

## Katalyst Kaleidoscope

February 2022: The Union Budget 2022-23

### OUR ANALYSIS ON UNION BUDGET 2022 – 2023

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### A. Budget Overview

#### Introduction

The Budget for 2022-2023 focused on four top priorities, which are highlighted as follows:

- i. **PM Gati Shakti:** The initiative will be driven by seven engines, namely, Roads, Railways, Airports, Ports, Mass Transport, Waterways, and Logistics Infrastructure and will encompass a National Master Plan aimed at world class modern infrastructure, unified logistics interface platform, integration of Postal and Railways network facilitating parcel movement, multimodal connectivity between mass urban transport and railway stations, etc.
- ii. **Inclusive Development:** Inclusive development across all sections of society will be focused upon by way of thrust on agriculture and food processing, including use of agritech to facilitate hi-tech services to farmers, launching funding programs (through NABARD) to finance agri startups, focusing on education and skill development, nurturing of physical and mental health, impetus on housing, digital banking, digital payments, development of underdeveloped regions, measures related to providing support to MSMEs, etc.
- iii. **Productivity Enhancement & Investment, Sunrise Opportunities, Energy Transition, and Climate Action:** Several initiatives were espoused - such as Ease of Doing Business 2.0 and ease of living based on integration of IT systems across central and state levels, including digitization of land records, support to 5G under the PLI scheme, opening up defense R&D for industry, startups and academia, issuance of chip enabled passports, modernization of town planning, developing EV infrastructure, promotion of R&D and government contribution in sunrise opportunities (Artificial Intelligence, Geospatial Systems and Drones, Semiconductor and its eco-system, Space Economy, Genomics and Pharmaceuticals, Green Energy, and Clean Mobility Systems), etc.

**Key Policy Initiatives:** In terms of policy, the following key measures were also announced - i) accelerated voluntary winding up of companies to reduce the time period from 2 years to 6 months; ii) introduction of relevant provisions to facilitate cross-border IBC provisions; and iii) replacement of SEZ law with a new legislation that will enable the states to cover all large existing and new industrial enclaves to optimally utilize available infrastructure and enhance competitiveness of exports.

- iv. **Financing of Investments:** In order to mobilize financial resources measures such as issuance of “green bonds”, increasing attractiveness of GIFT City/ IFSC through opening

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up world class education institutions, inclusion of data centers and energy storage systems in the harmonized list of infrastructure so as to facilitate credit availability for, digital infrastructure and clean energy storage, holistic measures for ramping up start-up, venture capital and private equity space, promotion of thematic funds to support sunrise sectors, increasing financial viability of infrastructure projects, introduction of digital Rupee using blockchain technology, etc. were announced.

### Fiscal Management

- The revised Fiscal Deficit in the current year is estimated at 6.9% of GDP as against 6.8% projected in the Budget Estimates. The Fiscal Deficit in 2022-23 is estimated at 6.4% of GDP, which is consistent with the broad path of fiscal consolidation to reach a fiscal deficit level below 4.5% by 2025-26.
- The budgeted estimate of disinvestment receipts for FY 2021-22 were INR 1.75 lakh crore, whereas the revised estimates are INR 0.78 lakh crore during the year; given that the current the disinvestment is under INR 0.10 lakh crore, and there are only 2 months to go for the rest of this financial year; this seems to be an indication that the government is pushing hard for LIC to list this financial year.
- As against a total expenditure of INR 34.83 lakh crore projected in the Budget Estimates 2021-22, the Revised Estimate is INR 37.70 lakh crore. The Revised Estimate of capital expenditure is INR 6.03 lakh crore. This includes an amount of INR 51,971 crore towards settlement of outstanding guaranteed liabilities of Air India and its other sundry commitments.

### **Budget 2022 at a glance:**

<b>Budget at a Glance</b>			
<i>(Rs. In lakh crores)</i>			
<b>Particulars</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
	<b>Actual</b>	<b>Revised</b>	<b>Budget</b>
	<b>Estimates</b>	<b>Estimates</b>	<b>Estimates</b>
Net Tax Revenues	14.26	17.65	19.35
Non-Tax Revenues	2.08	3.14	2.70
<b>Total Revenue Receipts (A)</b>	<b>16.34</b>	<b>20.79</b>	<b>22.04</b>
Non Debt Capital Receipts (B)	0.58	1.00	0.79
<b>Total Revenues (C = A + B)</b>	<b>16.92</b>	<b>21.79</b>	<b>22.84</b>
Revenue Expenditure (D)	30.84	31.67	31.95
Capital Expenditure (E)	4.26	6.03	7.50
Gross Domestic Product (GDP)	197.45	232.14	260.49
<b>Revenue Deficit (A-D)</b>	<b>-14.50</b>	<b>-10.88</b>	<b>-9.90</b>
<i>% of GDP</i>	<i>-7.3%</i>	<i>-4.7%</i>	<i>-3.8%</i>
<b>Fiscal Deficit (C - D - E)</b>	<b>-18.18</b>	<b>-15.91</b>	<b>-16.61</b>
<i>% of GDP</i>	<i>-9.2%</i>	<i>-6.9%</i>	<i>-6.4%</i>

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### **B. Changes in Tax Rates / extension of sunset clause under the Finance Bill, 2022**

#### **1. Rate of Surcharge for Individuals/ Private Trusts/ HUFs capped for long term capital gains**

- **Proposed Amendment (with effect from FY 22-23):** It is proposed to cap the surcharge on long term capital gains tax applicable on sale of any capital asset (including immovable property, unlisted shares and securities (including debt securities and investment in AIF), etc.) by individuals (including private trusts registered as individuals) or Hindu Undivided Family to 15%.

#### **Katalyst Comments:**

*As a result of the above amendment, the embedded rate of long-term capital gains tax on sale of any capital asset by individuals/ private trusts HUFs would be capped at ~24% (instead of 28.5% earlier), which is approximately equal to the rate applicable to limited liability partnerships and companies. Further, the said rate on sale of unlisted shares and securities by non-resident individuals would be capped at ~12% (instead of 14.25% earlier).*

#### **2. Withdrawal of Concessional Rate of Dividend from Foreign Subsidiaries/ Associates**

- **Proposed Amendment (with effect from FY 22-23):** It is proposed to withdraw concessional rate of tax on dividends received from investee companies in which an Indian company owns at least 26% of the total equity share capital.

#### **Katalyst Comments:**

*Consequent to the above amendment, any dividend received by an Indian company from foreign investee companies would be subject to tax at normal rates applicable to corporates at ~25% (if lower corporate tax regime u/s 115BAA of the Income-tax Act, 1961 ("ITA") is adopted) or 30% (plus applicable surcharge/ cess), if lower corporate tax regime, as aforementioned, is not adopted.*

#### **3. Cap on Rate of Surcharge for Consortiums**

- **Proposed Amendment (with effect from FY 22-23):** Finance Bill, 2022 has proposed to introduce a cap on surcharge on rates applicable to Association of Persons ("AOP") with only companies as members (i.e., in case of a consortium arrangement).

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### **Katalyst Comments:**

*As a result of the above amendment, the embedded rate of tax rate on the income of such AOP would be capped at ~36% (instead of ~43% earlier). The said amendment is only applicable to a scenario where only companies are members, and not otherwise. Therefore, in case where any member is any person other than a company, then maximum marginal rate of 43% would continue to be applicable; this means that even private discretionary trusts would continue to be taxed at ~43%.*

#### **4. Extension of Time Limit for availing certain incentives:**

##### **Setting up New Manufacturing Facility**

- **Proposed Amendment (with effect from FY 21-22):** Section 115BAB of the ITA provides an option for opting concessional tax rate of 15% (plus applicable surcharge/ cess), subject to certain conditions, for new domestic companies setting up manufacturing facilities, provided such manufacturing facility is set up on or after 1 April 2019 but prior to 31 March 2023. Finance Bill, 2022 has proposed to extend the said time limit for setting up new manufacturing facility to 31 March 2024.

##### **Exemption of Profits for Eligible Startups**

- **Proposed Amendment (with effect from FY 21-22):** Section 80-IAC of the ITA provides an exemption of 100% profits of Eligible Startups (i.e., a company which is incorporated after 1 April 2016, has a turnover of less than INR 100 Crores, and has obtained certificate of eligible business from the Inter-Ministerial Board of Certification), provided such startup was set up on or before 1 April 2022. Finance Bill, 2022 has proposed to extend the said time limit for incorporating a startup to 31 March 2023.

### **Katalyst Comments:**

*Given that there could have been unforeseen delays to set up a manufacturing facility / incorporate a startup on account of the ongoing pandemic or obtaining necessary registration, this extension should provide a relief to such manufacturing facilities / startups. However, in case incentive u/s 115BAB is to be availed, the fact that an entirely new manufacturing unit is required to be set up as opposed to creating a new unit within the same company, creates significant and needless administrative challenges.*

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### C. Key Mergers & Acquisitions related amendments

#### 1. Conversion of Interest into Debentures – disallowance of Interest Expenditure

- **Proposed Amendment (with effect from FY 22-23):** Section 43B of the ITA provides that any interest converted into loan or borrowing (from, *inter-alia*, any bank/ public or state financial institution/ NBFC) shall be disallowed as deduction, till such time interest has actually been paid by the borrower. Finance Bill, 2022 proposes to extend the remit of such disallowance to any interest converted (but not actually discharged) into debentures.

**Impact of Proposed Amendment:** Conversion of accumulated interest into debenture was previously eligible for deduction as business expenditure, based on the principle that such interest so converted was an effective discharge of interest liability in lieu of actual payment.

#### Katalyst Comments

*In the ongoing times, where businesses have witnessed significant economic and financial stress, debt restructurings have been on the rise, and in this context, not allowing business deduction for cash-strapped companies could adversely impact debt restructuring of such companies.*

#### 2. Continuity of Business Losses in case of Unlisted PSUs

- **Proposed Amendment (with effect from FY 21-22):** Section 79 of the ITA provides that any loss incurred by an, *inter-alia*, unlisted company (i.e., companies in which public are not substantially interested) shall not be eligible to be carried forward and set off, if there has been a change in beneficial shareholding of more than 51% in the year of incurrance of loss vis-à-vis in the year of claim of set off.
- The Finance Bill, 2022 has proposed to amend this section so as to provide that even if there has been a change of more than 51% of the total shareholding on account of a strategic divestment of an unlisted Public Sector Undertaking (“PSU”), business losses of such PSU shall be eligible for carry forward and set off, provided that the ultimate holding company of such PSU (i.e., direct or indirect shareholding through subsidiaries) continue to hold atleast 51% in such PSU.

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### Katalyst Comments:

*This amendment appears to facilitate divestment of beleaguered unlisted PSUs such as Air India where continuity of business losses could be one of the most important considerations at the time of acquisition. Secondly, the amendment seems to tacitly recognize the concept of “beneficial ownership” vis-à-vis “registered ownership”. In the past, the tax authorities have contended that the benefit of continuity of losses under the said section should not apply in case there has been a change in immediate ownership of an unlisted company (say, on account of internal group restructurings), even if the ultimate beneficial ownership continues to remain the same. With this amendment, perhaps, one could strongly argue that even in case of private unlisted companies, if the ultimate shareholding has not changed, the benefit of continuity of losses should continue to apply vis-à-vis such private companies, on account of any group restructuring which may have resulted in change in immediate shareholding.*

### **3. Assessment on Successor entity in case of Business Reorganization**

- **Proposed Amendment (with effect from FY 22-23):** In the context of business reorganization (involving amalgamation or de-merger of business), it is proposed to insert a sub-section (2A) to section 170 of the ITA, to provide that the income-tax assessment or other proceedings pending or completed on the predecessor (i.e., amalgamating or demerged company), shall be deemed to have been made on the successor (i.e., amalgamated or resulting company).

### Katalyst Comments:

*Aforesaid amendment would remove anomaly with regard to income-tax assessments carried out on amalgamated / demerged company which in several judicial precedents were held to be void-ab-initio.*

### **4. Enabling revision of income-tax returns in case of Business Reorganisation**

- **Proposed Amendment (with effect from FY 22-23):** It is proposed to insert Section 170A to enable the entities going through business reorganization to file modified returns for the period between the Appointed Date (date from which merger / demerger scheme comes into effect) and the Effective Date (date on which merger / demerger scheme becomes effective i.e., typically upon filing of NCLT order with Registrar of Companies) within 6 months from the end of the month in which merger/demerger order is issued.

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### Katalyst Comments:

*Aforesaid amendment would enable amalgamated or demerged company to revise its income-tax returns with effect from the Appointed Date for merger / demerger.*

#### 5. Enabling provision for modification in income-tax demands under IBC restructuring

- **Proposed Amendment (with effect from FY 22-23):** It is proposed to insert section 156A to provide a mechanism to the income-tax department to enable them to reduce outstanding income-tax demands from the outstanding demands register as a part of the overall restructuring process under Insolvency and Bankruptcy Code (“IBC”).

#### 6. Ambit of anti-avoidance provisions to include certain securities, InvIT / REIT / AIF units

- **Proposed Amendment (with effect from FY 22-23):** Anti avoidance provisions such as Dividend Stripping u/s 94(7) of the ITA and Bonus Stripping u/s 94(8) of the ITA are now made applicable to securities and units of InvIT, REIT and AIF.

#### 7. Consequential amendment for reduction of Goodwill from block of assets to be considered as ‘transfer’

- The Finance Act, 2021 had stipulated that goodwill of a business or profession shall not be considered as a depreciable asset and no tax depreciation shall be available for deduction on such goodwill. In case where goodwill is purchased by taxpayer, the purchase price of the goodwill is considered as cost of acquisition for the purpose of computation of capital gains u/s 48 of the ITA, subject to the condition that in case depreciation was obtained by the taxpayer in relation to such goodwill prior to FY20-21, then the depreciation so obtained by the taxpayer shall be reduced from the amount of the purchase price of the goodwill.
- However, for the purpose of reduction of amount of goodwill from the block of asset, no consequential amendment was made earlier in Section 43 of the ITA. Such amendment has now been proposed to Section 43 to provide that reduction of goodwill from block of assets to be considered as ‘transfer’ with effect from FY 20-21.



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### 8. Deduction of tax on benefit or perquisite out of business or profession

- Under Section 28(iv) of the ITA, the value of benefit or perquisite, whether convertible into money or not, arising from business or profession is charged to tax in the hands of recipient.
- **Proposed Amendment (with effect from 1<sup>st</sup> July 2022):** In order to widen the tax net, it proposed to insert section 194R to provide that any person (other Individual or HUF whose turnover / gross receipts does not exceed INR 1 Cr in case of business or INR 50 Lacs in case of profession in preceding financial year) responsible for paying such benefit or perquisite is required to deducted tax at the rate of 10% of value of such benefit or perquisite.
- Further, in case where the benefit or perquisite is wholly in kind or partly in cash and partly in kind, and such part in cash is not sufficient to meet the TDS liability, then the person responsible for providing such benefit of perquisite shall, before releasing the benefit or perquisite, should ensure that tax has been paid in respect of the benefit or perquisite.

#### **Katalyst Comments:**

*The principal question as to what constitutes a benefit or perquisite u/s 28(iv), and even if it does constitute a benefit or perquisite, what is the valuation thereof, remains unanswered. For example, in a debt restructuring scenario, in case of write back of loans, if tax authorities (as they have in the past) contend that such write back constitutes a benefit or perquisite, there could be serious consequences as to default in withholding taxes on such lender.*

*Secondly, clarification on the deductibility of tax at source in case where the recipient of such perquisite contends that the same is not taxable in his hands would create an issue in the context of such intended payments.*

### 9. Justification of Source of Funds of loans or borrowings

- **Proposed Amendment (with effect from FY 22-23):** Section 68 of the ITA is sought to be amended to provide that if a taxpayer raises a loan or borrowing (not applicable in case of funds raised from funds registered with SEBI), then such amount so credited will be deemed to be unexplained, unless the source of funds of the creditor is explained to the satisfaction of the Assessing Officer.

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### **Katalyst Comments:**

*This provision, while inserted with an intention to tackle black money, may lead to unnecessary litigation for genuine loan transactions, including raising of funds from established investors, who may not be registered with SEBI, as well as, intra-group fund mobilisation through inter-corporate deposits.*

### **D. Other Direct Tax Proposals**

#### **1. Disallowance of expenditure incurred to earn unaccrued exempt income**

- An Explanation has been inserted in Section 14A to elucidate the legislative intent behind the provision and clarify that provisions of this Section shall apply and shall be deemed to have always applied even in a case where exempt income has not accrued / arisen / has not been received and the expenditure has been incurred in relation to such exempt income.

#### **2. New scheme for taxation of Virtual digital assets introduced**

- **Proposed Amendment:** It proposes to bring to tax income from transfer of cryptocurrencies or virtual digital assets at a flat rate of 30% without allowing deduction of any expenditure (except for cost of acquisition incurred) or set off of losses against said income, or any loss on transfer of such assets, shall not be set off against any other income. Similarly, withholding tax at 1% on any payment to a resident (exceeding certain monetary thresholds) for acquisition of a virtual digital asset is sought to be inserted. Any gift of such virtual digital assets will also be deemed as “income from other sources” u/s 56(2)(x) of the ITA in the hands of the recipient.

### **Katalyst Comments:**

*it will be interesting to see as to how such withholding tax obligations will be discharged where such transactions are undertaken on an exchange*

#### **3. Clarification on Deductibility of Surcharge and Cess**

- **Proposed Amendment (with retrospective effect from FY 2004-05):** Section 40 of the ITA provides for disallowance of certain items claimed as deduction while computing income from business. One such item disallowed is the amount of taxes paid. In that relation, one key area of litigation was whether Education and Health Cess levied by the Central

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Government could be considered as “tax” and therefore, be ineligible for disallowance as expenditure u/s 40 (ruled in affirmative by various judicial precedents).

- The Finance Bill, 2022 has proposed to clarify that any surcharge or cess, by whatever name called, shall be deemed to be “tax” for the purposes of Section 40 of the ITA, and therefore, would be disallowed as deduction while computing business expenditure. This amendment is with **retrospective** effect from FY 2004-05.

### **Katalyst Comments:**

*Given that this amendment is retrospective in nature, it would create a scope of litigation for expenditure allowed by various courts in the past, and therefore, an additional burden of tax along with interest thereon.*

#### **4. Clarification in relation to Deduction of Certain Business Expenditure**

- **Proposed Amendment (Clarification with Retrospective Effect):** Plethora of litigation shrouded the issue of deduction of business expenditure u/s 37 of the ITA in relation to certain items such as payments made in violation of any law including any foreign law, compounding fees for compounding any offence under foreign law, or payments made to persons to provide any benefit or perquisite to such person, if such person is barred to accept such payments, as may have been prescribed under law governing conduct of such persons.
- The Finance Act, 2022 intends to amend Explanation 1 to Section 37(1) of the ITA so as to clarify (**retrospectively**) that any payments made in relation to the items mentioned above shall not be allowed as a business expenditure while computing business income.

### **Katalyst Comments:**

*The proposed amendment seeks to restrict deduction of business expenditure incurred on freebies to doctors/ other professionals and payments made in violation of (or compounding of violation) any foreign law, and not only Indian law. Given that this amendment is retrospective in nature, this amendment could reopen various settled cases, and therefore, may result in additional tax burden (along with interest retrospectively).*

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### 5. Tax Incentives to IFSC

- **Proposed Amendment (with effect from FY 22-23):** In order to incentivise operations from International Financial Services Centre (“IFSC”), it is proposed to:
  - (i) amend Clause (4E) of Section 10 to extend the exemption to the income of a non-resident from offshore derivative instruments, or over the counter derivatives issued by an offshore banking unit;
  - (ii) amend Clause (4F) of Section 10 to extend the exemption to the income from royalty and interest on account of lease of ship (similarly, Section 80LA is sought to be amended to provide 100% exemption of the profits arising to a unit set up in IFSC on transfer of a ship, subject to such unit having commenced its operations on or before 31 March 2024);
  - (iii) introduce Clause (4G) in Section 10 for exemption of income received from portfolio management services in IFSC, subject to specified conditions; and
  - (iv) amend Section 56(2)(viib) so as to provide that any investment by a Category I and Category II AIF registered under IFSC law shall not be subject to deemed taxation in the hands of the investee company, where such investment is made at a premium.

#### **Katalyst Comments:**

*Such amendments are in line with several tax concessions that have been provided to units located in IFSC under the ITA over the past few years, to make it a global hub of financial services sector.*

### 6. No Set Off of Business Losses/ Unabsorbed Depreciation against Undisclosed Income

- **Proposed Amendment (with effect from FY 21-22):** The Finance Bill, 2022 has proposed to insert a new Section 79A to the ITA to provide that no set off of business losses/ unabsorbed depreciation shall be permitted against undisclosed income consequent to search or seizure proceedings.

### 7. Introduction of “Updated Return” under Section 139

- **Proposed Amendment:** In order to give additional time to the taxpayer (in addition to time available for belated or revised return) to file return of income, the Finance Bill, 2022 has proposed introduction of the concept of “Updated Return”, whereby a taxpayer can file an updated return within 24 months from the end of the relevant AY, irrespective of whether the taxpayer has filed a return previously for relevant AY or not. The concept of

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Updated Return shall not apply in search or seizure proceedings, or proceedings initiated under various economic offences laws, or such return is a return of loss or which reduces the total income.

- An “additional tax” of 25% (if filed within 12 months from the end of relevant AY) or 50% (if filed beyond 12 months but before 24 months from the end of AY) shall be payable at the time of furnishing an Updated Return. This amendment appears to be akin to an indirect Voluntary Disclosure of Income Scheme.

### 8. COVID-19 related Receipts

- **Proposed Amendment (with effect from FY 19-20):** The Finance Bill, 2022 has proposed to provide that:
  - (i) any sum received by an employee in relation to medical expenses actually incurred in relation to treatment of COVID-19 either for himself or for his family, shall not be considered as “perquisite” while computing salary income of such employee;
  - (ii) any receipt of sum of money, subject to condition, from any person in relation to treatment of COVID-19 either for himself or for his family, shall not be considered as “income from other sources” u/s 56(2)(x) of the ITA; and
  - (iii) any ex-gratia payment to the member of family of a deceased person (on account of COVID-19) from an employer, without limit, or from any other person (up to INR 10 Lacs) shall not be considered as “income from other sources”.

### 9. Litigation management where an identical question of law is pending before High Court or Supreme Court

- It is proposed to insert a new Section 158AB to provide that where a “collegium” of income-tax department (as would be prescribed by the CBDT) is of the opinion that any question of law arising in case of a taxpayer is identical with a question of law already raised in his case for earlier year or in case of any other taxpayer, which is pending before the jurisdictional High Court or Supreme Court or in a special leave petition, and the taxpayer has received favourable order from relevant appellate authority (CIT Appeals, Tribunal or jurisdictional High Court, as the case may be), then the collegium may decide and intimate the Commissioner or Principal Commissioner to defer filing of appeal (till the decision is given by the respective court and communicated to the jurisdictional Assessing Officer) to higher appellate authority (with effect from FY 22-23). Such decision on deferment will be subject to acceptance by the taxpayer that the question of law in their case is identical to the question of law pending before High Court or Supreme Court.

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### 10. Computation of interest in case of failure to deduct or pay income tax

- Section 201(1A) of the ITA prescribes penalty at simple interest of 1% and 1.5% p.a. on non-deduction of tax or non-payment of deducted tax to the Central Government. Similarly, Section 206C (7) prescribes penalty at simple interest at prescribed rates on non-collection of tax at source or non-payment of tax collected to the Central Government.
- **Proposed amendment (with effect from FY 22-23):** Considering the frequency of litigation in computing the interest under the aforesaid Sections 201(1A) and 206C(7), the proposed amendment provides that where any order is made by the Assessing Officer for default under above mentioned sections, then the interest shall be paid by the taxpayer in accordance with the order passed by the Assessing Officer.

### 11. TDS on sale of immovable property

- **Proposed Amendment (with effect from FY 22-23):** In case of transfer of immovable property (other than agricultural land), tax deducted at source is proposed to be at 1% of consideration paid to the seller or the stamp duty value of the property, which is higher. In case the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than fifty lakh rupees, then no tax is required to be deducted.

### 12. Key Changes in Faceless Assessment Scheme

- **Proposed Amendment (with retrospective effect from 1 April 2021):** One key amendment, which could reverse various judicial precedents, and could impose additional burden on taxpayers, is retrospective omission of Section 144B(9) of the ITA. The said section provides that the assessment proceedings shall be void if the procedure mentioned in the section was not followed.
- The stated intent of such omission is that such retrospective omission was intended to address violation of the procedure laid down by the law whereas a large number of disputes had been raised involving technical issues arising due to use of information technology. leading to unnecessary litigation, which was never intended, and therefore, this sub-section is sought to be omitted vide the Finance Bill, 2022.

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### **E. Key Indirect Tax Proposals**

- Transfer of amounts inter-se between various heads (i.e., balance in CGST could be transferred to IGST, SGST or UTGST ledger within same state and to CGST and IGST ledger in case of inter-state) from an electronic cash ledger vis-à-vis a “distinct person” (with same PAN) has now been permitted, thereby easing cash flow requirements for a taxpayer in case of excess balance under one head, while a deficit in other.
- An enabling provision to limit the maximum proportion of output GST liability to be discharged utilising the available Input Tax Credit (“ITC”) has been introduced. This power, if exercised, will defeat the purpose of seamless utilisation of ITC against output GST liability, and would impose a great burden in terms of cash outflow to discharge output GST liability, if utilisation of ITC is capped.
- Sequential filing of returns has now been proposed to be introduced. Filing of return for outward supplies under GSTR-1 will need to precede filing of GSTR-3B (i.e., return for tax payment).
- In order to avail ITC, it is now proposed that ITC can only be availed if the same is not restricted in line-item details communicated by the supplier to the taxpayer.
- Time-line for availment of ITC of any invoice or debit note pertaining to a financial year has been extended to 30th November of the following year (from 20th October i.e., September GST return filing date provided earlier).
- If ITC was availed and utilised wrongly earlier, then a retrospective reduction of interest rate to 18% (with effect from 1 July 2017) has been provided.
- Decision of the Supreme Court of India in the case of *Cannon India Private Limited* which held that Department of Revenue Intelligence (“DRI”) had no powers under law to reassess imports and recover duty under Customs Act, 1962 has now been sought to be reversed, by including DRI and other investigative wings of customs as class of customs officers.
- It is clarified that the amount of Social Welfare Surcharge (“SWS”) payable would be ‘Nil’ in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero, even though SWS has not been exempted.

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#### **Our Offices:**

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