

TAX FLASH NEWS

19 July 2019

Proposed amendments to the Finance (No. 2) Bill, 2019

On 5 July 2019, the Finance Minister presented the Finance (No. 2) Bill, 2019 (the Bill). On 18 July, the Lok Sabha has passed the Bill. The key amendments are summarised as follows:

Clarification on taxability of income in case of failure to comply with the specified for exemption under Section 56(2)(viib) of the Income-tax Act, 1961 (the Act)

The Bill proposed that the exemption from deemed taxable income provisions for issue of shares exceeding the stipulated Fair Market Value (FMV) available to eligible start-up shall be revoked in case of failure in fulfilment of specified conditions. In such case, such start-up will be subjected to tax on the income i.e. excess of consideration over face value in the year of such failure.

It is now proposed to provide that in case of such failure, the eligible start-up will be subjected to tax on the excess of consideration over stipulated fair value and not the face value as originally proposed in the Bill. Further it shall be deemed that such start-up has underreported the said income in consequence of misreporting of income.

This amendment aligns with the existing provisions which provide for taxing the difference between consideration over stipulated FMV.

Deemed taxable income provisions relating to gift of money

The Bill proposed that the deemed taxable income provisions relating to gift of money or property are to be extended to the gifts received by non-resident from resident on or after 5 July 2019.

It is now proposed to restrict the tax only on gift of money received by non-resident from resident on or after 5 July 2019 and the word property has been removed from the proposed provision.

Further, it is proposed to substitute words 'person outside India' with the words 'non-resident, not being a company, or to a foreign company'.

Relaxation proposed in conditions for capital gains exemption to Category III Alternative Investment Funds (AIFs) located in International Finance Services Centre (IFSC) dealing in specified securities

The Bill proposed to exempt from tax capital gains derived from transfer of prescribed securities (i.e. global depository receipts, rupee denominated bonds, derivatives and notified securities) by a Category III AIF located in IFSC provided (i) all unitholders of the Category III AIF are non-resident in India and (ii) such Category III AIF derives its income solely in foreign exchange.

The condition that all the units of the Category III AIF need to be held only by non-residents is proposed to be relaxed to exclude units held by a sponsor or a manager of such Category III AIF. The condition that the Category III AIF derives its income solely in foreign exchange is now proposed to be deleted. Such capital gains exemption will be available to Category III AIF located in IFSC to the extent such income is accrued or received in respect of units held by a non-resident.

Shares issued to any Category I AIF not to be subject to angel tax

Currently, where a closely held company issues shares to a resident at a price which is higher than the FMV of such shares, such premium is taxed in the hands of the issuer company. However, no such tax is leviable in respect of shares issued by a venture capital undertaking to a VCF or a Category I AIF-VCF.

The Bill proposed to extend the exemption from the applicability of such angel tax to consideration received by a venture capital undertaking from a Category II AIF towards issue of shares.

It is now proposed to further extend such exemption to shares issued to all sub-categories of Category I AIF.

Accordingly, any investment made by a Category I or II AIF in the shares of a closely held company for a consideration above the FMV of such shares will now not be subject to tax in the hands of such issuer company.

Mutual fund located in IFSC

The Bill proposed to provide relief from additional tax on distribution of any amount to specified Mutual Fund which are located in IFSC deriving its income solely in convertible foreign exchange and of which all the units are held by non-residents.

It is now proposed that condition of deriving income by such specified Mutual Fund solely in convertible foreign exchange has been done away with. It is provided that no additional income-tax is chargeable on any amount of income distributed by a specified Mutual Fund out of its income derived from transactions made on a recognised stock exchange in IFSC and where the consideration for such transaction is paid or payable in convertible foreign exchange.

Amendment to Section 10(23C)

The Bill proposed that for granting registration, the Principal Commissioner or the Commissioner shall be satisfied about the compliance of the trust or institution to the requirements of any other law which are material for the purpose of achieving its objectives. The Principal Commissioner or Commissioner shall cancel the registration if an undisputed order/direction/decreed holds that the trust or institution has violated such requirements.

It is now proposed to introduce a similar amendment in Section 10(23) of the Act. It provides that for the approval, the prescribed authority shall be satisfied about the compliance of requirements under any other law for the time being in force by fund or trust or institution or any university or other educational institution or any hospital or other medical institution¹, as the case may be, which are material for the purpose of achieving its objects.

Further Section 10(23C)² of the Act provides certain conditions for specified fund or trust or institution or any university or other educational institution or any hospital or other medical institution. It is now proposed that government or prescribed authority needs to satisfy that requirement of any other law for the time being in force has not complied, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality to take specified action against such organisations.

¹ Provided under 2nd proviso to Section 10(23C) of the Act

² 15th proviso to Section 10(23C) of the Act

TDS on payments to contractors, professionals and commission

The Bill proposed to introduce a new Section 194M. It was proposed that all individuals and HUF otherwise not obliged to deduct tax at source including cases of personal use are liable to deduct tax at 5 per cent on payments for contractual work or fees for professional services payable to any resident if the sums paid during a financial year exceeds INR50 lakh. Such deductors can deposit the TDS using their PAN and are not required to obtain TAN. The recipient made eligible to apply for obtaining lower TDS certificate in such cases.

It is now proposed to include commission³ or brokerage in the ambit of above provisions of Section 194M.

TDS on cash withdrawal

The Bill proposed to introduce a new Section 194N. It was proposed that tax needs to be deducted at 2 per cent on cash withdrawal by any person in excess of INR1 crore in aggregate in a financial year 'from an account' maintained with them by the recipient.

It is now proposed to replace the terms 'from an account' with 'from one or more accounts'. Further it is also proposed that such TDS shall not be deemed to be income received for the purpose of computing income of the taxpayer.

TDS on payment on transfer of certain immovable property

As per the existing provisions of Section 194-IA of the Act, on transfer of immovable property meaning any land (other than agricultural land) or any building or any part of a building, the transferee is required to deduct tax at source at the rate of 1 per cent on the amount of consideration which is equal to or more than INR50 lakh.

The term 'consideration for immovable property' was not defined under the provisions of the Act and therefore it was proposed in the Bill to clarify that 'consideration for immovable property' shall include all charges in the nature of:

- Club membership fees
- Car parking fee
- Electricity or water facility fee
- Maintenance fee
- Advance fee or any other charges of similar nature which are incidental to transfer of the immovable property.

It is now proposed to replace the words 'consideration for immovable property' with 'consideration for transfer of any immovable property' to align the same with the provisions of Section 194-IA of the Act.

³ Not being insurance commission referred to in Section 194D

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