

# INCOME-TAX ACT, 2025

## TAX PLANNING

---

**April 17, 2026**

# BUY BACK OF SHARES FINANCE ACT, 2026

---

# IN BRIEF

---

- Old – Section 2(22f) r.w. 46A
  - Dividend taxable as dividend u/h IOS
  - Cost allowed as Capital Loss to be set-off with Capital Gains only
- Now – Taxable as capital gains, no more dividend (Section 69, E-S46A)
  - W.e.f. Tax Year 2026-27

# BUY BACK OF SHARES - LISTED

	Promoter – Domestic Company	Promoter – Any Other	Other Shareholder
LTCG – 197 or 198 (E-112A or 112)	Additional 9.5% = 22%	Additional 17.5% = 30%	Additional NIL = 12.5%
STCG – 196 (E-111A)	Additional 2% = 22%	Additional 10% = 30%	Additional NIL = 20%
STCG – Other	Additional NIL = 22%	Additional NIL = Slab Rates	Additional NIL = Slab Rates

- Promoter = as per SEBI Provisions

# BUY BACK OF SHARES - UNLISTED

	Promoter – Domestic Company	Promoter – Any Other	Other Shareholder
LTCG – 198 (E-112)	Additional 9.5% = 22%	Additional 17.5% = 30%	Additional NIL = 12.5%
STCG	Additional NIL = 22%	Additional NIL = Slab Rates	Additional NIL = Slab Rates

- Promoter = 2(69) of Companies Act, 2013 OR holding (directly or indirectly) > 10% shares

# TAX RATE

---

- Surcharge on tax on such capital gains
  - On additional tax u/s 69 – surcharge @ 12% irrespective of total income.
  - On capital gains tax as per other provisions like 196, 197 & 198 – surcharge as applicable normally

# BUY BACK OF SHARES - UNLISTED

---

Section 2(69) - “promoter” means a person—

(a) who has been named as such in a prospectus or is **identified by the company in the annual return** referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

*Provided that* nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity

# QUESTIONS

---

- Whether loss incurred on buy-back is allowed? **Yes**
- Whether losses (including b/f losses) allowed to be set-off? **Yes**
- Whether LTCG can be exempted u/s 86 (E-54F)? **Yes**
- Whether 50CA would apply (unlisted shares) if buy-back price is lower than FMV? **Yes, no exception provided**
- What will happen if one promoter transfers shares to another promoter before buy back? Will it save taxes?



# QUESTIONS

---

- Whether above additional tax will be levied even if net LTCG is lower or NIL????
- Is it to curb practice of paying lower dividend tax by foreign entities (DTAA Route)?
- Is it to curb practice to bring unaccounted money into company by issuing shares at premium and then buy back at lower price
  - Section 56(2)(viib) deleted w.e.f. 01/04/2025, and buy back taxation as dividend was introduced w.e.f. 01/10/2024

# INDEXATION VS TAX RATE 20% OR 12.5%

---

# INDEXATION VS SECTION 54/82

---

- Question: Maturity of CGAS of FY 2022-23 in FY 2025-26 taxable at which rate – 20% or 12.5%?
- ITA 1961 – Section 112
  - in the case of an individual or a Hindu undivided family, being a resident,-
  - (i) .....; and
  - (ii) the amount of income-tax calculated on such long-term capital gains,-
  - (A) at the rate of twenty per cent **for any transfer which takes place before the 23rd day of July, 2024**; and
  - (B) at the rate of twelve and one-half per cent for any transfer which takes place on or after the 23rd day of July, 2024:

# INDEXATION VS SECTION 54/82

---

- Question: Maturity of CGAS of FY 2023-24 in FY 2026-27 taxable at which rate – 20% or 12.5%?
- ITA 2025 – Section 197
  - Where the total income of an assessee includes any income arising from the transfer of a long-term capital asset which is chargeable under the head “Capital gains”, the tax payable by the assessee on the total income, subject to sub-sections (2), (3) and (4), shall be the aggregate of—
  - (a) income-tax payable on the total income as reduced by such long-term capital gains, had the total income, as so reduced, been his total income; and
  - (b) income-tax calculated on such long-term capital gains at the rate of 12.5%.

# MINOR BUT RELEVANT PLANNINGS

---

# DEPRECIABLE ASSETS VS EXEMPTION U/S 85

---

- Shops in malls vs Section 85 (E-S54EC)
- ITA 1961 – Section 54EC(1)
  - Where the capital gain arises from the transfer of a long-term capital asset, being land or building or both, .....
- ITA 2025 – Section 85(1)
  - Where an assessee has—
  - (a) long-term capital gains arising from the transfer of land or building, or both, (original asset);

# 2 HOUSES AGAINST 1 HOUSE

---

- ITA 1961 – Section 54(1) Second Proviso
  - Provided further that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year:
- ITA 2025 – Section 82(6)
  - If during any tax year, the assessee has exercised the option mentioned in section 82(5), he shall not be entitled to exercise such option for the same tax year or any other tax year.
- No reference of ITA 1961. Can be claimed again post 01/04/2026?

# IHP – SECTION 20 (E-S22)

---

- ITA 1961:
  - 22. The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".
- ITA 2025
  - 20(2). The provisions of sub-section (1) shall not apply to such portions of the property, as occupied by the assessee for his business or profession, the profits of which are chargeable to income-tax.



# ACCOMMODATION TO EMPLOYEE

---

- ITA 1961 - Explanation 3 to Section 28 (*inserted by Finance (No. 2) Act, 2024*)
- ITA 2025 – Section 26(4)
  - Any income from letting out of a residential house or a part of it by the owner shall not be included in income under sub-section (1) and shall be chargeable only under the head “Income from house property”
- Ques:
  - Rent free accommodation to employee?
  - Concessional accommodation to employee?

# MINIMUM ALTERNATE TAX FINANCE ACT, 2026

---

# MAT CREDIT

---

- W.e.f. Tax Year 2026-27
- MAT Rate reduced to 14%
- MAT Credit for Tax Year 2026-27 and onwards: not allowed at all
  - i.e. MAT is full & final tax. No more tax holidays
- MAT Credit for AY 2026-27 and earlier years
  - Allowed to domestic companies from Tax Year 2026-27 onwards only if opted for 22% (Section 200; E-S115BAA) or 15% (Section 201; E-S115BAB) tax scheme
  - Subject to max 25% of tax liability for that year
  - Balance will be carried forward but max 15 years from year of MAT Credit

# MAT CREDIT

---

- Questions:
  - Whether old MAT Credit w/off by many companies earlier will revive?
  - In case assessee opts for Section 200 or 201 in TY 2027-28 or later, whether MAT Credit (accumulated upto 31/03/2026) will be allowed?
  - Whether allowance of such MAT Credit to the extent of 25% of tax liability will increase/decrease in case there is change in tax at later stage? **Yes (Section 206(3)(c))**

# MAT CREDIT

---

- Companies with huge MAT Credit and on verge of end of Tax Holiday, would be benefitted most.
  - Continued with old regime – MAT Credit upto 17.472% of income would have gone
    - Normal provisions tax =  $30\% + 12\% + 4\% = 34.944\%$
    - MAT =  $15\% + 12\% + 4\% = 17.472\%$
    - MAT Credit set-off =  $34.944\% - 17.472\% = 17.472\%$  of income
  - Continuing with new regime – MAT Credit upto 6.292% of income would be utilized i.e. approx. 36%
    - Section 200 =  $22\% + 10\% + 4\% = 25.168\%$
    - MAT Credit set-off =  $25\%$  of  $25.168\% = 6.292\%$
  - MAT Credit set-off versus old provision = only 36% will be set-off

# MAT CREDIT

---

- Better to continue with old regime if tax holiday is available
  - MAT under Old Regime =  $14\% + 12\% + 4\% = 16.3072\%$
  - Tax under New Regime =  $22\% + 10\% + 4\% = 25.168\%$
  - Savings
    - $25.168\% - 16.3072\% = 8.8608\%$
    - Old MAT Credit to the extent of 6.292% shall also be available for future years
  - Total Savings =  $8.8608\% + 6.292\% = 15.1528\%$  of income

# ALTERNATE MINIMUM TAX

---

# ALTERNATE MINIMUM TAX

---

- ITA 1961 – Chapter XII-BA, Sections 115JC, 115JD, 115JE, 115JEE
- ITA 2025 – Section 206
- Facts:
  - Y1 – AMT Applicable (Reason: Deduction claimed u/c VI-A (Part C)) and AMT credit carried forwarded
  - Y2 – AMT not applicable (Reason: no deduction u/c VI-A (Part C))
- Question: Whether AMT Credit of Y1 allowed in Y2?
  - ITA 1961 – allowed
  - ITA 2025 – allowed



# ALTERNATE MINIMUM TAX

---

- Y1 – AMT Applicable (Reason: deduction claimed u/c VI-A (Part C)) and AMT credit carried forwarded
- Y2 – AMT not applicable (Reason: assessee filing ITR u/s **115BAC(1A)** (**ITA 2025 – 202(1))**)
- Question: Whether AMT Credit of Y1 allowed in Y2?
- ITA 1961 – not allowed
- ITA 2025 – allowed

# RENT INCOME – PGBP VS IHP

---

Building with land (like warehouse)

Building without land (like shops in malls)

# PGBP VS IHP

PGBP	IHP
Depreciation (including pre-construction)	Standard Deduction @ 30%
Repair & Maintenance, Agreement Registration/Drafting expenses, Bad Debts (easy to claim)	No Tax Audit, No Books of Accounts
Interest on Borrowed Capital	Interest on Borrowed Capital (including pre-construction over 5 years) with restriction over resulting losses

# PGBP VS IHP

---

PGBP	IHP
Brokerage	Brokerage (Disputed Matter)
Cash basis allowed	
Notional Rent concept not applicable	

# PGBP VS IHP

PGBP	IHP
Capital Gains – STCG	Capital Gains – LTCG
Even depreciation claimed will be treated as STCG (only tax deferral through depreciation)	No depreciation and hence CoA = Historical Cost (Standard Deduction = permanent benefit)
Tax Rate – Maximum 39%	Tax Rate – Maximum 14.95%
No exemption u/s 82/85 (E-S54/S54EC)	Exemption allowed u/s 82/85

# PGBP VS IHP

---

- Question:
- Relevancy of above discussions for self use of property in business/profession?

# INTEREST ON BORROWED CAPITAL VS COST OF ACQUISITION/IMPROVEMENT

---

# UNDER IHP – NEW REGIME

---

- Self-occupied: Interest deduction not allowed at all
- Let-out: Interest allowed including pre-construction interest
  - Extent allowed?
  - Allowability of resulting loss?
  - Carry-forward of resulting loss?
- ITA 2025 – Section 26(4)
  - Any income from letting out of a residential house or a part of it by the owner shall not be included in income under sub-section (1) and shall be chargeable only under the head “Income from house property”



# UNDER CAPITAL GAINS

---

- Section 90(1): Cost of Improvement
  - 90(2): For the purposes of sub-section (1)(b), the cost of improvement does not include any expenditure which is deductible in computing the income chargeable under the head “Income from house property”, “Profits and gains of business or profession” or “Income from other sources”.
- Section 72(3): In computing the income chargeable under the head “Capital gains”, the following amounts shall not be allowed as a deduction:—
  - (a) the interest claimed as deduction u/s 22(1)(b) or u/c VIII (Deductions)

# EFFECTIVE COST OF BORROWINGS

---

- Whether 8% (Bank Lending Rate) or 12%?

# PENALTY & IMMUNITY, UPDATED ITR, UNEXPLAINED INCOMES FINANCE ACT, 2026

---

# PENALTY ORDER VS ASSESSMENT ORDER

---

- Now penalty u/s 439 (erstwhile 270A) shall form part of assessment order after giving a show cause notice (both for under-reported income (50% penalty) and mis-reported income (200% penalty))
  - Applicable w.e.f. 01/04/2027 i.e. for assessment orders passed on or after 01/04/2027 for any year
  - No interest on such penalty portion upto date of passing of order by CIT(A)
- Question: Whether AO can issue revised SCN post submissions by assessee highlighting technical issues with earlier show cause notice?
- Demand deposit for stay - proposed 10% of tax portion
  - May be pre-condition for filing appeal in manner similar to GST

# UPDATED ITR VS LOSS RETURN

---

- Updated ITR allowed in case of reduction in losses also
  - Effective from 01/03/2026
  - No additional tax liability in such cases. In that case subsequent years' ITRs may need to be revised (no additional tax, but Late fees) or to be updated (additional tax would be there)

# UNEXPLAINED INCOMES

---

- Unexplained incomes (Section 102-106 r.w. 195) (erstwhile 68 to 69D r.w. 115BBE)
  - Tax rate reduced to 30% w.e.f. Tax Year 2026-27 but surcharge continue to be flat @ 25% i.e. effective rate to be 39%
  - No more 10% penalty but will be treated as misreporting thereof i.e. liable for 200% penalty
  - Effective:
    - Earlier 78% tax + 10% penalty = 84%
    - Now 39% + 200% tax = 117%
  - Savings in interest portion
    - Earlier interest calculated on 78% tax
    - Now interest will be calculated on 39% tax

# UNEXPLAINED INCOMES

---

- Unexplained incomes (Section 102-106 r.w. 195) (erstwhile 68 to 69D r.w. 115BBE)
  - Question: If assessee declares unexplained income in ITR suo-moto, what shall be the tax rate and corresponding penalty thereof
  - Tax Rate = 39%
  - Penalty = as no change in assessed income vs returned income, section 439 (erstwhile 270A) has no applicability and hence no penalty could be levied
  - Is it VDS/IDS scheme available w.e.f. Tax Year 2026-27
  - Logic behind introduction of 78% tax rate????

# CONVERSION OF FIRM INTO COMPANY AND VICE-VERSA

---



# CONVERSIONS

---

ITA 1961	ITA 2025
47(xiii)	70(1)(zd)
47(xiiib)	70(1)(ze)
47(xiv)	70(1)(zf)

# FIRM/(SOLE PROPRIETORSHIP) INTO COMPANY

- ITA 1961
  - the aggregate of the shareholding in the company of the partners of the firm is not less than fifty per cent of the total voting power in the company and their shareholding **continues to be as such** for a period of five years from the date of the succession;
- ITA 2025
  - the aggregate of the shareholding of the partners in the company is not less than 50% of the total voting power and such shareholding **continues to not less than 50%** for five years from the date of succession
- Question: Originally voting power 65% and later on reduced to 50%?

# JOINT DEVELOPMENT AGREEMENTS (JDA)

---

As covered up by Section 67(14) [E-S45(5A)]

# TDS IN CASE OF JDA

---

ITA 1961	ITA 2025
194-IA	393 T 3(i)
194-IC	393 T 3(ii)
194M	393 T 6(ii)

# TDS BY DEVELOPER

---

- Whether under both sections 194-IA [393 T 3(i)] and 194-IC [393 T 3(ii)] or under 194-IC [393 T 3(ii)] only
- ITA 1961 – no clarification
- ITA 2025 – Note 2: In case of consideration on which provisions of both serial numbers 3(i) and 3(ii) are applicable, tax shall be deducted under 3(ii) only.

# TDS BY LANDOWNER

---

- Whether 194M [393 T 6(ii)] applicable or not?
- Question persists even under ITA 2025

# SECTION 67(14)[E-45(5A)]

---

- Irrespective of anything contained in 67(1) (E-S45), if the capital gains arises to a person (being an Individual/HUF), from the **transfer** of a capital asset, being land or building or both, under a specified agreement, then,—
- (a) such capital gains shall be **chargeable** to income-tax for the tax year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and
- (b) for the purposes of section 72 (E-S48), the stamp duty value, on the date of issue of the said certificate, of the **share of such person**, being land or building or both, in the project, **as increased by any consideration** received in cash or by a cheque or draft or by any other mode shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

# SECTION 67(16) [E-45(5A) PROVISIO]

---

- The provisions of S67(14) shall not apply, if the person transfers his share in the project on or before the date of issue of the certificate of completion, and then,—
- (a) the capital gains shall be deemed to be the income of the tax year of such transfer; and
- (b) the provisions of this Act, other than S67(14), shall apply for the purpose of determination of full value of consideration.



# SECTION 393(1) [TABLE SL. NO. 3(ii)]

- Erstwhile – Section 194-IC

Nature of Income or sum	Payer	Rate & Threshold limit
Any consideration, not being consideration in kind, under the agreement referred to in section 67(14).	Any person.	Rate: 10% <hr/> Threshold limit: Nil.

# QUESTIONS:

---

- Whether exemption u/s 82 (E-S54), 85 (E-S54EC), 86 (E-S54F) available against LTCG of Land Owner?
- If yes, from which date, period of 1 year or 2 years or 3 years or 6 months will be computed?
- What shall be the cost of acquisition of share received by the landowner (whether includes money consideration received)?

# SECTION 73 (E-S49)

---

- Table Sl. No. 20

Description of the capital asset	Cost of acquisition
Capital asset, being share in the project, in the form of land or building, or both, under section 67(14), not being a capital asset referred to in section 67(16).	The amount deemed as full value of consideration under section 67(14).

# QUESTIONS:

---

- Whether TDS u/s 393(1) (Table 1 – 3(ii)) (E-S194-IC) is required to be deducted even if Land Owner is other than Individual/HUF although agreement is specified agreement?
- Section 67(15)(b)
  - “specified agreement” means a registered agreement in which a person owning land or building, or both, agrees to allow another person to develop a real estate project on such land or building, or both, in consideration of a share, being land or building or both, in such project, whether with or without payment of part of the consideration in cash.

# JOINT DEVELOPMENT AGREEMENTS (JDA)

---

Other than JDAs covered up by Section 67(14) [E-S45(5A)]

# ISSUES FOR DEVELOPER

---

- Unsold inventory vs IHP
  - Section 21(5) [E-S23(5)]
  - Where a property is held as stock-in-trade and is not let wholly or partly at any time during the tax year, the annual value of such property or part thereof shall be nil upto two years from the end of the financial year in which the certificate for completion of construction is obtained from the competent authority.
- Deduction of interest on borrowed capital, if any (including pre-construction interest) against such notional IHP
- TDS by Developer from payments to Land Owner

# LAND OWNER – REVENUE SHARING

---

- Capital Gains
  - Year of taxability
  - Full value of consideration
  - Future consideration different from consideration offered to tax
  - Whether POCM allowed under Capital Gains
  - Whether treated as SIT from the date of agreement
- Stock-in-Trade
  - Whether POCM allowed
  - Full Value of Consideration
  - Future Consideration

# LAND OWNER – REVENUE SHARING

---

- Any tax planning
  - Conversion of Capital Asset into Stock-in-Trade - Only if POCM allowed
  - Cash basis of accounting for land owner



# LAND OWNER – AREA SHARING

---

- Capital Gains
  - Whether whole land is treated as transferred on date of agreement
  - Whether treated as carrying on business
  - Whether treated as carrying on development as AOP
  - Whether resulting area will be treated as SIT
  - Period of holding of resulting area in case held as capital asset
  - How capital gains will be computed, if any

# LAND OWNER – REVENUE CUM AREA SHARING

---

- Whether area could be 1 out of 800?
- Is a tax planning tool vis-à-vis section 67(14)

# ISSUES FOR ULTIMATE BUYER

---

# PURCHASE OF BOOKING

---

- TDS u/s 393(1) [Table 1 3(i)]
  - Part consideration to original allottee
  - Part consideration to builder/developer
  - Registry of original consideration fixed between original allottee & builder only

# PRESENTATION BY:

---

CA. Pankaj Saraogi

- B.Com.(H)-SRCC, FCA (10<sup>th</sup> Rank), DIIT (ICAI), LL.B.
- Email: [pankaj@saraogi.co.in](mailto:pankaj@saraogi.co.in)
- Mobile: +91 98103 08129

## THANK YOU