

RECENT UPDATES

1. Clarification of due date for deposit of “Employee Contribution” to welfare fund w.e.f. FY 2020-21 (AY 2021-22)

- Any amounts received from employee as contribution to any provident fund or superannuation fund or ESI or any other fund, will be treated as income of the employer u/s. 2(24)(x). However, deduction can be claimed u/s. 36(1)(va) when such amounts are deposited within the due date specified under respective Acts. Further, employer contribution to such funds, can be claimed as deduction u/s. 43B on payment basis when paid on or before due date mentioned u/s. 139(1).
- Based on various court rulings, timeline specified u/s. 43B was applied to Sec. 36(1)(va). However, by amending Sec. 36(1)(va) & 43B, it is clarified that, timeline mentioned u/s. 43B cannot be adopted for employee contribution.
- This implies that, employee contributions should be deposited within due date of respective Acts to claim deduction and unlike Sec. 43B deduction will not be allowed u/s. 36(1)(va) even when employees contributions are deposited at a later date.

2. Tax on Unit Linked Insurance Policy (‘ULIP’)

- ULIP is a hybrid investment option, whereby part of premium goes to insure the policyholder and other part towards investment. The investable portion of the premium is invested in equity, debt, money market or a mix of all based on the goals and risk appetite of the investor.
- Now, contribution to ULIPs issued on or after 01.02.2021 will be exempt u/s. 10(10D) subject to the following,
 - (a) Premium not exceeding 10% of capital sum assured; and

(b) (i) Premium payable for a policy (Single Policy) does not exceed Rs. 2.5 lakhs in any year during its tenure; or

(ii) When premium payable for each of such policy during any year does not exceed Rs. 2.5 lakhs but the aggregate of premium payable for all such policies (Multiple Policy) exceeds Rs. 2.5 lakhs in a year, then exemption is restricted to those policies whose aggregate premium does not exceed Rs. 2.5 lakhs.

- It may be noted that once the premium exceeds Rs.2.5 lakhs, the entire amount is denied exemption u/s. 10(10D). Thus, it is not that the amount attributable to insurance premium up to Rs.2.5 lakhs is considered exempt.
- ULIPs which are not exempt u/s. 10(10D) based on Rs. 2.5 lakhs criteria (referred as 'High premium ULIP'), shall be treated as 'capital asset'. Bonus & profits arising from such ULIPs will be subjected to capital gain tax in the year of its receipt (method to be prescribed).
- High premium ULIPs with exposure of 65% (shares) or 90% (units) to equity shares of domestic companies listed on a recognised stock exchange is treated as "High Premium Equity-Oriented ULIPs" ('HPE-ULIPs'). This, equity exposure should be retained throughout the term of such policy.
- Again, ULIP in the nature of keyman insurance policy are subject to tax, even if the premium does not exceed Rs.2.5 lakhs.
- HPE-ULIPs held more than 12 months will be classified as Long term and taxed at rates prescribed u/s. 112A @ 10% or under section 111A @ 15%, as a short-term capital gains, as the case may be. STT is levied @ 0.001% when policy holder transfer units of HPE-ULIPs and receives amount, due to sale or surrender or redemption of the units, on account of maturity or partial withdrawal.
- Gains arising from other High Premium ULIPs (debt based, balanced, etc.) shall be taxable u/s.112 or slab rate, as the case may be and will be treated as long term if held more than 36 months.
- Further, fund switching in High premium ULIPs will now attract capital gains but more clarity is expected in this aspect.

- Exemption u/s. 10(10D) on High premium ULIPs is still available in the event of death of the policy holder.
- Existing ULIPs issued on or before 31.01.2021 are not covered under this Amendment.
- The taxable portion of the gains would be entitled to exemption u/s.54F of the Income-tax Act, subject to fulfilment of conditions thereunder.
- The taxable portion of ULIP shall be subject to TDS u/s. 194DA @ 5% as there are no specific exemptions provided.

3. Relaxation of Tax Audit limit w.e.f. FY 2020-21 (AY 2021-22)

- Every person carrying on a business and maintaining books of account is required to get them audited from a Chartered Accountant if total sales, turnover or gross receipt from the business during the previous year exceeds Rs. 1 crore. This threshold has been increased to Rs. 10 crores.
- This higher threshold limit applies only if the cash receipt and payment made during the year does not exceed 5% of total receipt and total payment respectively. It is to be noted that, payment or receipt settled through a non-account payee cheque or non-account payee bank draft shall be deemed to be cash payment or cash receipt respectively. Thus, the same shall be included while computing 5% cash transaction limit under section 44AB.

4. Reduction in timelines for ITR filings, processing and assessments w.e.f. FY 2020-21 (AY 2021-22):

- Belated return or revised return could now be filed three months before the end of the relevant assessment year (i. e. 31st Dec of the relevant Assessment Year) or before the completion of the assessment, whichever is earlier.
- The late-filing fee of return u/s 139(1) shall be Rs. 5,000. However, where the total income of a person does not exceed Rs. 5 Lacs, the fee payable shall not exceed Rs. 1,000.

- Notice under section 143(2) and 143(1) Intimation under the Act will now be issued within 3 & 9 months from the end of the financial year in which the return is furnished respectively (i. e. 30th June/31st Dec).
- The time limit for completion of Scrutiny and Best Judgement Assessment will be 9 months from the end of the assessment year in which the income was first assessable (i. e. 31st Dec).
- The timelines are summarised below considering FY 2020-21 as the base year under consideration:

Financial Year	2020-21
Assessment Year	2021-22
Due Date of ITR filing	31.07.2021 / 31.10.2021
Last date upto which return can be revised or filed belatedly	31.12.2021
Timeline for processing of return and sending Intimation u/s 143(1)	31.12.2022
Time Limit to issue scrutiny Notice u/s 143(2)	30.06.2022
Time Limit to complete the assessment u/s 143(3)	31.12.2022

5. Paradigm shift in reopening of assessment (w.e.f. FY 2021-22)

- The 'reason to believe' test has been replaced with 'tax officer should have information' test which suggests income escapement.
- The expression 'information with AO which suggests that income chargeable to tax has escaped assessment' has been defined to mean:
 - (a) any information flagged as per the risk management strategy;

- (b) final objection raised by CAG that assessment is not in accordance with provisions of IT Act;
- (c) Search, Requisition or Survey conducted on the assessee;
- (d) AO satisfaction that books, documents, money, bullion, jewellery or other valuable article or things of any other person, belongs to the assessee.
- Before the issuance of notice for reassessment, the Assessing Officer can conduct enquiry with prior approval. A show-cause notice is required to be issued to an Assessee providing it an opportunity to respond that why reassessment proceedings should not be carried out. The Assessee is required to respond to the show cause notice and provide its reply within 30 days from issuance of the notice. Pursuant to the reply received, the Assessing Officer is to decide within one month from the receipt of reply or within one month from the end of the extended time period, whether to proceed with reassessment or not. It will not be applicable in cases of search, seizure and survey.
- Reopening of assessments for 4/6/16 years are done away with and hereinafter tax assessments cannot be reopened beyond 3 years from the end of relevant assessment year (RAY). However, if tax officer has evidence in his possession which reveals that income escaping assessment, represented in the form of asset, amounts to or is likely amount to Rs. 50 lakhs or more, it can be reopened for 10 years from end of RAY.
- For search, survey or requisition cases initiated or made or conducted on or after 01.04.2021, assessments are to be made in accordance with Sec. 147 r.w.s. 148.

6. TDS/TCS rates

Some of the important TDS and TCS rates for FY 2021-22 are given as an Annexure.