

# ANALYTICAL DISCUSSION ON THE DIRECT TAX PROVISIONS ENACTED BY FINANCE ACT 2022

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# Finance Act 2022

- Finance Bill 2022 was introduced on 01.2.2022
- In all 83 amendments were proposed in the Income Tax Act
- Amendment Bill was introduced on 23.3.2022
- In all 39 amendments were proposed to the Finance Bill 2022
- Finance Act 2022 was enacted on 25.3.2022

# New scheme of taxation

## Section 115BBH

- Virtual Digital Asset (VDA) popularly known as Crypto currencies, NFTs
- A separate code has been created for taxation of VDA under section 115BBH
- The taxation is more or less in line with the provisions applicable to 'Winning from Lottery'
- New provisions are applicable from AY 2023-2024
- Till AY 2022-2023, the income from DVA will be taxable under general provisions of income tax.
- Relevant sections are 2(47A), 56(2)(x)-Explanation, 115BBH & 194S

## Section 2(47A)-virtual digital asset" means:

- (a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;
- (b) a non-fungible token or any other token of similar nature, by whatever name called;
- (c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify:

**Provided** that the Central Government may, by notification in the Official Gazette, exclude any digital asset from the definition of virtual digital asset subject to such conditions as may be specified therein.

## Section 115BBH –Taxation of Virtual Digital Asset (VDA)

(1) Where the total income of an assessee includes any income from the transfer of any virtual digital asset, **notwithstanding anything contained** in any other provision of this Act, the income-tax payable shall be the aggregate of,—

- (a) the amount of income-tax calculated on the income from transfer of such virtual digital asset at the rate of **thirty per cent.**; and
- (b) the amount of income-tax with which the assessee would have been chargeable, had the total income of the assessee been reduced by the income referred to in clause (a)

(2) Notwithstanding anything contained in any other provision of this Act:

- (a) **no deduction** in respect of any expenditure (**other than cost of acquisition, if any**) or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing the income referred to in clause (a) of sub-section (1); and
- (b) **no set off** of loss from transfer of the virtual digital asset computed under clause (a) of sub-section (1) shall be allowed against **income computed under any provision** of this Act to the assessee and such loss shall not be allowed to be carried forward to succeeding assessment years.

(3) For the purposes of this section, the word "transfer" as defined in clause (47) of section 2, shall apply to any virtual digital asset, **whether capital asset or not**

# Section 194S- TDS on VDA w.e.f.1.7.2022

Payer	Any Person responsible for paying any Resident any sum by way of consideration for transfer of VDA
TDS Rate	1%
Exemption from TDS	Specified Person – Up to Rs.50,000 per annum Non Specified Person - Up to Rs.10,000 per annum
Specified person	(i) Individual/HUF whose TO doesn't exceed Rs.1 cr (business) or Rs.50Lacs (Profession) in the preceding year (ii) Being Individual/HUF not having income from Busi/Prof.
Incidence of TDS	Payment or credit whichever is earlier
Payment in Kind	Payer should before releasing the consideration TDS has been paid
Procedural Relief	i) 203A Not applicable - TAN not required ii) 206AB not applicable – No obligation to check if the recipient has filed the Return for the preceding years
Overriding	TDS under this section will override TDS U/s 1940- E commerce
TDS under multiple section	There can be TDS on the same transaction by Payer and Recipient if the transaction is settled by DVA eg 194J and 194S may apply in same transaction.

# Updated Return

<b>Eligible Assessee</b>	<b>Any Person whether he has already filed a Return or not filed a Return</b>
<b>Duration</b>	Within 24 Months from the end of Relevant A.Y.
<b>Option not available</b>	(i) Loss Return (ii) Has the effect of decreasing the total tax liability (iii) Results in refund or increase in refund claimed
<b>Ineligible Person</b>	(i) In case where Search is initiated U/s 132 or requisition made U/s 132A (ii) Survey is conducted U/s 133A (other than U/ss 2A- TDS survey) (iii) Notice issued for seizure of asset or books of accounts U/s 132 / 132(2A)  Such Person shall not qualify for filing of Updated Return for the AY relevant to previous year in which search / survey/requisition is made and <b>any assessment year</b> preceding such assessment year.

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# Contd....Updated Return Section 139(8A)/140B

Person not eligible to furnish Return for relevant AY	(i) Person who has already furnished an Updated Return (ii) Case where assessment or reassessment proceedings are pending (iii) AO has information under specified Laws / From Fo government U/s 90/90A prior to furnishing of Return under this section (iv) Cases where prosecution has been launched (v) Such person / class of person as notified by the Board
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Loss Return	<b>If any Person has filed the original Loss Return within time allowed U/s139(1) then such person would be eligible for filing of Updated Return <u>provided that such Return is not a Loss Return</u></b>
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Consequential Updated Returns	If an updated Return for any Year result in reduction of loss /unabsorbed depreciation / MAT credit then the respective Returns shall also be Updated
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Additional Tax payable U/s 140B	(i) 25% of aggregate tax and interest payable if Updated Return is filed within 12 months from the end of relevant AY (ii) 50% of aggregate tax and interest payable if Updated Return is filed after 12 months but before 24 months from the end of relevant AY
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# Tax Rates

	Till AY 2022-2023	W.e.f. AY 2023-24
<b><u>Co-op Society</u></b>		
Total Income > 1cr<10Cr	12%	7%
Total Income > 10cr	12%	12%
Alternate Minimum Tax	18.50%	15%
<b><u>Surcharge – All Assessee</u></b>		
Dividend, STCG111A, LTCG 112A	Max capped at 15%	Max capped at 15%
LTCG- Other than 112A	10%-37%	Max capped at 15%
Section 115BBD- concessional tax on Dividend from Fo. Companies	15%	Abolished

# Retrospective amendments

Section ax includes	w.r.e.f.	Description
14A	1.4.2022	A non obstante clause is introduced in the beginning of section 14A
14A- Explanaiton 1	1.4.1962	Section 14A to apply even in absence of exempt income in any particular AY
17(2)	1.4.2020	COVID treatment provided by employer is not a perquisite.
56(2)(XII) / (XIII) (COVID relief)	1.4.2020	<i>(XII): Amount recvd towards reimbursement of amount spent on Covid treatment, subject to prescribed conditions (XIII): Amount recvd by family member of deceased person subject to certain conditions</i>
Expl 3 to section 37(1)	1.4.1962	Enlarging the scope of expression ' <i>offence prohibited by Law</i> '
40(a)(ii)	1.4.2006	Tax includes Cess and Surcharge. Consequential amendment has also been made to Section 155(18)
149	1.4.2021	Restriction on issue of notice increased from 6 years to 10 years to cover search matters u/s 153A & C.

# TDS Provisions – Section 194R- TDS on perquisites in respect of business w.e.f.1.7.2022

Payer	Any Person responsible for providing a Resident any benefit or perquisites arising from business or profession by such Resident
TDS Rate	10% of the aggregate value of such benefit / perks
Exemption threshold	Rs.20,000 per annum
Payer exempt	Individual/HUF whose TO doesn't exceed Rs.1 cr (business) or Rs.50Lacs (Profession) in the preceding year
Incidence of TDS	Before providing such perks / benefits
Payment in Kind	Payer should before releasing the consideration TDS has been paid
Guidelines	Board may issue guidelines in consultation of Govt to remove sny difficulty

# Other Amendment TDS provisions

## Section 194IA-TDS on immovable property

Scope of consideration is expanded to substitute stamp duty valuation for the agreed consideration if the same is higher than the agreed consideration.

## Section 206AB-Special TDS for non filers

The requirement of filing the Return has been reduced to ONE year from 2 years

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## Other Amendment TDS provisions

### Section 239A

#### Refund for denying liability to deduct tax in certain cases

- Tax is deductible U/s 195 (other than interest)
- Tax is to be borne by the deductor
- Tax has been deducted and paid
- Deductor claims that no tax was deductible

The deductor in such case may within the period of 30 days from the date of payment of tax file an application before the AO claiming refund of such tax.

The AO shall give an opportunity of being heard and pass the order within 6 months from the end of month in which application is filed.

# Deterrence against tax evasion / black money

## Section 68

W.e.f.1.4.2023, where the amount consist of borrowing or loan, the Assessee would not only be required to establish the credential of lender but the lender will also have to explain the nature and source (Source of Source would be required in respect of borrowings or loan).

SC decision (87 ITR 349) has now been over ruled.

## Section 79A w.e.f.1.4.2022

No set off of loss (whether B/fd or **otherwise**) or unabsorbed depreciation should be allowed against undisclosed income resulting as a consequence of search, requisition, survey (other than TDS survey).

# Section 285B

## Reporting of expenditure

- Till FY 2021-2022 this section provided for furnishing of statement in prescribed Form in respect of expenditure incurred on production of Cinematograph film.
- W.e.f.1.4.2022 the scope has been enlarged to cover:
  - (i) Event Management
  - (ii) Documentary production
  - (iii) Production of program for telecasting on TV or OTT
  - (iv) Sports management
  - (v) Other performing art
  - (vi) Any other activity as may be notified

# Amendments to Trust provisions

## 12A(b) w.e.f.1.4.2023:

Various conditions are prescribed U/s 12A for claiming deduction under section 11&12.

The following additional condition has been prescribed w.e.f.1.4.2023:

*The books of account and other documents have been kept and maintained in such form and manner and at such place, as may be prescribed*



# Section 12AB(4)&(5) w.e.f.1.4.2022

W.e.f.1.4.2022 the Trust activities can be scrutinized by Pr CIT / CIT in the following cases :

- (a) On occurrence of Specified Violation\*
- (b) On reference being made by the AO U/s143(3)-Proviso-2
- (c) Cases selected in accordance with risk management strategy of the Board

*\*Specified violations* have been defined by way of Explanation to Sub section (4)

In such cases the Pr CIT/CIT shall call make enquiries etc and pass the order in writing cancelling or refusing to cancel the registration within the period of Six months, calculated from the end of the Quarter in which first notice was issued

# Section 13(10) - Relief

In case the deduction U/s 11 & 12 is not eligible on account of :

- (i) Business activities as per proviso (1) to section 2(15)
- (ii) Specified Books are not maintained as per 12A(b)
- (iii) Return of income is not filed in time as per 12A(ba)

The Trust would be entitled to claim deduction in respect of expenditure incurred in India towards the object of the Trust subject to following conditions:

- (a) Amount spent is not out of corpus
- (b) Expenditure is not out of loans and borrowings
- (c) Depreciation is not in respect of asset whose deduction has already been claimed
- (d) Should not be in form of donation to any other person
- (e) Provision of Section 40A(3)/3(A) and 40(a)(ia) will apply

# Section 115BBI

## Tax on specified income of Trust

- *Specified income* of Trust / Institution shall be taxable at 30%
- No deduction or allowance or setoff shall be allowed in respect of Specified income

### Specified Income means:

- (i) Income accumulated in excess of 15% where such accumulation is not allowed under any specific provisions of Act.
- (ii) Deemed income U/s 11(1B) / (3) - Accumulated income
- (iii) Income not eligible for deduction on violation of section 13(1)(d) – Failure to comply with investment in specified modes.
- (iv) Deemed income U/s 13(1)(c)- Benefit to Trustees
- (v) Income not eligible for deduction U/s 11(1)(c)-application outside India in specified cases

# Time Limit for completion of assessment under Section 153

AY	Before amendment	After amendment
2021-22 & onwards	Within 9 months from the end of AY in which income is first assessable	Within 9 months from the end of AY in which income is first assessable
2020-2021	Within 12 months from the end of AY in which income is first assessable	Within 18 months from the end of AY in which income is first assessable
2019-2020	Within 12 months from the end of AY in which income is first assessable	Within 12 months from the end of AY in which income is first assessable
2018-2019	Within 18 months from the end of AY in which income is first assessable	Within 18 months from the end of AY in which income is first assessable

# Questions & Answers

In case of any queries, please write to :  
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**THANK YOU**

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