



## Proposed amendments to the Finance Bill, 2018

The Finance Bill, 2018 (the Bill) was introduced by the Finance Minister in the Lok Sabha on 1 February 2018. Today, the Lok Sabha has passed the Bill. The key amendments are summarised as follows:

### Significant Economic Presence

The Bill proposed to amend Section 9(1)(i) of the Income-tax Act, 1961 (the Act) to provide that 'significant economic presence' (SEP) in India shall also constitute 'business connection'. It was also proposed to provide that the transactions or activities shall constitute SEP in India, whether or not the non-resident has a residence or place of business in India or renders services in India.

It is now proposed<sup>1</sup> that the transactions or activities shall constitute SEP in India, whether or not the agreement for such transactions or activities is entered in India.

### Start-ups

Deductions under Section 80-IAC are available to an eligible start-up for 3 consecutive assessment years out of 7 years at the option of such start-up subject to prescribed conditions

The Bill proposed to amend the condition relating to the requirement of turnover not to exceed INR25 crore to seven previous years commencing from the date of incorporation beginning 1 April 2016 and ending on 31 March 2021.

It is now proposed that instead of seven years, the condition with respect to turnover not to exceed INR25 crore has been restricted to the year in which the deduction is claimed<sup>2</sup>.

<sup>1</sup> To amend second proviso to Explanation 2A

<sup>2</sup> Section 80IAC of the Act provides option to the taxpayer to claim the deduction for any 3 consecutive years out of the 7 years from the date of incorporation.

### Taxation of long term capital gains

- The Bill introduced taxation of long-term capital gains at the rate of 10 per cent arising from transfer of equity shares in a company or units of an equity oriented mutual fund or units of a business trust. It was proposed to include the provisions relating to the determination of cost of acquisition (without giving effect to the first proviso and second proviso to Section 48 of the Act) in the aforesaid cases in newly introduced Section 112A.

The amendment to the Bill proposes to remove these provisions from Section 112A and introduce the same under Section 48 and Section 55 of the Act.

- The Bill had provided for computation of the 'fair market value' in case of shares which were listed on 31 January 2018.

It is now proposed to provide for the determination of a 'fair market value' in case where shares were not listed as on 31 January 2018 but are listed on the date of transfer and which become the property of the taxpayer in consideration of share which is not listed on such exchange as on the 31 January 2018 by way of transaction not regarded as transfer under Section 47 of the Act. In the aforesaid case, the taxpayer will be allowed to consider the benefit of indexation of cost of acquisition of such unlisted equity shares for the purpose of determination of capital gains under Section 112A.

## Taxability of long-term capital gains up to INR1 lakh

The Bill provided for the computation of tax payable on the total income to be the aggregate of the amount of income-tax calculated on long-term capital gains exceeding one lakh rupees at the rate of 10 per cent and the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the taxpayer.

The provisions nowhere provided for excluding INR1 lakh while calculating tax payable on the balance amount of the total income. It is now provided that the amount of income-tax payable on the total income shall be as reduced by the amount of long-term capital gains referred to in Section 112A(1) as if the total income so reduced were the total income of the taxpayer.

## Conversion of inventory into capital asset

In order to provide symmetrical treatment and discourage the practice of deferring the tax payment by converting the inventory into capital asset, the Bill proposed to introduce Section 28(vi) so as to provide that any profit or gains arising from conversion of inventory into capital asset or its treatment as capital asset shall be charged to tax as business income. It is also proposed to provide that the fair market value of the inventory on the date of conversion or treatment determined in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of such conversion or treatment. To include such fair market value the definition of income has also been amended. It is proposed that for the purposes of computation of capital gains arising on transfer of such capital assets, the fair market value on the date of conversion shall be the cost of acquisition.

It is now proposed to amend the definition of 'actual cost' to provide that where a capital asset, referred in Section 28(vi), is used for the purposes of business or profession, the actual cost of such asset to the taxpayer shall be the fair market value which has been taken into account for the purposes of the said clause.

## Withdrawal of Section 54EC exemption if the bonds are redeemed within 5 years

The Bill proposed to restrict the scope of exemption under Section 54EC with respect to investment in specified bonds of NHAI and RECL only in respect of long-term capital gains arising from land or building or both. Further, the lock-in period of these bonds, i.e., NHAI and RECL, has been proposed to be increased to 5 years.

Though the Bill proposed to increase the lock-in period of investments in bonds to 5 years, yet there was no consequential amendment proposed for reversal of exemption if these bonds are transferred or redeemed within 5 years.

It is now proposed to insert a new proviso stating that exemption shall be withdrawn if bonds issued on or after 1 April 2018 are transferred or redeemed within 5 years.

## Definition of 'equity oriented fund'

The Bill proposed to define the term 'equity oriented fund' under clause (a) of the Explanation to Section 112A to mean a fund set up under a scheme of a mutual fund specified under Section 10(23D) and —

- in a case where the fund invests in the units of another fund which is traded on a recognised stock exchange,—
  - a minimum of ninety per cent of the total proceeds of such fund is invested in the units of such other fund; and
  - such other fund also invests a minimum of ninety per cent of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and
- in any other case, a minimum of sixty-five per cent of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange.

Provided that the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

Section 2(42A) of the Act defines the term 'short term capital gain'. Explanation 4 to Section 2(42A) of the Act provides that the expression 'equity oriented fund' shall have the meaning assigned to it in the Explanation to Section 10(38) of the Act.

It is now proposed to amend the Explanation 4 to Section 2(42A) of the Act to provide that the expression 'equity oriented fund' shall have the meaning assigned to it in clause (a) of the Explanation to Section 112A.

## PAN

The Bill proposed amendment to Section 139A to provide that every person not being an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year and who has not been allotted a Permanent Account Number (PAN) shall within such time as may be prescribed apply to Assessing Officer (AO) for the allotment of a PAN.

It is now proposed to restrict the scope of this provision to only non-individual resident persons.

### **Valuation of securities held by bank or financial institution**

The Bill proposed to amend Section 145A to provide that the inventory, being unlisted securities or securities listed but not quoted on a recognised stock exchange, shall be valued at actual cost initially recognised in accordance with the Income Computation and Disclosure Standards (ICDS). The inventories of other securities shall be valued at lower of actual cost or net realisable value in accordance with ICDS.

It is now proposed to provide that the securities held by a scheduled bank or public financial institution shall be valued in accordance with the ICDS notified under Section 145 after taking into account the extant guidelines issued by the Reserve Bank of India (RBI).

#### Ahmedabad

Commerce House V, 9th Floor,  
902 & 903, Near Vodafone House,  
Corporate Road,  
Pralhad Nagar,  
Ahmedabad – 380 051  
Tel: +91 79 4040 2200  
Fax: +91 79 4040 2244

#### Bengaluru

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala,  
Bengaluru – 560 071  
Tel: +91 80 3980 6000  
Fax: +91 80 3980 6999

#### Chandigarh

SCO 22-23 (1st Floor)  
Sector 8C, Madhya Marg  
Chandigarh – 160 009  
Tel: +91 172 393 5777/781  
Fax: +91 172 393 5780

#### Chennai

KRM Tower, Ground Floor,  
No 1, Harrington Road  
Chetpet, Chennai – 600 031  
Tel: +91 44 3914 5000  
Fax: +91 44 3914 5999

#### Gurugram

Building No.10, 8th Floor  
DLF Cyber City, Phase II  
Gurugram, Haryana – 122 002  
Tel: +91 124 307 4000  
Fax: +91 124 254 9101

#### Hyderabad

Salarpuria Knowledge City,  
ORWELL, 6th Floor, Unit 3, Phase  
III, Sy No. 83/1, Plot No 2,  
Serilingampally Mandal, Raidurg  
Ranga Reddy District,  
Hyderabad, Telangana – 500081  
Tel: +91 40 6111 6000  
Fax: +91 40 6111 6799

#### Jaipur

Regus Radiant Centres Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road  
Jaipur, Rajasthan, 302018.  
Tel: +91 141 - 7103224

#### Kochi

Syama Business Center  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682019  
Tel: +91 484 302 7000  
Fax: +91 484 302 7001

#### Kolkata

Unit No. 603 – 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091  
Tel: +91 33 4403 4000  
Fax: +91 33 4403 4199

#### Mumbai

Lodha Excelus, Apollo Mills  
N. M. Joshi Marg  
Mahalaxmi, Mumbai – 400 011  
Tel: +91 22 3989 6000  
Fax: +91 22 3983 6000

#### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park  
Tower-B, Plot# 7, Sector 142,  
Expressway Noida, Gautam Budh Nagar,  
Noida – 201305  
Tel: +91 0120 386 8000  
Fax: +91 0120 386 8999

#### Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex, Mundhwa Road,  
Ghorpadi, Pune – 411001  
Tel: +91 20 6747 7000  
Fax: +91 20 6747 7100

#### Vadodara

iPlex India Private Limited,  
1st floor office space, No. 1004,  
Vadodara Hyper, Dr. V S Marg  
Alkapuri, Vadodara – 390 007  
Tel: +91 0265 235 1085/232 2607/232 2672