undisclosed income is defined specifically for section 79A.

- Amendment will take effect from A.Y.2022-23

- Purpose of the introduction of section as per memorandum

  - To ensure proper tax payment on income detected due to search or survey
  - To increase deterrence against tax evasion

Our Comments

✓ Hardship to genuine cases like incomplete books of accounts in year of search
✓ Clarification is required if a case of no books of accounts are maintained

8.2 Rationalization of the provisions of sections 271AAB, 271AAC, and 271AAD of the Act

- Sections 271AAB, 271AAC, 271AAD penalize actions pertaining to undisclosed income, unexplained credits or expenditures, or deliberate falsification or omission in books of accounts.

- These provisions give powers to the Assessing Officer to levy penalty in cases involving undisclosed income in cases where search has been initiated u/s 132 or otherwise, or for false entry, etc. in books of account

- The said powers are extended to the Commissioner (Appeals) to levy penalty under these sections to the along with Assessing Officer.

- Effective from A.Y.2022-23

8.3 Amendment in the provisions of section 272A of the Act

- Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc. **At present**, the amount of penalty for failures listed under sub-section (2) of section 272A is **Rs. 100/- for every day during which the failure continues**

- To have adequate deterrence value The said penalty is increased to **Rs. 500 for every day during which the failure continues**

- Effective from A.Y.2022-23

9. Litigation Management

9.1 Insertion of New Section 158AB of the ITA 1961 for reducing litigation by IT Department

Existing Section 158AA	Proposed new Section 158AB
Cases where IT Department should not file an appeal ***before the Hon'ble Supreme Court (SC)*** - Where an appeal by the IT Department ***in case of the assessee*** is already pending ***only before SC*** for other assessment year on identical question of law	The scope is now being expanded vide this newly inserted section. As per the present newly inserted section, now, the IT Department should not file an appeal ***either before Appellate Tribunal (ITAT) or High Court (HC) or SC*** (subject to assessee's approval) in any of the following cases: - Where an appeal by the IT Department in case of the assessee ***or any other assessee*** is ***pending either before the ITAT or HC or SC*** for other assessment year on identical question of law

The above provisions are subject to the prescribed procedure that needs to be followed.
This amendment will take effect from 1st April, 2022.

Our Comments

- ✓ Welcome Amendment facilitating Easy of Business Motive
- ✓ No prolonged litigation and removal of backlogs
- ✓ Reduction in legal cost and time

9.2 Amendment in section 245MA of the Act related to Dispute Resolution Committee

- Finance Act, 2021 introduced a new chapter XIX-AA in the Act consisting of section 245MA for constituting Dispute Resolution Committee ("DRC") for specified persons who may opt for dispute resolution under the said section and who fulfill specified conditions mentioned below

  - *the returned income of a taxpayer is less than or equal to INR 50 lakhs; and*
  - *the aggregate amount of variation proposed in specified order is less than or equal to INR 10 lakhs.*

- The existing provisions of the said section do not contain any provision to pass an order giving effect to the directions of the DRC. Therefore, it is proposed to insert a new sub-section to this section

  This amendment will take effect from 1st April, 2022.

9.3 Formulation of Faceless Scheme

- Time limit for the formulation of faceless scheme for transfer pricing cases, international taxation cases and ITAT appeals is extended to 31st March 2024

  These amendments will take effect from 1st April 2022.

9.4 Amendment in the provisions of section 263 of the Act

- The provisions of section 263 has been proposed to be amended to allow the Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner who is assigned the jurisdiction of transfer pricing for exercising jurisdiction under section 263 on order passed by the Transfer Pricing Officer (TPO).

- Consequential changes are also be made in the provisions of section 153 to provide two months to the Assessing Officer to give effect to the order of TPO consequent to the directions in the revision order

- These amendments will take effect from 1st of April, 2022.

10. Charitable Organisations / Trusts

Charities have been greeted with peculiar tax regimes over past few years. Tax compliances are increasing year-by-year, whereas, effects of non-compliance are becoming stringent too. Current year's amendments need to be read in tandem with immediate last year's amendments which provide

- That, Application out of CORPUS funds will not be a deductible Application
- That, built-up of CORPUS is a deductible Application (s.t. conditions..)
- That, assets created out of loans is not a deductible Application
- But, such a loan (used for assets) repayment is a deductible Application
- That, carried forward deficit would not be available for set-off

As if the above dose of amends was insufficient, some further changes are suggested. Here are some of the latest proposals.

10.1 Two Regimes

Existing Provision	Amended Provision
Some charities get exemption u/s 10(23C) i.e. first regime and some u/s 11 r.w.s. 12A i.e. second regime. Situations exist where the two regimes give some unequal benefits. Even there is difference in taxing extreme situations of accretion of income between the two regimes.	Now, intention is to make procedures of both the regimes similar. Manner and form of maintaining books for both the regimes will be prescribed soon. For first regime of section 10(23C), submission of form no. 10 was not an essential requirement (like for second regime of section 11), but now it will be required. For the second regime, provisions of accretion of income were already prescribed. Now, similar provisions are introduced even for the 1st regime.

Our Comments

✓ In absence of specific manner & form, charities have been adopting accounting procedures, materially different from each other. For example, revenue recognition, manner of working out depreciation, etc.

- ✓ Uniformity in procedure ought to be welcomed always so that, stake-holders understanding elevates
- ✓ Form no. 10 leads to clarity of accumulation and applications, hence, welcome anyway. Also for the reason that, different procedures were leading to huge confusion, removal of which ought to be cherished
- ✓ But, in the entire process, massive complexity is getting in-built

10.2 Assessment of charities in case of technical non-compliances

Existing Provision	Amended Provision
At present, no any distinction exists between technical non-compliance as against specified violation, etc. Many cases exist wherein, for some trivial reason (say) of incorrect filing of return, Or, say, cases, where, proviso to section 2(15) is hit, etc. In such cases, entire revenue of charity gets taxed, leading to hardships	In such cases of non-compliances, it is expressly provided that, entire revenue will not be taxed and deduction of revenue expenses (s.t. other conditions like Cash Payment disallowance, etc.) will be granted Capital Expenditure will not be granted as a deduction

Our Comments

- ✓ As transpires, in some such peculiar situations, the taxable income will be worked out without affording two golden prerogatives of charity i.e. deduction of CAPEX and right to accumulate surplus
- ✓ Now, once the taxable income is not worked out as that of a charity, claim of depreciation ought to be allowed considering rationale given in Explanation-5 of Section 32 on the analogy that, without depreciation, income can't be computed at all

10.3 Assessment in cases of "Specified violations"

Existing Provision	Amended Provision
Many situations of violation were covered u/s 13(1)(c) and 21st proviso to section 10(23C). Such violations were leading to plausible loss of exemption in totality / partially	Any specified violations, to lead to taxation of violative portion only (and not entire exemption for that year) Penalty of equal amount to be faced by the charity for the 1st time default of this nature and Penalty of double the violative portion to be paid from 2nd default onwards In the hands of specified persons, the violations are to lead to separate taxation In addition, regulatory laws (like say Charitable Trust act, etc.) also have their role to deal with issues of excessive payments to specified persons

Our Comments

- ✓ As per some of the court decisions, even in existing regime, specified violations were leading to taxation of violative portion only. Doubts about this view now removed, and tax @ 30% (plus surcharge, etc.) is to be paid on violative portion only.
- ✓ However, penalty is to be levied on violative portion by AO.
- ✓ Penalty is quite harsh for 2nd and onward violation.
- ✓ Further, taxation in the hands of specified persons is also to happen now
- ✓ Regulatory laws are to hit the situation anyway
- ✓ In totality, the overall kitty of provisions lead to an extreme harsh situation.
- ✓ One needs to remember that, charities are performing some tasks of Welfare State as against tasks of private ownership
- ✓ Hence, harshness ought to have been confined to a reasonable level

10.4 Accumulation

Existing Provision	Amended Provision
For the 1st regime i.e. section 10(23C) cases, period of accumulation is 5 years, and unapplied amount gets taxed in year-5 itself. For the 2nd regime i.e. section 11(3) also provides 5 years period, and unapplied accumulation gets taxed in year-6.	Year of taxation of unapplied accumulation of 2nd regime cases is aligned to 1st regime cases, i.e. Year-5 itself.

Our Comments

- ✓ Pursuit of alignment is reasonable and same leads to reduction of confusion and related litigation
- ✓ An acute issue can arise, whether, this provision should apply prospectively (and not retroactively). Assuming that AY 2022-23 is the 6th year of taxation of some charity of 2nd regime type, it will be difficult for charity to apply the funds in a hurry and before 31st March 2022.

10.5 Meaning of "Application"

Existing Provision	Amended Provision
(No specific provision / explanation)	A specific explanation is provided that, word "Application" is to be understood as "actually paid" and not as " liability incurred"

Our Comments

- ✓ Far reaching provision
- ✓ Contrary to Mercantile system of Accounting
- ✓ Plausible to rationalize the provision on the principle that,

…..for a charity, real application is, spending for the cause….

- ✓ Emerging principle – charity funds ought not to await for accumulation /
- ✓ Non-application of charity funds is incorrect, etc.

10.6 Voluntary recognition of grants as "CORPUS"

Existing Provision	Amended Provision
(No any such provision)	It is proposed that a charity may recognize voluntary contributions received towards renovation / repair of Temple / Mosque / Gurudwara / Church as a CORPUS donation. As a sequel, all new norms CORPUS donation are needed to be complied with. Hence, such treated CORPUS funds will have to retained separately in investment modes u/s 11(5) and, will have to be applied for the specific purpose

Our Comments

- ✓ A welcome measure since, spending money for major repairs is at times, a major pursuit of charities
- ✓ Concept of treating some contributions as CORPUS is also quite attractive.
- ✓ If grants flexibility, and urgency of application could be better planned

B. GST - SUMMARY OF PROPOSED KEY CHANGES

The key changes relating to GST are as follows:

Sr No	Existing Provision	Proposed Provision	Comment
1	Conditions for Availing of ITC: New condition inserted in Section 16 for Availing of ITC	A new clause (ba) to sub-section (2) of section 16 is being inserted to provide that ITC with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38	The substituted section 38 provides for communication of details of inward supplies and ITC to the recipient through an auto-generated statement. As per the new clause (ba), if details of ITC are reported as restricted credit in the auto-generated statement then availing of such ITC is not allowed u/s 16
2	Time Limit for Availing of ITC: Section 16 (4) provides that ITC in respect of invoices or debit notes pertaining to a financial year can be availed till the due date of furnishing of return for the month of September following the financial year	Section 16 (4) is proposed to be amended for extending the time limit prescribed for availing of ITC in respect of invoices or debit notes pertaining to a financial year till 30th November of the following financial year	ITC in respect of invoices or debit notes pertaining to preceding financial year can be availed till 30th November of the subsequent financial year. Open Issue: ITC is availed through Form GSTR 3B & Form GSTR 3B is filed on 20th of the next month. The time limit of 30th November does not align with due date of filing of Form GSTR 3B. We are of the view that, previous year ITC can be claimed in any month's GSTR 3B which will be filed on or before 30th November of the next financial year

Sr No	Existing Provision	Proposed Provision	Comment
3	Cancellation / Suspension of Registration: Sub-Section (2) of Section 29 provides that: The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, (a)…. (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months (d)…. (e)….	Clause (b) and (c) of sub-section (2) of section 29 are being amended so as to provide that the registration of a person is liable for cancellation, where - (b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing of the said return; (c) a person, other than those paying tax under section 10, has not furnished returns for such continuous tax period as may be prescribed.	(i) Default period for failure in filing of returns has been amended for composition tax payers to a delay of more than 3 months for return for a financial year (ii) For other tax payers, the default period will be as prescribed in the CGST Rules to be notified

Sr No	Existing Provision	Proposed Provision	Comment
4	Time Limit for Issuance & Reporting of Credit Notes: Section 34 (2) provides that credit notes in respect of any supply pertaining to a financial year can be issued & declared till the due date of furnishing of return for the month of September following the financial year	Section 34 (2) is proposed to be amended for extending the time limit prescribed for issuance & declaration of credit notes in respect of any supply pertaining to a financial year till 30th November of the following financial year	Credit notes in respect any supply pertaining to preceding financial year can be issued & declared till 30th November of the subsequent financial year. Open Issue: Credit notes are reported in Form GSTR 1 & Form GSTR 1 is filed on 11th of the next month. The time limit of 30th November does not align with due date of filing of Form GSTR 1. We are of the view that, previous year credit notes can be issued and declared in any month's GSTR 1 which will be filed on or before 30th November of the next financial year
5	Rectification of error or omission in Form GSTR 1: As per Section 37 the last date for rectification of error or omission in Form GSTR 1 is earlier of: Due date for furnishing of return u/s 39 for the month of September of the following financial year or Date of furnishing of the relevant annual return	Amendment is proposed to provide for an extended time up to 30th November of the following financial year for rectification of errors or omission in respect of Form GSTR 1	Amendment or changes in respect of Form GSTR 1 for previous financial year can be processed till 30th November of the next financial year Open Issue: Amendment or changes in outward supplies are reported in Form GSTR 1 & Form GSTR 1 is filed on 11th of the next month. The time limit of 30th November does not align with due date of filing of Form GSTR 1. We are of the view that, previous year amendment or changes can be reported in any month's Form GSTR 1 which will be filed on or before 30th November of the next financial year

Sr No	Existing Provision	Proposed Provision	Comment
6	Details of Inward Supplies: Section 38 provides for furnishing details of inward supplies basis the details made available through Form GSTR 1	New Section 38 is substituted which provides for: Communication of an auto-generated statement containing the details of input tax credit to the recipients. The auto-generated statement will contain: (i) Inward supplies for which ITC may be available to the recipient (ii) Inward supplies for which ITC cannot be availed in following cases: (a) Form GSTR 1 has been filed by any registered person within such period of taking registration as may be prescribed (b) Registered person has defaulted in payment of tax and where such default has continued for such period as may be prescribed (c) Tax liability as per Form GSTR 1 is more than taxes paid as per Form GSTR 3B (d) ITC in excess of eligible ITC u/s 38 has been availed by such limit as may be prescribed (e) Registered person has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 (f) Such other class of persons as may be prescribed	Auto-generated statement for availing of ITC by the recipients has been prescribed. Requirement of filing of Form GSTR 2 has been omitted. Instead of Form GSTR 2, an auto-generated statement containing details of eligible ITC & restricted ITC will be communicated. Further, enabling provision has been introduced in Act to restrict ITC in various enlisted scenarios. Detailed conditions for the restriction of ITC will be notified in CGST Rules.

Sr No	Existing Provision	Proposed Provision	Comment
7	Payment of Self-Assessed Tax or Prescribed Amount of tax: First proviso to Section 39 (7) provides for payment of self-assessed tax along with return u/s 39	First proviso to Section 39 (7) has been substituted which provides for: Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed: (a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or (b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.	Government shall prescribe rules for calculation of amount of tax to be paid along with Form GSTR 3B instead of self-assessed tax

Sr No	Existing Provision	Proposed Provision	Comment
8	Rectification of error or omission in Form GSTR 3B: As per Section 39 the last date for rectification of error or omission in Form GSTR 3B is earlier of: Due date for furnishing of return for the month of September of the following financial year or Date of furnishing of the relevant annual return	Amendment is proposed to provide for an extended time up to 30th November of the following financial year for rectification of errors or omission in respect of Form GSTR 3B	Rectification or changes in respect of Form GSTR 3B for previous financial year can be processed till 30th November of the next financial year Open Issue: Rectification or changes relating to previously filed Form GSTR 3B are reported in Form GSTR 3B & Form GSTR 3B is filed on 20th of the next month. The time limit of 30th November does not align with due date of filing of Form GSTR 3B. We are of the view that, previous year rectification or changes can be reported in any month's Form GSTR 3B which will be filed on or before 30th November of the next financial year
9	Availiment of Input Tax Credit: Section 41 provides for claiming of ITC on provisional basis as self-assessed	New Section 41 has been substituted which provides for: (i) ITC to be claimed on self-assessment subject to conditions and restrictions as may be prescribed (ii) The ITC in respect of which supplier has not paid the taxes shall be reversed along with interest (iii) Once tax is paid by the supplier, ITC reversed can be re-availed	Section 41 of the CGST Act is being substituted so as to do away with the concept of "claim" of eligible input tax credit on a "provisional" basis and to provide for availing of self-assessed ITC. ITC reversal with interest is required where supplier has not paid the taxes. However, re-availing of ITC is allowed once taxes are paid by the supplier. Interest paid will be cost to the company. Open Issue: Currently, the recipient does not have the visibility for checking whether the supplier has paid the taxes in respect of invoices or debit notes. Due to such impossibility, compliance with this section will be a difficult task.

Sr No	Existing Provision	Proposed Provision	Comment
10	Matching of ITC: Section 42 provides for Matching, reversal and reclaim of input tax credit, Section 43 provides for Matching, reversal and reclaim of reduction in output tax liability & Section 43A provides for New return filing system	Omitted	Sections 42, 43 and 43A of the CGST Act are being omitted so as to do away with two-way communication process in return filing.
11	Late Fees: Section 47 provides for levy of late fees	Section 47 has been amended for providing levy of late fees for delayed filing of return u/s 52 (Return for TCS)	-
12	Transfer of Electronic Cash Balance: Section 49 provides for payment and utilisation of cash and ITC	New sub-section (10) to Section 49 has been substituted which provides for: (a) Inter-head Transfer of cash balance within GSTIN for IGST / CGST / SGST / UTGST / Cess (b) Transfer of cash balance for CGST between distinct persons as specified in sub-section (4) or, as the case may be, subsection (5) of section 25 Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register	New facility prescribed to allow transfer of amount available in electronic cash ledger to electronic cash ledger of the GSTIN under same PAN

Sr No	Existing Provision	Proposed Provision	Comment
13	Restrictions on ITC Utilization: Restrictions on utilization of ITC have been inserted	New Sub-section (12) to Section 49 has been inserted which provides for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger	Section has been introduced for supporting Restrictions notified under Rule 86A & Rule 86B of CGST Rules, 2017 for maximum ITC to be utilised against output liability
14	Interest on ITC wrongly availed & Utilized: Section 50 (3) provides for levy of interest undue or excess claim of input tax credit	New Section 50 (3) has been substituted which provides for levy of interest only when the ITC has been wrongly availed and utilised w.e.f. 01st July, 2017	Sub-section (3) of section 50 of the CGST Act is being substituted retrospectively, w.e.f. 01st July, 2017, providing levy of interest on ITC wrongly availed and utilized. If the incorrectly availed ITC is not utilised then interest will not applicable.
15	Refund of Tax: Section 54 provides for refund of tax provisions	(i) Section 54 (1) has been amended to explicitly provide that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed (ii) Section 54 (10) has been amended to extend the scope of withholding of or recovery from refunds in respect of all types of refund for defaults prescribed (iii) Relevant date prescribed for refund claim in respect of supplies made to a SEZ unit / SEZ developer as the due date for furnishing of return under section 39 in respect of such supplies	(i) Amendment is proposed for regularizing process of refund of cash balance through Form RFD-01 instead of return u/s 39. (ii) Scope of withholding of refunds is extended to all types of refund claims. (iii) Relevant date for refund claim in case of SEZ unit / developer has been clarified.

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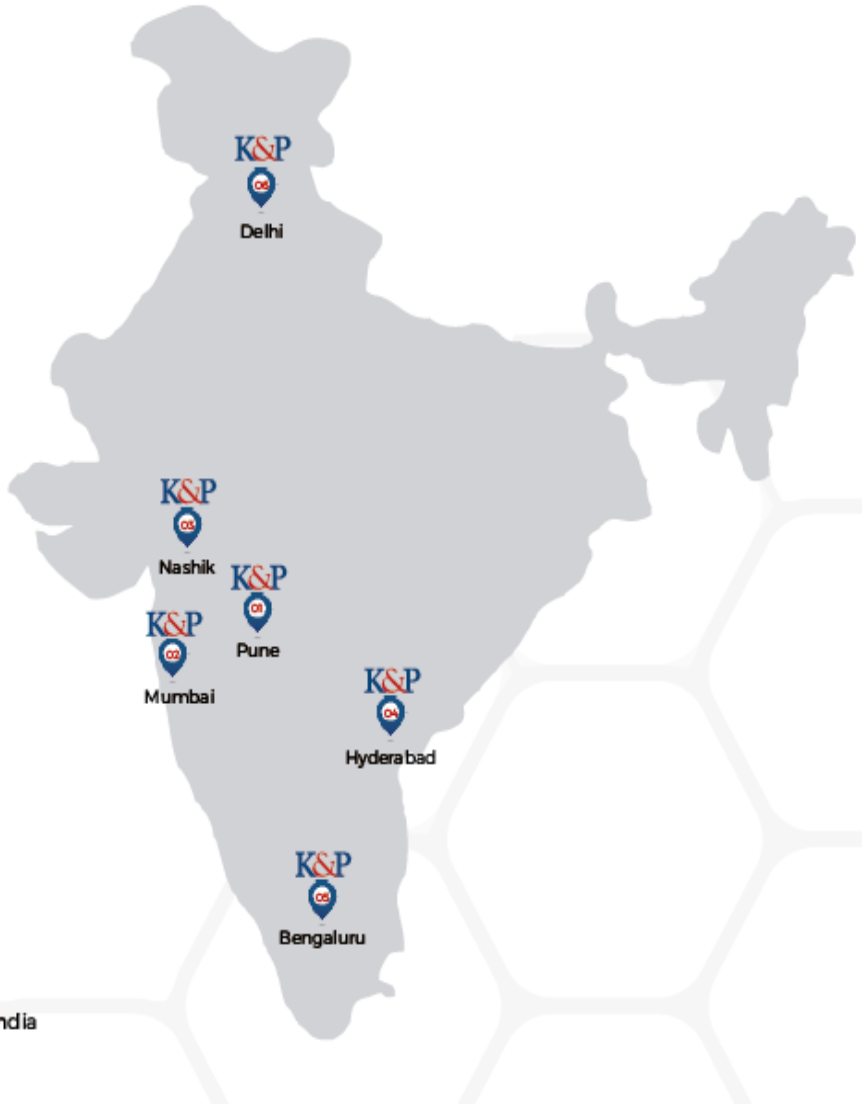

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