RSM Newsflash:
Key Amendments passed in the Finance Act 2022 vis-s-vis Original Finance Bill 2022

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Newsflash

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1.0 BACKGROUND:

The Finance Bill 2022 (*referred as the "Original Finance Bill"*) was introduced in the Lok Sabha on 1st February 2022. On 24th March 2022, the Finance Minister, Nirmala Sitharaman, proposed about 39 changes to be made in the Bill and the same was passed by the Lok Sabha on March 25, 2022 incorporating such proposed amendments. The Finance Act 2022 was passed after receiving President's assent on 30th March, 2022. In this Newsflash, we have provided a brief overview on these key amendments made in the Finance Act 2022 vis-à-vis Finance Bill presented on 1 February 2022.

2.0 KEY AMENDMENTS TO THE FINANCE BILL 2022:

Sr. No.	Provision in the Original Finance Bill 2022	Change in the Revised Finance Bill 2022/ Finance Act 2022
1	**Taxation of Virtual Digital Assets (VDAs)**	
	The Original Finance Bill introduced section 115BBH so as to provide that any income from transfer of any virtual digital asset shall be taxed @ 30% and no deduction would be allowed for any expenditure or set-off of losses. Further, it provided that no set off of any loss arising from transfer of virtual digital assets shall be allowed against any income computed under ***any other provision*** of the Income Tax Act (hereinafter referred to as 'the IT Act') and such loss shall not be allowed to be carried forward to subsequent assessment years.	The Revised Finance Bill clarified on the aspect by elimination the word 'other' from clause (b) of Section 115BBH(2) of the IT Act. Accordingly, the loss incurred from any Virtual Digital Asset would not be allowed to be set off even against profit of other Virtual Digital Asset i.e. Intra head adjustment between VDAs is also not possible. For instance, A taxpayer cannot set off losses incurred from Crypto against profits incurred from NFTs even though both Crypto and NFTs belong to VDA category.
	The Original Finance Bill 2022 stated that the newly introduced Section 115BBH would be applicable in case of	The Revised Finance Bill 2022 inserted a clarification by way of inserting sub-section (3) to S 115BBH stating that for the

	transfer of VDA. However, the existing definition of transfer u/s 2(47) has been used only in context of capital asset. Thus, there was an anomaly whether such section 115BBH would be made applicable in case of transfer of any VDA held as stock-in-trade.	purposes of the said section, the word "transfer" as defined in clause (47) of section 2, shall apply to any virtual digital asset, whether capital asset or not. Thus, Section 115BBH would be attracted even when the VDAs have been held as stock-in-trade.
	Sub-section (2) of Section 115BBH had a non obstante clause which gave it the power to override any other section of the IT Act. Such non-obstante clause was not provided in sub-section (1) which provided for taxation of VDAs @ 30%. Thus, there was a possibility that taxpayers may apply any lower rate, if applicable, under any other section.	The Revised Finance Bill introduced a non-obstante clause in sub-section (1) of S. 115BBH of the IT Act as well so as to allow the same to override other sections of the IT Act. Thus, income from the transfer of VDA shall be taxed at 30%, notwithstanding anything contained in any other provision of the Income-tax Act.
	The original Bill provided that no deduction in respect of any expenditure ***(other than cost of acquisition)*** or allowance or set off of any loss shall be allowed. This raised question on the applicability of S 115BBH where the cost of acquisition is not ascertainable as the Supreme Court in the case of B.C. Srinivasa Setty (1981) 5 Taxman 1 (SC) stated that in absence of such computation of acquisition cost method u/s 55 of the IT Act, the acquisition cost cannot be determined and thus, the gains derived could not be subject to Capital Gains tax.	The Revised Finance Bill 2022 inserted 'if any' so as to provide '(other than cost of acquisition, ***if any***)'. Such insertion clarifies that taxation of VDAs would not fail even though the cost of acquisition is not ascertainable. Further, the minister of state for finance Pankaj Chaudhary also clarified in the Lok Sabha that Infrastructure costs incurred in the mining of VDA will not be treated as cost of acquisition as the same will be in the nature of capital expenditure.
	The original Finance Bill provided for TDS pertaining to transfer of VDAs applicable u/s 194S subject to the	The Revised Finance Bill has eliminated sub-section (8) and substituted the eliminated provision in sub-section (4).

	following: (i) **S. 194S(4):** If tax has been deducted under section 194S, then no tax is to be collected or deducted in respect of the said transaction under any other provision of Chapter XVII of the IT Act (ii) **S. 194S(8)**: In case provision of both sections 194S and 194-O of the IT Act are applicable then the tax shall be deductible under section 194S	Thus, in case where there is simultaneous application of S. 194S and 194-O, TDS u/s 194S would have an overriding effect over S. 194-O of the IT Act.
2	**Surcharge and Cess claimed as expenditure by the assesse to be deemed as under-reported income**	
	The Original Finance Bill proposed to include an explanation in the IT Act that for the purposes of section 40(a)(ii) of the IT Act, the term tax includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax. This amendment was proposed to be given a retrospective effect from 1 April 2005 and made applicable from AY 2005-06 onwards. Accordingly, even for the past period, the deduction for cess or surcharge shall not be available. .	The Revised Finance Bill inserted sub-section (18) to S. 155 of the IT Act so as to provide that where any deduction in respect of any surcharge or cess, which is not allowable as deduction under section 40, has been claimed and allowed in the case of an assessee in any previous year, such claim shall be **deemed to be under-reported income** of the assessee for such previous year. Consequently, Penalty proceedings u/s 270A of the IT Act may be initiated and the Assessing Officer shall recompute the total income of the assessee for such previous year and make necessary amendment. It has been further provided that the provisions of S. 270A(6), which provides exceptions to under reported income, shall not be applicable in this case. For the said purpose, the period of four years specified under S. 154 (7) for passing of rectification order would be reckoned from the end of the previous year commencing on the 1st day of April 2021.

		Thus, the assessee shall be liable to pay tax on under reported income along with a penalty of 50% of the tax payable on under-reported income. However, no penalty would be levied where the assessee suo moto makes an application to the Assessing Officer in the prescribed form and within the prescribed time, requesting for recomputation of the total income of the previous year without allowing the claim for deduction of surcharge or cess and pays the amount due thereon within the specified time.
3	**Amendments Pertaining to Updated Returns u/s 139(8A)**	
	The Original Finance Bill introduced section 139(8A) in the IT Act wherein any person, whether or not he has furnished a return, may furnish an updated return of his income or the income of any other person in respect of which he is assessable under the IT Act, within 24 months from the end of the assessment year, subject to other prescribed conditions. However, in accordance with the second proviso to S. 139(8A) of the IT Act, no such updated return was eligible to be filed in certain specific cases where search is initiated or survey is conducted or requisition is made by the assessee for the relevant year and **2 years preceding such year.** Further, Section 139(8A) does not allow filing an updated return where such return is a loss return.	The Revised Finance Bill 2022 has substituted "two assessment years", with "any assessment year" and accordingly, an assessee would not be eligible to file an updated return in case of search, survey, seizure, etc. for the relevant year as well as any preceding year. However, the Revised Bill has inserted the fourth proviso to S. 139(8A) that if any person has furnished a return of loss within the prescribed time, he shall be allowed to furnish an updated return **where such updated return is a return of income**. To conclude, the updated return should not be a return of loss. Also, the Revised Bill has inserted the fifth proviso to S. 139(8A) to clarify that if the • loss carried forward under Chapter VI or • unabsorbed depreciation carried forward u/s 32 (2) or • MAT credit carried forward u/s 115JAA or • AMT credit carried forward u/s 115JD is to be reduced for any subsequent previous year as a result of furnishing of

		return of income under 139(8A) for a previous year, an updated return shall be furnished for each such subsequent previous year on which such updated return has a bearing due to carry forward of the aforementioned components.
4	**Amendments pertaining to carrying out proceedings in case of Business Reorganisation**	
	The Original Finance Bill, in order to clarify that proceedings in case of predecessor entity which ceases to exist **pursuant to business reorganisation** are valid, proposed to amend S. 170 of the IT Act so as to provide that such proceedings pending or completed on the predecessor shall be deemed to have been made on the successor entity. Further, in order to enable the successor entity to give effect to business reorganization, a new section 170A was proposed to be inserted allowing the successor entity to file a modified return within 6 months from the end of the month in which the order of competent authority is issued.	The Revised Finance Bill has replaced the term 'Business reorganisation' with 'Succession' so as to give it a wider meaning. Further, the Revised Bill has covered such proceedings '**made or initiated**' on the predecessor during the course of pendency of such succession. The original Bill only covered cases where the proceedings were made on the predecessor. Also, for the purpose of Section 170A of the IT Act, the term business reorganization and successor have been defined as follows: • "Business reorganisation" means the reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons; • "Successor" means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.
5	**Relaxation for Residency purposes in order to claim exemption u/s 10(4D) of the IT Act**	
	Section 10(4D) provides for exemption for a specified fund with respect to certain incomes subject to certain condition. One such condition that the specified	The Revised Finance Bill, by way of insertion of a Proviso, provided that the aforesaid condition would not apply if the non-resident unitholder, during the previous year when such unit or units were issued, becomes resident under S. 6 (1)/ S.

	fund needs to satisfy is that all the units of the fund, except those held by a sponsor or manager, should be held by non-residents.	6 (IA) in any previous year subsequent to that year, if the aggregate value and number of the units held by such resident unitholder or unitholders **do not exceed 5%** of the total units issued subject to fulfillment of other required conditions.
6	**Clarification for applicability of TDS in excess of Rs. 1 lakh for Long term capital gains u/s 112A**	
	The First Schedule provided for TDS to be withheld @ 10% with respect to any long term capital gains of a non-resident. Since the Schedule provided for a flat rate of 10%, there was a possibility that such rate would be made applicable on the entire amount and not on the amount in excess of Rs. 1 lakh threshold as applicable u/s 112A.	The Revised Finance Bill clarified on this aspect that only such amount in excess of Rs. 1 lakh would be subjected to TDS even in case of a non-resident.
7	**Exemption u/s 56(2)(x) would not apply in case of Gift received from Certain Trusts**	
	The original Finance Bill provided that if any unreasonable benefit is passed on to the trustee or any specified person referred under section 13(3) of the IT Act by trust or institution under first regime, then such income shall be taxable in the hands of such trust or institution in the year in which it was so applied. Moreover, a new section 115BBI was introduced to provide that where the total income of an assessee being a trust under the first or second regime, includes any income by way of any specified income, as defined under the IT Act, the income-tax shall be payable @ 30% (plus applicable surcharge and cess).	The Revised Finance Bill inserted a non-obstante clause in Section 115BBI so as to give it an overriding effect over other provisions of the Act. Further, the exemption provided to certain trusts or institutions under clauses (VI) and (VII) of proviso to Section 56(2)(x) has also been withdrawn where any gift is received by a person referred to in sub-section (3) of section 13 of the IT Act. It is pertinent to note that even if only a small portion of income is used or applied for the benefit of an person referred to in sub-section (3) of section 13, the entire income is denied from exemption

8	**Extension of Time Limit for Completion of Assessment**	
	As per the existing provisions of the IT Act, the time limit for completion of assessment for AY 2020-21 is **12 months** from the end of the Assessment Year in which income was first assessable i.e. **31st March 2022**.	The Revised Bill has revised such time limit for **AY 2020-21** to **18 months** from the end of the Assessment Year in which income was first Assessable i.e. **30th September 2022**. Further, the Revised Bill also provided that the assessment for **AY 2021-22** shall be made **on or before the 30th September, 2022** in the following cases: • Where the last of the authorisations for search under section 132 or requisition under section 132A was executed during the financial year commencing on the 1st April, 2020 or • In case of other person referred to in section 153C, the books of account or document or assets seized or requisitioned were handed over under to the Assessing Officer having jurisdiction over such other person during the financial year commencing on the 1st April, 2020.
9	**Tax Deductor needs to ensure that TDS required to be deducted u/s 194R and 194S has been deducted and paid**	
	Section 194R was introduced to the IT Act to provide that the person responsible for providing to a resident, any benefit or perquisite, arising from carrying out of a business or profession by such resident, shall deduct the tax @ 10% of the value or aggregate of value of such benefit or perquisite. Also, Section 194S was introduced under the IT Act to provide for TDS on payment made to a resident in relation to transfer of virtual digital assets @ 1% of such sum above a monetary threshold and certain other conditions.	The Revised Finance Bill provided a clarification that the tax required to be deducted must be deducted and paid by the tax deductor i.e. person responsible for paying such consideration or providing such benefit or perquisite. For the said purpose, the Revised Bill proposed to replace the words "ensure that tax", with "required to be deducted". As a result, the tax deductor would not be absolved of his liability even though the tax on said consideration/benefit/ perquisite has been paid by the deductee.

	In aforesaid section, it was provided that the person responsible for paying such consideration or providing such benefit or perquisite shall, before releasing the consideration or benefit or perquisite, ***ensure that tax has been paid*** in respect of the benefit or perquisite.	Further, the Revised Bill also introduced sub-section (2) and (3) to S. 194R so as to empower CBDT to issue guidelines for removing any difficulty in giving effect to the provisions of S. 194R and such guidelines shall be binding on the income-tax authorities and on the person providing any such benefit or perquisite.
10	**Definition of Books of Accounts u/s 2(12A) amended to include maintenance of books in Digital/ Electronic form**	
	Section 2(12A) of the IT Act defines "books or books of account" to include ledgers, day-books, cash books, account-books and other books, ***whether kept in the written form or as print-outs of data stored in*** a floppy, disc, tape or any other form of electro-magnetic data storage device	The Revised Finance Bill has amended the said definition so as to include any books maintained in digital or electronic form within the said definition. Accordingly, the words "in the written form or as print-outs of data stored in", would be substituted by the following: 'in the written form or ***in electronic form or in digital form or*** as print-outs of data ***stored in such electronic form or in digital form.***
11	**Overriding effect to provisions of Section 115BBI**	
	The Finance Bill, 2022 proposed to insert section 115BBI with effect from AY 2023-24. Section 115BBI provides that the income which does not enjoy exemption under section 11 is taxable at the rate of 30%. On the other hand, proviso to section 164(2) providing for taxation of a charitable trust at maximum marginal rate (MMR) is not deleted leading to overlapping of both such sections	The Revised Finance Bill provided that notwithstanding anything contained in any other provision of the Act, the specified incomes shall be taxable under Section 115BBI. Thus, the provisions of section 115BBI would have an overriding effect over anything contrary contained in the Act. Hence, the provisions of section 115BBI shall now prevail for the rate of tax in case of income specified therein.
12	**Restriction on the simultaneous benefit of Section 10(23C)**	
	Any income of fund or institution established for charitable or religious	The revised Finance Bill inserted explanation to the nineteenth proviso to section 10(23C). It provides that if an

	purposes or educational institution or hospital shall be exempt from tax under section 10(23C). Also exemption is available to specified entities under section 10(46) subject to fulfillment of certain conditions	institution approved under Section 10(23C) (iv)/(v)/(vi)/(via) is notified under Section 10(46), the approval or provisional approval granted to such institution shall become inoperative from the date of notification of under Section 10(46). Thus, the institutions cannot take the simultaneous benefit of exemption under Section 10(23C) and Section 10(46).
13	**Application of income for the benefit of interested persons**	
	The Finance Bill, 2022 proposed to insert twenty-first proviso imposing restriction to apply the income of a 10(23C)(iv)/(v)/(vi)/(via) institution for the benefit of an interested person referred to in section 13(3). However, it was wrongly mentioned in the Finance Bill that such benefit should become income of that person to whom the benefit is provided.	The Revised Finance Bill has corrected the error by providing that such income shall be deemed to be the income such fund or institution and not of an interested person

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