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SALIENT FEATURES OF THE FINANCE ACT, 2023 IMPACTING THE REAL ESTATE SECTOR

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I N D E X

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I. INTRODUCTION

This was NDA Government's last full budget before they usher in for elections. With the Government slowly moving towards non-exemption / non-deduction based tax regime, the new income tax regime has now become a default tax regime. However, one can opt for old tax regime by exercising such option before the return filing due date.

The Finance Bill, 2023 was presented by the Hon'ble Finance Minister Mrs. Nirmala Sitharaman on February 1, 2023. While moving the Finance Bill, 2023 for approval by the Lok Sabha, the Finance Minister introduced 'Notice of amendments' to the Finance Bill, 2023 (referred to as the "**Finance Bill (Lok Sabha**)") proposing 39 amendments to the original Finance Bill, 2023. These amendments are generally intended to address certain ambiguities arising from the wordings of proposals as contained in the Finance Bill, 2023, expanding the existing provisions of the Income Tax Act, 1961 and that of the proposed provisions contained in the Finance Bill, 2023.

The key direct tax amendments made by the Finance Act, 2023 impacting the real estate sector are analysed hereinafter.

II. GLOSSARY OF TERMS USED

"Act" means the Income Tax Act, 1961;

"**AJP**" means an artificial juridical person;

"AMT" means Alternate Minimum Tax applicable to the assessees other than a company-assessee, as referred to in Section 115JC;

"AO" means the Assessing Officer;

"**AOP**" means an association of persons;

"**BOI**" means body of individuals;

"**CBDT**" means the Central Board of Direct Taxes;

"CIT" means the Commissioner of Income Tax;

"Finance Act" means the Finance Bill, 2023 which was presented in the Lok Sabha as part of the Union Budget on February 1, 2023, which was passed by the Lok Sabha with certain amendments/ modification contained in the 'Notice of Amendments' on 24th March, 2023 and which received Presidential assent on 31st March, 2023;

"FMV" means the fair market value;

"HEC" means Health and Education Cess;

"LRS" means the Liberalised Remittance Scheme of the Reserve Bank of India;

"MAT" means Minimum Alternate Tax applicable to corporate assessees, as referred to in Section 115JB;

"MMR" means maximum marginal rate of income tax;

"Rules" means of Income-tax Rules, 1962;

"SDV" means the stamp duty value;

"SEBI" means the Securities and Exchange Board of India, a statutory body formed under the provisions of the Securities and Exchange Board of India Act, 1992;

"STT" means Securities Transaction Tax;

"TCS" means collection of tax at source;

"TDS" means withholding tax/ tax at source deducted pursuant to the provisions of the Act;

III. INCOME TAX

Unless otherwise specifically mentioned, the amendments are effective from F. Y. 2023-24 relevant to A. Y. 2024-25 and are therefore applicable with respect to income arising on or after 1st April, 2023 i.e. during the F. Y. 2023-24 and onwards. Specific mention is made at the relevant places, where the effective date of the amendment is other than the date referred to hereinabove. Any reference to the sections, unless otherwise stated, is to the sections of the Act.

1. IMPORTANT CHANGES TO TAX RATES FOR F. Y. 2023-24 (A.Y. 2024-25)

As regards rates of tax:-

(a) The Finance Act has made following changes to the tax rates:

(i) **The new tax regime to be default tax regime so the option for the old tax regime has to be exercised specifically by the assessee.**

(ii) Basic exemption limit for Individuals and HUFs opting for the new default tax regime u/s.115BAC has been increased from Rs.2,50,000/- to Rs.3,00,000/-. Furthermore, the Finance Act

has prescribed 5 slabs of tax rates as against earlier 6 slabs of tax rates. The Finance Act has also made applicable the provisions of Section 115BAC to AOPs (other than a co-operative society), BOIs (whether incorporated or not) and AJP, which were earlier left out from the scope of Section 115BAC.

There are no changes in the existing tax rates for Individuals and HUFs who opt to be governed by the old tax regime.

(iii) The Finance Act has introduced a new Section 115BAE for levying 15% concessional tax rate for new manufacturing co-operative societies. This provisions is made in line with the concessional tax rate applicable to new domestic manufacturing company u/s. 115BAB.

(iv) The Finance Act has not made any changes in the existing tax rates for domestic manufacturing / non-manufacturing companies, foreign companies, partnership firms, LLPs and resident co-operative societies.

(b) The existing "**Health and Education Cess**" continues to be @ 4%.

(c) The Finance Act has made following changes to the rates of Surcharge :

(i) The rate of Surcharge on the total income of an Individual, HUF, AOP, BOI and AJP exceeding Rs.5 Crores, has been reduced to 25% from 37%, provided such assessee is governed by the new default tax regime u/s.115BAC. Hence, an Individual, HUF, AOP, BOI and AJP whose total income exceeds Rs.5 Crores and who has adopted the new default tax regime u/s.115BAC would now pay **tax at the effective rate of 39% as against the earlier tax rate of 42.74%**.

(ii) There is no other change in the rate of **Surcharge** except as stated above. Surcharge on long term capital gains from transfer of all assets (including listed shares and units of equity-oriented mutual fund) and income taxable u/s. 111A (short term capital gains) and dividend income, for all types of assessees continues to be restricted to / capped at 15%.

(d) Maximum marginal rate of tax for an Individual and HUF who has opted for the old tax regime continues to be @ 42.74% (including Surcharge of 37% and HEC of 4%). Maximum marginal rate of tax for an Individual and HUF under the new default tax regime u/s.115BAC will now be @ 39% (including Surcharge of 25% and HEC of 4%).

(e) The Finance Act has increased the rebate u/s. 87A from Rs. 12,500/- to Rs. 25,000/- for a resident Individual who is governed by the new default tax regime u/s. 115BAC and whose Total Income is up to Rs.7

Lakhs. Rebate u/s. 87A continues to be Rs.12,500/- for resident Individual who opts for the old tax regime and whose Total Income is not in excess of Rs.5 Lakhs.

The Finance Act has substituted proviso to Section 87A to allow a marginal rebate if the total income marginally exceeds Rs.7 Lakhs.

The income tax rates (inclusive of Surcharge and HEC) and TDS Rates for the F. Y. 2023-24 is tabulated hereunder for ready reference. These income tax rates are applicable on income earned during the period from 1st April, 2023 to 31st March, 2024.

1.1 EFFECTIVE TAX RATES FOR INDIVIDUALS, HUFs, AOP, BOI and AJP

Tax Rates under existing Tax Regime - For resident Individuals, HUFs, AOPs, BOIs and AJP

Particulars	Tax Rates for F. Y. 2023-24			
	Resident Very Senior Citizens of age 80 Years & above	Resident Senior Citizens of 60 Years & above but below age of 80 years	Resident Men & Women below 60 Years & Non Residents (Men & Women)/ HUF / AOP / BOI / AJP	Applicable Surcharge
Total Income				
Up to Rs.2,50,000	Nil	Nil	Nil	Nil
Rs.2,50,001 – Rs.3,00,000	Nil	Nil	5.20%	Nil
Rs.3,00,001 – Rs.5,00,000	Nil	5.20%	5.20%	Nil
Rs.5,00,001 – Rs.10,00,000	20.80%	20.80%	20.80%	Nil
Rs.10,00,001 – Rs.50,00,000	31.20%	31.20%	31.20%	Nil
Rs.50,00,001- Rs.1,00,00,000	34.32%	34.32%	34.32%	10%
Rs.1,00,00,001 – Rs.2,00,00,000	35.88%	35.88%	35.88%	15%
Rs.2,00,00,001 – Rs.5,00,00,000	39%	39%	39%	25%*
Above Rs.5,00,00,000	42.74%	42.74%	42.74%	37%*

* Surcharge on Long Term Capital Gains from all assets, Short-Term Capital Gains on the sale of listed equity shares, equity mutual funds, and units of business trust on which STT is paid and dividend income, is restricted to / capped at 15%.

Tax Rates under New Default Tax Regime u/s. 115BAC - For resident and non-resident Individuals, HUFs, AOPs, BOIs and AJP

The effective tax rates for resident and non-resident Individuals, HUFs, AOPs, BOIs and AJP under the new default tax regime, for different slabs of income is as follows :

Particulars	Tax Rate	Applicable Surcharge	HEC
Up to Rs.3,00,000	Nil	Nil	4%
Rs.3,00,001 – Rs.6,00,001	5.20%	Nil	
Rs.6,00,001 – Rs.9,00,001	10.40%	Nil	
Rs.9,00,001 – Rs.12,00,001	15.60%	Nil	
Rs.12,00,001 – Rs.15,00,001	20.80%	Nil	
Rs.15,00,001 – Rs.50,00,000	31.20%	Nil	
Rs.50,00,001 – Rs.1,00,00,000	34.32%	10%	
Rs.1,00,00,001 – Rs.2,00,00,000	35.88%	15%	
Above Rs.2,00,00,000/-	39%	25%	

Notes :

1. An assessee will have to comply with the conditions laid down in Section 115BAC vis-à-vis forgoing certain deductions / exemptions if it opts or continue to pay tax under new default tax regime u/s. 115BAC. However, an assessee will be entitled to claim only the following deduction / exemption under new default tax regime u/s. 115BAC:

Section	Deduction / Exemption allowable
16(ia)	Standard deduction of Rs.50,000/-
24(b)	**Interest deduction (for property other than Self Occupied)**
57(iia)	Deduction of 1/3rd or Rs.15,000/- whichever is less
80CCD(2)	Employer contribution to notified pension scheme
80CCH(2)	Employer contribution to Agniveer Corpus Fund
80JJAA	Deduction in respect of employment of new employees
80LA	Deduction in respect of certain income of Offshore Banking Units and International Financial Services Centre (IFSC)

Earlier Standard Deduction u/s. 16(1) from Salary Income was not allowed as a deduction for those assessees who opted for the new tax regime u/s.115BAC. However, now the Standard Deduction u/s. 16(1) and deduction in respect of the amount paid or deposited in the Agniveer Corpus Fund u/s. 80CCH(2) will be allowed as deduction while computing the Salary Income, under new default tax regime.

2. The provisions of AMT are not applicable.

1.2 EFFECTIVE TAX RATES FOR COMPANIES

A. For Domestic Companies (which has not opted for special tax regime u/s.115BA, 115BAA and 115BAB)

Type of Company	Domestic Companies Where the total turnover or the gross receipts in the P. Y. 2022-23 is Rs.400 crore or more			Domestic Companies Where the total turnover or the gross receipts in the P. Y. 2022-23 does not exceed Rs.400 crore		
Total Income	**Up to Rs.1cr**	**Rs.1 cr to Rs.10 cr**	**Above Rs.10 cr**	**Up to Rs.1 cr**	**Rs.1cr to Rs.10 cr**	**Above Rs.10 cr**
Rate of tax	30%	30%	30%	25%	25%	25%
Surcharge	-	7%	12%	-	7%	12%
HEC	4%	4%	4%	4%	4%	4%
Effective Tax Rate	**31.20%**	**33.384%**	**34.944%**	**26.00%**	**27.82%**	**29.12%**

Note : For companies, other than companies opting for the new tax regime u/s. 115BA, 115BAA or 115BAB, the rate of MAT continues to be at 15%.

B. For certain Domestic Manufacturing Companies which has been set up and registered on or after March 1, 2016 and is engaged in the business of manufacturing or production of any article or thing and which has opted for the new ax regime under Section 115BA

Total Income	Up to Rs.1cr	Rs.1 cr to Rs.10 cr	Above Rs.10 cr	MAT Provisions
Rate of tax	25%	25%	25%	**NA**
Surcharge	-	7%	12%	
HEC	4%	4%	4%	
Effective Tax Rate	**26%**	**27.82%**	**29.12%**	

Notes:

1. Companies opting for the special tax regime u/s.115BA are not eligible for certain specified deductions as specified under that section.

2. MAT provisions are not applicable to companies opting for the special tax regime u/s.115BA. Such companies cannot avail MAT credit against their tax liability.

C. For New Domestic Manufacturing Companies (which has been set-up and registered on or after 1st October, 2019 and has commenced manufacturing or production of an article or thing on or before 31st March, 2024) and other Domestic Companies opting for special tax regime u/s. 115BAB and 115BAA respectively, subject to prescribed terms and conditions :

Particulars	Certain New Domestic Manufacturing Companies including electricity generation [Section 115BAB]	Other Certain Domestic Companies Section 115BAA	Applicability of MAT Provisions
Rate of tax	15%	22%	**NA**
Surcharge	10%	10%	
HEC	4%	4%	
Effective Tax Rate	**17.16%**	**25.17%**	

Notes:

1. Companies opting for the special tax regime u/s.115BAA and 115BAB are not eligible for certain specified deductions as specified under respective sections.

2. **MAT provisions are not applicable to companies opting for the special tax regime u/s. 115BAA and 115BAB. Such companies cannot avail MAT credit against their tax liability.**

D. For Foreign Companies

Total Income	Up to Rs.1cr	Rs.1 cr to Rs.10 cr	Above Rs.10 cr
Rate of tax	40%	40%	40%
Surcharge	-	2%	5%
HEC	4%	4%	4%
Effective Rate	**41.06%**	**42.432%**	**43.68%**

E. Minimum Alternate Tax (MAT) on Companies

Type of Company	Domestic Companies (other than those opting for special tax regime u/s. 115BA, 115BAA and 115BAB)			Foreign Companies		
Total Income	**Up to Rs.1 cr**	**Rs.1 cr to Rs.10 cr**	**Above Rs.10 cr**	**Up to Rs.1 cr**	**Rs.1 cr to Rs.10 cr**	**Above Rs.10 cr**
Rate of tax	15%	15%	15%	15%	15%	15%
Surcharge	-	7%	12%	-	2%	5%
HEC	4%	4%	4%	4%	4%	4%
Effective Tax Rate	**15.60%**	**16.69%**	**17.47%**	**15.60%**	**15.91%**	**16.38%**

F. Tax on buy-back of shares by Indian Companies

Particulars	F. Y. 2023-24	
	Tax Rate with Surcharge	Rate of Surcharge
(A) Buyback of shares by unlisted Domestic Companies u/s.115QA	23.27%	12%
(B) Buyback of shares by listed Domestic Companies made after 5th July, 2019 u/s.115QA	23.27%	12%

1.3 EFFECTIVE TAX RATES FOR CO-OPERATIVE SOCIETIES

A. For Co-operative Society (Existing Regime)

Income Slab	Effective Tax Rate	Surcharge	HEC
Up to Rs.10,000	10.40%	Nil	4%
Rs.10,001 to Rs.20,000	20.80%	Nil	
Rs.20,001 to Rs.1,00,00,000	31.20%	Nil	
Rs.1,00,00,001 to Rs.10,00,00,000	33.384%	7%	
Above Rs.10,00,00,001	34.944%	12%	

B. For Co-operative Society which has opted for optional tax regime u/s.115BAD

Particulars	Rate of Tax	Applicability of AMT Provisions
Rate of Tax	22%	Not Applicable
Surcharge thereon	10%	
Health and Education Cess	4%	
Effective Tax Rate	**25.168%**	

Notes :

1. Co-operative Societies opting for the special tax regime u/s.115BAD are not eligible for certain specified deductions as specified under the section.

2. AMT provisions are not applicable to co-operative societies opting for the special tax regime u/s.115BAD. Such societies cannot avail AMT credit against their tax liability.

C. For certain new Manufacturing Co-operative Society u/s.115BAE subject to compliance with specified conditions

Particulars	Rate of Tax
Rate of Tax	15%
Surcharge thereon	10%
HEC	4%
Effective Tax Rate	**17.16%**

1.4 EFFECTIVE TAX RATES FOR OTHER ASSESSEES (INCLUSIVE OF SURCHARGE & HEC)

Particulars	Threshold Limit for Surcharge	F. Y. 2023-24		
		Tax Rate without Surcharge	Tax Rate with Surcharge	Rate of Surcharge
Partnership Firm / LLPs And Local Authority	Up to Rs.1 Crore	31.20%	NA	Nil
	Above Rs.1 Crore	NA	34.94%	12%

1.5 ALTERNATE MINIMUM TAX ("AMT") RATES FOR NON CORPORATE ASSESSEES (INCLUSIVE OF SURCHARGE & HEC) UNDER THE OLD TAX REGIME

Particulars	Threshold Limit for Surcharge	F. Y. 2023-24		
		Tax Rate without Surcharge	Tax Rate with Surcharge	Rate of Surcharge
Partnership Firm, LLP and Local Authority - Alternate Minimum Tax (Basic AMT Rate – 18.50%)	Up to Rs.1 Crore	19.24%	NA	Nil
	Above Rs.1 Crore	NA	21.548%	12%
Co-operative Society – Alternate Minimum Tax (Basic AMT Rate – 15%)	Up to Rs.1 Crore	15.6%	NA	Nil
	Rs.1 Crore to Rs. 10 Crores	NA	16.692%	7%
	Above 10 Crores	NA	17.472%	12%
Individuals, HUFs, AOPs, BOIs and AJPs – Alternate Minimum Tax (Basic AMT Rate – 18.50%)	Rs.50 Lakhs	19.24%	NA	Nil
	Rs.50 Lakhs to Rs.1 Crore	NA	21.164%	10%
	Rs.1 Crore to Rs.2 Crores	NA	22.126%	15%
	Rs.2 Crores to Rs.5 Crores	NA	24.05%	25%
	Rs.5 Crores	NA	26.358%	37%

Notes :

1. For resident co-operative societies and certain new resident manufacturing co-operative societies opting for optional tax regime u/s. 115BAD and 115BAE respectively and Individuals, HUF, AOP, BOI and AJP opting for optional tax regime u/s. 115BAC, the provisions of Section 115JC relating to AMT are not applicable.

2. A co-operative society, an Individual / HUF / AOP / BOI / AJP claiming deduction of an amount equal to 100% of the profits and gains derived from the business of developing and building affordable housing projects u/s. 80-IBA and who have not opted for new tax regime u/s. 115BAD or s. 115BAC respectively, shall still be liable to pay AMT on its book profits at the basic rate of 18.5%. However, if such assesses opts for the new tax regime u/s. 115BAC or s.115BAD, then such assessees shall neither be eligible to claim deduction u/s. 80-IBA nor shall it be liable to pay AMT on its book profits nor shall it be entitled to carry forward and set off its past AMT credit.

1.6 TAX RATES ON CAPITAL GAINS - SECTIONS 10(38), 111A, 112 & 112A

Category of Assessee	Long Term Capital Gains			Short Term Capital Gains	
	On all Assets (other than listed securities)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust		On all Assets (including listed securities, where STT is not paid)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust, where STT is paid
		If STT is paid (Refer No 5 below)	If STT is not paid		
Resident Individuals/ HUFs / AOP / BOI / AJP having taxable income up to Rs.2.50 lakhs	Nil	Nil	Nil	Nil	Nil
Individuals / HUFs / AOP / BOI / AJP having taxable income exceeding Rs.2.50 lakhs (Refer Notes 1, 2 & 3 below)	20% with indexation*	10% with grandfathering	10% without Indexation or 20% with Indexation	Slab Rates Max – 30%	15%
Partnership Firms/ LLPs (Refer Note 2 below)	20% with indexation	10% with grandfathering	10% without Indexation or 20% with Indexation	30%	15%

Category of Assessee	Long Term Capital Gains			Short Term Capital Gains	
	On all Assets (other than listed securities)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust		On all Assets (including listed securities, where STT is not paid)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust, where STT is paid
		If STT is paid (Refer No 5 below)	If STT is not paid		
Companies (Refer Notes 2 below)	20% with indexation	15% (MAT) with grandfathering	10% without Indexation or 20% with Indexation	30%	15%
Co-operative Societies (Refer Note 2 below)	20% with indexation	10% with grandfathering	20% with indexation	30%	15%

Notes:

1. Surcharge for Individuals, HUF, AOP, BOI and AJP will be levied on Total Income based on thresholds as stated in para 1.1 above, which is as high as 37% (under old tax regime) and 25% (under new default tax regime), but the Surcharge on Long Term Capital Gains from all assets, Short Term Capital Gains on the sale of listed equity shares, equity mutual funds, and units of business trust on which STT is paid and dividend income, being restricted to / capped at 15%.

2. Surcharge on Capital Gains tax is applicable for different types of assessees based on the quantum of their Total Income including Capital Gains. The applicable rate of Surcharge for different types of assessees is as mentioned in para 1.1 to 1.4 above.

3. No long term capital gains tax would be levied if the long term capital gains arising or accruing on sale of listed equity shares or units of equity-oriented mutual fund / business trust is up to Rs. 1,00,000/-.

4. The existing "HEC" continues to be @ 4%.

5. With reference to taxation of capital gains, it is pertinent to note that Long Term Capital Loss cannot be set-off against Short Term Capital Gain. However, Short Term Capital Loss can be set-off against Long Term Capital Gain.

* Rate of 20% with Indexation is applicable only to Resident Individual. For Non-resident individual rate is 10% without indexation.

1.7 RATES OF TDS APPLICABLE FOR THE F. Y. 2023-24 DEPENDING UPON THE CATEGORY OF RECIPIENT WITH RESPECT TO THE IMPORTANT PAYMENTS MADE BY THE BUILDERS / DEVELOPERS

		TDS Rates applicable for different categories of Resident Recipient		
Main Section	**Nature of payment**	**Resident Individual/ HUF/AOP/ BOI**	**Resident Company**	**Resident Firm / LLP**
193	**Interest on Debenture issued by a Company** Basic exemption Rs. 5000/-, where the payee is a resident individual or HUF	10%	10%	10%
	Interest on listed Securities / Debentures of a company held in dematerialized form *(Refer Note No. 1 below)*	10%	10%	10%
194	**Dividends** (Basic exemption limit Rs.5,000/-)	10%	10%	10%
194K	**Dividends on Units** (Basic exemption limit Rs.5,000/-)	10%	10%	10%
194A	**Interest other than interest on securities** i.e. Interest on loan etc. (Basic Exemption - Rs.40,000/- (Rs.50,000/- for Senior Citizen w.e.f. 1st April, 2018) where the payer is a Banking Company, Co-op. Society engaged in the business of banking and Post Office; and Basic Exemption – Rs. 5,000/- for all other types of payers)	10%	10%	10%
194C	**Payments to Contractors**			
	(1) In case of Contract/Sub-Contract	1%	2%	2%
	(2) Contractor/Sub-Contractor in Transport Business (provided Transporter furnishes his PAN) (Basic Exemption – Rs.30,000/- per Contract subject to overall limit, of Rs.1,00,000/- per annum per contractor) - Individuals/ HUFs whose total turnover exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of	Nil	Nil	Nil

		TDS Rates applicable for different categories of Resident Recipient		
Main Section	**Nature of payment**	**Resident Individual/ HUF/AOP/ BOI**	**Resident Company**	**Resident Firm / LLP**
	profession would be covered by Section 194C in respect of payments made by them to a resident contractor.			
194M	**Payment by Individual/ HUF to contractors and professionals** (Exemption up to Rs.50,00,000/-) – Applicable even to Individuals/ HUFs whose total turnover does not exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession	5%	5%	5%
194H	**Commission or Brokerage** (Basic Exemption –Rs.15,000/)	5%	5%	5%
194-I	**Rent to Residents** - **Rent on Plant, Machinery and Equipment** (Basic Exemption- Rs.2,40,000/- per person) - **Rent for Land & Building or Furniture or Fittings** (Basic Exemption- Rs.2,40,000/- per person)	2% 10%	2% 10%	2% 10%
194-IB	**Rent payable by Individuals/ HUFs for use of Land or Building in excess of Rs.50,000/- per month or part of the month** – Applicable to Individuals/ HUFs whose total turnover does not exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession	5%	5%	5%
194-IA	**Consideration for transfer of immovable property (other than agricultural land)** (Basic exemption - Rs.50 lakh) Applies to person other than the person referred to in Section 194LA. TDS is required to be deducted on higher of the Stamp Duty Value or the Transaction Value. *(Refer Note No. 2 below)*	1%	1%	1%
194-IC	Monetary consideration payable by Developer to the Land owner being Individual / HUF in addition to non-	10%	-	-

		TDS Rates applicable for different categories of Resident Recipient		
Main Section	**Nature of payment**	**Resident Individual/ HUF/AOP/ BOI**	**Resident Company**	**Resident Firm / LLP**
	monetary consideration in the form of constructed area under a specified agreement as defined in Section 45(5A), such as Joint Development Agreement / **Society Redevelopment Agreement**			
194LA	**Payment of compensation/ consideration on compulsory acquisition of certain immovable property, other than compensation/ consideration which is exempt u/s.96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 pursuant to an award or agreement** (Basic Exemption - Rs. 2,50,000/-)	10%	10%	10%
194J	**Fees for technical services / royalty** (Basic Exemption - Rs. 30,000/- per person, per annum)	2%	2%	2%
194J	**Fees for other professional services** (Basic Exemption - Rs. 30,000/- per person, per annum) – Individuals/ HUFs whose total turnover exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession would be covered by Section 194J in respect of payments made by them of professional fees.	10%	10%	10%
194J	Remuneration (not in the nature of salary), fees or commission to Directors (w. e. f. 1st July, 2012)	10%	-	-
194N	Cash payments by banks and post office in excess of Rs 1 Crore in a financial year, where the recipient is a filer of return of income. In case of payment to a co-operative society, the	2%	2%	2%

			TDS Rates applicable for different categories of Resident Recipient		
Main Section	**Nature of payment**		**Resident Individual/ HUF/AOP/ BOI**	**Resident Company**	**Resident Firm / LLP**
	threshold limit is Rs.3 Crores instead of Rs.1 Crore. *(Refer Note No. 3 below)*				
	Cash payments by banks and post office in a financial year, where the recipient is a non-filer of return of income :				
	(i)	Cash payments in a financial year up to Rs.20 Lakhs	NIL	NIL	NIL
	(ii)	Cash payments in a financial year between Rs.20,00,001/- to Rs. 1 Crore	2%	2%	2%
	(iii)	Cash payments in a financial year in excess of Rs.1 Crore	5%	5%	5%
194LBA	Distribution by a Business Trust to its resident unit-holders of any interest or dividend or any income received from renting or leasing or letting out any real estate asset owned directly by it.		10%	10%	10%
194LBB	Income payable to a unit holder in respect of specified units of an Investment Fund		10%	10%	10%
194LBC	Income payable to a resident investor in respect of an investment in securitization trust		25% for Individual & HUF and 30% for AOP / BOI	30%	30%
194R	Benefit or perquisite, "*whether in cash or in kind or partly in cash and partly in kind*" and whether convertible into money or not, arising from business or the exercise of profession, provided by a resident assessee (Basic Exemption – Rs.20,000/-) *(Refer Note No. 4 below)*		10%	10%	10%

TDS RATES APPLICABLE TO PAYMENTS MADE TO NON-RESIDENTS

The rates of TDS applicable to payments made to non-residents relevant to the real estate sector, during the period 1st April, 2023 till 31st March, 2024 are tabulated hereunder :

Main Section	Nature of Payment	TDS Rates for different categories of Non-Resident Recipient	
195	**Payment of consideration exceeding Rs. 1 Crore by any transferee to a non-resident transferor towards purchase of any immovable property situated in India :**	**Non-Resident / Non Corporate Person (including surcharge)**	**Foreign Company (including surcharge)**
	Immovable Property held by the non-resident transferor for a period exceeding 24 months	23.92%	21.84%
	Immovable Property held by the non-resident transferor for a period up to 24 months	35.88%	43.68%
195	**Dividends** *(Refer Note No. 5 below)*	20% or rate prescribed in DTAA, whichever is less*	20% or rate prescribed in DTAA, whichever is less*
194LBA	**Distribution by a Business Trust to its non-resident unit-holders (not being a company) or a foreign company of -**	**Non-Resident (not being a company)***	**Foreign Company***
	Income being in the nature of interest income	5%	5%
	Income being in the nature of dividend income	10%	10%
	Income being in the nature of rent from renting or leasing or letting out any real estate asset owned directly by it	30%	30%
194LB	Interest payments by an Infrastructure Debt Fund	5%	5%
194LBB	Income payable to a unit holder in respect of specified units of an Investment Fund	30%	30%
194LBC	Income payable to a non-resident investor in respect of an investment in securitization trust	30%	30%
194LC	Interest payable to a non-resident by a specified company or a business trust (i) in respect of monies borrowed by it in foreign currency from a source outside India subject to certain conditions; and (ii) to the extent to which interest does not exceed the amount of interest calculated at the rate approved by the Central Government.	4%	4%

* Subject to applicable Surcharge and HEC.

Notes:

1. **TDS on Listed Securities / Debentures held in Dematerialised Form**

   Section 193 has been amended by the Finance Act to provide for deduction of tax at source in respect of payment of interest on securities / debentures which are held in dematerialized form and are listed on a recognised stock exchange in India. This amendment will take effect from 1st April, 2023 and accordingly apply to interest payments on listed securities / debentures made on or after 1st April, 2023.

2. **TDS on consideration for transfer of immovable property (other than agricultural land) [Section 194-IA]**

   With effect from 1st September, 2019, the term "consideration for immovable property" to include all charges in the nature of club membership fees, car parking fees, electricity and water facility fees, maintenance fees, advance fees or any other charges of similar nature, which are incidental to transfer of the immovable property.

   It is pertinent to note that with effect from 1st April, 2022, TDS on transfer of immovable property (other than agricultural land) is required to be deducted on higher of the SDV or the Transaction Value. The SDV may include non-monetary consideration also. However, TDS is to be deducted only on monetary consideration which is clearly borne out by the wordings of the Section and which is the intention of the legislature at the time of its introduction in the statute book. This position of law cannot be changed by the provision that TDS is to be deducted on SDV or Transaction Value whichever is higher viz. indirectly the TDS is also deductible on the non-monetary consideration. So on harmonious interpretation TDS is to be deducted only on the monetary consideration. But if the SDV is more by 15%, then the TDS amount pro-rata also increases by 15%.

3. **TDS on cash withdrawals [Section 194N]**

   Section 194N has been amended by the Finance Act to increase the threshold limit from Rs.1 Crore to Rs.3 Crore in case where the recipient is a co-operative society. This amendment will take effect from 1st April, 2023 and accordingly apply to cash withdrawals made by a co-operative society on or after 1st April, 2023.

4. **TDS on Benefit or Perquisite [Section 194R]**

   Section 194R is amended by the Finance Act by insertion of an Explanation to clarify that the TDS provisions u/s.194R would apply to any benefit or perquisite, whether in cash or in kind or partly in cash and partly in kind, arising from business or exercise of profession by a resident. This is in addition to the applicability of TDS

provisions u/s.194R to any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession by a resident.

This amendment will take effect from 1st April, 2023.

5. **Rate of TDS on dividend distributed to a Non-resident or Foreign Company [Section 195]**

With effect from 1st April, 2020, domestic companies distributing dividends to its non-resident shareholders are required to deduct tax at source @ 20%. However, where dividend income of a non-resident person is chargeable to tax at the reduced rate as per the provisions of DTAA, then tax shall be deducted at a rate provided under DTAA.

6. **Time of deduction of tax**

Except in case of salary (wherein tax is to be deducted at the time of payment), tax is to be deducted at the time of payment or credit, whichever is earlier.

7. **Time of deposit of tax**

All sums deducted at source shall be deposited with the government within 7 days from the end of the month in which the deduction is made and where payment is made under Section 194-IA (i.e. TDS on Purchase of Immovable Property) or Section 194-IB (Rent), the amount shall be deposit within 30 days from the end of the month in which it was deducted. However, where the amount is credited or paid to the account of the payee in the month of March, the tax is required to be deposited with the government on or before 30 April.

8. **Mode of making payment of Tax**

All companies and other deductors who are liable to tax audit have to make payment of tax by electronic mode. Others can make payment of tax either physically or by electronic mode.

9. **TDS Return**

Person deducting tax is required to file quarterly statements for the quarter ending on 30 June, 30 September, 31 December and 31 March in each financial year, in Form 26Q (Form 24Q for Salary) along with Form 27A, on or before 31 July, 31 October, 31 January, and 31 May respectively. Form 26Q and Form 24Q are to be filed electronically. Form 27A is to be filed in physical form.

10. **Certificate for tax deduction in case of non-salary payments**

TDS Certificate in Form 16A is required to be issued on quarterly basis within 15 days from the due date of furnishing the statement of TDS i.e. on or before 15 August, 15 November, 15 February and

15 June for quarters ended 30 June, 30 September, 31 December and 31 March respectively.

11. **Certificate for tax deduction in case of salary payments**

TDS Certificate in Form 16 is required to be issued on annual basis by 31 May of the financial year immediately following the financial year in which the income was paid and tax deducted.

12. **Higher TDS rate of 20% for not furnishing PAN**

In case the payee does furnish his / her / its PAN to the payer, tax shall be deducted at higher of the rates specified in the relevant provisions of the Act or at the rates in force or 20%.

13. **Liability of Individual or HUF to deduct tax at source**

An Individual or HUF *per se* are not liable to deduct tax at source. However, the liability to deduct TDS will arise on Individuals and HUFs in case of Salary payments u/s. 192, Interest other than securities u/s. 194A, payments to contractors u/s.194-C, payment of commission or brokerage u/s. 194H, rent payments u/s.194-I, consideration payable for transfer of an immovable property u/s. 194-IA, rent payable for use of land and building u/s. 194-IB, fees for professional or technical services u/s. 194J and payments to contractors and professionals u/s. 194M, if their turnover exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession.

This means that businesses, which are not liable to tax audit owing to having turnover less than Rs. 10 Crore, will also be required to deduct tax at source if the turnover exceeds Rs. 1 Crore.

14. **Consequence for delay in deposit of tax at source**

As per the provisions of Section 201(1A), in case of delay in deposit of tax at source, the assessee shall be liable to pay interest @ 1% per month from the date the tax was deductible to the date on which tax is deducted and @ 1.5% per month from the date of tax deduction till the date of tax payment to the Government.

15. **No Penalty in certain cases**

As per the provisions of Section 201 read with Section 201(1A), any person who fails to deduct the whole or any part of the tax at source on the sum **paid to a resident** or on the sum credited to the account **of the resident**, shall not be deemed to be an assessee in default in respect of such tax if the resident-payee:

(a) Has furnished his return of income under Section 139;

(b) Has taken into account such sum for computing income in such return of income; and

(c) Has paid tax due on the income declared by him in such return of income, and the resident-payee furnishes a certificate to this effect from a chartered accountant in the prescribed form. Accordingly, no penalty shall be leviable on such person under Section 221. However, such person shall still be liable to pay interest under Section 201(1A).

(d) Furthermore, if any person does not deduct the whole or any part of the tax at source or after deducting fails to pay the tax, he shall be liable to pay simple interest under Section 201(1A) as specified in Para 15 above.

16. The Special Court of Economic Offence, Bengaluru in case of ***Income Tax Department TDS Ward – 1(3), Bengaluru vs M/s Geodesic Techniques Pvt Ltd and Others*** has held that if TDS is deposited late along with interest and penalty with the government department, then no prosecution can be initiated u/s. 276B.

2. AMENDMENTS RELATING TO SOCIETY REDEVELOPMENT

2.1 Defining cost of acquisition in case of certain assets for computing capital gains – Section 55

Background

(a) Section 55 defines the 'cost of acquisition' and 'cost of improvement' for the purposes of computing capital gains. In relation to specified self-generated capital assets, their cost of acquisition and cost of improvement are taken as 'Nil'.

(b) However, there are certain assets like intangible assets or any sort of right for which no consideration has been paid for acquisition. In the absence of a specific provision providing that their cost of acquisition to be nil, the chargeability of capital gains from the transfer of such assets has been litigated.

The Hon'ble Supreme Court in ***CIT vs. B.C. Srinivasa Setty, [1981] 128 ITR 294 (SC)*** held that if the asset does not have any ascertainable cost, the computation mechanism fails and hence no capital gains can be computed. Hence, on transfer of an asset which has no cost of acquisition or which has no ascertainable cost, the charge of capital gains would fail and therefore there would not be any liability to capital gains tax.

Based on ratio of this decision of Srinivasa Setty, the Hon'ble Bombay High Court in the case of ***Maheshwar Prakash-2 Co-op Hsg. Society Ltd. v. ITO 24 SOT 366 (Mum)*** and ***Sambhaji Nagar Co-operative Housing Society Ltd. [ITA No. 1356 of 2012]*** held that on sale of self-generating FSI rights in the case of redevelopment of a housing society, there would be no liability to capital gains.

Amendment

(a) Section 55(1)(b)(1) and Section 55(2)(a) are amended to define the term cost of improvement and cost of acquisition of a capital asset being 'any other intangible asset' or 'any other right' as 'Nil' Thus, the cost of improvement and cost of acquisition of "any other intangible asset" or "any other right" is now treated similar to goodwill and other specified assets.

Our Comment

(a) The amendment has widened the scope of taxation of capital gains by encompassing within its ambit gains arising on transfer of any intangible asset or any other right, which earlier was tax-free due to having no cost of acquisition. Thus, the FSI rights or TDR rights to which the society has got entitled, due to the government policy or change in the Development Control Regulations and which did not have any cost of acquisition in the hands of the society will now be taxed in the hands of the society upon its transfer under society redevelopment arrangement and its cost of acquisition will be deemed to be 'Nil'.

(b) If the land rights (FSI, TDR, etc.) are held to be tangible rights, then proportionate amount of land cost / 2001 SDV will become attributable to such land rights and the same shall be deductible in computing capital gains upon its transfer. However, if the land rights are held to be intangible rights, then as per the amended provisions as discussed above, their 'cost of acquisition' and the 'cost of improvement' will be deemed to be 'Nil'.

2.2 **Mode of receipt of consideration vis-à-vis taxability of Joint Development Agreements & Society Redevelopment Agreements - Section 45(5A)**

Background and Amendment

(a) Section 45(5A) provides that the full value of consideration received or accruing as a result of transfer of a capital asset being land or building or both, under a specified agreement as defined in the Explanation thereto shall be the stamp duty value of his share, being land or building or both in the project, on the date of issuance of completion certificate as increased by the **consideration received in cash**, if any.

(b) It was noticed that the taxpayers were taking a stand that any amount of consideration which is received in a mode other than cash, i.e., by way of cheque or electronic payment modes would not be included in the consideration for the purpose of computing capital gains chargeable to tax under section 45(5A), as Section 45(5A) only referred to consideration received in 'cash'.

(c) In order to rectify the drafting mistake, Section 45(5A) has been amended so as to provide that the full value of consideration shall be taken as the stamp duty value of his share as increased by any consideration received in cash or by cheque or draft or any other mode.

Our Comment

(a) Under Section 194-IC, TDS is deductible only on the monetary consideration and not on non-monetary consideration or consideration in kind.

(b) In the case of society redevelopment, TDS @ 10% is deductible under Section 194-IC on the corpus money paid to the society, hardship compensation, rent compensation, brokerage, shifting allowance and other cash consideration paid to the society members.

3. AMENDMENTS RELATED TO TRANSACTIONS IN IMMOVABLE PROPERTIES

3.1 Limiting the roll over benefit of Capital Gains exemption claimed under Section 54

Background

Section 54 provides an exemption from capital gains arising to an Individual or HUF on the transfer of a long term capital asset, being residential house, if such capital gain is invested in purchasing one residential house within a period of one year before or two years after the date on which the transfer took place or construction of one residential house within a period of three years after the date of transfer.

Amendment

(a) A Proviso has been inserted in sub-section (1) of Section 54 to restrict the capital gains exemption on reinvestment in new residential house to Rs. 10 Crore.

(b) Furthermore, Section 54(2) dealing with deposit of capital gains in the Capital Gains Account Scheme, is amended to provide that for the purposes of deposit in the Capital Gains Account Scheme, capital gains in excess of Rs. 10 Crore shall not be taken into account for the purpose of Section 54(2). In other words, the assessee is not required to deposit taxable amount of capital gains in excess of Rs.10 Crores.

Our Comments

(a) By the aforesaid amendment, capital gains exemption under Section 54 will now be restricted up to Rs. 10 Crore per year.

(b) The amended provisions of Section 54 will apply only in respect of transfer of flats happening on or after 1st April, 2023. If the transfer is completed before 31st March, 2023 then this limit will not apply although the investment in new residential house may be done in the current year.

(c) Assessees deriving income by way of long term capital gains on transfer of a residential house and intending to appropriate or invest such capital gains in a luxury residential house need to carefully plan the transfer of his existing residential house.

(d) The aforesaid amendment to Section 54 is explained by way of following illustration:

(Rs. in Crores)

Particulars	Existing Provisions	Amended Provisions	
		Scenario I	Scenario II
Consideration on transfer of a residential house property	50	50	50
Less : Indexed cost of acquisition	(-) 30	(-) 30	(-) 30
Capital Gains	20	20	20
Cost of investment in new residential house	40	15	9
Cost of new residential house to be considered for exemption u/s. 54	40	10	9
Less : Exemption u/s.54	20	10	9
Capital Gains chargeable to tax	Nil	10	11

3.2 Limiting the roll over benefit of Capital Gains exemption claimed under Section 54F

Background

(a) Section 54F provides an exemption from capital gains arising to an Individual or HUF on the transfer of a long term capital asset other than a residential house, if the net consideration is invested in purchasing one residential house (the "new asset") within a period of one year before or two years after the date on which the transfer took place or construction of one residential house within a period of three years after the date of transfer.

(b) If the cost of the new asset is equal to or more than the net consideration, then the entire capital gains is exempt. However, if the cost of the new asset is less than the net consideration, then proportionate amount of capital gains is exempt. The following illustration enumerates the existing exemption provisions of Section 54F:

(Rs. in Crores)

Particulars			
	Scenario I	**Scenario II**	**Scenario III**
Net consideration on transfer of a capital asset, other than a residential house	50	50	50
Less : Indexed cost of acquisition	(-) 30	(-) 30	(-) 30
Capital Gains	20	20	20
Cost of investment in new asset	50	40	55
Cost of investment in new asset as a percentage of net consideration	100%	80%	110%
Exemption u/s. 54F	20	16	20
Capital Gains chargeable to tax	Nil	12	Nil

Amendment

(a) A Proviso has been inserted in sub-section (1) of Section 54F to restrict the cost of the new asset to Rs.10 Crore. In other words, the eligible amount of reinvestment in a new residential house is capped at / restricted to Rs. 10 Crore for the purpose of claiming capital gains exemption under Section 54F.

(b) Furthermore, Section 54F(4) dealing with deposit of net consideration in the Capital Gains Account Scheme, is amended to provide that for the purposes of deposit in the Capital Gains Account Scheme, capital gains or the net consideration in excess of Rs. 10 crores shall not be required to be deposited into the Capital Gains Account Scheme.

This amendment is applicable w.e.f.1st April, 2023 and onwards.

Our Comments

(a) The amendment to Section 54F is explained by way of following illustration:

(Rs. in Crores)

Particulars	Amended Provision		
	Scenario I	**Scenario II**	**Scenario III**
Net consideration on transfer of a capital asset, other than a residential house	10	50	20
Less : Indexed cost of acquisition	(-) 3	(-) 30	(-) 10
Capital Gains	7	20	10
Cost of investment in new asset	12	50	20

Particulars	Amended Provision		
	Scenario I	Scenario II	Scenario III
Cost of investment in new asset to be restricted to Rs.10 crore as per second proviso to Section 54F	10	10	10
Restricted cost of investment in new asset as a percentage of net consideration	100%	20%	50%
Cost of new asset eligible for exemption u/s. 54F viz. Exemption u/s. 54F	7	4	5
Capital Gains chargeable to tax	NIL	16	5

(b) From the above analysis of the amended provisions of Section 54F, the following analogy can be drawn therefrom:

(i) By restricting the eligible cost of reinvestment in new asset to Rs.10 Crore, the capital gains exemption under Section 54F is maximum up to Rs.10 Crore. Ideally, the capital gains exemption under Section 54F should have been restricted to Rs.10 Crore and not the eligible cost of investment of the new asset.

(ii) The more the amount of net consideration, the lesser will be the amount of exemption available under Section 54F and vice-versa.

(iii) If the capital gains is less than Rs. 10 Crore, then the entire capital gains will be exempt under Section 54F, provided the cost of the new asset is equal to or more then the net consideration accruing or arising as a result of transfer of the capital asset.

(iv) If the capital gains is more than Rs. 10 Crore, then proportionate amount of capital gains will be exempt under Section 54F, such proportion to be calculated as cost of new asset being restricted to Rs. 10 Crore divided by the net consideration accruing or arising as a result of transfer of the capital asset.

(v) For Shares : Claim only in respect of shares having higher percentage of capital gains to maximise capital gains exemption under Section 54F. Practically, one can never exhaust the full available limit of 10 Crores.

(c) Assessees deriving income by way of long term capital gains on transfer of any capital asset and intending to appropriate or invest the net consideration in a luxury residential house need to carefully plan the transfer of his capital assets.

(d) The amended provisions of Section 54F will apply only in respect of transfer of shares/ other capital assets (other than residential house property) made on or after 1st April, 2023. If the transfer is completed before 31st March, 2023 then this limit will not apply although the investment in new residential house may be done in the current year.

(e) An assessee can take the benefit of both section 54 as well as section 54F. Thus, husband and wife together can take the benefit under Section 54 and 54F to Rs. 40 Crores (maximum).

3.3 Prevention of double deduction of interest on borrowed capital on house property – Section 48

Background

Under the existing provisions of the Act, the amount of any interest payable on borrowed capital for acquiring and/ or reconstruction of a house property is allowed as a deduction under the head "Income from house property" under Section 24. In addition, a deduction of this interest is also claimed under the provisions of Chapter VIA. Furthermore, interest paid on borrowed capital for acquiring and/ or reconstruction of a house property is capitalised and while computing the capital gains on transfer of the house property, a deduction of such interest is claimed under Section 48 as being part of 'cost of acquisition' or 'cost of improvement'.

Thus, this leads to multiple deduction of the same interest

Amendment

In order to prevent double deduction, a proviso has been inserted after clause (ii) of Section 48 so as to provide that for the purposes of computing capital gains on transfer of a house property, the 'cost of acquisition' or 'cost of improvement' shall not include the amount of interest claimed as a deduction under Section 24 or under Chapter VIA.

3.4 Grant of TDS Credit in certain cases and interest on refund – Section 244A

Background

Presently, in cases where income has been disclosed in any assessment year and TDS on such income is deducted in a subsequent financial year by the payee, then is such cases TDS credit was not available to the assessee, which lead to litigation and loss of money by way of TDS mismatch.

Amendment

Section 244A has been amended so as to provide that where any income has been included in any assessment year and TDS on such income is deducted and paid in a subsequent financial year, the AO, on an application

made by the assessee in prescribed form under Section 155(20), shall grant credit of such TDS in the relevant assessment year by amending the order of assessment or intimation, within two years from the end of the financial year in which such tax was deducted.

Where a refund arises as a result of an order passed by the AO in consequence of an application made by the assessee as referred above, interest under Section 244A shall be computed at 0.5% for every month or part of a month from the date of such application, till the date on which refund is granted.

Our Comments

(a) A real estate developer is required to follow percentage completion of accounting in view of ICAI Guidance on Real Estate and draft ICDs, whereunder the income from the development activity is offered by the developer in Year 2, whereas the TDS is deducted by the purchaser of the flat in earlier years. This leads to timing difference of income offered to tax and TDS deducted by the purchaser and hence the difficulty by the developer in claiming credit of the TDS deducted.

(b) Furthermore, professionals generally follow cash system of accounting whereunder the client books the invoice in its books of account in say Year 1 on accrual basis and deducts TDS and pays the same to the government. However, the professional books the income only on receipt basis in Year 2 and claims the TDS credit in its return of income in Year 2. This method again leads to timing difference of income offered to tax by the professional in Year 2 whereas the TDS was deducted by the client in Year 1.

(c) This is a welcome move by the Government, specifically for real estate sector and professionals enabling such assessees to claim credit of the TDS in the year in which the income relating thereto is offered for tax, even though the TDS was deducted in subsequent year.

These amendments are applicable with effect from 1st October, 2023.

4. PROFIT AND GAINS FROM BUSINESS OR PROFESSION

4.1 Increase in threshold limit for business and specified professions under presumptive taxation – Sections 44AD, 44ADA

Background and Amendment

(a) Under the existing provisions of presumptive taxation for eligible business and specified professions, an assessee being an individual, HUF or a partnership firm having turnover or gross receipts below the specified threshold limit, and offer profits @ 6% / 8% in case of businesses under Section 44AD and 50% in case of specified professions under Section 44ADA or any higher rate so earned, is not

required to maintain books of account under Section 44AA, and is also not required to get its books of account audited under Section 44AB.

(b) This threshold limit is now enhanced as under:

Applicability	Existing threshold limit	New threshold limit
Eligible Business as per Section 44AD	Rs.2 Crore	Rs.3 Crore
Specified Professions as per Section 44ADA	Rs.50 Lakh	Rs.75 Lakh

(c) These enhanced limits will apply only in those cases where the aggregate cash receipts do not exceed 5% of the total turnover or gross receipts during the year. Any amount received through a cheque which is not 'account payee' shall be considered as cash receipt for this purpose.

(d) Consequently, the first proviso of Section 44AB is substituted to provide that the tax audit section shall not apply to persons who declare profits and gains in accordance with the provisions of Sections 44AD(1) and 44ADA(1).

Our Comment

(a) Though the threshold limits under presumptive taxation have been increased, there is no revision or increase in the threshold tax audit limits under Section 44AB which continue to be as under :

Applicability		Existing threshold limit
Person carrying on business, if his total sales, turnover or gross receipts in business exceed the threshold limits :		
(i)	If the aggregate of all amounts received during the previous year, in cash, does not exceed 5% of the said amount; and aggregate of all payments made (including amount incurred for expenditure) during the previous year, in cash, does not exceed 5% of the said payment;	Rs.5 Crore
(ii)	In any other case	Rs.1 Crore
Person carrying on profession, if his gross receipts exceed the threshold limit		Rs.50 Lakh

4.2 Taxability of benefits and perquisites — Sections 28(iv) and 194R

Background

(a) Section 28 lists various types of incomes which are chargeable to income-tax under the head 'Profits and gains of business or profession'. Section 28(iv) provides that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession shall be chargeable to income-tax.

(b) Section 194R which was introduced by the Finance Act 2022 provides for a deduction of tax at source in case of a resident @ 10% on the value of any benefit or perquisite, whether convertible into money or not, arising from business or profession, if the value of such benefit or perquisite during the financial year exceeds Rs.20,000/-.

(c) The CBDT has issued Circular No. 12 of 2022 dated 16th June, 2022 (F. No. 370142/27/2022-TPL) and Circular No. 18 of 2022 dated 13th September, 2022 (F. No. 370142/27/2022-TPL) laying down guidelines on applicability of Section 194R relating to TDS on benefit or perquisite, whether convertible into money or not, arising from business or exercise of a profession. These circulars enumerates various examples stating the applicability or otherwise of the provisions of Section 194R.

Amendment

(a) Section 28(iv) has been amended to also include within its scope the benefit or perquisite derived in cash or in kind or partly in cash and partly in kind.

(b) Similarly, the expanded scope has also been included in Section 194R for the purpose of deduction of tax at source on the value of any benefit or perquisite arising from business or exercise of a profession.

The amendment to Section 28 is applicable with effect from Assessment Year 2024-25 and provision of Section 194R is applicable with effect from 1st April, 2023.

4.3 Deduction of certain amounts only on actual payment — Section 43B

Background and Amendment

(a) Section 43B provides for deduction of certain expenditure only on actual payment basis. Section 43B(da) provides for deduction of interest payable on any loan or borrowing from a deposit taking NBFC or systematically important non-deposit taking NBFC.

Section 43B(da) has been amended to make it applicable only to notified class of NBFCs.

(b) Furthermore, the scope of Section 43B has been widened by insertion of a new sub-section (i) so as to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in Section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction only in the year in which actual payment is made. The time limit prescribed by the MSMED Act, is up to 45 days if the supplier/ service provider has an agreement with the assessee, and in the absence of an agreement, the time limit is up to 15 days.

(c) The relaxation of payment being made up to the due date of filing return under Section 139(1) is not available to sums paid to micro or small enterprises.

5. CAPITAL GAINS

5.1 Income from transfer of Market Linked Debenture and Debt Mutual Funds to be taxable as short term capital gains – Section 50AA

Background

(a) Market Linked Debentures ("MLD") are debt instruments, regulated by SEBI, and usually listed, whose returns are linked to the performance of an underlying index or security in the market like Nifty, Sensex, Gold Index, Government Security etc. When the underlying index or security does well, the return on MLDs will be high and vice-versa. MLDs are usually issued with a maturity of more than one year. MLD is not defined under the Act.

(b) The modus operandi of an MLD can be understood with the help of an example. Say, a company PQR Limited issues a MLD that carries a coupon rate of 8%, and having a maturity of 14 months.

This MLD is linked to market conditions, such that the investor gets the offered coupon rate of 8% only if the BSE Sensex does not fall by 25% at the end of the tenure of such MLD.

(c) MLDs usually come at a face value of Rs 10 lakh each, so these are usually tailor-made for HNIs and Corporates.

(d) Some of the big financial institutions which have offered MLDs in India are Reliance Capital Ltd, Kotak Mahindra Investment Ltd, Motilal Oswal Home Finance Ltd, L&T Infrastructure Finance Company Ltd, Axis Finance Ltd etc.

Existing Taxation Provisions in respect of MLDs

(e) Section 2(42A) stipulates the holding period of 12 months only in order that the gain arising on transfer of MLD is treated as long term capital gains and not 36 months as is the case for unlisted securities.

(f) The long-term capital gain on listed debt security with holding period of one year is taxable @ 10% (without indexation) plus applicable

surcharge, whereas the short-term capital gain is taxable at the applicable slab rate of the investor.

Thus, the gain arising on transfer of a listed MLD after a period of one year but before its maturity period, is currently being treated as long term capital gain, and is subject to the applicable tax rate of 10% plus applicable surcharge, just like any other listed debt security.

(g) Also, by virtue of clause (ix) of proviso to Section 193, any interest income arising on a listed debt security, is currently exempt from the requirement of deduction of tax at source.

(h) On maturity of MLD, the interest component is taxable in the hands of the investor just like any other interest income at the applicable tax slab rate of the investor. There is no tax on the principal sum received.

Existing Taxation Provisions in respect of units of Debt Mutual Fund

(a) In case of units of debt mutual fund, Section 2(42A) stipulates the holding period of 36 months in order that the gain arising on transfer of units of debt mutual fund is treated as long term capital gains.

(b) The long-term capital gain on transfer of units of a debt mutual fund with holding period of three years and above is taxable @ 20% with indexation plus applicable surcharge, whereas the short-term capital gain is taxable at the applicable slab rate of the investor.

Amendment

(a) A new Section 50AA is inserted to deem the capital gains arising from the transfer or redemption or maturity of Market Linked Debentures, irrespective of their holding period, as capital gains arising from the transfer of a short term capital asset, taxable at applicable slab rates.

Furthermore, gains arising on transfer of units of a specified mutual fund viz. debt fund acquired on or after 1st April, 2023 will be taxed as short term capital gains irrespective of the period of holding of such units, as per the applicable slab rates. Consequently no indexation benefit will be available on transfer of such assets.

(d) STT paid will not be allowed as a deduction while computing income chargeable under the head 'capital gains' upon transfer of MLD or units of specified mutual fund.

(c) Explanation to Section 50AA defines "Market Linked Debenture" to mean a security by whatever called, which has an underlying principal component in the form of a debt security and where the returns are linked to the market returns on the underlying securities or indices, and includes any security classified or regulated as a market linked debenture by SEBI.

(d) Explanation to Section 50AA defines "specified mutual fund" to mean a mutual fund by whatever name called, where not more than 35% of its total proceeds is invested in the equity shares of domestic companies.

Our Comments

(a) An assessee holding Market Linked Debentures as on 1st April, 2023 and subsequently transfers such debentures will now be liable to tax at a higher rate as the same shall now be considered as short term capital gains, even though these debentures were held for a period of 24 months or more as against the earlier concessional tax rate of 10%. It is pertinent to note that no grand fathering provisions are applicable to Market Linked Debentures which have been acquired prior to 1st April, 2023 and therefore the aforesaid amendment seems to be unfair.

(b) After the deletion of clause (ix) of the Proviso to Section 193 by the Finance Act, TDS will now have to be deducted @ 10% under Section 193 on the interest component paid to the holder of MLD upon its maturity.

(c) While returns in debt mutual funds have been in line with fixed deposits, they enjoyed additional tax benefit on account of indexation benefit and lower rate of taxation upon their transfer on account of the gain being treated as long term capital gains. Furthermore, unlike fixed deposits, debt mutual funds are taxed on maturity thus postponing of the tax impact. This move will definitely impact the market of debt funds. Thus, there was a tax arbitrage available in investing in units of a debt mutual fund as against investing in a fixed deposit. The pre-tax returns in case of investment in fixed deposit was almost equivalent to the post tax returns in a debt mutual fund, meaning investment in fixed deposit was disadvantageous as compared to investment in units of a debt mutual fund. In the premises aforesaid, the aforesaid amendment will have an adverse impact on investment in units of a debt mutual fund.

5.2 **Conversion of gold into Electronic Gold Receipts (EGR) and vice-versa not to be considered as transfer – Sections 2(42A), 47(viid), 49(10)**

Amendments made

(a) Section 47 provides that certain transactions shall not be regarded as 'transfer' and therefore no capital gains shall arise therefor. A new clause (viid) is inserted in Section 47 to provide that any transfer of a capital asset by way of conversion of physical gold into Electronic Gold Receipt ("EGR") issued by a Vault Manager or vice versa, shall not attract the provisions of Section 45, and consequently, such conversion will not be chargeable to tax under the head 'Capital Gains'.

An Explanation to clause (viid) is proposed to be inserted to provide that the expressions 'Electronic Gold Receipt' and 'Vault Manager' shall be the same as assigned to them in Regulation 2(1)(h) and 2(1)(l) respectively of the Securities and Exchange Board of India (Vault Managers) Regulations, 2021.

(b) Section 49 is amended to provide that the cost of acquisition of EGR shall be deemed to be the cost of physical gold in the hands of the person in whose name EGR is issued. Similarly, cost of physical gold released against an EGR shall be deemed to be the cost of EGR in the hands of such person.

(c) Sub-clause (hi) in Explanation 1(i) to Section 2(42A) is inserted to provide that the period of holding of EGR issued in respect of gold deposited by an assessee shall include the period for which the physical gold was held by him prior to its conversion into EGR. Similarly, the period of holding of gold released in respect of an EGR shall also include the period for which EGR was held by the assessee prior to its conversion into gold.

Our Comment

(a) The proposed amendments are made to promote the concept of holding gold in electronic form by conversion of physical gold into EGR and vice versa by a SEBI registered Vault Manager, rather than holding gold in physical form.

(b) The cost of acquisition of EGR acquired from the market shall be the amount paid for acquisition of the EGR and the period of holding of such EGR shall be from the date from which such EGR was acquired.

6. OTHER AMENDMENTS

6.1 Limiting the exemption of Income from Life Insurance Policies – Section 2(24), 10(10D) and 56(2)(xiii)

Background

Presently, any sum received under life insurance policy including bonus is exempt from tax under Section 10(10D), provided the premium payable during the term of the policy does not exceed 10% of the capital sum assured for policies issued on or after 1st April 2012 and 20% for policies issued prior thereto. In case of ULIP issued on or after 1st February 2021 where the annual premium exceeds Rs.2.50 Lakhs for one or more policy, income is taxable as capital gain.

Amendments

(a) Section 10(10D) is amended to provide that exemption of the maturity proceeds shall not be available to any life insurance policy (other than ULIP for which separate provisions already exists) issued on or after 1st April, 2023 in respect of which premium exceeds Rs. 5 Lakhs in any year during the term of the policy.

(b) In the event, there are multiple policies, exemption of the maturity proceeds will be available only with respect to those policies whose aggregate premium is less than Rs. 5 Lakhs during the term of the policies.

(c) The maturity proceeds which is not exempt under Section 10(10D) will be chargeable to tax under the head 'Income from other sources' under the newly inserted sub-Section 56(2)(xiii). Deduction for the premium paid will be available while computing income under the head 'Income from other sources' at the time of maturity, if such premium has not been claimed as a deduction under chapter VIA.

(d) Method of computation of the income will be prescribed.

(e) The proceeds from these polices received upon the death of the insured person will continue to be exempt. The proceeds from life insurance policies (other than ULIPs) issued before 1st April, 2023 continue to be exempt subject to the specified conditions.

Comment

The CBDT has issued Circular No. 2 of 2022 dated 19th January 2022 providing guidelines under Section 10(10D) in respect of consideration received on maturity of ULIPs. Similar guidelines can be expected for insurance policies issued on or after 1st April 2023.

6.2 Share money received as premium from non-residents – Section 56(2)(viib)

Background

(a) Section 56(2)(viib) provides that where a company, not being a company in which public are substantially interested, receives in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the FMV of such shares, then the aggregate consideration received for such shares as exceeds the FMV of the shares shall be chargeable to income tax in the hands of the company as 'Income from other sources'.

(b) The provisions of Section 56(2)(viib) are not applicable where the consideration for issue of shares is received by a start-up or by a venture capital undertaking from a venture capital company or a venture capital fund or a specified fund.

Amendment

The aforesaid provision is presently not applicable to consideration received from non-resident for issue of shares. In order to widen the scope of this provision, this clause is now made applicable to receipt of any consideration for issue of shares from any person irrespective of his residential status.

6.3 **Income arising outside India being sum received without consideration — Sections 9(1)(viii) and 56(2)(x)**

Background and Amendment

(a) As per the extant provisions of Section 9(1)(viii) read with the provisions of Sections 56(2)(x) and 2(24)(xviia), any sum of money received by a non-resident from a person resident in India without consideration, is deemed to accrue or arise in India and accordingly the non-resident is chargeable to tax under Section 9(1)(viii) under the head 'Income from other sources'.

(b) The provisions of Section 9(1)(viii) are not applicable to a resident but not ordinarily resident. A resident but not ordinarily resident receiving any sum of money from a resident without consideration outside India could contend that such income is outside the scope of Total Income under Section 5 as the same is arising outside India and is also not income deemed to accrue or arise in India and accordingly not taxable in India.

(c) In order to bring within the tax-fold any sum of money received without consideration by a resident but not ordinarily resident from a resident. Section 9(1)(viii) is amended so as to bring such income of a resident but not ordinarily resident also within the Indian tax net.

7. TDS & TCS PROVISIONS

7.1 **TDS on payment of interest on securities - Section 193**

Background

Section 193 provides for TDS on payment of any income to a resident by way of interest on securities. Clause (ix) of the proviso to Section 193 provides that no tax is to be deducted in the case of any interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India. The aforesaid Clause (ix) has been omitted and therefore, TDS will now be deductible on interest on securities which is in dematerialized form and is listed on a recognized stock exchange in India.

This amendment is applicable with effect from 1st April, 2023.

7.2 **Increase in rate of TCS on remittances under LRS — Section 206C(1G)**

Background and Amendments

(a) Section 206C deals with TCS on various transactions and sub-section (1G) includes foreign remittance through LRS and sale of overseas tour package.

(b) The said sub-section is amended vis-à-vis the threshold and the rate of TCS. Furthermore, Section 206C(1G) is amended to omit the word "out of India" thereby increasing the scope of the provisions of Section 206C(1G) to include remittances made under LRS, even within India. Thus, where the remittance is made under LRS to GIFT city, the new rates of 20% will apply instead of 5% and the new thresholds will apply.

(c) The amended sub-section insofar as the rate of TCS and threshold is concerned, reads as follows:

Sr. No.	Type of Remittance	Present rate of TCS	Amended rate of TCS w.e.f. 1st October, 2023
1.	For education purposes, if the amount being remitted is a loan obtained from any financial institution as defined in Section 80E	0.5% of amount or the aggregate of the amounts in excess of Rs.7 Lakhs	No change
2.	For education purposes (other than 1 above) or for medical treatment	5% of amount or the aggregate of the amounts in excess of Rs.7 Lakhs – First proviso to Section 206C(1G)	No change
3.	Overseas tour package	5% without any threshold limit	5% upto Rs.7 Lakhs and 20% thereafter
4.	Any other case	5% of amount or the aggregate of the amounts in excess of Rs.7 Lakhs	Nil upto Rs. 7 Lakhs and 20% above Rs.7 Lakhs

These amendments are applicable with effect from 1st October, 2023 - Reference to Press Release from Ministry of Finance dated 28/06/2023.

* It was earlier proposed that any payments made by an individual using their international debit or credit card up to Rs 7 lakh per financial year will also be included in determining the LRS limits and hence such spending will attract TCS. However, by virtue of a clarification issued by Ministry of Finance dated 19th May, 2023, it is clarified that any payments made by an individual using their international debit or credit card up to Rs 7 lakh per financial year will be excluded from the LRS limits and hence, will not attract any TCS.

7.3 **TCS rate not to exceed 20% in case of non-furnishing of collectee's PAN or non-filer of income-tax return – Sections 206CC and 206CCA**

Background and Amendments

(a) Section 206C deals with TCS on various transactions.

Section 206CC provides for rates of TCS for non-furnishing of PAN of the collectee. Section 206CC provides that in case of non-furnishing of PAN by the collectee, TCS will be collected at twice the rate of TCS specified for that transaction or @ 5%, whichever is higher.

Section 206CCA provides for rates of TCS for non-filers of income tax return. Section 206CCA provides that in case of non-furnishing of PAN by the collectee, TCS will be collected at twice the rate of TCS specified for that transaction or @ 5%, whichever is higher.

(b) The Finance Act has inserted a proviso to Section 206CC(1) and Section 206CCA(1) to provide that the rate of TCS under Section 206C shall not exceed 20% even if the collectee does not furnish his PAN or is a non-filer of income return. The maximum TCS rate is now capped @ 20%.

These amendments are applicable with effect from 1st October, 2023.

8. OTHER IMPORTANT AMENDMENTS

8.1 **Distribution by a Business Trust (REIT & InVIT) to its unit holders - Sections 2(24)(xviic), 56(2)(xii) and 115UA(3)**

Background

(a) Under Section 115UA, a pass-through status is provided to a business trust in respect of interest income, dividend income received by the business trust from a special purpose vehicle in case of both REIT and InVIT and rental income in case of REIT. Such income is taxable in the hands of the unit holder unless specifically exempted. However, in case of distribution made by the business trust to its unit holders which are shown as repayment of debt, the said amount presently does not suffer taxation either in the hands of business trust or in the hands of unit holder.

(b) In order to bring such income to tax in the hands of the unit holder, Section 56(2)(xii) is inserted with retrospective effect as follows.

Amendment

(a) A new sub-section (xii) is inserted in Section 56(2) to provide that "specified sum" received by a unit holder from a business trust during the previous year, with respect to a unit held by him at any time during the previous year, shall be chargeable as the income of the unit holder under the head 'Income from other sources'.

Explanation to Section 56(2)(xii) provides for the manner of computing "specified sum". As per the prescribed formula, "specified sum" = A (–) B (–) C, where –

A = aggregate distributions made to the unit holders and not chargeable to tax under Section 115UA(2). These distributions are interest and dividend under Section 10(23FC) and rent under Section 10(23FCA);

B = Issue price of the unit; and

C = Amounts already charged to tax in any earlier previous year.

If the net figure i.e. A after applying the prescribed formulae results in a negative value, then the specified sum shall be deemed to be zero.

In other words, the cost of acquisition of the unit of the business trust and amounts already charged to tax in any earlier years, is first required to be deducted/ reduced from the specified sum and the balance if any of the specified sum shall become chargeable to tax in the hands of the unit holder under Section 56(2)(xii).

(b) Consequential amendment is made in Section 48 by insertion of a new clause (ii) in Explanation 1 to Section 48 with effect from A. Y. 2024-25 to provide for the reduction of the sum received by a unit holder from a business trust, which is neither chargeable to tax in the hands of the unitholder nor is it chargeable to tax in the hands of business trust, from the cost of acquisition of the units.

(c) Explanation 2 is inserted in clause (ii) of Section 48 with effect from A. Y. 2024-25 to cover a situation where the transaction of transfer of a unit is not considered as transfer under Section 47 and cost of acquisition of such unit is determinable under Section 49. E.g. units of a business trust received by a transferee-company upon amalgamation of a transferor company into the transferee company. It provides that sum received with respect to such unit before such transaction as well as after such transaction shall be reduced from the cost of acquisition. Thus, if an assessee has received unit of business trust under a transaction which is not regarded as 'transfer', say, amalgamation, then the cost of acquisition of such unit shall be reduced by the sum received from the business trust by the transferee-assessee as well as the previous unit holder-transferor provided such sum is not chargeable to tax either in the hands of the assessee-transferee, the previous unitholder-transferor and the business trust.

(d) Consequential amendments have been made to Sections 10(23FE) and 115UA.

Our Comments

(a) Though Explanation 1 and Explanation 2 to Section 48(ii) have been inserted with effect from A. Y. 2024-25, they will have a retrospective effect. It means if a person holds units of a business trust as on 01-04-2023, any sum received from a business trust in respect of such unit on or before 31-03-2023 shall be reduced from the cost of acquisition of such unit if such sum was not chargeable to tax in hands of unit holder or the business trust.

(b) Any sum received (other than dividend/interest from SPV, and rental income from REIT) on or after 01-04-2023 in respect of the units are subject to chargeability provision of Section 56(2)(xii) and will not be reduced from the cost of acquisition even if no taxable income arises in the year of distribution due to the mechanism provided for the computation of the specified sum. Similarly, if the income distributed to a unitholder is not taxable due an exemption provision, it will not be reduced from the cost of acquisition. E.g., sum referred to in Section 56(2)(xii) distributed by a business trust to Abu Dhabi Investment Authority is exempt from tax under Section 10(4E). Such sum shall not be reduced from the cost of acquisition although such distribution is not taxable.

(c) For detailed discussion on the taxation provisions of a business trust and its unit holders, please refer to para 5.2 of our annual Budget Circular 2020 at https://lawpointindia.com/wp-content/uploads/2021/01/Budget-Circular-2020-LP-Website.pdf

8.2 Provisions to give effect to orders of tribunal or court in business reorganisation - Section 170A

Background

(a) Section 170A was inserted *vide* Finance Act, 2022 to make provisions for giving effect to the order of business reorganisation issued by tribunal or court or an Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016. The section provides that in case of business reorganisation, where a return of income has been filed by the successor under Section 139 before the order of the tribunal etc. is passed, such successor shall furnish a modified return within six months from the end of the month in which such order of business reorganisation was issued, in accordance with and limited to the said order. Consequently, Rule 12AD was notified prescribing the form and manner of furnishing such modified return by companies by the Board *vide* Notification No. 110/2022 dated 19the September, 2022.

(b) The provisions pertaining to business reorganisation and corporate restructuring are also available under other statutes like the Companies Act, 2013. Considering the multiplicity of the provisions and the entities to whom the order affected, the provisions as it existed gave rise to certain vexed issues for the entities who have previously furnished the return for the relevant assessment year,

obligation on the AO for passing or modifying assessment or reassessment orders, the requirement of furnishing modified return etc. In order to avoid any unintended litigation, Section 170A is substituted to amend the law to clarify the same.

Amendment

(a) Section 170A is substituted so as to provide that notwithstanding anything contained in Section 139, in a case of business reorganisation, where prior to the date of order of the tribunal or the High Court or Adjudicating Authority as defined in the Insolvency and Bankruptcy Code, 2016, any return of income has been furnished for any assessment year relevant to a previous year, by an entity to which such order applies, the successor shall furnish, within a period of six months from the end of the month in which the said order was issued, a modified return in the form and manner, as may be prescribed, in accordance with and limited to the said order. This would also enable modification of the returns filed by the predecessor wherever required.

(b) Further, provisions have been introduced to lay down the procedure to be followed by the AO after the modified return is furnished by the successor entity.

(c) The definition of the terms 'business reorganisation' and 'successor' in the substituted section remains unchanged. The expression "business reorganisation" is defined to mean the reorganisation of business involving the amalgamation or demerger or merger of business of one or more persons. The expression "successor" is defined to mean all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

This amendment is applicable with effect from 1st April, 2023.

IV. CONCLUSION

(a) While the Budget proposals have nothing to offer to the real estate sector, High Networth Individuals have some bittersweet takeaways in the form of the highest surcharge on income above Rs.5 Crores being reduced from 37% to 25%, provided the assessee opts for the new tax regime, capping of deduction of capital gains on investment in residential house against sale of residential house / other capital assets to Rs. 10 Crores thereby curbing investments in luxury housing, curbing misuse of high value insurance policies similar to ULIPs, income tax exemption being made limited to only policies with aggregate premium of less than Rs.5 lakhs per annum and unreasonable tax collection at source (TCS) @ 20% on overseas remittances under LRS leading to additional outflow due to blockage of funds in TCS.

(b) Vis-à-vis the taxation of non-residents are concerned, the taxation of issue of shares at consideration higher than fair value, will result in inconsistent regulation between the Act and Foreign Exchange Regulations. With respect to taxation of not ordinarily residents are concerned, gifts made in India by a resident to a not ordinarily resident is covered within the ambit of Indian taxation.

(c) Treating of gains on transfer of Market Linked Debentures and Debt Mutual Funds as short term capital gains irrespective of the period of holding, is an unwelcome, unfair move and deserves a big thumbs down.

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SALIENT FEATURES OF THE FINANCE ACT, 2023 IMPACTING THE REAL ESTATE SECTOR

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31st day of August, 2023