

# EY Tax Alert

**Parliamentary Select Committee's Report on the Income Tax Bill 2025 to closely align it with the Income Tax Act, 1961**

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## Executive summary

This Tax Alert summarizes the key changes recommended by the Parliamentary Select Committee (PSC) to the Income Tax Bill 2025 (ITB 2025) through a Report dated 16 July 2025 tabled before Lok Sabha on 21 July 2025. The ITB 2025, introduced in the Lok Sabha on 13 February 2025<sup>1</sup>, seeks to simplify India's income tax law, reduce litigation and eliminate redundant provisions from the currently applicable Income Tax Act, 1961 (ITA 1961). The 4500+ pages Report provides clause-by-clause analysis of the provisions of ITB 2025 with ITA 1961, stakeholder suggestions, views of Ministry of Finance (MOF) as also other Ministries and PSC's analysis and conclusions by way of recommendations. It also provides an amended version of ITB 2025 (Amended ITB 2025) incorporating majority of recommendations made by PSC.

The primary intent behind most of the PSC recommendations in the Amended ITB 2025 is to harmonize its provisions with the ITA 1961 without any policy change to maintain continuity. The PSC has stated that policy level changes will require a separate exercise. Accordingly, the recommendations are predominantly for addressing drafting anomalies in the ITA 1961 which crept in while attempting to simplify the complex provisions of ITB 2025. This Tax Alert summarizes the key changes in the Amended ITB 2025. Additionally, it also covers some significant suggestions made by stakeholders which were not considered being in the nature of policy changes.

<sup>1</sup> Refer EY Tax alert on ITB 2025 [Income Tax Bill 2025: March towards simplification] of February 2025.



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The key contents of the Report are discussed in the Alert under following captions:

- ▶ Aligning drafting anomalies in ITB 2025 with ITA 1961 incorporated in Amended ITB 2025
- ▶ Drafting anomalies in ITB 2025 recommended to be addressed by PSC but not forming part of Amended ITB 2025. These are expected to be incorporated in the next version of ITB 2025.
- ▶ Recommendations of PSC resulting in deviation from ITA 1961 provisions
- ▶ Other recommendations
- ▶ Significant suggestions from stakeholders not accepted by PSC in view of being policy level issues

The Government may consider the recommendations and is expected to introduce a revised ITB 2025 for approval of Lok Sabha. Once approved, it will be submitted to the Rajya Sabha for approval, followed by presidential assent, leading to enactment into law with effect from 1 April 2026 replacing the ITA 1961.

## Background

In July 2024, the Indian Finance Minister (FM) announced the Government's decision to conduct a comprehensive review of the ITA 1961. The goal of such review was to simplify the law and reduce controversies stemming from ITA 1961's complex language. A Departmental Committee was established to complete this task within six months, actively seeking stakeholder input on four key areas: simplifying language, minimizing controversy, reducing compliance burdens and eliminating redundant provisions.

As a result, the ITB 2025 was tabled in the Lok Sabha<sup>2</sup> on 13 February 2025. On the same day, a Parliamentary Select Committee (PSC) was formed to review the ITB 2025 and submit its report.

The PSC's mandate was to examine the ITB 2025 clause-by-clause to ensure its provisions clearly convey their intent, are free from procedural defects and align with the existing ITA 1961.

The PSC conducted 36 sittings, gathering insights from stakeholders, including the Finance and Law Ministries. They invited suggestions via advertisements on Sansad TV, social media, and major newspapers, receiving 334 memoranda. Detailed discussions were also held, and the Committee visited Bengaluru and Mumbai for further consultations. Based on all discussions and representations, a 4500-plus page Report of the Select Committee on the Income Tax Bill 2025 [Report] dated 16 July 2025 containing the PSC's recommendations was tabled before Lok Sabha on 21 July 2025, being the first day of Monsoon session of the Parliament. The Report also contains an amended version of ITB 2025 incorporating majority of PSC recommendations.

The Government may consider the recommendations and is expected to introduce a revised ITB 2025 for approval of Lok Sabha. Once approved, it will be submitted to the Rajya Sabha for approval, followed by presidential assent, leading to enactment into law with effect from 1 April 2026 replacing the current ITA 1961.

### Overview of contents of PSC Report

The Report includes the following:

- ▶ Introductory portions - This part provides information on the PSC's composition, the background leading to its formation and the Parliamentary proceedings to date.
- ▶ Objectives - It highlights that the ITB 2025 was designed to simplify the language and presentation of tax laws, reduce its volume, consolidate existing amendments and eliminate redundancies, all without introducing structural

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<sup>2</sup> The lower house of the Indian Parliament

or policy changes or altering established taxation principles.

- ▶ Clause-by-clause analysis of the ITB 2025 - The PSC Report details the suggestions received from stakeholders for each clause of the ITB 2025 during the extensive consultations. It then evaluates each suggestion to determine whether the suggestions are required to be accepted or rejected, including the inputs from MOF on the said suggestions. Thereafter, the PSC has presented its conclusions/ recommendations both as part of the clause-by-clause analysis as also in a separate part of the Report.
- ▶ Appendices - The Report includes various appendices containing list of memoranda received by the PSC, minutes of PSC meetings, dissenting notes from PSC members, and more.
- ▶ Annexure - Finally, the Amended ITB 2025, incorporating the PSC's suggestions, is presented as an annexure to the Report.

In this background, we have captured key recommendations of PSC to ITB 2025 under five categories as follows:

- ▶ Key modifications addressing the drafting anomalies in ITB 2025 to align with ITA 1961
- ▶ Modifications proposed by PSC to address the drafting anomalies present in ITB 2025 but not forming part of Amended ITB 2025
- ▶ Modifications resulting in deviation from existing ITA 1961
- ▶ Other modifications
- ▶ Significant suggestions from stakeholders not accepted by PSC

## 1. Key modifications addressing the drafting anomalies in ITB 2025 to align with ITA 1961

### (i) **Scope**

#### ▶ Deemed Source Rule

- ITA 1961 considers royalty payable by a non-resident (NR) as taxable in India if such royalty is payable in respect of a business carried on by the NR in India or for the purpose of earning income from any source in India. In contrast, ITB 2025 proposed to tax any royalty payable by an NR for the purpose of earning income from source "outside India" resulting in extra-territorial taxation. This has now been corrected by replacing the phrase

"outside India" with the phrase "in India".

### (ii) **Computation of Income**

- ▶ Disallowance of expenses in case of tax deduction at source (TDS) compliance defaults
  - ITA 1961 provides for disallowance of 100% of the sum payable to an NR (30% in case sum is payable to a resident) in case there is a default in TDS compliance as follows -
    - Scenario A - In case TDS is not deducted during the tax year in which expense is incurred.
    - Scenario B - TDS is deducted during the tax year in which expense is incurred but not paid before the due date of filing the tax return.

However, deduction of such expenses is granted in the subsequent tax years when the TDS compliance is made good.

- ITB 2025 provided that if TDS is deducted and paid during any subsequent tax year, deduction will be allowed in the year in which TDS is paid. It did not envisage a situation where the TDS is deducted during the tax year in which expense is incurred but paid after the due date of filing the return (Scenario B). This could have resulted in permanent disallowance of such expenses.
- Amended ITB 2025 now includes the above-mentioned scenario as well and explicitly provides that if the TDS is deducted in the year in which expense is incurred and is paid after the due date of filing of return, the expense deduction will be available in the year in which TDS payment is made. However, it may be noted that this recommendation is incorporated only in the context of payments to residents, and not for payments to NRs.
- ▶ Amended ITB 2025 includes a specific provision to grant deduction of current repairs in respect of owned machinery, plant or furniture, which was missing in ITB 2025.

- ▶ To avail deduction of insurance premium, current repairs and rent in respect of premises, machinery, plant or furniture, the condition that such assets should be 'wholly and exclusively' used for business, as additionally inserted in ITB 2025, is deleted in Amended ITB 2025. This aligns with ITA 1961 which allows a fair proportionate part of such expenses attributable to business use where the aforesaid assets are partly used or not wholly and exclusively used for business.
  - ▶ Investment-linked incentive:
    - There was no clawback provision in ITB 2025 to tax the sale proceeds of capital asset transferred on or after 1 April 2026 as business income, whose expenditure was fully allowed under ITA 1961. This is now introduced in Amended ITB 2025.
    - Further, certain conditions contained in profit-linked incentive provisions, i.e., intra unit transfers to be at market value, audit of accounts of specified business and furnishing report of such audit, restricting deduction to reasonable profits if transactions of specified business with closely connected persons produces more than ordinary profits, which were inadvertently missed in ITB 2025 are reinstated in Amended ITB 2025.
  - ▶ Amended ITB 2025 allows depreciation to intangible assets acquired on or after 1 April 1998, which aligns with ITA 1961.
  - ▶ Amended ITB 2025 specifically denies deduction of any marked-to-market (MTM) or expected loss not in accordance with income computation and disclosure standards, which was inadvertently missing in ITB 2025.
  - ▶ In computing business income, a specific provision in ITA 1961 allows deduction of specified expenses (like statutory payments, bonus or leave salary encashment to employees, interest to banks and specified financial institutions, etc.), only upon actual payment, subject to such expenses otherwise qualifying for deduction as per other provisions of ITA 1961. In ITB 2025, the relevant phrase "otherwise allowable" was absent, creating ambiguity on deductibility if they do not otherwise qualify for deduction as per other provisions of ITB 2025. Amended ITB 2025 now applies this provision only to sums payable which are "otherwise allowable" as a deduction under ITB 2025 aligning with ITA 1961.
- Further, ITA 1961 clarifies the applicability of this provision to tax, duty, cess, etc. for which taxpayer has incurred a liability in the tax year even though such sum might not have been payable within that tax year under the relevant law. This provision was missing in ITB 2025 which is now reinstated in Amended ITB 2025.
- ▶ In the provisions which adjust exchange fluctuation differences to actual cost of imported capital assets, ITB 2025 measured variation on account of forex fluctuation by reference to 'amount paid in Indian currency'. This drafting anomaly is corrected in Amended ITB 2025, by substituting it with 'amount paid as expressed in Indian currency'.
  - ▶ In respect of amortization of certain preliminary expenses, Amended ITB 2025 clarifies that companies can claim other expenditures which are specified for all taxpayers in general (such as expenditures for preparation of feasibility report, preparation of project report, conducting market survey, legal charges for drafting any agreement relating to the setting up or conduct of the business, etc.), in addition to expenditures specifically allowed for companies (such as legal charges for drafting the Memorandum and Articles).
  - ▶ Amended ITB 2025 introduces clarity to provide that specific provision governing 100% deduction for capital (except land and building) and revenue expenditure in respect of approved in-house R&D facility is distinct from general provision to grant 100% deduction of revenue or capital expenditure (except land) incurred on scientific research. Thus, a taxpayer can claim either of the two deductions (subject to compliance of respective provisions) but not both. Also, deduction under specific provision will not be allowed while claiming concessional tax rate of 22%<sup>3</sup> for domestic companies (22% CTR). This avoids ambiguity which had arisen in ITB 2025 and addresses apprehension of stakeholders on whether R&D expenditure on in-house R&D facility

<sup>3</sup> Plus applicable surcharge and cess (effective tax rate of 25.17%)

will be governed by specific provision alone and furthermore, it will not be allowed while claiming 22% CTR, thus, inadvertently resulting in disallowance.

- ▶ Amended ITB 2025 clarifies that it is only for payments to national laboratory or university, etc. that the condition of such payments being made with a specific direction to use sums for scientific research undertaken under an approved program would apply. This condition would not apply to other payments enumerated in the same provision, such as payments to a company registered in India having the main object of scientific R&D, and to a research association having the object of undertaking research in social science or statistical research. This deduction is not available both under ITA 1961 and ITB 2025 if concessional tax rate is availed.
- ▶ The Amended ITB 2025 now allows companies opting for the 22% CTR to claim deductions for inter-corporate dividends, aligning this benefit with what is already available under ITA 1961. This deduction was inadvertently omitted for the 22% CTR in ITB 2025. The inadvertent miss in ITB 2025 had raised significant concerns for domestic companies which now stands addressed.
- ▶ ITA 1961 allows deduction of donations made to specified institutions within a threshold limit of 10% of adjusted total income (viz. gross total income as reduced by certain exempt incomes, capital gains, and deductions available under the ITA 1961) if concessional tax rate is not availed. ITB 2025 was differently worded, leading to potential higher deduction under ITB 2025 compared to ITA 1961. The deduction was inadvertently allowed to the extent of 10% of "gross total income" instead of "adjusted gross total income", leading to inconsistent results. PSC has noted this inadvertent benefit and recommended restoring the language of the provision to align with ITA 1961.
- ▶ ITA 1961 allows income-linked deduction for royalty on patent to resident patent holder if concessional tax rate is not availed. The Amended ITB 2025 now provides that if income-linked deduction is claimed in respect of royalty on patents, no deduction

can be claimed under any other provision on the same income in any tax year. This aligns the provision of ITB 2025 with ITA 1961.

- ▶ Disallowance of income linked deduction while processing the RoI filed belatedly
  - Under the ITA 1961, while processing a return of income filed belatedly, certain adjustments are permitted such as disallowance of income-linked deductions which require timely return filing as a precondition for availing the deduction.
  - The ITB 2025 introduced similar provisions, but proposed a wider scope of adjustment, permitting disallowance of all deductions from total income (illustratively like deduction for payment of life insurance premium, investment in equity linked savings scheme (ELSS), contribution to pension fund, etc.) in cases of delayed filing i.e., even those which do not require timely filing of return.
  - In deference to stakeholder representations, the Amended ITB 2025 restricts the adjustment only to income linked deductions, consistent with the ITA 1961 when belated return is filed.
- ▶ ITA 1961 allows profit-linked deduction for taxpayer (not availing concessional tax rate) engaged in business of collecting and processing or treating of bio-degradable waste *inter-alia* for producing bio-fertilizers, bio-pesticides or "other" biological agents. While ITB 2025 considered only production of "biological agents", with the omission of the term "other". The amended ITB 2025 has inserted the term "other" to correct drafting error which would have unintentionally led to narrowing of provision.
- ▶ Under ITA 1961 long-term capital gain (LTCG) arising for a NR from the transfer of shares of unlisted and closely held company is taxable at 12.5% *without* foreign exchange fluctuation benefit. However, the withdrawal of foreign exchange fluctuation benefit was missing under ITB 2025 thereby resulting in foreign exchange fluctuation benefit being available to NRs (other than FPIs<sup>4</sup>) while taxing LTCG at 12.5%. This is rectified in amended ITB 2025 and

<sup>4</sup> Foreign Portfolio Investors

aligned with existing provisions of ITA 1961.

► Consistent language in special provisions computing capital gains on depreciable assets:

- There are special provisions for computing capital gains on transfer of depreciable assets. The computation of capital gains consists of two limbs - (a) few assets in block continue to exist and (b) block ceases to exist. Under ITA 1961, capital gains arising under both the scenarios is considered as "capital gains arising from the transfer of short-term capital assets".
- ITB 2025 aligned with ITA 1961 on the first limb (i.e., block continues to exist) to provide that the income on transfer shall be 'deemed to be capital gains arising from the transfer of short-term capital asset'. However, under the second limb, where the block ceases to exist, ITB 2025 provided that income on transfer shall be 'deemed to be short-term capital gain'. Amended ITB 2025 has brought consistency by modifying the language prescribed under second limb to align fully with ITA 1961 on both limbs and states that it shall be 'deemed to be capital gains arising from the transfer of short-term capital asset' in both situations.

► Consistent language for deemed consideration provision:

- There are anti-abuse provisions under ITA 1961 for determining full value of consideration for transfer of unlisted shares. This section specifically provides that such determination is for the purposes of computational provision of capital gains.
- ITB 2025 modified the language to provide that the determined value is for the purposes of computing 'capital gains' rather than referring only to computational provision. This raised ambiguity whether this will override all other computational provisions of capital gains e.g. consideration on transfer of capital asset by partner to firm. In this backdrop, Amended ITB 2025 restores the language prescribed in ITA 1961.

- Further, ITA 1961 contains another anti abuse provision providing deemed full value of consideration where consideration on transfer of capital asset 'is not ascertainable or **cannot** be determined'. ITB 2025 modified the language to provide that such provisions are applicable where consideration 'is not ascertainable or **is unable** to be determined' leading to apprehension that this will provide subjective powers to tax authority leading to litigation. Amended ITB 2025 has now restored the language as prescribed in ITA 1961.

► Timeline for relocation:

- FA 2025 extended the tax neutrality on relocation of capital asset by original fund to resulting fund in International Financial Services Centre (IFSC) from 31 March 2025 to 31 March 2030. But ITB 2025 did not incorporate this extension. Amended ITB 2025 now provides for extended time line till 31 March 2030 in line with ITA 1961.

► Definition of 'Investment Fund' -

- The Investment Funds are governed by special provisions and are regarded as partial pass-through entities for taxation. The definition of Investment Fund under ITA 1961 covers Category-I and Category-II Alternative Investment Fund (AIF) regulated by Securities and Exchange Board of India (SEBI) or International Financial Services Centre Authority (IFSCA).
- The language used in ITB 2025 led to ambiguity whereby it potentially resulted even Category-III Alternative Investment Fund (AIF) regulated by IFSCA being covered within ambit of 'Investment Fund'. Accordingly, there was a need for the definition to be amended to ensure that only Category-I and Category-II AIF regulated by IFSCA are entitled to pass-through taxation.
- Amended ITB 2025 has now modified the language to align with provisions of ITA 1961.



- ▶ Presumptive taxation in respect of resident taxpayers:
  - ITB 2025 computed presumptive tax with reference to 'turnover or gross receipts realised'. Reference to 'realised' is omitted in Amended ITB 2025 to align with ITA 1961. This avoids misinterpretation that the percentage of presumptive income should be based only on amounts realised, without considering outstanding amounts.
  - Amended ITB 2025 reinstates provision to calculate aforesaid 6% after including receipts in specified banking or online mode during the tax year or before the due date for filing return of income (ROI) in respect of that tax year.
  - For taxpayer engaged in the business of plying, hiring or leasing of goods carriage, in the context of a heavy goods vehicle, Amended ITB 2025 reinstates reference along the lines of ITA 1961 to compute presumptive income by reference to "each vehicle for every month or part of a month during which the heavy goods vehicle is owned by the taxpayer in the tax year".
- ▶ Rate of tax for business trusts:
  - The total income of business trust, except for income covered by special provision dealing with LTCG and certain STCG (i.e. section 111A and section 112 of ITA 1961), is taxable at maximum marginal rate. FA 2025 has amended the relevant ITA 1961 provision to include section 112A (dealing with certain LTCGs). But this was not considered in ITB 2025. The Amended ITB 2025 provides for such carve out to align with ITA 1961 as amended by FA 2025.
- ▶ Generally, vacant properties are also subject to tax on deemed basis with reference to notional fair rental value. However, ITA 1961 carves out an exception for business properties (whether actually used for business or lying temporarily vacant pending potential use) from such deemed taxation. ITB 2025 created an anomaly whereby only properties physically in use by the owner would be exempt from deemed basis taxation thus bringing "ready-to-use" or "unutilized business premise" within the tax ambit. The Amended ITB 2025, restores the position under ITA 1961 by excluding property which taxpayer "may occupy" for business purposes from scope of deemed taxation.
- ▶ Change in provisions of vacancy allowance while computing income from house property
  - The issue of determining income from a newly acquired house property when the said property has been vacant for a part of the year has been litigious. Certain judicial precedents under ITA 1961 granted deduction in respect of vacancy allowance if such property could not be let out despite best efforts. However, ITB 2025 permitted deduction in respect of vacancy allowance only if such property is let out "in normal course" leading to uncertainty on whether newly acquired property or irregularly let out property would be eligible for such benefit. The Amended ITB 2025 has deleted the phrase "in normal course" and restored the position of ITA 1961.
  - Under ITA 1961, as vacancy allowance, if the actual rent received or receivable is less than fair rent due to vacancy, then the actual rent received, or receivable is to be considered. This comparison was missing under ITB 2025. Amended ITB 2025 has restored the provision to existing ITA 1961 to avoid ambiguity.
- ▶ Restoration of pre-construction interest deduction to let out property (LOP)
  - ITB 2025 allows deduction of pre-construction interest on income from house property only to self-occupied property (SOP) unlike ITA 1961 which allows for both SOP and LOP. Amended ITB 2025 restores allowance of pre-construction interest even to LOP in addition to SOP and also permits such claim in addition to the threshold of INR2lakh to align with existing ITA 1961.
- ▶ For Indian shipping companies covered by tonnage tax scheme, as regard to maximum tonnage which can be chartered-in, reference to inland vessel in ITA 1961 was substituted

with 'new inland vessel' in ITB 2025. This inadvertently resulted in restricting the specified chartering-in limit of 49% only qua 'new inland vessels' – and not qua second-hand vessels. Amended ITB 2025 applies the 49% limit uniformly to all chartered-in vessels – whether new or second-hand – to align with ITA 1961.

- ▶ ITA 1961 provides for disallowance of expenditure due to non-compliance of equalisation levy (EL) provisions. This provision is removed in Amended ITB 2025, as FA 2025 has repealed EL.

**(iii) Tax Deducted at Source (TDS)/ Tax Collected at Source (TCS)**

- ▶ Threshold limit of INR 50,000 reinstated for applicability of TDS on payments in the nature of royalty and non-compete fees under Amended ITB 2025, which was missed earlier aligning thereby with ITA 1961 provisions,
- ▶ Ambiguity on TDS rate on payment of accumulated balance of Recognised Provident Fund resolved:
  - Under ITA 1961, while accumulated balance of a Recognised Provident Fund of an employee is chargeable to tax at the average rate of tax applicable to the said employee, TDS on such amount is deductible at 10%. ITB 2025 inadvertently deleted the lower 10% TDS rate creating ambiguity. Amended ITB 2025, redresses such ambiguity by restoring the 10% TDS rate.
- ▶ Power to Issue NIL TDS certificate restored:
  - ITA 1961 provides for a facility to payee to obtain both lower TDS and NIL TDS certificate, but for specified receipts only. While ITB 2025 broadened the scope of lower TDS certificates to all receipts, it made no explicit reference to NIL TDS certificates. To remove any ambiguity, Amended ITB 2025 now specifically permits application for and issue of NIL TDS certificates.

**(iv) Procedural aspects**

- ▶ Ambiguity on refund claims through belated return resolved
  - Under the ITA 1961, taxpayers who are not required to file income tax returns, can claim refund of taxes withheld or paid by filing return of income anytime on or before the due date for filing belated return, whereas ITB 2025 required the return to be filed on or before the due date of filing original return – although it also permitted to file belated return.
  - In light of stakeholder representations, Amended ITB 2025 has reinstated the position under ITA 1961 by omitting the clause requiring filing return on or before due date thereby<sup>5</sup>.
- ▶ Tax authority can impound or retain documents of taxpayers within its jurisdiction:
  - Under the ITA 1961, powers are granted to tax authorities for discovery, production of evidence, and impounding or retention of documents which can only be exercised in relation to taxpayers falling within their respective jurisdiction.
  - The ITB 2025 introduced similar provisions, however without expressly restricting the exercise of such powers over taxpayers in the jurisdiction of tax authority. This raised concerns over potential overreach, allowing tax authorities to act against persons not within their jurisdictional scope.
  - In deference to stakeholder representations, the Amended ITB 2025 restores the jurisdictional limitation. This aligns the position under ITA 1961.
- ▶ Discretion restored with tax authority for imposition of penalty for failure to maintain books and documents
  - Under the ITA 1961, the tax authority has discretionary power (reflected through the use of the term “may”) to impose a penalty for failure to keep and maintain

<sup>5</sup> While the justification provided by PSC for recommending removal is that the requirement of filing return on time to claim refund could inadvertently lead to prosecution for non-filing of return, it may be noted that prosecution proceedings for refund cases in respect of

individual taxpayers, under ITA 1961 as also ITB 2025, do not trigger where taxable income is below taxable limit or tax payable (net of prepaid taxes including withholding) is below INR 10,000.



books and documents. ITB 2025, while introducing a similar penalty provision, replaced “may” with “shall” leading to ambiguity on mandatory nature of penalty.

- In deference to stakeholders’ representations, Amended ITB 2025 reinstates the term “may” ensuring that there is no conflict with discretionary power of tax authority which it can exercise for reasonable causes, thereby aligning with ITA 1961.
- ▶ Tax authority is mandated to drop the reassessment proceeding in certain cases
  - Under ITA 1961, tax authority “shall” drop reassessment proceedings if the taxpayer makes a valid claim “on his showing” that (i) he has already been assessed on an amount not lower than the liability that would arise even after including the alleged escaped income; and (ii) he has not challenged the original assessment order through appeal or revision.
  - However, ITB 2025 used “may” instead of “shall” suggesting that proceeding would be dropped at the discretion of the tax authority. Furthermore, ITB 2025 omitted phrase “on his showing” which could suggest that taxpayer is not required to prove satisfaction of prescribed conditions.
  - In deference to stakeholder representations, the Amended ITB 2025 reinstates the term “shall” to make it mandatory for the tax authority to drop proceedings upon a valid claim. Further, to align with the ITA 1961, the Amended ITB 2025 now includes the phrase “on his showing”, thereby clarifying that the burden lies on the taxpayer to demonstrate satisfaction of prescribed conditions.
- ▶ Under ITA 1961, NR taxpayers having liaison office<sup>6</sup> are required to submit a statement regarding their activities in India in a prescribed form and manner within 8 months from the end of tax year. ITB 2025 inadvertently provided for 60 days limitation period which is

modified now by Amended ITB 2025 to align with ITA 1961.

▶ General Anti-Avoidance Rules:

Amended ITB 2025 reinstates the requirement in ITA 1961 that tax consequences of impermissible avoidance arrangement should be as is deemed appropriate, ‘in the circumstances of the case’, which phrase was missing in ITB 2025. The PSC has construed this as a safeguard to ensure that the application of GAAR “remained reasonable and sensitive to the specific context”, and the “determination of consequences under GAAR will continue to be guided by the specific facts and context of each case, thereby preserving the balance between effective enforcement and taxpayer protection.” The PSC has further noted that, “while deterrence against tax avoidance must remain robust, it must also be tempered with procedural fairness and contextual sensitivity.”

Here, it may be highlighted that in respect of GAAR, the MOF has said that GAAR can be applied despite Limitation of Benefit (LOB) clause in the treaty, stating that *“Application of GAAR irrespective of treaty is required to protect the tax base. It is an accepted international practice.”*

The MOF has also said that GAAR provisions are to be invoked in the “rarest of rare cases”, or “exceptional cases”.

(v) **Personal taxation**

▶ Residential status of person going abroad for the purpose of employment

Under the ITA 1961, an individual is regarded as resident if he/she is in India for at least i) 182 days in a tax year, or ii) 60 days in a tax year and has stayed in India for 365 days or more over four years immediately preceding the tax year. However, for Indian citizens leaving India for the purpose of employment, only the 182-day rule applies. Further “for the purpose of employment” has been interpreted broadly to include self-employment and business purpose as well and not limited to travelling for taking up employment abroad. The Amended ITB 2025 restores the phrase “for the purpose of employment outside India,” as

<sup>6</sup> Set up as per the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999.

compared to “for employment outside India” as was introduced in ITB 2025, ensuring the wider interpretation.

- ▶ The default CTR regime for non-corporate taxpayers under ITA 1961 gives precedence to the various special rates of taxes on certain incomes like capital gains, dividend, interest, royalty and fees for technical services (FTS) income of non-residents, non-residents sports persons and institutions, foreign institutional investor (FII), etc. Under ITB 2025, default CTR regime did not give precedence to certain special rate provisions like dividend, interest, etc. earned by NRs which is taxed on gross basis. This led to inconsistency. Amended ITB 2025 has modified the default CTR regime such that it gives precedence to all provisions dealing with special rate of tax.
- ▶ The Amended ITB 2025 aligns the threshold for Unit Linked Insurance Policies (ULIP) and life insurance policies with ITA 1961 to determine coverage of proceeds from such policy under exemption provision. The Amended ITB 2025 states that the threshold of annual premium of INR2.5lakhs in case of ULIP is to be tested in “any tax year” during the policy tenure as against for “all tax years” as stated in earlier draft of ITB 2025. Similar provision is applicable for life insurance policies where threshold for annual premium is INR5lakhs which is to be tested for “any tax year”.
- ▶ ITA 1961 allows deduction of voluntary contributions by the taxpayer to National Pension Scheme (NPS) account upto INR50,000 if concessional tax rate is not availed. The language of ITB 2025 suggested that any voluntary contribution, even if not by the taxpayer itself to individual NPS is eligible for deduction. Amended ITB 2025 now modifies the language of provision to cover voluntary contributions only by the Taxpayer.
- ▶ Under ITA 1961, if a deceased person owes taxes prior to demise and the legal representative transfers or creates charge on any asset of deceased before paying the taxes owned, the legal representative becomes personally responsible for those unpaid taxes. The personal responsibility is limited to value of property transferred/ charge created. In contrast, ITB 2025 referred to “any sum” which is payable by deceased.

Amended ITB 2025 has reinstated the liability to “tax” owed rather than any sum owed aligning the position with ITA 1961.

- ▶ Rebate for resident individual - anomaly in computation of marginal relief resolved:

Under ITA 1961, marginal relief on tax is available under rebate provisions to resident individuals covered under default CTR regime where the individual's total income exceeds INR12 lakh and income tax payable on the above total income exceeds incremental income over INR12 lakh. Under ITB 2025, marginal relief was available in cases of resident individuals covered under default CTR regime where income exceeded INR12lakh, however the condition that income tax payable on total income should be more than incremental income was missing. Amended ITB 2025 has rectified this unintended anomaly and has stated that marginal relief under rebate is available where the tax liability on total income is more than incremental income over INR12lakh.

#### (vi) ***Charity taxation and related aspects***

- ▶ Anonymous Donation (AD): Under ITB 2025, AD received by a registered Non-Profit Organisation (NPO) is taxable if AD is in excess of the higher of: (i) 5% of AD or (ii) INR 0.1M. To bring the threshold in line with ITA 1961, Amended ITB 2025 increases the limit (i) to 5% of total donations.
- ▶ ITB 2025 provided for tax return filing obligation by registered NPOs. With a view to avoid ambiguity, Amended ITB 2025 now provides that registered NPOs shall file such tax returns in prescribed form and verify in prescribed manner aligning with ITA 1961.

## 2. **Modifications proposed by PSC to address the drafting anomalies present in ITB 2025 but not forming part of Amended ITB 2025**

The recommendations of PSC under this category are missing in the Amended ITB 2025. Since most of them involve issues accepted by MOF as inadvertent drafting anomalies, it is expected that the Government may incorporate them in the next version of ITB 2025 to be introduced in the Parliament.

The recommendations of PSC under this category are missing in the Amended ITB 2025.

Since most of them involve issues accepted by MOF as inadvertent drafting anomalies, it is expected that the Government may incorporate them in the next version of ITB 2025 to be introduced in the Parliament.

**(i) Computation of Income**

- ▶ The PSC has recommended an amendment to allow carry forward and set off of losses for closely held companies where the shareholding pattern, though altered temporarily beyond 51%, is restored in subsequent years. This suggestion is favorable to the taxpayers as compared to current ITA 1961. However, the text of the Amended ITB 2025 does not incorporate this recommendation.

- ▶ Alternate Minimum Tax (AMT)/Minimum Alternate Tax (MAT) provisions: The PSC has made following recommendations in AMT/MAT provisions. However, text of Amended ITB 2025 does not incorporate these recommendations.

- Under ITA 2025, AMT @ 18.5%<sup>7</sup> applies to non-corporate taxpayers only if they claim specified deductions or exemptions and Adjusted Total Income (ATI) exceeds INR 2m. ITB 2025 does not specify this condition potentially triggering AMT liability if the tax payable under normal provisions is lower otherwise than due to specified deductions or exemptions (for instance, due to LTCGs taxable @ 12.5%) PSC has recommended to introduce a separate provision similar to ITA 1961 to restrict AMT applicability to taxpayers claiming specified deductions whose ATI exceeds INR 2m.
- PSC has also recommended insertion of enabling provision in ITB 2025 similar to ITA 1961 for setting off AMT credit in years where taxpayer is excluded from AMT scope.
- In MAT provisions applicable to companies, PSC has recommended to add specific provision on the lines of ITA 1961 to exclude notional gain either at the time of transfer of shares of Special Purpose Vehicle (SPV) to business trust or on a year-on-year basis till the date of transfer

of units. This is inadvertently missing in ITB 2025

- PSC has also recommended to exempt withdrawal of reserves created before 1 April 1997, by debit to Profit & Loss Account (P&L), from MAT on the lines of exemption currently available under MAT.
- PSC has recommended to include surcharge and cess in tax for determining quantum of MAT credit and its set off.
- PSC has also recommended to provide that AMT liability shall apply to the successor limited liability partnership (LLP) post-conversion from company to LLP, but MAT credit of the predecessor company cannot be carried forward by LLP. This provision existing in ITA 1961 was inadvertently missed in ITB 2025

- ▶ Determination of standard deduction for house property income

- ITA 1961 allows the taxpayer to claim a standard deduction of 30% of house property income post deduction of property taxes (including services taxes). In contrast, ITB 2025 inadvertently permitted higher standard deduction claim at 30% of gross income (before property tax deduction). In this respect, while the PSC has recommended restoration of the computation of standard deduction as per ITA 1961 after deduction of property taxes, the text of change appearing in the Amended ITB 2025 appears to inadvertently refer to allowing the standard deduction before deduction of property taxes.

- ▶ ITA 1961 as also ITB 2025 allows deduction of sum payable to micro and small enterprise (MSEs) beyond the time limit specified in Micro, Small and Medium Enterprises Development Act (MSMEDA), 2006 only in the tax year in which such sum is actually paid. For this purpose, MSEs are defined based on the specified investment thresholds stated in MSMEDA. The specified investment thresholds are revised on a periodic basis through notifications issued by the Central Government. In this regard, stakeholders requested that the existing definitions can be

<sup>7</sup> Plus applicable surcharge & cess

better rephrased by dynamically linking them to the notification of the Central Government, instead of linking them to the static (and redundant) thresholds under MSMEDA, which was accepted by the PSC. However, this change does not appear in the text of Amended ITB 2025.

**(ii) Tax deduction at source (TDS)/ Tax collection at source (TCS)**

► NIL TCS on Liberalised Remittance Scheme (LRS) remittances for education purposes financed by specified financial institutions restored:

- Pursuant to Finance Act (FA) 2025, under the ITA 1961, LRS remittance for the purposes of education out of a loan obtained from specified financial institutions was exempted from the TCS levy.
- However, similar exemption was inadvertently missed out in ITB 2025. While PSC has recommended restoration of such exemption, the text of Amended ITB 2025 does not incorporate this recommendation.

► Applicability of TDS on benefit/perquisite arising from business/profession, paid through modes such as cheque/ demand draft/ bank draft:

ITA 1961 requires a person to deduct taxes at the rate of 20% on payment of benefit or perquisite in cash/kind or partly in cash/kind arising from business/profession. ITB 2025 provides for parallel provision. PSC recommended to clarify that TDS herein will also apply to benefit or perquisite paid through modes of payment other than cash, such as cheque/ demand draft/ bank draft. However, the text of Amended ITB 2025 does not incorporate this recommendation.

► Missing appending notes to TDS provisions:

- ITB 2025 categorized all TDS provisions contained in ITA 1961, into three broad heads as follows:

(a) TDS on payments to residents,

(b) TDS payments to NRs and

(c) TDS on payments to any person not covered by (a) and (b)

- For each category, ITB 2025 consolidates the TDS provisions into a single table, and wherever required, the table is supplemented with requisite notes to incorporate specific provisions parallel to ITA 1961.

- However, certain notes relating to category (b) and (c) are missing in ITB 2025. This led to ambiguity on interpretation of certain provisions.

- For instance, ITA 1961 provides the rate of withholding in respect of specified income paid to a NR at 20% or the rates prescribed in the Double Taxation Avoidance Treaty (tax treaty) whichever is lower. Parallel provisions are contained in ITB 2025. ITB 2025 defines the specific rate as the rate provided in Note 2. However, note 2 is missing in the text of ITB 2025.

- While PSC has recommended insertion of the missing notes, they appear to be still missing in the text of Amended ITB 2025.

- More particularly, ITA 1961 contains a clarification (inserted retroactively in 2012) that a NR payer is required to deduct tax while making payment to another NR even if the payer NR does not have residence, place of business, business connection or any other presence in India. This clarification is missing in both ITB 2025 and Amended ITB 2025

**(iii) Procedural aspects**

- Under the ITA 1961, every representative assessee (RA) is subjected to same duties, responsibilities and liabilities as if the income is received by or accruing to the RA beneficially and shall be liable to "assessment" on such income. ITB 2025 expanded the liability to not just assessment on income but also "any other proceedings". This created ambiguity on scope of liability on representative assessee. To resolve this, PSC recommended to delete the aforesaid phrase. However, no corresponding amendment appears in text of Amended ITB 2025.

(iv) **Personal taxation**

- ▶ ITA 1961 provides that if salary is payable in foreign currency, then the amount on which withholding is to be done will be determined by conversion of such foreign currency as per the prescribed rates. There is no corresponding provision in the ITB 2025. PSC has recommended to address this inadvertent miss but it does not appear in the Amended ITB 2025.

(v) **Charity taxation and related aspects**

- ▶ ITB 2025 allows charity registration to NPOs having either wholly religious or wholly charitable objects. Concerns were raised about likely ambiguity for NPOs having mixed objects (both charitable and religious) which may not strictly be covered within the scope of ITB 2025 provision. While PSC has recommended providing clarity to cover NPOs having mixed objects, it does not appear in the text of Amended ITB 2025.
- ▶ ITB 2025 provides for computation of income of NPOs on gross receipt basis. The deduction for application on objects of NPOs are allowed separately. Stakeholders raised concerns that this is in deviation with the well settled concept of taxation of "income" (and not gross receipt) provided in ITA 1961. In this respect, the PSC (contradicting the MOF which found the suggestions unacceptable) has recommended modifying the computation to net income basis instead of gross receipt. However, this does not appear in text of Amended ITB 2025.
- ▶ One year accumulation option for contributions as available in ITA 1961 is not available in ITB 2025. Stakeholders raised concerns that such option should be restored. While, the PSC has recommended restoration of one year accumulation option, it does not appear in text of Amended ITB 2025.
- ▶ ITB 2025 provides for different dates for payment of exit tax which resulted in ambiguity. Noticing the same, the PSC has recommended to remove ambiguity on conflicting due dates prescribed for payment of exit tax.

However, it does not appear in the text of Amended ITB 2025.

- ▶ PSC has also recommended to rectify certain incorrect referencing in Schedule XVI which provides for list of permitted investments. However, it does not appear in the text of Amended ITB 2025.
- ▶ PSC though observed in its report to provide exclusion from taxation of Anonymous Donation in case of mixed object registered NPOs (religious and charitable) along the lines of ITA 1961<sup>8</sup>, no such amendment is covered in Amended ITB 2025 on this aspect.

3. **Modifications resulting in deviation from existing ITA 1961**

(i) **Computation of income**

- ▶ "Beneficial owner" definition for continuity of 51% shareholding in closely held companies for carry forward and set off of losses:
  - Under ITA 1961, set off and carry forward of losses is prohibited in case of change of shareholding in a closely held company beyond 49% from the last day of the tax year of incurrance of loss vis-à-vis the shareholding on the last day of the tax year in which the loss is sought to be set off.
  - ITB 2025 restricts set off of loss if there is change of "beneficial owners" of shares beyond 49%. The phrase "beneficially held" used in ITA 1961 is replaced with phrase "beneficial owner" by ITB 2025.
  - To provide clarity, the Amended ITB 2025 has defined the term "beneficial owner" to mean an individual who derives benefits directly or indirectly from the shares. As per PSC Report, the intention to define term "beneficial owner" is to align the interpretation with term "beneficially held" used in ITA 1961.
  - However, the new definition of "beneficial owner" raises several ambiguities. For instance:

<sup>8</sup> ADs received by registered NPOs having mixed objects (religious and charitable) are not taxable unless such donation is specifically directed towards education or medical institution run by such NPO.

- There is no clarity if the term “individual” used in definition needs to be restricted to natural human beings or can be extended to entities in nature of trust, firm, LLP, etc. if they are ultimate shareholders of the group. The use of term “individual” raises unintended interpretational issues more particularly in multi-layered corporate structures and holding by pooled investment structures like mutual funds, pension funds, etc.
- There is no clarity on meaning of term “benefit” and “indirectly” used in definition. Whether benefit needs to be restricted to voting rights attached to shares and how to determine any “indirect” benefit to beneficial owner.

(ii) **Tax deduction at source (TDS)/ Tax collection at source (TCS)**

- ▶ TDS to be deducted on consideration payable for purchase of goods:
  - ITA 1961 requires a resident buyer to withhold taxes at the rate of 0.1% while making payment to a resident seller for purchase of goods of value exceeding INR 5M. For this purpose, TDS is to be carried out only on the consideration payable in excess of the threshold limit of INR 5M. However, there was ambiguity in comparable provision of ITB 2025 in application of threshold limit. The PSC has recommended to clarify deduction of tax only on the sum exceeding INR 5M to align with ITA 1961. However, the text of amendment in Amended ITB 2025 creates ambiguity in this regard by removing the reference to the phrase “of such sum exceeding Rs. 50,00,000”.

(iii) **Procedural aspects**

- ▶ Meaning of ‘associated enterprise’ (AE) for Transfer Pricing compliance:
  - ITA 1961 provides for criteria to determine AE relationship between two related parties. In this regard, AE is defined in two

parts. The first part [S. 92A(1)] defines the broad contours of the term and is based on participation in “management” or “control” or “capital”. The second part [S. 92A(2)] lists certain conditions which if satisfied would result in a deemed AE relationship.

- The second part begins with the phrase “for the purposes of sub-section (1)”. There are contrary views taken by judiciary on the interplay of Sections (S.) 92A(1) and 92A(2) in light of the scope of the phrase “for the purposes of sub-section (1)”. Certain courts have taken a view that the conditions specified in S. 92A(2) have to be satisfied for two enterprises to qualify as AEs<sup>9</sup>. Similarly, there are also rulings<sup>10</sup> which seem to have taken a view that S.92A(1) can apply independent of S. 92A(2).
- While the ITB 2025 retained the provisions similar to ITA 1961, however, it proposed to replace the phrase “for the purposes of sub-section (1)” with the phrase “without affecting the generality of the provisions of sub-section (1)”.
- However, stakeholders represented that the change may expand the scope of AE and make the two parts mutually exclusive, contrary to the court rulings which held them to be conjunctive. On the other hand, the MOF explained the intent of the change to bring clarity that the first part is a general definition while the second part is a specific definition.
- Considering the views of the stakeholders and having regard to the unintended impact of the change, the PSC recommended to retain the original language as contained in existing S. 92A of ITA.
- However, in the Amended ITB 2025, the provision does not make any reference to either of the two aforementioned phrases. Instead, the structure of the provision is modified so as to combine both S.92A(1) and

<sup>9</sup> Illustratively, refer Bangalore Income Tax Appellate Tribunal (ITAT) decision in the case of Page Industries [2016] 71 taxmann.com 172 (subsequently, upheld by Karnataka High Court (HC) in TS-19-HC-2021 (KAR) and SLP dismissed by SC in Petition No. 11465/2021, Ahmedabad ITAT decision in the case of Veer Gems (2017)(77

Taxmann.com 127 (Affirmed by Gujarat HC (2017)(83 taxmann.com 271). SLP filed by revenue against HC decision was dismissed in [2018] 256 Taxman 298 (SC)

<sup>10</sup> Illustratively, refer Mumbai ITAT decision in the case of Kaybee Private Limited [TS-233-ITAT-2015(Mum)-TP]



S.92A(2) into one section with an intent to make all the clauses as alternative conditions for testing AE relationship.

- The manner in which Ss. 92A(1) and 92A(2) are combined, may raise various interpretational issues which may need independent evaluation.
  - ▶ Considering the large pendency of cases at the first appellate authority pursuant to introduction of the faceless appeals scheme, stakeholders made various suggestions to replace the faceless appeal scheme with e-appeals where the officers conduct the hearings through video conferencing, and to allow physical appeals in cases meeting certain thresholds (as applicable in search and seizure cases) for speedy disposal of appeals. Accepting these suggestions, the PSC has recommended introduction of a new enabling provision empowering the Central Government to notify a scheme so as to dispose of appeals efficiently.
- (iv) **Charity taxation and related aspects**
- ▶ Restrictions on commercial activity by Non-GPU<sup>11</sup> NPOs<sup>12</sup>:
  - Like ITA 1961, ITB 2025 provides that NPOs having Non-GPU objects are not allowed to carry on commercial activity unless such activity is incidental to the attainment of objects of NPOs and separate books of accounts are maintained. Separate restrictions are imposed on GPU NPOs for carrying out commercial activity.
  - However, while simplifying the language in Amended ITB 2025 (as recommended by PSC), the restriction may now apply to GPU NPOs instead of Non-GPU NPOs. The amended clause overlaps with separate clause applicable to GPU NPOs in ITB 2025. This appears to be an inadvertent error and should hopefully be rectified in the next version of ITB 2025.

#### 4. Other modifications

##### (i) *Procedural aspects*

- ▶ Extension of mandate to accept payments through prescribed electronic modes to professionals
- ITA 1961, as also ITB 2025, includes a provision requiring certain large businesses (with turnover exceeding INR 500 M in the preceding tax year) to offer payment facilities through prescribed electronic modes, such as debit cards and UPI. Under ITA, there is a relaxation from this compliance granted from through a Circular<sup>13</sup> to persons having only Business-to-Business (B2B) transactions with at least 95% receipts in non-cash mode. The Amended ITB 2025 extends the mandate to large taxpayers (with gross receipt exceeding INR 500 M in preceding tax year) engaged in professions as well. It would be good for the Government to clarify that the relaxation granted to taxpayers having only B2B transactions with at least 95% receipts in non-cash payments will also apply to professionals.

- ▶ ITB 2025 restructured the exemption provisions comparable to S.10 of ITA 1961 for easy readability. Here, it stated that where exemption from total income is linked to a condition, the exemption shall be withdrawn if the taxpayer breaches the said condition. In this respect, there was no clarity on whether the exemption shall be withdrawn for past tax years as well if the condition is breached in subsequent years. The Amended ITB 2025 clarifies that in such cases income shall be chargeable to tax in that particular tax year, in which the conditions are not fulfilled.

##### (ii) *Rationalization of transitional provisions*

- The ITB 2025 is set to apply from 1 April 2026, covering tax years 2026-27 and onwards, with the ITA 1961 being repealed on the same date. Assessment and procedural aspects for tax years prior to 2026-27 will continue to be governed by the ITA 1961

<sup>11</sup> General Public Utility

<sup>12</sup> NPOs having objects of relief of the poor, education, medical relief, yoga and preservation of environment or monuments.

<sup>13</sup> Circular No. 12/2020 dated 20 May 2020

provisions, with no changes to this aspect.

Amended ITB 2025 now clarifies that these Circulars are also granted continuity.

- To facilitate a smooth transition, ITB 2025 contains transitional provisions to allow for tax credits, carry forward of losses/ unabsorbed depreciation/ amortization or deferral of expenses across various years. The PSC has recommended certain anomalies in such provisions to be addressed, as discussed below:

- The Amended ITB 2025 now includes provisions for the carry forward of deferred deductions for the acquisition of telecom spectrum, which was previously inadvertently omitted.
- Long term capital losses (LTCL) incurred before 1 April 2026 were initially allowed to be offset against both long term capital gains (LTCG) and short term capital gains (STCG) arising after that date. The Amended ITB 2025 has corrected this by permitting the set-off of LTCL only against LTCG.
- Clawback provisions for violations of tax exemption conditions on transfers of capital assets between holding and subsidiary companies would previously result in taxation in the year of violation rather than the year of actual transfer. The Amended ITB 2025 now rectifies this by taxing the clawback of exemption in the year of actual transfer.
- The ITB 2025 proposed continuity for various Rules, Instructions, Notifications, and Schemes issued by the Central Board of Direct Taxes (CBDT), as well as any elections and declarations made by taxpayers under the ITA 1961. However, it initially lacked reference to Circulars issued under the ITA 1961. The

- However, lack of specific transitional provisions related to the carry forward of interest deduction limitations and pre-construction interest on house property in ITB 2025 remain unaddressed. While specific transitional provisions are lacking, carry forward may still be possible based on general principles.
- However, lack of specific transitional provisions related to the carry forward of interest deduction limitations and pre-construction interest on house property in ITB 2025 remain unaddressed. While specific transitional provisions are lacking, carry forward may still be possible based on general principles.

## 5. **Significant suggestions from stakeholders not accepted by PSC**

PSC has recommended removal of references to ITA 1961 provisions by incorporating them specifically in ITB 2025, if required through transitional provisions, to make ITB 2025 a standalone legislation. This will enhance clarity and ease of referencing to a reader.

As stated earlier, the PSC restricted itself to addressing drafting anomalies and made recommendations to align ITB 2025 with ITA 1961. In the process, several suggestions made by stakeholders identified by MOF as involving policy issues were not considered by PSC. The MOF also provided certain further reasons for not accepting certain suggestions. Some of the key stakeholder recommendations and the basis for their rejection as involving policy issue and/or other reasons are briefly tabulated at Annexure A hereunder.

## Annexure A - Significant suggestions from stakeholders not accepted by PSC

Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
<p>▶ The ITB 2025 aimed to simplify the tax law by replacing the archaic phrase “Notwithstanding anything contained” with “irrespective of anything contained” for clarity. This raised questions about whether existing judicial rulings related to the former non-obstante clause would still apply. Accordingly, it was requested to reinstate the phrase used under the ITA 1961.</p>	<p>▶ The change is justified on the following grounds: (i) it aligns with international best practices; (ii) it enhances understanding for a 'common graduate'; and (iii) it makes the language more lucid.</p> <p>▶ Both the expressions are similar, preserve the tax effect and do not erode the overriding effect.</p> <p>▶ Courts are likely to uphold the intended hierarchy of provisions, regardless of the wording, without diluting legislative intent.</p> <p>▶ Additionally, regarding broader concerns that judicial interpretations developed under the ITA would be disregarded due to the language change, this issue is left for the courts to address, and thus there can be no government assurance on the matter.</p>
<p>▶ Exempt waiver of loan from tax</p> <p>Note :- It is significant to note that the Ministry of Corporate Affairs suggested that waiver of loan should not be considered as taxable income because it will negatively impact the purpose of IBC</p>	<p>▶ Sick companies covered under Insolvency and Bankruptcy Code (IBC) can set off such waiver against accumulated losses despite change in shareholding. Granting benefit to companies not having significant losses to absorb such waiver will result in unjust enrichment</p> <p>▶ As per Ind-AS also, waiver is to be credited to P&amp;L.</p> <p>▶ Certain court rulings held it to be taxable under ITA 1961<sup>14</sup></p>
<p>▶ Suggestion to change depreciation rate for energy storage system and electric vehicles</p>	<p>▶ It was not shown as to what the useful life of such assets are.</p>
<p>▶ Grant depreciation on goodwill</p>	<p>▶ It is prone to misuse; can encourage tax avoidance and tax arbitrage;</p> <p>▶ There is no specific mechanism to compute goodwill; and value of goodwill can appreciate also.</p>
<p>▶ Restore 200% weighted deduction for in-house approved R&amp;D facility</p>	<p>▶ The government's stated policy is to phase out exemption/deduction and provide a simpler tax regime to the taxpayers.</p> <p>▶ Weighted deduction would decrease actual expenditure towards R&amp;D i.e., a taxpayer wanting to avail INR200 of weighted deduction would only spend INR100 for R&amp;D.</p>

<sup>14</sup> Bombay HC in case of Solid Containers Ltd. v. Dy. CIT [2009] 178 Taxman 192, Delhi HC in case of Logitronics (P.) Ltd. v. CIT [2011] 197

taxman 394, Delhi HC in case of Rollatainers Ltd. v. CIT [2011] 203 Taxman 31 (Mag.)

Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
<ul style="list-style-type: none"> <li>▶ Omit provisions in ITA 1961 relating to Sick Industrial Companies (Special Provisions) Act, 1985 [SICA] to avoid redundancy</li> </ul>	<ul style="list-style-type: none"> <li>▶ Repeal of SICA became effective only in 2016, and there are chances of such sick companies facing reassessments of past years.</li> </ul>
<ul style="list-style-type: none"> <li>▶ ITA 1961 postpones recognition of interest income for bad and doubtful debts to point of actual receipt having regard to RBI guidelines. While extant RBI guidelines classify a debt as non-performing if interest is not received for 90 days, the rules provide for an extended timeline of 180 days. A suggestion to adopt RBI guidelines for the purpose of this provision was made</li> </ul>	<ul style="list-style-type: none"> <li>▶ 90 days is too short a time to recognize a debt as bad and doubtful.</li> <li>▶ Flexibility should be retained to differ from RBI guidelines.</li> </ul>
<ul style="list-style-type: none"> <li>▶ In respect of small resident taxpayers, reduce current lock-in in presumptive business income taxation provisions from 5 years to 2 years</li> </ul>	<ul style="list-style-type: none"> <li>▶ Fundamental premise behind such lock-in of 5 years was to encourage participation in this scheme for a reasonable period of time and not to misuse it strategically to reduce tax liability (e.g., going out of presumptive scheme when there is loss and availing presumptive scheme when there is income as per books much beyond the presumptive rate).</li> </ul>
<ul style="list-style-type: none"> <li>▶ In respect of resident taxpayers, extend benefit of presumptive taxation provisions to brokerage and commission agents</li> </ul>	<ul style="list-style-type: none"> <li>▶ No substantial expenses are incurred in earning such income and hence presumptive taxation is not recommended.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Rationalize provisions of the new presumptive taxation scheme for providing services/ technology for electronics manufacturing in India in respect of non-resident taxpayers</li> <li>▶ Specifically, permit NRs to claim a profit lower than the presumptive profit by maintaining books</li> </ul>	<ul style="list-style-type: none"> <li>▶ NR providing both services and technology is also entitled to avail presumptive taxation benefit.</li> <li>▶ A request to exempt such NRs from minimum alternate tax provisions has been noted by the MOF for further examination.</li> <li>▶ As to permitting NRs to claim lower profit by maintaining books, this may defeat the purpose of providing tax certainty, minimizing litigation and reducing compliance burden. Significant benefit is already allowed to such taxpayers by keeping the presumptive rate very low at 25% resulting in effective tax rate of less than 10%.</li> </ul>
<ul style="list-style-type: none"> <li>▶ The private company which is the subsidiary of a listed entity is classified as deemed public company for the purpose of Companies Act, 2013.</li> <li>▶ For the purposes of ITA 1961 and ITB 2025, the company is classified as widely held company (WHC) if it is not private company as defined under Companies Act, 2013.</li> <li>▶ This raised ambiguity regarding whether deemed public companies could be classified as WHC which continues to retain characteristics of private company basis its charter documents. It was recommended to modify the definition of widely held company to cover deemed public companies.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Coverage of such deemed public companies as WHC would lead to tax leakage as provision of deemed dividend, unexplained cash credits is not applicable to WHC. The intention is not to extend WHC status to deemed public companies which continues to be private company lacking public shareholding.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Inter head set off of losses without restriction, subject to exception (like losses from speculation</li> </ul>	<ul style="list-style-type: none"> <li>▶ This is in the nature of policy change which is beyond the scope of the present exercise.</li> </ul>

Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
business, activity of owning and maintaining race horses, online gaming etc.) may be allowed.	
<p>▶ There is an ambiguity if fast track demergers qualify as tax neutral in the absence of express reference in definition of “demerger”. Hence modify the definition of demerger to specifically cover fast track demergers.</p>	<p>▶ It is not an inadvertent omission</p> <p>▶ Intention to provide tax neutrality to demerger was only to schemes approved by the court unlike fast-track demerger which is not under control and supervision of court.</p> <p>▶ Since fast-track demergers are not court monitored, valuations thereof can result in tax implications or avoidance</p>
<p>▶ Increase of tolerance band by 10% over value determined by Valuation Officer</p>	<p>▶ Such tolerance band is not applicable to value determined by Valuation Officer as it will result in challenging the valuation report itself.</p>
<p>▶ ITA 1961 provides tax neutrality for transfer of shares for units of business trust. However, no relief is available on swapping of convertible debt instrument, LLP interest or immovable property for units of business trust.</p>	<p>▶ The purpose of the exemption on swap is for transfer of ownership in SPV in exchange of business trust units, which represents ownership in business trust. The convertible debt instrument or other assets are not instrument of ownership. Further, the suggestion may result in tax avoidance and is therefore unfeasible.</p>
<p>▶ Provide specific carve out of waiver of loan pursuant to resolution plan approved under IBC and on transfer of unquoted shares by conversion of debenture, preference shares, right shares, bonus shares or transaction approved by National Company Law Tribunal (NCLT) from gift tax provisions.</p>	<p>▶ These provisions are anti-abuse in nature.</p> <p>▶ Further, the recommendation was in nature policy change, which is beyond scope of the current exercise.</p>
<p>▶ The period of holding for classification of capital assets being residential property is reduced from 36 months to 24 months. The capital gains arising from transfer of such capital asset is exempt where the investment is made in new residential house property. One of the conditions to claim exemption is to hold the new house property for a period of 3 years.</p> <p>▶ The period of holding for determining nature of asset and exemption provision may be streamlined.</p>	<p>▶ Period of holding and condition of holding are not interconnected and period prescribed for holding new property is reasonable.</p>
<p>▶ Avoid application of deemed consideration provision on transfer of shares among relative, family members, group companies, under family settlement or by listed company and also on bonafide transaction.</p>	<p>▶ This is in the nature of policy change which is beyond the scope of the current exercise.</p> <p>▶ Further, it is noted that ‘bonafide’ is a subjective term and open to litigation. Undervaluation of shares and other assets is rampant and provisions for anti-abuse are therefore needed.</p>
<p>▶ Considering that all capital asset become long-term capital asset if held for a period exceeding 24 months, undertaking for slump sale should also be</p>	<p>▶ Slump sale is different from sale of any other capital asset. Shorter duration will result in misuse of provision.</p>

Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
clarified to become long-term capital asset if held for a period exceeding 24 months.	<ul style="list-style-type: none"> <li>▶ Further, this is a policy change which is beyond the scope of the current exercise.</li> </ul>
<ul style="list-style-type: none"> <li>▶ The stakeholders have recommended to apply GAAR provisions instead of deemed consideration provisions (on transfer of unlisted shares) and gift tax provisions.</li> </ul>	<ul style="list-style-type: none"> <li>▶ These are specific provision to deal with specific case of valuation. Usage of GAAR may dilute the purpose of GAAR. Further, invocation of GAAR may be cumbersome. GAAR is used only in few cases and cannot substitute deeming provision.</li> <li>▶ Further, this is a policy change which is beyond the scope of the current exercise.</li> </ul>
<ul style="list-style-type: none"> <li>▶ In case of amalgamation of two foreign companies, some jurisdictions do not have any legal mandate to issue shares to shareholders of amalgamating company. Hence, the stakeholders have recommended to remove the condition of issuing shares to the shareholders of foreign amalgamated company, wherein there is no change in ultimate ownership of the group.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This is an anti-abuse provision so that Indian assets are not parted with in disguised manner.</li> <li>▶ Further, this is a policy change which is beyond the scope of the current exercise.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Tax neutrality conditions on conversion of company into LLP may be amended to increase the turnover and asset base limit. The limits are outdated and an amendment may result in ease of doing business which is a guiding factor for the limits prescribed.</li> </ul>	<ul style="list-style-type: none"> <li>▶ The provision for conversion of company into LLP is to enable conversion of small companies. Any enhancement may result in misuse of provision.</li> <li>▶ Further, this is a policy change which is beyond the scope of the current exercise.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Where Indian shareholder is holding shares of foreign companies and there is amalgamation of foreign companies, there is no specific exemption in the hands of Indian shareholder who receives shares of amalgamated foreign company in lieu of shares of amalgamating foreign company. Thus specific exemption may be provided to Indian shareholder.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This may result in tax avoidance and leakages and hence not feasible. This will also result in absence of an oversight mechanism.</li> </ul>
<ul style="list-style-type: none"> <li>▶ There is no specific provision in ITA 1961 providing for deduction to employees with respect to the amount paid to the former employer as notice period pay. Such notice period pay may be allowed as deduction in computing salary income.</li> </ul>	<ul style="list-style-type: none"> <li>▶ The suggestion made is in the nature of policy change which is outside the scope of the current exercise</li> <li>▶ The amount being paid by the taxpayer employee is already earned by the employee. The amount paid is in the nature of penalty which is being levied by the employer.</li> <li>▶ The amount being paid is an application of income and not reduction of salary income earned/ accrued.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Any specified asset<sup>15</sup> found to be owned by taxpayer but not recorded in its books of account or recorded at lower value, without satisfactory explanation, is deemed income of taxpayer (popularly known as unexplained asset<sup>16</sup>).</li> </ul>	<ul style="list-style-type: none"> <li>▶ MOF clarified that the phrase 'or belonging to' was introduced to address cases where the legal owner and beneficial owner are not same. This phrase encompasses individuals who enjoy the benefits of an asset without being its legal owner. Without this clarification, there may be opportunities for tax avoidance.</li> <li>▶ Hence, this suggestion is not acceptable.</li> </ul>

<sup>15</sup> Money, bullion, jewellery or other valuable article.

<sup>16</sup> Section 69A and 69B of ITA 1961.



Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
<ul style="list-style-type: none"> <li>▶ ITB 2025 has expanded the scope of unexplained income to include cases where specified asset<sup>17</sup> "belonging to" taxpayer.</li> <li>▶ It was suggested to remove this phrase to bring it in line with ITA 1961.</li> </ul>	
<ul style="list-style-type: none"> <li>▶ The prohibition on set-off and carry forward of losses in case of more than 49% change in beneficial shareholding may not be made applicable to intra-group restructuring</li> </ul>	<ul style="list-style-type: none"> <li>▶ This is a policy change which is beyond the scope of the current exercise.<sup>18</sup></li> </ul>
<ul style="list-style-type: none"> <li>▶ Benefit of set-off and carry-forward of losses in the following circumstances may be preserved:</li> <li>▶ Share transfer of special purpose vehicle (SPV) made by sponsor to business trust.</li> <li>▶ Share transfer of stressed industries.</li> <li>▶ To evaluate continuity of loss set off basis business continuity rather than shareholding change.</li> <li>▶ To extend existing condition applicable to company start-ups to even LLP start-ups which was denied on additional ground of LLP being different legal form of entity than company;</li> </ul>	<ul style="list-style-type: none"> <li>▶ This is a policy change which is beyond the scope of the current exercise.</li> <li>▶ This could result in abuse of provisions and manipulation of profits.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Buy back may continue to be taxed under the head Capital gains as against deemed dividend as taxation of gains on buyback of shares as dividend goes against the premise that return of capital cannot be dividend. Further, it may also go against the economic and accounting norm.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This amendment was to prevent misuse of buyback provisions by the promoters of companies by availing low rate of buyback.</li> <li>▶ This is a policy change which is beyond the scope of the current exercise.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Requirement of TDS on year-end provisions may be done away with.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This can result in revenue leakage for taxpayers following mercantile basis of accounting and is hence not feasible.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Judicially it is settled position that only those years for which incriminating material is found during a search should be assessed for undisclosed income under block assessments for search. Such judicial position should be statutorily incorporated</li> </ul>	<ul style="list-style-type: none"> <li>▶ Such a change would amount to a policy change</li> <li>▶ Under the block assessment regime, the assessment is to be made for the entire block period as single assessment, and therefore, judicial precedents relating to year wise assessments are not relevant in this context.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Barring evasion of taxes, all other offences under the income tax law may be decriminalized.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This suggestion would result in a policy change and hence not accepted.</li> <li>▶ Further, in recent years, various defaults under the income tax law have already been decriminalized.</li> </ul>

<sup>17</sup> includes money, bullion, jewellery, virtual digital asset or other valuable article.

<sup>18</sup> However, the definition of "beneficial owner" as inserted in Amended ITB 2025 appears to protect intra-group transactions where ultimate shareholders are common individuals. This requires further evaluation

Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
<ul style="list-style-type: none"> <li>Offence of defaults in payment of taxes deducted/ collected at source may be decriminalized, especially in cases where such default is not wilful.</li> </ul>	<ul style="list-style-type: none"> <li>Failure to deposit taxes deducted/ collected is violation of a fiduciary duty which is a serious offence and hence cannot be decriminalized.</li> <li>Besides, pursuant to amendments made vide FA 2024 and 2025, delayed remittance prior to due date of filing of quarterly statement of taxes deducted/ collected have already been decriminalised.</li> </ul>
<ul style="list-style-type: none"> <li>There should be no overlap between penalty and prosecution provisions i.e. both penalty and prosecution should not trigger in respect of the same default<sup>19</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>There is generally no overlap between penalty and prosecution provisions. However, even where such overlap exists, both operate in different fields.</li> <li>Further prosecution is not launched in all cases and the cases fit for prosecution are governed by CBDT Guidelines.</li> </ul>
<ul style="list-style-type: none"> <li>Offence of non-filing of return of income may be decriminalized in cases not involving any tax evasion.</li> </ul>	<ul style="list-style-type: none"> <li>There exists a specific carve-out from prosecution in cases where the tax payable by the taxpayer (after reducing advance tax, self-assessment tax payments and any available credit of tax deducted or collected at source) does not exceed INR 10,000<sup>20</sup>.</li> </ul>
<ul style="list-style-type: none"> <li>Offence of failure to produce books of accounts before the tax authority may be decriminalized since the Tax Authority can carry out assessment on an estimate basis.</li> </ul>	<ul style="list-style-type: none"> <li>This would amount to wilful scuttling of quasi-judicial proceedings and hence cannot be accepted</li> </ul>
<ul style="list-style-type: none"> <li>Extend benefit of reasonable cause defence to all prosecution provisions. In other words, a taxpayer may not be prosecuted for any default in case there exists a bona fide reasonable cause for the same.</li> </ul>	<ul style="list-style-type: none"> <li>This would go against certain provisions of the ITA 1961 where prosecution is permitted even if the default is on account of a reasonable cause [For instance, penalty for unaccounted income/ income in the form of unexplained credits, etc.]</li> </ul>
<ul style="list-style-type: none"> <li>Procedural requirements in terms of filing of return of income (ROI) should be done away with when a taxpayer has a significant economic presence under the ITA 1961, however is not taxable under the treaty in absence of permanent establishment in India</li> </ul>	<ul style="list-style-type: none"> <li>ROI exemption is provided in cases where NRs have dividend, interest, royalty or FTS income, subject to conditions.</li> <li>However, where active business is undertaken, a taxpayer may be required to file ROI on a case-to-case basis</li> <li>The intricacies of taxation and its effective administration require basic minimum procedural compliances from the taxpayers, so that a non-intrusive approach may be adopted for ensuring tax compliances.</li> </ul>
<ul style="list-style-type: none"> <li>Taxes paid outside India which are not eligible to be claimed as foreign tax credit should be allowed as a deduction</li> </ul>	<ul style="list-style-type: none"> <li>Allowance of ineligible foreign tax credit (FTC) as a business loss is in the nature of policy change and is beyond the scope of the objectives of ITB 2025.</li> </ul>

<sup>19</sup> It may here be highlighted that the provisions of the ITA permit both penalty and prosecution, inter alia, in cases where TDS is to be deducted on certain in-kind payments like for tax withholding on lottery winnings, business perquisite or benefit, virtual digital assets, etc.

<sup>20</sup> It may here be highlighted that such carve-out from prosecution if the amount of tax remaining payable is less than INR 10,000 does not apply to corporate taxpayers (domestic or foreign).

Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
<ul style="list-style-type: none"> <li>▶ Under the ITA 1961, the faceless assessment provisions itself codify the procedural framework.</li> <li>▶ In contrast, the ITB 2025 confers powers on the CBDT to prescribe the procedural framework for faceless assessment through subordinate legislation.</li> <li>▶ Stakeholders expressed concern that vesting such powers with the CBDT may result in excessive delegation, enabling substantive procedural changes without direct legislative oversight</li> </ul>	<ul style="list-style-type: none"> <li>▶ Substantive provisions are provided in the parent law, and only procedural aspects are delegated to subordinate legislation.</li> <li>▶ Even subordinate legislation such as rules are subject to legislative oversight, as it requires approval of the Minister in charge and the Ministry of Law and Justice, and is also laid before Parliament, ensuring adequate checks and balances.</li> </ul>
<ul style="list-style-type: none"> <li>▶ ITA 1961 requires tax authority to pass order giving effect to appellate or revisionary order, otherwise than by making a fresh assessment or reassessment, within three months from end of the month in which such appellate or revisionary order is received. ITB 2025 substitutes aforesaid period of three months with six months. Restore the original timeline of three months.</li> </ul>	<ul style="list-style-type: none"> <li>▶ The original time limit of three months was giving rise to grievances on account of tax credit not being provided adequately; as the tax authorities faced difficulty in reconciling records with different portals of CPC-TDS, CPC-ITR and ITBA, and for past years the records were not available on systems. The extension of time limits would allow appropriate closure of the case without having to resort to rectifications of the order giving effect.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Under ITB 2025, scope of information which suggests that income chargeable to tax has escaped assessment is expanded to include any directions 'in the case of the taxpayer' given by the Approving Panel. Further, reassessment pursuant to receipt of directions issued by Approving Panel is automatic, and tax authority is not required to conduct pre notice inquiry for such reassessment.</li> <li>▶ Additionally, ITB 2025 dispenses with pre- notice inquiry where reassessment is pursuant to receipt of finding or direction contained in an order passed (a) by any authority, Tribunal or court in any proceeding under ITB 2025 by way of appeal, reference or revision or (b) by a Court in any proceeding under any other law.</li> <li>▶ Allow pre-notice inquiry in aforesaid cases.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Decision to reopen has effectively been made by a higher authority - there is nothing left for the tax authority to evaluate or the taxpayer to plead that can undo that directive by a higher authority, and, besides, opportunity of being heard would have already been granted by the Approving Panel or Appellate Authority or Tribunal or Court.</li> </ul>
<ul style="list-style-type: none"> <li>▶ In case of succession of business or profession, where the predecessor cannot be found, income of predecessor is assessed in hands of successor. Successors face unlimited liability for predecessor's dues, even if inherited assets are insufficient.</li> <li>▶ The liability of successor should be limited to income attributable to inherited assets or value of inherited assets only and that the liability should not be unlimited.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This is a policy change prone to misuse, and adverse to revenue interests by limiting the liability of successor. The successor is inherently obligated to assume the predecessor's liabilities.</li> </ul>
<ul style="list-style-type: none"> <li>▶ For provision dealing with discontinuance of business or profession, the term "discontinuance" may be defined as permanent cessation of business or profession with no intent to resume operations. This will remove ambiguity and avoid coverage of</li> </ul>	<ul style="list-style-type: none"> <li>▶ This is a policy change. Scope of the term "discontinuance" should be interpreted in natural sense and based in facts of the case. Defining discontinuance</li> </ul>

Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
temporary closure of business (e.g., due to strike, closure of hotel for two years for reconstruction)	<p>will also require to further define term "cessation" leading to litigation on interpretation.</p> <p>► Thereafter the Report also gives guidance on what could be scope of term "discontinuance".</p>
<p>► Liquidator is personally liable for tax dues of liquidating company if it fails to intimate tax authority within 30 days of its appointment. Since liquidator is personally liable, opportunity to demonstrate if failure was due to reasonable cause should be given to liquidator.</p>	<p>► This is policy change and adding condition of reasonable cause will add discretion and unnecessary litigation to determine "reasonable cause".</p>
<p>► It was suggested that in case of multiple liquidators, the joint and several liability should not extend to other liquidators due to non-compliance by a specific individual liquidator.</p>	<p>► This is policy change.</p> <p>► Further, joint liability ensures there is fixed accountability, and all liquidators involved, act responsibly leading to protection of the interest of the Revenue. Any deviation from this position will open avenues for bypassing the system and there would not be a logical end to the liquidation proceedings.</p>
<p>► Personal recovery of a private company's tax dues from its directors is an onerous liability and hence should be applied only in grave situations of personal wrongdoing by directors.</p>	<p>► This is a policy change. Considering anti-abuse nature of provision, the suggestion seeks to eliminate the deterrence out of provision. Private limited companies are closely managed by directors and recovery of tax from directors is not onerous in nature.</p>
<p>► ITA 1961, as amended by Finance (No. 2) Act, 2024, removed the requirement for the tax authority to provide a minimum time limit of three months for the taxpayer to file its return of income in response to reassessment notice (though maximum time limit that can be allowed is three months). ITB 2025 has adopted the same position as ITA 1961.</p> <p>► In this behalf, a minimum time limit of one month may be provided.</p>	<p>► Time available with the tax authorities to complete reassessment (within one year from the end of the financial year in which such reassessment notice is served) begins as soon as reassessment notice is served. Further, there are cases of non-residents or persons leaving India where reassessment may have to be finalised quickly to enable such taxpayers to leave India after meeting their tax liabilities. In any case, the tax authority has a power to grant an extension in filing return if the taxpayer faces any difficulty in filing return.</p>
<p>► ITA 1961, as amended by Finance (No. 2) Act, 2024, also removed the requirement for the tax authority to provide a minimum time limit of 7 days but not more than 30 days to the taxpayer to respond to pre-inquiry notice for reassessment. ITB 2025 has adopted the same position as ITA 1961.</p> <p>► In this behalf, a minimum time limit of 15 days may be provided to ensure that taxpayer is provided with a reasonable opportunity to be heard.</p>	<p>► These provisions were recently modified to avoid litigation on time limits, and to avoid inserting multiple timelines in the provisions.</p>
<p>► Set a time limit for first appellate authority seeking a remand report from the tax authority.</p>	<p>► Remand report is a part of appellate procedure, and not a separate procedure.</p> <p>► Further, if the first appellate authority is required to pass an order in absence of remand report, the same may be detrimental to the interest of the taxpayer.</p>

Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
<ul style="list-style-type: none"> <li>▶ Time limit for disposal of appeals before first appellate authority may be fixed to reduce pendency.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Acceptance of this suggestion would lead to a policy change which is not in scope of the current exercise.</li> <li>▶ Further, CBDT vide the Central Action Plan has already put in place various measures to reduce pendency at first appellate level. In case of disposal of an appeal resulting in a refund, interest is paid for the entire period.</li> <li>▶ Additionally, various monetary thresholds have also been set against appeals by income tax authorities at higher appellate levels to reduce pendency at each level.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Hold tax authorities accountable where the demands upheld at Tribunal level is not higher than a reasonable figure (say 50%).</li> </ul>	<ul style="list-style-type: none"> <li>▶ Suggestion is rejected quoting it to be not feasible.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Increase the time limit for filing of appeal before the first appellate authority from 1 month to 3 months.</li> <li>▶ Also extend the time limit for filing of appeal before Tribunal to 3 months</li> </ul>	<ul style="list-style-type: none"> <li>▶ This suggestion results in policy change, which is not within the scope of current exercise.</li> <li>▶ Further, existing time limit of 1 month is aligned with recovery proceeding which is 30 days.</li> <li>▶ Additionally, currently the time limit for filing appeal before Tribunal is 2 months from the end of the month in which order sought to be appealed against is communicated to taxpayer. Thus, effectively, in many cases the time limit allowed is close to 3 months.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Reduce amount of demand to be pre-deposited for grant of stay from 15% to 10% in case of appeal at first appellate level.</li> </ul>	<ul style="list-style-type: none"> <li>▶ There already exists a mechanism wherein certain senior level tax authorities are empowered to permit lower percentage of demand to be paid for granting stay.</li> </ul>
<ul style="list-style-type: none"> <li>▶ In case of non-disposal of appeal by first appellate level within one year, interest on refund to be paid at 12% instead of 6%.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This suggestion results in policy change, which is not within the scope of current exercise.</li> <li>▶ Necessary administrative measures to monitor disposal of pending appeals are already in place.</li> <li>▶ Further, the proposal will create more confusion in a case where Commissioner of Income Tax (Appeals), confirms the addition and Tribunal deletes the same.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Introduction of facility allowing taxpayers to file an "inactivity appeal" requesting to set a deadline in case of appeals pending for unjustifiably long period (as done in Germany).</li> </ul>	<ul style="list-style-type: none"> <li>▶ According to German Federal Ministry of Finance, this facility is rarely used by taxpayers i.e., 1.6% to 2% of administrative tax appeals.</li> <li>▶ Accordingly, providing such facility in India may not be helpful either.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Appointment of more juniors to assist first appellate authority for quick disposal of appeals.</li> </ul>	<ul style="list-style-type: none"> <li>▶ A junior category of appellate authorities, called Joint Commissioner of Income Tax (Appeals), has already been created for quick disposal of appeals. Therefore, this suggestion has been taken care of.</li> </ul>

Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
<ul style="list-style-type: none"> <li>▶ Limit first appellate authorities power not to remand any matter back to the tax authority for adjudication afresh.</li> </ul>	<ul style="list-style-type: none"> <li>▶ First appellate authorities power to remand any matter back to the tax authority for adjudication afresh can only be exercised in cases where the assessment was completed on an estimate basis (viz. best judgement assessment). In such case, remand back to tax authority aligns with the principle of natural justice and grants taxpayer an opportunity of being heard.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Various orders (such as order on completion of pre-notice enquiry which determines whether a case is fit for assessment, waiver of interest, etc.) issued under the ITA 1961 are currently not appealable. Introduce appeal avenues for the same.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This suggestion results in policy change, which is not within the scope of current exercise.</li> <li>▶ Further, the existing provisions ensure finality.</li> <li>▶ In any case, Taxpayer has opportunity of contesting the said orders before the High Court (HC) in writ proceedings.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Order of Tribunal refusing condonation of delay is not appealable before HC<sup>21</sup>. This should be made appealable.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This is a judicially settled issue.</li> <li>▶ In any case, taxpayer has opportunity of contesting the said orders before the HC in writ proceedings.</li> <li>▶ Further, this suggestion results in policy change, which is not within the scope of current exercise.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Time limit for disposal of appeal by Tribunal to be reduced from 4 years to 2 years.</li> <li>▶ In case of non-disposal due to delay by department, higher interest at 12% to be paid on refund.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This suggestion results in policy change, which is not within the scope of current exercise.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Existing time limit of 6 months for rectification of Tribunal order to be removed. Alternatively, it may be extended to 4 years similar to S. 154 of ITA.</li> </ul>	<ul style="list-style-type: none"> <li>▶ The existing time limit of 6 months is to promote finality.</li> <li>▶ Further, extension of time limit would lead to delay in recovery proceedings.</li> </ul>
<ul style="list-style-type: none"> <li>▶ On appeal to Tribunal, where taxpayer's case is covered by favorable judicial precedents, requirement of pre-deposit of 20% of disputed tax may be removed or reduced, similar to Vivad se Vishwas (VSV) scheme.</li> </ul>	<ul style="list-style-type: none"> <li>▶ In case of appeal to Tribunal, the additions would have already been confirmed by first appellate authority. Therefore, rationale of VSV scheme cannot be applied.</li> <li>▶ Further, there are detailed instructions issued by CBDT regarding calibration of amount of pre-deposit for stay in various cases.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Empower Tribunal to grant complete stay of demand even beyond 365 days in deserving cases.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This suggestion results in policy change, which is not within the scope of current exercise.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Include judicial member in composition of Dispute Resolution Committee (DRC)</li> </ul>	<ul style="list-style-type: none"> <li>▶ Finding judicial members is difficult as has been seen in respect of composition of Authority for Advance Rulings (AAR).</li> </ul>
<ul style="list-style-type: none"> <li>▶ Increase limit for hearing by Single Member Bench of Tribunal to INR 10 M from existing INR 5 M.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Ministry is positive on this suggestion as department cannot appeal to Tribunal against order of first appellate authority in cases involving amounts less than INR 6 M.</li> </ul>

<sup>21</sup> as held by Kerala HC in case of V K Sreenivasan v. CIT (2013) [213 Taxman 17 (Mag)(Ker.)(HC)]



Suggestion from stakeholders	Reasons for rejection by Ministry of Finance as accepted by the PSC
	<ul style="list-style-type: none"> <li>▶ However, any change in provisions of law shall be carried out through appropriate due process.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Writ petitions against ITB 2025 to be heard by HC through a division bench of 2 judges, to bring uniformity.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Composition of HC benches for writ petitions are governed by Article 226 and 227 of Constitution, it is not feasible to regulate the same through the tax law.</li> </ul>
<ul style="list-style-type: none"> <li>▶ The list of all pending issues on direct taxes before HC and Supreme Court (SC) to be published in CBDT website.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This is an administrative issue and requires keeping the list updated on real time basis. Therefore, this request may be better addressed by the respective HCs.</li> </ul>
<ul style="list-style-type: none"> <li>▶ The constitution of Board of Advance Rulings (BAR) to include a law member.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This suggestion results in policy change, which is not within the scope of current exercise.</li> <li>▶ Further, it is difficult to find such law members (retired judges of HC and SC) opting for this post.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Recommence practice of issuing Circulars on Court Rulings to clarify CBDT position to reduce litigation.</li> </ul>	<ul style="list-style-type: none"> <li>▶ It is logistically difficult as there are 25 high courts.</li> <li>▶ The courts deal with finer points on major issues.</li> <li>▶ Further, there is divergence of opinion amongst HCs on the same issue.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Penalty to be levied on tax authorities filing repeated appeals which are settled by the court in favour of the taxpayer.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Every appeal is filed with the approval of senior officers. Also, there are sufficient administrative measures in place to ensure no frivolous appeals are filed by the department. Thus, the suggestion is not feasible.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Parameters for appraisal of tax authorities should include success rate of their orders in appeal.</li> </ul>	<ul style="list-style-type: none"> <li>▶ An efficient and effective mechanism for evaluation of performance of officers is already in place.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Time limit for revision of orders on application by the taxpayer be increased from 1 year to 2 years, to bring it at par with revision suo moto by tax authority.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Revision on application by taxpayer is already at par with suo moto revision by tax authority since taxpayer can apply in 1 year and then Commissioner can pass order in 1 year after that.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Enhance the scope of DRC by increasing the threshold limits.</li> <li>▶ Also provide a time limit for closure of cases by DRC</li> </ul>	<ul style="list-style-type: none"> <li>▶ This suggestion results in policy change, which is not within the scope of current exercise.</li> <li>▶ Further, DRCs are not yet stabilised. Enhancement of scope may be contemplated once they are stabilised.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Abolish BAR and expand the power of Tribunal to cover advance rulings.</li> </ul>	<ul style="list-style-type: none"> <li>▶ This suggestion results in policy change, which is not within the scope of current exercise.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Constitution of a Litigation Management Committee to address the litigating factors on a real time basis and recommend CBDT for issuing guidelines.</li> </ul>	<ul style="list-style-type: none"> <li>▶ There exist provisions under the ITA 1961/ ITB 2025 which empower CBDT to issue guidelines. However, there is no organized systematic process.</li> <li>▶ Therefore, suggestion can be considered for administrative implementation.</li> </ul>

## Undefined terms in tax treaties

- ▶ As per ITA 1961, any term which is not defined in a tax treaty is to be understood as per the meaning of such term (if any) in the ITA 1961 itself, any explanation given by the Central Govt; or in absence thereof, as per a notification issued in this regard by the Central Govt.
- ▶ Similar provisions exist in the ITB 2025. However, ITB 2025 additionally provides that if the undefined term is not defined in ITA or any notification issued by the Central Government, the meaning may be borrowed from any other Central Govt. Act (either dealing with taxes or otherwise) which shall be deemed to have effect from date on which the tax treaty came into force.
- ▶ Stakeholders represented that ITB 2025 referring to other Central Acts amounts to overriding the Vienna Convention and Article 3(2) contained in tax treaties and hence leads to interpretational issues. Hence, the existing provisions of S. 90 may be retained. Alternatively, the meaning contained in the other Central Laws should be applied prospectively and not from the date on which the treaty comes into force.
- ▶ However, after considering the views of MOF, PSC refrained from making any recommendation in this regard by providing the following brief reasoning:
  - ▶ In order to interpret an undefined term, precedence is to be given to domestic laws rather than public international law. Further Article 3(2) of tax treaty itself requires recourse to domestic laws.
  - ▶ The additions made by ITB 2025 are in accordance with the provisions of tax treaty and settled judicial precedents. It also reduces litigation and provides certainty on how an undefined term is to be interpreted.
  - ▶ Further the additional provisions of ITB 2025 are parimateria with the existing provisions of ITA 1961 and hence it is appropriate for it to have effect from the date of entry into force of the relevant tax treaty.

## Comments

The recently released 4500-plus page Report of the PSC on the ITB 2025 in the Lok Sabha reflects thorough clause-by-clause deliberations and an extensive consultative process undertaken by the PSC, that actively included inputs from a diverse range of stakeholders. This detailed report not only offers valuable insights into PSC's extensive discussions but also emphasizes that its mandate was primarily focused on rectifying drafting errors and ensuring consistency with the existing Income Tax Act, 1961. The PSC appears to have concurred with the MOF's view that maintaining continuity with the policy framework of existing ITA 1961 is one of the objects of ITB 2025, and any amendments which result in change in policy framework will require an independent exercise. Hence, the PSC has not recommended any policy changes and has prioritized the refinement of language and the resolution of technical inconsistencies to improve clarity and coherence in the ITB 2025.

Some of the notable recommendations include reinstating the deduction for inter-corporate dividends for corporate taxpayers benefiting from 22% CTR, allowing NIL tax withholding certificates, clarifying distinctiveness of inhouse R&D deductions with Department of Scientific and Industrial Research (DSIR) approval, disallowance of MTM losses not in accordance with Income Computation and Disclosure Standards (ICDS), allowance of business deductions involving delayed deposit of withholding taxes, denial of foreign exchange fluctuation benefit to non-residents when computing capital gains, etc. It may be noted that all these changes result in aligning the simplified text of ITB 2025 with existing ITA 1961.

Furthermore, it appears not all PSC recommendations are incorporated in the Amended ITB 2025. For instance, there are number of amendments recommended by PSC on MAT and AMT to align them with ITA 1961 (e.g. firm/LLP not being required to pay AMT if it does not claim any specified incentive deductions or exemptions) which do not appear in the text of Amended ITB 2025, computation of standard deduction for income from house property after reducing municipal taxes, set off and carry forward of losses when there exists change in shareholding, etc. It is expected that the Government may consider these recommendations when presenting the revised version of ITB 2025 in the Parliament for legislative approval.

The PSC also appears to have concurred with Finance Ministry's views that certain new provisions in ITB 2025 like retroactive treaty interpretation of undefined terms with reference to domestic central non-tax laws are aligned with the position under current ITA 1961; they bring forth clarity and will reduce litigation.

While PSC has refrained from recommending policy changes, the Report provides good insights on the views of MOF on certain important issues. For instance, the MOF views fast-track demerger (without NCLT approval) differently from conventional NCLT approved demerger for granting tax neutrality. Furthermore, it views waiver of loans by financial creditors in corporate insolvency process as a taxable income (although Ministry of Corporate Affairs recommended to clarify its non-taxability). The Report also reveals that MOF is seized of some of the computational issues impacting newly introduced presumptive taxation for non-residents providing services or technology for electronic manufacturing in India. It also highlights that the CBDT is aware of the issues arising out of the large pendency of appeals before various fora (especially the first appellate authority), and also admits that some administrative measures are required in addition to those already taken in the last few years in this respect [such as formation of Joint Commissioner of Income Tax (Appeals), etc.]

In light of this, stakeholders are encouraged to engage with the government to capitalize on this rare opportunity to overhaul the six decades-old income tax framework. Their continued inputs can help shape future provisions aimed at minimizing disputes and compliance challenges, as well as address any remaining gaps not resolved by the PSC. More significantly, since the Government is parallelly reviewing the income tax rules and forms to align with ITB 2025, stakeholders' inputs on compliance issues like income tax returns, tax audit report, lower or nil withholding certificates, valuation rules, profit attribution rules, safe harbors, etc. will help the Government in addressing them effectively before ITB 2025 comes into force. It is also hoped that the Government leverages on the extensive stakeholder consultation made by PSC to address the policy issues highlighted by stakeholders as part of next budget exercise.

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