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UNION BUDGET
2021-2022

Direct Tax Proposals

FOREWORD

The Finance Minister has introduced the Union Budget 2021('Budget') in the Parliament amidst the panic and upheaval caused to the society globally by the pandemic. All governments have had to grapple with the human and economic havoc. The Budget aims to increase public spending to steer the economy from its worst contraction in decades.

Amidst these trying times, there are a plethora of proposed amendments to the Income-tax Act, 1961 (the Act). Many of the critical ones are misaimed and against the basic tenets of law which has evolved over the last many decades, all in the aim of ushering in a new machine oriented way of implementing the law, so as to eliminate the human participation, in the hope of removing corruption.

The government forgets that justice and fair play, which are of paramount importance, do not emanate from the backroom of offices, but is meted out by human participation, based on reasonability and an equitable disposition and implementation of the law. It is this basic change that is required to be ingrained in the drafting and implementation of the tax laws by the revenue and for the assessee to plan his affairs in law and pay the taxes reasonably.

This Budget is no exception and the proposed amendments remind us of the words of the great jurist ***Shri N. A. Palkhivala, Preface to the Second Edition***; *'You shall not for some slight profit of convenience or utility depart from the standards set by history or logic; the loss will be greater than the gain. You shall not drag to dust the standards set by equity and justice to win some slight conformity to symmetry and order; the gain will be unequal to the loss.'*

It is hoped that the Parliament imbibes these words and reconsiders the many amendments which are proposed on the plank of ushering in technology, as technology alone does not usher in the spirit of fairness and equity, which is absent in many of the amendments.

The key amendments introduced by the Budget in relation to the direct tax proposals are provided below.

KEY BUDGET PROPOSALS

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KEY INCOME-TAX PROPOSALS

NON-RESIDENTS

Meaning of the term 'liable to tax' **[Section 2(29A)]**	- The term '***liable to tax***' has been defined by inserting a new clause 29A to Section 2 of the Act. *The term '**liable to tax**' in relation to a person means that there is a liability of tax on such person under the law for the time being in force of any country and shall include a case where subsequent to imposition of such tax liability, an exemption has been provided.* - The above amendment is proposed to be effective from 1 April 2021.
VTPA Comments	- The Act presently does not define the term 'liable to tax' although the same is widely used in various provisions like determination of residential status under Double Tax Avoidance Agreements (DTAAs/ tax treaties). - Various tax treaties provide that in case a term is undefined in a tax treaty, then reference should be made under the domestic law. Hence, this amendment would impact the interpretation of various DTAAs.

Relief from taxation in income from retirement benefit account maintained in a notified country **[Section 89A]**	- The said Section is applicable in the case of a resident who was earlier a non-resident and had maintained an account in a notified country in respect of his retirement benefits. There was a mismatch with respect to taxability on withdrawal from the retirement fund i.e., in some cases, the income was charged on accrual basis in India, whereas the same was charged on receipt basis in the foreign country. - The insertion of the Section 89A is now proposed to alleviate the genuine hardship to these residents and accordingly provides that the income of a specified person from specified account shall be taxed in such manner and for such year as provided by the Rules. - The above amendment is proposed to be effective from 1 April 2022.
VTPA Comments	- The amendment will alleviate the hardship faced by returning Indians from abroad.

Incomes not included in total Income **[Section 10(23FE)]**	- Section 10(23FE) of the Act was introduced vide the Finance Act, 2020 and provides exemption in respect of any income in the nature of dividend, interest or long-term capital gains earned by a wholly owned subsidiary of the Abu Dhabi Investment Authority (ADIA) or sovereign wealth funds (SWFs) or pension funds (PFs) in respect of their investment made in India in infrastructure, subject to fulfilling certain conditions. - In order to further encourage more investments from SWFs and PFs, amendments relaxing some of the earlier conditions of exemption of income have been proposed. - The erstwhile Section required the Category-I or Category-II Alternative Investment Fund to invest 100% of its investments in one or more entities covered under Section 80-IA(4) of the Act which provides 100% deduction to an enterprise engaged in an infrastructure facility. The said requirement has now been relaxed to 'not less than 50 per cent' of the investments. - Further, the investment may also be made in an Infrastructure Investment Trust defined in Section 2(13A)(i) and is not just limited to one or more entities covered under Section 80-IA(4). - Further, it has also been proposed to allow investment into a newly incorporated domestic company, which then invests a minimum of 75% in one or more entities covered under Section 80-IA(4). - It is also proposed to allow investment into a Non-Banking Finance Company (NBFC) registered as an Infrastructure Finance Company or in an Infrastructure Debt Fund (IDF) as referred in the Master Circular issued by the Reserve Bank of India (RBI) in this regard, provided that the NBFC / IDF have minimum 90% lending to one or more entities covered under Section 80-IA(4). - It is further proposed that in case the revised minimum investment limits are satisfied but the investments are not 100% in the specified business, the exemption in income would be calculated in proportion to the investments in the infrastructure facility and the balance income attributable to non-infrastructure investments would be taxable as applicable.

Incomes not included in total Income **[Section 10(23FE)]** **(Cont…)**	- Further, it is also proposed that in case a SWF or a PF has a loan or borrowing, directly or indirectly, which has been utilised for the purpose of making investment in India, then exemption would not be allowed. A corresponding amendment has also been made which states that the conditions regarding the devolvement of the earnings and assets in India would not apply if funds or loans are availed for some other purpose and for investment in India. - It is further proposed to insert a condition that the SWF or PF would not participate in the day-to-day operations of the assessee. However, the SWF or PF would be allowed to appoint directors or executive directors and the same would not be considered as participation in day-to-day operations. - It is also proposed to add a clarificatory amendment whereby the PF even if it is liable to tax in the foreign country, exemption from taxation for the said income is provided in the foreign country. - The term '***liable to tax***' has been proposed to be defined under Section 2(29A) and means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided. - The government may prescribe the method of calculation of the said investment limits as applicable. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- The said relaxations and clarifications, especially in relation to the investment limits, demonstrate the resolve of the government to garner funds from foreign funds and utilise the same to improve the infrastructure in India and put India on the map of high economic growth.

Other Deductions and Certain deductions to be only on actual payment **[Section 36(1)(va) and Section 43B]**	- Section 36(1)(va) provides for deduction by way of expenditure to any sum received by the assessee from any of his employees to which the provisions of Section 2(24)(x) apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. - Section 43B of the Act allowed for the deduction of expenditure incurred by the employer on account of employers' contribution to the specified funds like provident fund etc. on actual payment basis. - As a result of the similar nature of payments, there was a controversy regarding the term 'due date' mentioned in the Section 36(1)(va) wherein, some High Courts had held that the due date mentioned, is the date of filing the return of income and not the mandatory date of payment under that specific Act. - Hence, the contribution made even after the due date under the specified Act but before the due date of filing the return of income was allowed as expenditure. There were conflicting decisions on both sides. - In order to clarify the issue, an amendment has been proposed under Explanation 2 to Section 36(1)(va) to provide specifically that the provisions of Section 43B are not applicable and further are deemed to never have been applicable for the purpose of determining the 'due date' under the Section 36(1)(va). - A corresponding clarification is also proposed to be inserted under Section 43B of the Act that the provision of the Section shall not apply to a sum received by the assessee from any of his employees to which the provisions of Section 2(24)(x) applies, as the same is covered in Section 36(1)(va) of the Act. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- However, the impact of the same, on the pending judicial precedents which allowed the expenditure under section 36(1)(va) would need to be evaluated. The Amendment is clarified in the memorandum to be applicable from 1 April 2021. - The intention behind the employer's contribution towards welfare funds such as ESI and PF needs to be clearly distinguished from the employee's contribution towards welfare funds.

Special provision for full value of consideration for transfer of assets other than capital asset in certain cases and Income from other sources **[Section 43CA and Section 56(2)(x)]**	- To encourage the real estate developer, in case of residential units, the safe harbour limit is proposed to be increased from 10% to 20% subject to fulfilling the following conditions, i.e.: • The transfer of residential unit takes place during the period from ***12 November, 2020 to 30 June, 2021.*** • The transfer is by way of ***first time allotment*** of the residential unit to any person. • The consideration received or accruing as a result of such transfer does ***not exceed INR 2 crore.*** - An explanation has been inserted to define the term 'residential unit'. - Consequential amendment is also proposed in Section 56(2)(x) to increase the ***safe harbour limit from 10% to 20%*** whereby, circle rate shall be deemed as sale/ purchase consideration only if the variation between the agreement value and the circle rate is more than 20%. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- This will bring relief to real estate industry. However, it needs to be evaluated whether the limit of INR 2 crore needs to be increased for metropolitan cities like Mumbai, etc.

CAPITAL GAINS

Income from Business or Profession – Depreciation on Goodwill **[Sections 2(11), 32, 50 and 55]**	- The term '***block of assets***' as referred to in Section 2(11) of the Act shall not include the term '***goodwill of a business or profession***'. - Section 32(1)(ii) of the Act is proposed to be amended to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said Section and therefore not eligible for depreciation. - Also, Explanation 3 to Section 32(1) is proposed to be amended to provide that goodwill of a business or profession shall not be considered as an asset for the said sub-Section. - A proviso is proposed to be inserted in Section 50(2) and the same provides that in a case where goodwill of a business or profession formed part of a block of asset for the assessment year beginning on 1 April 2020 and depreciation has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed. - Section 55(2)(a) is proposed to be substituted to provide that in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours: • ***in the case of acquisition of such asset by the assessee by purchase from a previous owner***, means the amount of the purchase price; and • ***in the case falling under Section 49(1) (i) to (iv) and where such asset was acquired by the previous owner by purchase***, means the amount of the purchase price for such previous owner; and • in any other case, shall be taken to be ***NIL***.

Income from Business or Profession – Depreciation on Goodwill **[Sections 2(11), 32, 50 and 55]** **(Cont…)**	- Further, the cost of acquisition will be the purchase price as reduced by the amount of depreciation so obtained by the assessee under Section 32 on or before 1 April 2020 in a case where: • the goodwill of a business or profession is acquired by the assessee by way of purchase from a previous owner [either directly or through the modes specified under Section 49 (1) (i) to (iv)]. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- It is a settled position by various judicial pronouncements, including the decision of the Hon'ble Supreme Court (SC) in the case of ***Smifs Securities Limited [(2012) 348 ITR 302 (SC)]***, that goodwill is an asset that arises on account of consideration paid being in excess of fair value of assets and liabilities being acquired, irrespective of the fact whether consideration is discharged in cash or shares. - The SC held that in essence the business advantages, like the reputation enjoyed by the transferor company to retain its clientele etc., is attributable to goodwill. - The transferor company, prior to the amalgamation would have had assets, trained workforce, established business practices, all this enabling the company to have a regular stream of income. It is this complete intangible apparatus that has been acquired by the transferee company through amalgamation. It is this intangible apparatus which is termed as goodwill. - The mode of acquisition of business may be via business purchase, amalgamation, mergers, demergers, etc. - The proposed amendment aims to nullify the decision of the SC *(supra)*. However, it would be interesting to see whether depreciation for this intangible apparatus is in line with the ***meaning ascribed to intangible assets given by Section 92B Explanation(ii)*** would be available or not, under Section 32.

Taxation on distribution of asset/ money on dissolution or reconstitution of firm/AOP/BOI

[Section 45 (4) and 45(4A) and Section 48]

- Section 45(4) provides for tax on transfer of capital asset by way of distribution to partner/ member by a firm / AOP / BOI (specified entity) on its dissolution or otherwise. For computation of such capital gains, fair market value of the capital asset is considered as full value of consideration.

- It is now proposed to substitute Section 45(4) and insert new Sections 45(4) and (4A) to compute tax of the specified person on capital gains arising from dissolution or reconstitution.

Section	**Transfer of**	**Full Value of consideration for the purpose of Section 48**	**Cost of Acquisition**
45(4)	Capital Asset	Fair Market value of capital asset on the date of such receipt	Cost of acquisition of such capital asset
45(4A)	Money and Other Assets	Value of money and fair market value of other assets on the date of such receipt	Balance in Capital Account of the specified person at the time dissolution or reconstitution

- Balance in capital account of the specified person to be calculated without taking into account increase in the capital account due to revaluation of any asset, or due to self-generated goodwill or any other self-generated assets.

- The above amendments are proposed to be effective from 1 April 2021.

VTPA Comments	- The words *'**dissolution or otherwise**'* are now substituted for the words *'**dissolution or reconstitution**'* of the specified entity. - The words *'**distribution of assets'*** are now substituted for the word *'**receives**'*. - The amendment is made to circumvent the judicial decisions where it has been held that *receipt of* ***monetary consideration by retiring partners would not be covered by the erstwhile Section 45(4)***. - It is to be seen how the profits and gains under the amended Section will be computed. - The other question is whether *'**receipt of a capital asset**'* under Section 45(4) at the time of dissolution or reconstitution is a transfer of a capital asset and under Section 45(4A) whether receipt of *'**money or other asset**'* would result in transfer of a capital asset; as, if there is no transfer of a capital asset, whether the charge of Section 45(1) is attracted.

Definition of the term 'Slump Sale' mentioned u/s 50B **[Section 2(42C)]**	- Section 50B of the Act provides for computation of capital gains in case of 'slump sale'. However, the said term has been defined in Section 2(42C) of the Act. - Section 2(42C) defines 'slump sale' to mean the transfer of one or more undertakings ***as a result of the sale*** for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. - The above definition of 'slump sale' is proposed to be amended to include all types of transfers within its scope to provide certainty. - Hence, the definition of the term 'slump sale' under Section 2(42C) is expanded so as to mean the ***transfer of one or more undertakings, by any means****, for lump sum consideration without value being assigned to individual assets and liabilities in such cases.* - An Explanation is also proposed to be added to Section 2(42C) which states that the meaning of the term 'transfer'; shall have the same meaning as assigned under Section 2(47) and hence, all the types of transfer as defined in Section 2(47) are included within its scope. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- The above amendment overturns the decision of the Hon'ble Bombay High Court in case of ***Bharat Bijlee Limited [(2014) (365 ITR 258)]*** and other decisions, wherein taxability of a transfer of an undertaking under Section 391 r.w. Section 394 of the Companies Act, 1956, in a Scheme of Arrangement was considered. - In the said Scheme there was a transfer of an undertaking in exchange of shares and bonds. The Court held that the transfer of the undertaking was not a sale as envisaged under Section 2(42C) of the Act, in absence of monetary consideration and was in fact an exchange. Thus, the provisions of Section 50B were not applicable. - The above amendment also proposes to tax 'slump exchange' of an undertaking as capital gains. - Further, post such amendment, all types of transfer of an undertaking are sought to be covered by the provisions of slump sale under Section 50B.

VTPA Comments **(Cont…)**	- However, the computation mechanism for determining the capital gains may still face challenges with respect to valuing the non-monetary consideration, and lead to litigation.

Capital gain on transfer of residential property not to be charged in certain cases **[Section 54GB]**	- The provisions of Section 54GB, inter alia, provide for roll over benefit in respect of capital gains arising from the transfer of a long-term capital asset, being a residential property owned by the eligible assessee. - In order to get benefit of this provision, the assessee is required to utilise the net consideration for subscription in equity shares of an eligible company before the due date of filing return of income. The benefit is only available for investment in the equity shares of eligible start-ups up to 31 March 2021. - It is proposed to amend the proviso to Section 54GB(5) so as to extend the outer date of investment in case of an eligible start-up, the capital gains arising from transfer of residential property made up to ***31 March 2022*** shall be eligible for the benefit. - The above amendment is proposed to be effective from 1 April 2021.

DEDUCTIONS

Special provision in respect of specified business. [Start-ups] **[Section 80-IAC]**	- Section 80-IAC of the Act provides for a deduction of 100% of the profits and gains derived from an eligible business by an eligible start-up having turnover not exceeding INR 100 crores, for 3 consecutive assessment years out of 10 years, at the option of the assessee, subject to certain conditions, for an eligible start-up incorporated on or after the 1 April 2016 but before the 1 April 2021. - It is now proposed to extend the period of incorporation of such eligible start-ups till ***1 April 2022*****.** - The above amendment is proposed to be effective from 1 April 2021.

Deduction in respect of profit and gains from housing project **[Section 80-IBA]**	- Section 80-IBA provides deduction of 100% of the profits in case they are earned from the business of developing and building affordable housing projects, to provide impetus to the construction industry in respect of these affordable housing projects - Earlier, the time limit for the approval of the project by the competent authority was until 31 March 2021, which has now been proposed to be extended to ***31 March 2022***. - Further, sub-Section 80-IBA(1A) is proposed to be inserted, whereby 100 percent deduction of the profits can also be availed for the profits and gains derived from the business of developing and building an ***affordable rental housing project***. - Consequential amendment is also made in sub-Section 80-IBA(6), defining the expression '***rental housing project***'. - A corresponding amendment has also been proposed to Section 80EEA, which provides for deduction in respect of interest on loan taken for acquisition of the affordable residential house property mentioned above to the purchaser of the said residential property - The above amendments are proposed to be effective from 1 April 2022.

VTPA Comments	- The extension of the time limit will provide some relief to the construction industry as well as the buyers, and enable more participation and interest in the affordable housing market segment. - However, the limits regarding the amount of investment and the size of the property should have been enhanced, so as to encourage more people to invest in the said market category. - The proposed amendment on rental housing projects has been introduced with the intent to help migrant labour and promote affordable rental housing options.

ASSESSMENTS

Return of income **[Section 139]**	- Section 139 of the Act deals with the provisions relating to the filing of return of income for various assessees. The Portuguese Civil Code of 1860 and Section 5A of the Act provides for the equal apportionment of income other than salaries between the husband and the wife governed by the said Code. - It is proposed to amend Section 139 so as to align the due dates of filing of return of income for the assessee with his / her spouse, in case the provisions of tax audit are applicable, and they are governed by the Portuguese Civil Code of 1860 and Section 5A is applicable. - In the erstwhile provisions there was a mismatch whereby the spouse had to file his / her return earlier by 31 July and the assessee was required to do so by 31 October, if the provisions of Section 44AB were applicable. Thus, the ***due date of 31 October*** would now be applicable to both the said assessee as well as his / her spouse, if either one of them is required to get his / her books audited. - The earlier provisions for filing of return of income had a mismatch in case the provisions of Section 92E were applicable to the firm as the due date of filing return of income was 31 October for the partners but 30 November for the firm. It is proposed to align the due date of filing Return of income under Section 139 to ***30 November***, for the ***partners of the firm*** to whom the provisions of Section 92E are applicable - It is further proposed to pre-pone the due date of filing belated return of income under Section 139(4) to ***31 December*** from the earlier time of 31 March of the next year, effectively reducing the window for filing the belated return of income by 3 months. - Similarly, it is also proposed to pre-pone the due date of filing revised return of income under Section 139(5) to ***31 December*** from the earlier time of 31 March of the next year, effectively reducing the window for filing the revised return of income by 3 months.

Return of income **[Section 139]** **(Cont…)**	- It is further proposed to amend Section 139(9) which relates to cases where the Return of income would be considered as defective, so as to grant the Central Board of Direct Taxes (CBDT), the powers to declare such classes of assessees as excluded or excluded with modifications as the case may be, from the said conditions under which a return of income may be considered as a defective return. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- There have been some rationalization provisions, which have been introduced so as to provide better and more robust compliance. - Further, the above reductions in the timelines to file belated and revised returns seem to be in order to expedite the whole assessment process. However, it needs to be noted that the assessee has been asked to comply with the provisions of Section 139 ***earlier by 3 months***. - Hence, the brunt of the said expediting of the assessment procedure has also shifted to the assessee, for no fault of his, all in the name of faster assessment. - This is bound to result in undue hardship to the assessees.

Inquiry before assessment **[Section 142(1)(i)]**	- The provisions of Section 133C give powers to the prescribed income-tax authority to ask for information and documents which may be useful or relevant to any inquiry or proceeding under the Act. - However, the prescribed income-tax authority was not permitted to ask the assessee to file its return of income in case it had not been filed. - It is now proposed to amend Section 142(1)(i) so as to include within the ambit of the assessing officer, the '***prescribed income-tax authority***'. Consequently, the prescribed income-tax authority can also mandate the assessee to file his return of income, in case the same is not filed. - This is apart from and in addition to the powers of inquiry under Section 133C wherein information and documents relevant to proceedings can be asked for. - This amendment is proposed to be effective from 1 April 2021.
VTPA Comments	- The above provision tries to blur the fast disappearing sanctity of the assessee-assessing officer relationship, and tries to superimpose another authority other than the AO, who can seek jurisdiction over the assessee. - It also needs to be evaluated whether the assessee can take a stand that the said proviso is ultra-vires Section 142, as the power to conduct inquiry before assessment under the said Section is wholly bestowed on the AO, and not on the said authority, which has powers only under Section 133C of the Act. - In the aim of ushering in the faceless assessment scheme, the principles of equity and natural justice inherent in assessment proceedings should not be given a go-by, as otherwise the assessee's fundamental rights would be infringed as laid down in jurisprudence. - A system of proper checks and balances would be essential so that the assessee does not have to comply with notices issued by overlapping income tax authorities, and avoid undue hardship.

Assessment **[Section 143]**	- Section 143(1) provides for the processing of the return of income and issuing the Intimation under Section 143(1). - It is proposed to amend the time limit of processing of the said intimation under Section 143(1) and reduce the same to ***nine months*** instead of the current one year time limit. - It is also proposed to amend the language of the provision so as to enable processing of intimation under Section 143(1) as regards the ***mismatches with the audit report to the income side*** as well and not just be restricted to the expenditure side. - Further, it is also proposed to insert '***Chapter VI-A***' instead of the Section numbers under Section 143(1)(a)(v) which provides the conditions for the processing of the return under Section 143(1). The said is consequential to amendment in Section 80AC, which provides for non-allowance of deduction in case the return of income is not filed within the due date specified in Section 139(1). - Section 143(2) provides the time limit for the issue of notice for scrutiny assessment, as 6 months from the end of the assessment year, which is now proposed to be reduced to ***3 months from the end of the assessment year***. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- As discussed in the analysis of the earlier provisions, the above reductions in the timelines seem to be in order to expedite the whole assessment process. - However, in effect, the AO gets the same time as it was earlier, one year from the last possible due date of filing of return of income, for processing the intimation under Section 143(1) of the Act, as also six months from the last possible due date of filing of return of income, for the issue of scrutiny assessment notice under Section 143(2). Thus, the brunt of the said expediting of the assessment procedure has also shifted to the assessee, for no fault of his, all in the name of faster assessment.

VTPA Comments **(Cont…)**	- Further, a corresponding amendment has also been introduced whereby the time limit for the completion of the scrutiny assessment proceedings under Section 143(3) / 144 has been reduced to 9 months from the end of the assessment year. - This is bound to result in undue hardship to the assessee.

Income escaping assessment **[Section 147]**	- It is proposed that the scheme of reassessment as well as search assessment be substituted with a new procedure for the reassessment of income from 1 April 2021 onwards, which subsumes within its ambit both the assessment pursuant to search under Section 153A / 153C as well as reassessment under Section 147, under the erstwhile law. - It is proposed to substitute the existing Section 147 and introduce a new Section 147, wherein the AO may assess or reassess such income and also any other income chargeable to tax which has escaped assessment, subject to the provisions of Section 148 to 153. - It is further proposed to be clarified by way of an Explanation that the AO has the power to assess or reassess any issue subsequently during the assessment proceedings irrespective of the fact that the provisions of Section 148A have not been complied with. - It is proposed to substitute the erstwhile Section 148 of the Act and introduce a new Section 148, which stipulates that the assessee is to be served a notice under Section 148 along with the order under Section 148A, asking him to furnish his return of income. It has been provided that the issue of the notice would not be made ***unless there is information with the AO which suggests escapement of income,*** as also the necessary approvals have been taken from the specified authority under Section 151. - The said return of income would be considered as a return of income filed under Section 139 and the provisions, so far as applicable may apply. - It has been clarified that information with the AO which suggests escapement of income to mean : • Any information flagged in accordance with the risk management strategy formulated by the CBDT • Any final objection raised by the C & AG of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Income escaping assessment **[Section 147]** **(Cont…)**	- It is also proposed to clarify by way of Explanation that any action under Section 132, 132A or 133A against the assessee or any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person belonging to the assessee after 01 April 2021 would be ***deemed*** to be considered as information with the AO which suggests income chargeable to tax has escaped assessment. Further, it has been clarified that the provisions of Section 148A would not be applicable to the assessee in these cases. - It is proposed to insert new Section 148A of the Act which requires that the AO, can if he requires conduct any inquiry with respect to the information which suggests that the income chargeable to tax has escaped assessment before the issue of notice under Section 148 of the Act, after prior approval of the authority prescribed under Section 151 of the Act. - It is proposed that Section 148A would require the AO to provide the assessee opportunity of being heard by serving him a show cause notice and asking him to reply within a specified time limit not exceeding 30 days from the date of the notice. - The AO shall consider the reply of the assessee in response to the show cause notice under Section 148A of the Act as well as the material before him and then pass an order under Section 148A of the Act, whether or not it is a fit case to issue notice under Section 148. The said order should be passed within 1 month from the end of the month in which the reply is received, and in cases where no reply is received within 1 month from the end of the month in which the time limit allowed has expired. - Section 149 of the Act has been substituted to provide that the reassessment provisions would not be applicable if 3 years have elapsed from the end of the relevant assessment year. - However, in case the AO has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to INR 50 lakh or more for that year, then the limitation period would get extended to 10 years from the end of the relevant assessment year.

Income escaping assessment **[Section 147]** **(Cont…)**	- It is further provided that the limitation period would be extended by the time limit allowed to the assessee to comply with the show cause notice under Section 148A, or the period during which the proceedings under Section 148A are stayed by an order or injunction of a court. - Corresponding amendments have also been made in Section 151 and Section 151A of the Act to reflect the said assessment procedure. - It is proposed to amend Section 153(1) by way of a proviso whereby the time limit of completion of assessments under Section 143 and Section 144 for AY 2021-22 onwards would be reduced to 9 months from the end of the assessment year in which the income is assessable. - Consequential amendments have been also proposed in Section 153A and Section 153C, whereby the Sections would cease to apply to actions initiated after 1 April 2021. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- The proposed changes to the manner in which income escaping assessment is to be assessed is drastically different from the erstwhile provisions, wherein jurisprudence has developed over more than many decades, to provide safeguards, whereby the overreach of the department was sought to be curtailed and the assessee's rights were recognized. - It seems that some of the first principles laid down by jurisprudence have been eschewed on the grounds of simplicity, technological changes and reduction in time limit for reopening. - Further, the changes proposed are a paradigm shift from the traditional reassessment process and the wisdom of bringing in such a sweeping reform, at a time when the economy is grappling to get out of the depression caused by the pandemic, is questionable. - The reopening process was only to bring to tax income which has escaped assessment, it has been judicially laid down that proceedings under Section 147 cannot be used to revising, rectifying or reconsidering the whole assessment, and merely changing one's opinion to tax the transaction already assessed.

VTPA Comments **(Cont…)**	- However, the words used in the proposed Section 148 proviso are telling in nature and extremely wide in ambit - '*Provided that no notice under this Section shall be issued* ***unless there is information with the Assessing Officer which suggests*** *that the income chargeable to tax has escaped assessment…*' - Thus, now the whole reassessment proceedings are based only on '***information which suggests***' that income has escaped assessment, in contradistinction to the words '***reason to believe***' in the erstwhile Section 147. - It would need to be seen how the judicial principles evolved over the decades would be interpreted by the courts, to see that the finality of assessment is not disturbed, and undue harassment is not caused to the assessees. - The safe harbour of a scrutiny assessment which was there in the erstwhile law does not find any place in the new Section. - The provisions are worded too widely and are against the first principles enunciated by the courts with respect to reassessment. - It needs to be seen whether in reality the time limit has increased or decreased as the words of the proposed Section 149(1)(b) are very wide and gives the department a leeway to reopen assessments up to ten years form the end of the relevant assessment year. - Thus, the new provisions are contrary to the exercise of simplification and treating the taxpayer with respect, and in fact are against the ethos of natural justice and equity. These proposed changes if passed by the Parliament could cause great hardship to the taxpayer and will lead to lot of litigation.

Board for Advance Rulings **[Section 245-OB and from Sections 245N to Section 245W]**	- In order to ensure smooth functioning of the Authority for Advance Rulings (AAR), it is proposed to constitute a Board of Advance Ruling consisting of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board. - A new Section 245-OB shall be inserted to provide for the constitution of the Board of Advance Rulings. - The erstwhile AAR shall cease to exist on and from such date notified by the Central Government. - Unlike the AAR, the rulings of the Board shall not be binding on the Applicant or the Department. - Consequential amendments in various provisions of this Chapter are made as the work of AAR shall be carried out by the Board for Advance Rulings on and after the notified date. - The above amendments are proposed to be effective from 1 April 2021. - Section 245N is amended to incorporate various definitions including the changes in the definition of Authority to now include Board of Advance Rulings. - References to Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 in the definition of applicant in Section 245N and in Section 245Q relating to application for advance ruling is to be omitted. - Section 245O is amended to provide that the Authority will cease to operate on or after the Notified date. - Sections 245P, 245R, 245T and 245U are amended to provide that for the words 'Authority', the words 'Board for Advance Rulings' shall be substituted and the provisions of this shall mutatis mutandis apply to the Board for Advance Rulings as they apply to the Authority. - Section 245Q is amended to provide that all pending applications with the Authority before the notified date shall be transferred to the Board for Advance Rulings.

Board for Advance Rulings **[Section 245-OB and from Sections 245N to Section 245W]** **(Cont…)**	- Section 245S and 245V shall no longer be applicable. - A new Section 245W is inserted which provides that an appeal can be made to the High Court in case of an applicant or the Assessing Officer is aggrieved by the ruling or order passed by the Board. The appeal is to be made within ***sixty days*** from the date of the communication of that ruling or order. - The High Court may grant further period of ***thirty days*** for filing such appeal if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in sub-Section (1). - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- The formation of this new Board of Advance Rulings in place of AAR may not serve the purpose, as a judicial body is replaced by an administrative body. - In fact, the AAR should have been strengthened by attracting the best judicial talent, so as to make it a meaningful alternative dispute resolution process. - It seems that the sagacious advice given by the Hon'ble Supreme Court in the case of ***National Co-operative Development Corporation vs. CIT*** [Civil Appeal Nos. 5105-5107 OF 2009], of strengthening the AAR as an effective Dispute Resolution mechanism, so as to un-burden the Courts of litigation, has been ignored and hopefully there will be a re-think by the government.

Procedure of Income-tax Appellate Tribunal (ITAT) **[Section 255]**	- In order to further strengthen the Faceless Appeals Scheme, a Faceless Scheme for ITAT proceedings is proposed to be launched. - Therefore, in order to reduce human interface between the department and the assessee, Section 255 of the Act is proposed to be amended, to provide that the Central Government may notify a scheme for disposal of appeal by ITAT and to impart greater efficiency, transparency and accountability by: • eliminating the interface between the ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible, • optimising utilisation of the resources through economies of scale and functional specialization, • introducing an appellate system with dynamic jurisdiction. - The Central Government is empowered to give such directions that certain provisions of this Act shall not apply to this scheme or shall apply with such modifications, exceptions and adaptations on or before 31 March 2023. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- The ITAT is the highest fact finding body under the Act. The essence of having the ITAT is to see that justice is meted out both in spirit and substance. A personal hearing and debating the issues and giving an opportunity to be heard are the cornerstone of justice, embedding the principles of natural justice. - It has been held in ***C. B Gautam v. UOI [(1993) 199 ITR 530 (SC)]***: *'Violation of the principle of natural justice may lead to violation of Fundamental rights of equality guaranteed by Article 14 or 21 of the Constitution of India.'* Thus, the attempt to introduce faceless hearings before the ITAT would be against the basic principles of natural justice. These principles have been upheld by the Hon'ble Supreme Court in a plethora of cases. Further, such a provision would lead to litigation, as it may not stand the test on constitutional principles.

VTPA comments **(Cont…)**	- The below reason is provided in the Explanatory Memorandum for the introduction of the Scheme: *'This will not only reduce cost of compliance for taxpayers, increase transparency in disposal of appeals but will also help in achieving even work distribution in different benches resulting in best utilisation of resources'*, - These reasons are in fact not relevant and germane to the role of the ITAT and the carriage of justice, which is essential in the implementation of the Act. - Thus, on balance and considering the importance of face to face hearing on complicated tax matters and the jurisprudence on the same of many decades, these proposed amendments should be dropped.

Constitution of new Interim Board for Settlement replacing existing Income-tax Settlement commission **[Section 245A to Section 245M]**	- It is proposed to discontinue the Income-tax Settlement Commission (ITSC) with effect from 1 February 2021 and constitute one or more Interim Board(s) for Settlement of pending applications. - The applications which have not been declared as invalid under Section 245D(2C) and in respect of which no order has been issued under Section 254D(4) on or before 31 January 2021 are proposed to be treated as pending cases for Interim Boards. - An order which was required to be passed by the ITSC under Section 245(2C) on or before 31 January 2021 to declare an application invalid but such order has not been passed before the aforesaid date, such application shall be deemed to be valid and treated as pending application. - Following amendments are proposed: • For the words 'Settlement Commission', wherever they occur, the words '***Interim Board***' shall be substituted • For the word 'Bench', the words '***Interim Board***' shall be substituted • The date on which the application was made before ITSC shall be deemed to be date on which application received by the IBS • Powers and functions of the ITSC shall be exercised by the IBS and the provisions of ITSC shall mutatis mutandis apply to the IBS as they apply to the Settlement Commission • The assessee who had filed such application before ITSC may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer (AO), in the prescribed manner, about such withdrawal • Where the assesse withdraws the application before ITSC, the proceedings with respect to the application shall abate on the date on which such application is withdrawn.

Constitution of new Interim Board for Settlement replacing existing Income-tax Settlement commission **[Section 245A to Section 245M]** **(Cont…)**	• Also, the AO, or, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application before ITSC had been made • All the records, documents or evidences, with the ITSC shall be transferred to such Interim Board and shall be deemed to be the records before it for all purposes. - The Central Government may by notification in the Official Gazette, make a scheme, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by : • eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible • optimising utilisation of the resources through economies of scale and functional specialisation • Introducing a mechanism with dynamic jurisdiction • Central Government by notification in the Official Gazette, direct that any of the provisions of ITSC shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification and the said notification will be placed before house of parliament. - The above amendments are proposed to be effective from 1 February 2021.

VTPA Comments	- The said amendment states that the Interim Board is proposed to be constituted to conclude pending cases and no fresh applications may be made. Hence, the applicants have an option to withdraw their pending application within three months from the commencement of the Finance Act, 2021. - The abolishment of the ITSC is a retrograde step considering that the Indian tax law has become extremely complicated due to the tinkering of the law over the past decade by the legislature, with the avowed goal to make the laws more tax friendly. In such a situation, the ITSC can work as an alternative Dispute Resolution Body, whereby the taxpayer can buy peace and the Government can garner its taxes. - The abolishment of this Body without an alternative Dispute Resolution scheme framed by the Finance Bill, 2021, would ultimately lead to more litigation on complex tax issues. It has been repeatedly pointed out by the Courts that having an alternative Dispute Resolution Scheme under the Act would help in the reduction of litigation and piling up of large number of cases in various Appellate Forums.

SPECIAL RATES OF TAX

Special provision for payment of tax by certain companies **[Section 115JB]** **(Part I)**	- The Finance Act, 2020, has scrapped the erstwhile dividend distribution tax and the burden of taxation of dividends has shifted from the issuer company to the shareholders receiving the dividends. - As a result of the aforesaid amendment, the dividend income was under a dual computation mechanism, whereby the MAT provisions were applicable in case the tax payable as per the normal rates of tax was lower than the tax payable on the book profits. - It is now proposed that the dividend income earned by the foreign company, like the income from royalty and fees for technical services, would now be excluded from the computation of the book profits under Section 115JB. - In other words, ***MAT provisions would not apply to foreign companies having only specified incomes like dividend income, royalty income and income from fees for technical services***. - These amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- This is a welcome step by the government to provide tax certainty and facilitate easier tax compliance to the foreign companies and will help to improve the ease of doing business in India.

Special provision for payment of tax by certain companies **[Section 115JB]** **(Part II)**	- The provisions of Section 115JB state that 15% of the book profits of the company are payable as income-tax, in case the amount arrived at, is higher than the income-tax computed as per the normal provisions of the Act. - Sections 92CC and 92CE of the Act, deal with the provisions of Advance Pricing Agreements and Secondary Adjustments respectively. - Both the Sections result in changes to income which gets reflected in the current year book profits of the company, even though the additions to the income as per the Act is of that particular year in which the adjustment is made. - This resulted in inflation of the book profits of the current year, as the adjustments to the books of accounts are made in the current year, even though the additions are pertaining to the income of the earlier years. - It has now been proposed that the AO, on the receipt of an application from the assessee, may re-compute the book profits for all the past years and then determine the tax liability for the previous year under consideration. - Further, it is also proposed to provide that the said process would be considered as a proceeding akin to proceedings under the ambit of Section 154, as also the time limit of 4 years from the end of the financial year in which the application was received from the assessee similar to Section 154(7) of the Act, would be applicable. - Thus, since the income additions under Sections 92CC and Section 92CE are considered as part of past year book profits, the tax computation of the current year remains insulated from these additions and results in the correct computation of income under Section 115JB of the Act.

VTPA Comments	- The proposed provision is beneficial to the assessee, as it helps to avoid the concentration of book profits pertaining to earlier years during the current year, thereby resulting in the correct computation of book profits under Section 115JB of the Act for the current year and consequently the determination of the correct income-tax liability of the company for the current year does not get vitiated. - Similar relief should also be available to assessee's covered by Section 115JC.

TAX DEDUCTED AT SOURCE

Withholding of tax on payment of dividends **[Section 194]**	- Section 194 provides for deduction of tax at source (TDS) on payment of dividend to a resident. - Section 194 is proposed to be amended to provide for exemption with respect to withholding tax on dividend paid by a SPV [as referred to in Explanation to Section 10(23FC) of the Act] to a business trust [as defined under Section 2(13A) of the Act] or any other person as may be notified by the Central Government in Official Gazette. - The above amendments are proposed to be effective retrospectively from 1 April 2020.
Withholding of tax on payment of interest **[Section 194A]**	- The provisions of Section 194A are not applicable on interest paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero coupon bond issued by them. - It is now proposed to widen the scope of the above exemption to include interest paid or payable by an infrastructure debt fund in relation to a zero coupon bond issued by such fund. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- The said amendment in Section 194A, seems to be on account of the government's focus on ramping up infrastructure spending in the budget. - The ambitious infrastructure development targets would require the government to raise funds by way of zero coupon bonds and hence, the said amendment is aligned to the amendments made in Section 2(48) of the Act, to also notify infrastructure debt funds to issue zero coupon bonds.

TDS on payment of rent by certain individuals or Hindu undivided family (HUF) **[Section 194-IB]**	- According to Section 194-IB, it is mandatory for any person, i.e. individuals / HUF not liable to audit under Section 44AB, to deduct taxes for rent paid to a resident, exceeding INR 50,000 per month. - Section 206AA of the Act provides that if Permanent Account Number (PAN) is not furnished by the payee, the withholding tax rate would be 20 per cent or the rate in force, whichever is higher. - It is now proposed to amend Section 194IB to include the newly inserted Section 206AB, providing for higher rate for TDS for the non-filers of income-tax return. - The above amendment is proposed to be effective from 1 July 2021.
VTPA Comments	- The proposed amendment seems onerous especially since the obligation for the higher deduction of income-tax is cast on the individuals/ HUF not liable to audit under Section 44AB. - Thus, even such class of small assessees would now need to follow-up with the payees as to whether return of income is filed or not. The duty of the Revenue Authorities to weed out the non-filers seems to have been arbitrarily transferred to the rent payers, who in addition to the management of their own affairs are now supposed to know the return filing history of their payees as well. - The proposed amendment does not seem to be in line with the government's philosophy of ease of doing business, especially for the low and middle income earners of the society. - The provision also seems improbable to apply as it would require the recipient to disclose his private information, which he may be unwilling to do, and also casts an impossible burden on the deductor.

Deduction of tax in case of specified senior citizen **[Section 194P]**	- Section 194P of the Act is proposed to be inserted which provides for relaxation from furnishing / filing of return of income to a senior citizen in the year in which tax has been deducted by the specified bank after giving effect to the deduction allowable under Chapter VI-A of the Act and rebate under Section 87A of the Act. - Senior citizens need to satisfy the below requirements for applicability of the said Section: • Resident in India • Aged 75 years or more during anytime during the previous year • No income other than pension and interest income from the same specified bank in which he is receiving his pension income • Furnishes a declaration to the specified bank containing particulars, in such form and verified in such manner, as may be prescribed - The above amendment is proposed to be effective from 1 April 2021.
VTPA Comments	- This Section applies only to senior citizens who are having income in the nature of pension, and no other income except the income of the nature of interest, received or receivable from any account maintained by such individual in the same specified bank, in which he is receiving his pension income. In other words, if the senior citizen earns interest income from other bank / banks, this Section shall not apply. Further, if the senior citizen has refund due, he / she will have to file a return of income. - While the philosophy of the government to reduce compliance burden on the specified senior citizens seems commendable, the requirements that they should be earning only interest income apart from pension income from only one bank seems unrealistic and in essence leads to the watering down of the whole benefit given. - Further, this will also increase the compliance burden on banks.

TDS on payment of certain sum for purchase of goods **[Section 194Q]**	- Section 194Q of the Act is proposed to be newly inserted to provide for withholding tax at the rate of 0.1 per cent on payment made by a buyer to a person resident in India for purchase of goods exceeding INR 50 lakh in a previous year. - The buyer is required to withhold tax at the rate of 0.1 per cent on the sum exceeding INR 50 lakh. - The Explanation to the proposed Section 194Q(1) of the Act seeks to define the term 'buyer' to mean a person whose total sales, gross receipts or turnover from the business carried on by him exceeds INR 10 crore, during the financial year immediately preceding the financial year in which the purchase of goods is carried out. - The provisions of this Section shall not apply to a transaction on which: • tax is deductible under any of the provisions of the Act; and • tax is collectible under the provisions of Section 206C [other than a transaction covered under Section 206C(1H) of the Act] - It is also proposed to consequentially amend Section 206AA(1) and insert second proviso. The second proviso shall provide that where the tax is required to be deducted under Section 194Q and Permanent Account Number (PAN) is not provided, the TDS shall be at the rate of five per cent. - The above amendments are proposed to be effective from 1 July 2021.
VTPA Comments	- The above amendment seems to be onerous. The government now apart from applying the GST compliances also intends to apply TDS provisions on sale of goods irrespective of whether the entity to which the goods are sold is earning profits or is in continuous losses. - Further, the compliance burden is increasing for doing business in India, as an entity, already is cast with the burden of collecting tax at source under Section 206C(1H) on sale of goods, and now this extra burden when it purchases goods. - The Memorandum clarifies that if on a transaction TCS under Section 206C(1H) is applicable, as well as TDS under this section is applicable, then only TDS under this section shall be carried out.

VTPA Comments **(Cont…)**	- Thus, the government now casts the burden of collecting taxes on taxpayers without any compensation, but with more onerous responsibilities, with its attended consequences of burdensome compliances!!

TDS on payment made to Foreign Institutional Investors (FIIs) **[Section 196D]**	- Section 196D prescribes a withholding of tax at the rate of 20 per cent on dividend paid to FIIs from securities under Section 115AD(1)(a). - A new proviso is inserted to Section 196D which provides that in case of a payee to whom an agreement under Section 90(1) or Section 90A(1) applies and such payee has furnished the tax residency certificate (TRC) referred to in Section 90(4) or Section 90A(4) of the Act, then the tax shall be deducted at the rate of twenty per cent or the rate or rates of income-tax provided in such agreement for such income, whichever is lower. - The above amendment is proposed to be effective from 1 April 2021.
VTPA Comments	- The above amendment is a welcome move, which will enable the FIIs to avail the benefits of the lower rate of the DTAA as applicable at the time of deduction of tax at source itself and also now resolves the ambiguity of applicability of the beneficial rate of tax for dividend income of FIIs. - The same is likely to boost the FII community sentiment, as there would be lower blockage of FII funds in taxes and would encourage more FII inflows into India.

TDS /TCS for non-filers of income-tax return **[Section 206AB / 206CCA]**	- Section 206AB and Section 206CCA is proposed to be inserted to provide for a higher rate of withholding tax / collection of tax for taxpayers not furnishing / filing return of income. - Section 206AB is proposed to apply on any sum paid or payable or credited by a deductee to a specified person (other than any sum where tax is required to be withheld under Section 192, Section 192A, Section 194B, Section 194BB, Section 194LBC or Section 194N of the Act). - The proposed withholding tax rate shall be higher of the below: • at twice the rate specified in the relevant provision of the Act; or • at twice the rate or rates in force; or • at the rate of five per cent - Section 206CCA is proposed to apply on any sum or amount received by a collectee from a specified person. The proposed tax collection rate in the said Section shall be higher of the following: • twice the rate specified in the relevant provision of the Act or • the rate of five per cent - Further, if the provisions of Section 206AA [requirement to furnish Permanent Account Number (PAN] or Section 206CC (requirement to furnish PAN by collectee) are applicable to a 'specified person' in addition to the proposed Sections, that is, Section 206AB and Section 206CCA, the tax shall be deducted / collected at higher of the two rates provided in the proposed Sections and in Section 206AA or Section 206CC of the Act. - The term 'specified person' means a person: • who has not filed the returns of income for preceding two assessment years immediately prior to the previous year in which tax is required to be deducted and for which the time limit of filing return of income under Section 139(1) has expired; and. • the aggregate of tax deducted at source and tax collected at source is INR 50,000 or more in each of these two previous years. **The term '**specified person**' shall not include a non-resident who does not have a permanent establishment in India* - The above amendment is proposed to be effective from 1 July 2021.

OTHER AMENDMENTS

Incomes not included in total Income **[Section 10(5)]**	- In view of the outbreak of COVID-19 pandemic, a second proviso to Section 10(5) is proposed to be inserted to provide that the cash allowance in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt subject to fulfilment of specified conditions. - It is also proposed to clarify by way of an Explanation that where an individual claims and is allowed exemption under the second proviso in connection with prescribed expenditure, no exemption shall be allowed under this clause in respect of same prescribed expenditure to any other individual. - The amount of exemption shall not exceed INR 36,000 per person or 1/3rd of specified expenditure, whichever is less. - The term 'specified expenditure' means expenditure incurred by an individual or a member of his family during the specified period on goods or services which are liable to tax at an aggregate rate of twelve per cent or above under various GST laws and goods are purchased or services procured from GST registered vendors / service providers. - The above amendment is proposed to be effective from 1 April 2021.
VTPA Comments	- An individual to get an exemption of INR 36,000, has to make purchase of goods of minimum of INR 1,08,000 on which individual has to pay assuming 12% GST which comes to INR 12,960. - Thus, against an exemption of INR 36,000, the government recovers INR 12,960 by way of GST.

Taxation of proceeds of high premium unit linked insurance policy (ULIP) **[Section 10(10D)]**	- Section 10 (10D) of the Act provides for the exemption for the sum received under a life insurance policy, including the sum allocated by way of bonus on such policy in respect of which the premium payable for any of the years during the terms of the policy does not exceed ten percent of the actual capital sum assured. - Fourth, fifth, sixth and seventh proviso are proposed to be inserted to Section 10(10D). - The proposed exemption shall not apply with respect to any unit linked insurance policy (ULIP) issued on or after 1 February 2021, if the amount of premium payable for any of the previous years during the term of the policy exceeds INR 2,50,000. *(fourth proviso.)* - If premium is payable by a person for more than one ULIPs, issued on or after 1 February 2021, exemption shall be available only to those insurance policies where the ***aggregate amount of premium does not exceed INR 2,50,000***, in any of the previous years during the term of any of the policies. *(fifth proviso.)* - The provisions of fourth and fifth proviso shall not apply to any sum received on the death of a person. *(sixth proviso.)* - In case any difficulty arises in giving effect to the provisions of Section 10(10D) *(seventh proviso)*: • the Central Board of Direct Taxes (CBDT) may with the approval of the Central Government issue guidelines for the purpose of removing the difficulty and • every guideline shall be laid before each House of Parliament and • the same shall be binding on the income-tax authorities and the assessee - *Explanation 3 to Section 10(10D) is proposed to be inserted to define unit linked insurance policy (ULIP)* as a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation (3) of the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019 dated 8 July 2019.

Consequential amendments to Section 2(14), 45(1B), 112A	- In a case of a ULIP to which exemption under Section 10(10D) does not apply on account of the applicability of the fourth and fifth proviso to Section 10(10D), consequential amendments are proposed to be made to the below Sections: • *Section 2(14)(c)* is inserted to include such ***ULIP as a capital asset*** *under Section 2(14).* • *Section 45(1B) is inserted* to provide for the deemed taxation of profit and gains from the redemption of such ULIP as income under the head 'capital gains.' The same shall be income of such person of the previous year in which such amount is received. The Rules may prescribe the manner of taxability of such income *(Non-obstante clause).* • *Explanation to Section 112A is amended* to include a fund set up under a scheme of an insurance company comprising of such ULIP in the definition of equity oriented fund, so as to provide them the same treatment as unit of equity oriented fund. Thus, the provisions of Section 111A and 112A would apply on sale/ redemption of such ULIPs. - Consequential amendments have been proposed to the Finance (No.2) Act, 2004 to make security transaction tax applicable on maturity or partial withdrawal with respect to unit linked insurance policy issued by insurance company on or after the 1 February, 2021 (to which exemption under Section 10(10D) of the Act does not apply on account of the applicability of the fourth and fifth proviso). - The above amendments are proposed to be effective from 1 April 2021
VTPA Comments	- The limit of INR 2.5 lakhs needs to be reconsidered, especially due to the real value of the Indian Rupee.

Incomes not included in total Income **[Section 10(11) and 10(12)]**	- Section 10(11) and 10(12) of the Act provide for exemption in respect of any payment from the provident fund, whether set up by the Central Government or whether it is a recognised provident fund respectively. - With respect to Section 10(11) and 10(12), a proviso is proposed to be inserted which states that the exemption would not be applicable to income by way of interest accrued during the previous year where the aggregate amount of contribution made by that person ***exceeds INR 2.5 lakhs*** and will be taxable and computed in the manner as prescribed. - The above amendment is proposed to be effective from 1 April 2022.
VTPA Comments	- The provision aims to restrict the exemption of interest accrued, where the employee's contribution to the provident fund amounts to INR 2.5 lakhs only during the year. - The limit of INR 2.5 lakhs needs to be reconsidered, especially due to the real value of the Indian Rupee.

Rationalization of the provisions of charitable trust and Institutions **[Section 11 and Section 10(23C)]**	- Section 11(1)(d) has been proposed to be amended so as to provide that voluntary contributions should be invested or deposited in one or more of the forms or mode specified in Section 11(5) maintained specifically for such corpus. - Explanation 4 to Section 11(1) is proposed to be inserted so as to provide that: i) Application out of the corpus shall not be considered as application for charitable or religious purposes for the purposes of clause (a) and (b) of sub-Section (1). However, when it is invested or deposited back, into one or more of the forms or modes specified in sub-Section (5), from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus and to the extent it is deposited back. ii) Application from loans and borrowings shall not be considered as application for charitable or religious, provided when such loan or borrowing is repaid from the income of that previous year, such repayment shall be allowed as application in the previous year in which it is repaid and to the extent it is repaid. - For the computation of income required to be applied or accumulated during the previous year, no set off or deduction or allowance of any excess application, of any of that year preceding the previous year shall be allowed. - A reference to Section 12AB shall be made in sub-Section (3) which provides for the procedure of registration. - For claiming exemption by universities, educational institutions and hospitals or other institutions under Section 10(23C) (iiiad) and (iiiae) respectively, the annual receipt threshold has been increased from INR 1 crore to INR 5 crore. - The above amendments are proposed to be effective from 1 April 2022.

Audit of accounts of certain persons carrying on business or profession **[Section 44AB]**	- Section 44AB provides for audit of accounts for every person carrying on business, if his total sales, turnover or gross receipts in business exceed or exceeds INR 1 crore in any previous year. - The threshold limit for a person carrying on business is increased from INR 1 crore to INR 5 crore, where: • the aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt and • the aggregate of all payments in cash during the previous year does not exceed 5% of such payment. - The threshold limit of tax audit in specified cases is now proposed to be increased to ***INR 10 crore***, however the conditions mentioned above would still be applicable. - The above amendment is proposed to be effective from 1 April 2021.
VTPA Comments	- The said amendment is made to incentivize non-cash transactions to promote digital economy and to further reduce compliance burden of small and medium enterprises. - It is surprising that the limit for professional gross receipts is still pegged at INR 50 lakhs, which seems to be very low and an unnecessary compliance burden.

Computing profits and gains of profession on presumptive basis **[Section 44ADA]**	- Presently, a resident, being an assessee having professional income, he / she can opt for offering presumptive income, if the gross receipts from such profession is up to INR 50 lakhs. - The said benefit is now proposed to be restricted to resident individual, Hindu Undivided Family or a partnership firm ***other than a Limited Liability Partnership (LLP)*** as defined under Section 2(1)(n) of LLP Act, 2008. - The above amendment is proposed to be effective from 1 April 2021.
VTPA Comments	- The said amendment is stated in the Memorandum to be only clarificatory in nature. However, it is a substantive provision, as maintenance of books of accounts or not, as prescribed under section 44AA, was not a pre-condition to fall within the purview of section 44ADA of the Act

Special provision for computing deduction in the case of business reorganization of co-operative banks **[Section 44DB]**	- The Reserve Bank of India (RBI) has started an on-tap licensing policy for granting of the Small Finance Bank (SFB) License to applicants, based on various parameters. On-tap licensing policy means that RBI, unlike in the past, will accept applications and grant license for banks throughout the year. The Urban Cooperative Banks, which are encompassed within the general definition of primary cooperative banks, are also eligible to avail the SFB license. - RBI has encouraged UCBs to apply for the said license on account of the better regulatory framework and compliance in terms of capital adequacy norms, etc. - Section 44DB of the Act provides for the method of computing deductions in the case of ***business reorganization of co-operative banks***, so as to enable seamless reorganization of the banks. - In the above backdrop and in order to provide a further impetus to these banks, an amendment to Section 44DB has been proposed to expand the scope of business reorganization by including within its ambit, the ***conversion of a primary co-operative bank into a banking company***. - This would allow the cooperative banks to avail the deduction even if the result of the reorganization is a banking company. - In line with the above, '***banking company***', '***converted banking company***', '***conversion***' and '***primary co-operative bank***' have been defined and consequential amendment to the term '***predecessor co-operative bank***' has been made. - Consequential amendments have also been carried under Sections 47, 56(2)(x) as well as new sub-Section 10(23)(FF) has been inserted, so as to make the said reorganization tax neutral. - The above amendments are proposed to be effective from 1 April 2021

VTPA Comments	- The amendments seek to encourage urban cooperative banks to get converted into banking companies and contribute to make the banking and financial services sector more robust. - The said amendments also contribute to mitigation of risk of scams like that in the case of PMC Co-operative bank. - The licensing policy of the RBI for the grant of the SFB license had so far seen a lukewarm interest among the cooperative banks. - Hence, whether these amendments would have the intended effect would be visible in the future.

Definition of 'Demerger' **[Section 2(19AA)]**	- Section 72A of the Act states the provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc. However, some restrictions were placed regarding which public sector enterprises were allowed the said losses etc., on amalgamation / demerger. - In order to ease the ***amalgamation / demerger of public sector enterprises***, some amendments have been introduced. - Explanation 6 is proposed to be inserted to Section 2(19AA) clarifying that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and • the resultant company is a public sector company on the appointed date indicated in the scheme approved by the government or any other body authorised under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf; and • fulfils such other conditions as may be notified by the Central government in the Official Gazette.
Carry forward and set off of accumulated loss and unabsorbed depreciation of public sector companies in case of amalgamation, etc. **[Section 72A]**	- Further, Section 72A(1) is also proposed to be amended to the below extent: • The provisions of Section 72A(1)(c) have been substituted and shall now apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies. • Section 72A(1)(d) has been inserted and provides that in case of amalgamation of an erstwhile public sector company with one or more company or companies, if ▪ the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and ▪ the amalgamation is carried out within five years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

Carry forward and set off of accumulated loss and unabsorbed depreciation of public sector companies in case of amalgamation, etc. **[Section 72A]**	- A proviso has been inserted to Section 72A(1) to provide that in case of an amalgamation under Section 72A(1)(d), the accumulated loss and unabsorbed depreciation of amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company, as on the date on which the public sector company ceases to be one as a result of strategic divestment. - An Explanation is inserted to Section 72A(1)(d) to define the expressions '***control***', '***erstwhile public sector company***' and '***strategic disinvestment***'. - The above amendments are proposed to be effective from 1 April 2021.
VTPA Comments	- The above amendment to allow carry forward and set-off of losses of public sector companies upon their amalgamation is proposed in order to facilitate strategic disinvestment of public sector companies.

Provisional attachment to protect revenue in certain cases **[Section 281B]**	- In line with Section 271AAD of the Act as inserted vide the Finance Act, 2020, the provisions of Section 281B are proposed to be amended to provide that an assessing officer (AO) may exercise power under this Section which pertains to provisional attachment of property during pendency of proceedings. - The words *'**or for imposition of penalty under Section 271AAD where the amount or aggregate of amounts of penalty likely to be imposed under the said Section exceeds two crore rupees**'* are inserted - This provision is amended to safeguard the department in case a taxpayer evades penalty under Section 271AAD of the Act. - The above amendment is proposed to be effective from 1 April 2021.

Advance Tax Instalment for dividend income **[Section 234C]**	- Section 234C of the Act provides for payment of interest by an assessee who does not pay or fails to pay on time, the advance tax instalments as per Section 208 of the Act. - The said Section further covers certain exceptional cases wherein no interest is levied if shortfall or failure to pay advance tax instalment on time is on account of specified incomes. - The above relaxation is to insulate the taxpayers from payment of interest under Section 234C of the Act in specified cases where accurate determination of advance tax liability is not possible due to the intrinsic nature of such specified income. - It is proposed to extend the above relaxation even in case of dividend income (other than deemed dividend as per Section 2(22)(e) of the Act) earned during the fiscal year. - The said amendment is proposed to be effective from 1 April 2021.
VTPA Comments	- The said provision is a beneficial provision introduced so as to ***ease the burden of advance tax payment on dividend income*** received during the year. However, the provisions of Section 234B would continue to apply in case the tax on the dividend income is not paid by 31 March of the previous year.

Certain activities not to constitute business connection in India [Section 9A]	- *A new sub-Section (8A) has been inserted under Section 9A* to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in Section 9A(3) (a) to (m) or Section 9A(4) (a) to (d) of the Act shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager, if the fund manager is located in an IFSC and has commenced operations on or before 31 March 2024.
[Section 10(4D)]	- *Section 10(4D) has been amended* so as to provide that the exemption to specified funds shall *also* be available in a case of any income accrued or arisen to, or received to the investment division of an offshore banking unit to the extent attributable to it and computed in the prescribed manner.
[Section 10(4E) and 10(4F)]	- *Section 10(4E) has been newly inserted* to exempt in the hands of non-resident, any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of an IFSC which commenced operations on or before the 31 March 2024 and fulfills prescribed conditions. - *Section 10(4F) has also been newly inserted* to exempt any income of a non-resident by way of royalty, on account of lease of an aircraft in a previous year, paid by a unit of an IFSC referred to under Section 80LA(1A), if the unit is eligible for deduction under Section 80LA for that previous year and has commenced its operations on or before 31 March 2024. - The above amendments are proposed to be effective from 1 April 2022.

[Section 10(23FF)] **Exemption from capital gain tax on account of transfer of shares of an India Company on account of relocation** **[Section 47]**	- Section 10(23FF) is proposed to be newly inserted. The same exempts any income of the nature of capital gains, arising or received by a non-resident, which is on account of relocation from the original fund to the resultant fund. - Section 47 is also amended to insert new clauses in the said provision so as to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gains tax purpose. Any transfer by a shareholder or unit holder or interest holder, in relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains. Explanation to Sections 47(viiac) and 47 (viiad) provide the definition of the terms '***Original Fund***', '***Relocation***' and '***Resultant Fund***'. - The above amendments are proposed to be effective from 1 April 2022.

Income based deductions for units located in IFSC from payment of income-tax **[Section 80LA]**	- The deduction will now be available to a unit of an IFSC, if it is registered under the IFSC Authority Act, 2019 and thereby removes the earlier requirement of obtaining permission under any other relevant law. - The income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit under Section 80LA(2)(c) to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100 per cent deduction, subject to condition that the unit has commenced operations on or before 31 March 2024. - Further, in case the unit is registered under the IFSC Authority Act, 2019, then the copy of permission shall mean a copy of the registration obtained under the IFSC Authority Act, 2019. - The above amendments are proposed to be effective from 1 April 2022.

Carry forward and set off of losses in case of relocation between Original Fund and Resultant Fund **[Section 79(2)]**	- *Section 79(2)(e)* is inserted, to specify the restriction pertaining to carry forward and set off of losses in case of change in shareholding pattern of company will not apply to a company wherein the change in shareholding pattern has taken place on account of relocation between original fund and resultant fund, as proposed to be defined vide amendments in Section 47. - The above amendment is proposed to be effective from 1 April 2022.

Tax on income of Specified Fund or Foreign Institutional Investors from securities or capital gains arising from their transfer **[Section 115AD]**	- Section 115AD is proposed to be amended to make the provision of this Section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund. - However, the provisions of this Section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the SEBI (FPI) Regulations, 2019 calculated in the prescribed manner. - The above amendment is proposed to be effective from 1 April 2022.

VTPA Comments on IFSC	- The government has established a world class financial services centre. The units located in IFSC enjoy some concession / benefits. In order to make the location in IFSC more attractive for foreign investors, the government has been promoting IFSC.

Provisions relating to Equalization Levy **Amendment to Section 163, 164 and 165A of the Finance Act, 2016**	- The Finance Act, 2016 had introduced the Equalisation Levy (EQL) of 6% which was to be levied on a 'Specified service' which means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement would include any other service as may be notified by the Central Government - The Finance Act, 2020 widened the ambit of the EQL, to not just cover payments made for online advertising, but also to any online sale of goods or online provision of services or facilitation of the any of them by an E-Commerce operator. - The Finance Act, 2021, has proposed that certain clarifications be inserted so as to provide certainty regarding the ambit of the EQL provisions. - Section 163 provides the scope of the EQL. The said section is proposed to be amended by way of inserting a proviso which states that the EQL would not cover within its ambit, any consideration which is otherwise taxable as royalty or fees for technical services under the provisions of the Income-tax Act, 1961 read with the applicable tax treaty. - Consequential amendment has also been introduced under section 10(50) of the Act, to clarify regarding the said exclusion under the Act. - It is further proposed to amend section 10(50) so as to provide that the said section would be applicable from 1 April 2020 and not 1 April 2021 as stated earlier, so as to align the exemption with the date of introduction of the expanded EQL provisions - It is further proposed to ***clarify regarding the applicability*** of the EQL provisions to the "***online sale of goods***" and "***online provision of services***", by defining the said terms to include one or more of the following online activities: • acceptance of offer for sale • placing of purchase order • acceptance of the purchase order • payment of consideration • supply of goods or provision of services, partly or wholly.

	- Further, under section 165A(3), the meaning of the word "***specified circumstances***" has been clarified to include consideration received for the sale of goods or provision of services, irrespective of the fact whether the goods are owned or not and whether the service is provided or only facilitated by the Ecommerce operator respectively.
VTPA Comments	- The amendment in respect of the ***exclusion of royalty and fees for technical services income*** is welcome and provides clarity regarding the taxation on these aspects. However, in case there is a judicial precedent in case of the assessee in earlier years, the same should be respected and the mechanical application of the EQL provisions should be avoided. - The amendment regarding the definition of the online sale of goods and provision of services, provides clarity stating that the ***income earned by the intermediaries***, which are only in facilitation and not engaged in actual online supply of goods and services, would also be covered in the EQL provisions, provided they get covered in the stated category. - The clarification in section 165A, also dispels any doubts, regarding the liability of the intermediaries under the EQL provisions

Provisions relating to Income Declaration Scheme, 2016 **Amendment to Section 191 of the Finance Act, 2016**	- Income Declaration Scheme, 2016 was introduced to provide an opportunity to persons who have not paid taxes in the past, to make a voluntary disclosure of their undisclosed income and pay taxes accordingly. - Section 191 of the Finance Act, 2016 provides that any excess amount of tax and surcharge paid on the voluntary disclosure of income made under the scheme would not be refundable, except where specifically provided by the Central Government by a notification, specifying the class of persons, to whom the refund may be allowed. - It is now proposed to insert the words "***without interest***" in the proviso to Section 191, so as to state that even in cases where the Central Government notifies a class of persons to whom the excess amount is refunded, the same would not include interest on the said amount of refund.

Clarification regarding the scope of Vivad se Vishwas Act, 2020 (VsV Act, 2020) **[Section 2]**	- With a view to remove any ambiguity, it is proposed to amend the provisions of VsV Act, 2020, to clarify that the proceedings before the Income-tax Settlement Commission (ITSC) would not be covered under the VsV Act, 2020. - The said amendment is proposed to take effect retrospectively from 17 March 2020.
VTPA Comments	- It is pertinent to note that the Hon'ble Delhi High Court (HC) in the case of ***Abhishek Manu Singhvi vs. CBDT & Anr***, is completely seized of this matter but yet the Parliament has thought it fit to introduce this proposed amendment. It will be interesting to see what the HC decides.

RATES OF TAX

1.1. For Individuals, Hindu Undivided Families, Association of Persons, Body of Individuals and Artificial judicial person

Existing Tax Rates**	
Total Income (INR)	**Rate (%) @**
0 – 2,50,000#	Nil
2,50,001 - 5,00,000#	5
5,00,001 - 10,00,000	20
10,00,001 and above	30

@ Health and Education cess of 4% is leviable on the amount of income-tax and surcharge.

 # The basic exemption limit is INR 250,000 in case of every individual below the age of 60 years, INR 300,000 in case of resident individuals of the age of 60 years or more, and INR 500,000 for 'very senior citizen" in case of resident individuals of age 80 years and above.

****** Where total income does not exceed INR 500,000, the assessee shall be entitled to a credit on the income-tax payable, not exceeding of an amount equal to hundred percent of the Income-tax payable or INR 12,500, whichever is less.

The **surcharge on income-tax**, for Individuals, Hindu Undivided Families, Association of Persons, Body of Individuals and Artificial judicial person, are as follows:

Total Income (INR)	Surcharge (%)
5 million – 10 million	10
10 million – 20 million	15
20 million – 50 million	25
Above 50 million	37

Further, the individual / HUF should also consider the newly introduced concessional regime of taxation, as explained below.

Tax on incomes of individuals and Hindu Undivided Family under section 115BAC

- As per the new section 115BAC introduced from the Finance Act, 2020, in the case of Individuals / HUFs, who do not claim exemptions and deductions as per the section, the below new concessional rates would be applicable as shown in the below table:

Total Income (INR)	Tax Rate in %
0 to 2,50,000	NIL
From 2,50,001 to 5,00,000	5
From 5,00,001 to 7,50,000	10
From 7,50,001 to 10,00,000	15
From 10,00,001 to 12,50,000	20
From 12,50,001 to 15,00,000	25
Above 15,00,000	30

- Section 115BAC has amended only the basic slab rates, and other provisions applicable to Individuals / HUFs, namely, rebate under section 87A, and the applicable rates of education cess and surcharge would be computed on the same basis as above, that is, under normal rates of tax.

1.2. For Others

There are no changes in the Income-tax rates in the Budget. Summary of the same is provided as under:

Description	Existing Tax Rates (%)		
	Having Income up to INR 10 million	Having Income from INR 10 million to 100 million	Having Income more than INR 100 million
	(Including Health and Education Cess @ 4%)		
Regular tax as per Para E of the 1st Schedule to the Finance Act (Turnover up to INR 4000 mn)	26.00	27.82*	29.12**
Regular tax as per Para E of the 1st Schedule to the Finance Act (Turnover > INR 4000 mn and not covered below)	31.20	33.38*	34.94**
115BA	26.00	27.82*	29.12**
115BAA	25.17***	25.17***	25.17***
115BAB	17.16***	17.16***	17.16***
MAT[@]	15.60 (of book profits)	16.69* (of book profits)*	17.47** (of book profits)**
Dividend Received from Foreign subsidiary company (section 115BBD)	15.60	16.69*	17.47**
Regular tax (Foreign Company)	41.60	42.43[$]	43.68[#]
Regular tax (Firm)	31.20	34.944**	
Alternate Minimum Tax (AMT)	19.24	21.55**	

*** Inclusive of surcharge @ of 7 %**
**** Inclusive of surcharge @ of 12 %**
***** Inclusive of surcharge @ of 10 %**
$ Inclusive of surcharge @ of 2 %
 # Inclusive of surcharge @ of 5 %
@ MAT provisions would not be applicable for who has opted for special taxation regime under Section 115BAA & 115BAB

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