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TAX FLASH NEWS

24 August 2019

Finance Minister announces various measures to boost economy

The Finance Minister has announced several measures in order to encourage some of the sectors of Indian economy. Key measures are as follows:

Relief from enhanced surcharge on long-term/short-capital gains

The Finance (No. 2) Act, 2019 increased the surcharge on income tax paid by certain rich individuals. The surcharge was levied over and above the applicable income tax rate. It was increased from 15 per cent to 25 per cent for those with taxable income of INR2 to 5 crore, and to 37 per cent for those earning more than INR5 crore.

Accordingly, the Foreign Portfolio Investors (FPIs) came under the gamut of higher tax rate as they have been investing as a non-corporate entity, such as trust or Association of Persons (AOPs), which are classified as an 'individual' for the purpose of taxation under the Income-tax Act, 1961 (the Act).

Due to such high rate of surcharge, as per the sources, FPIs started withdrawing from the Indian stock markets which has started putting pressure on indices and the rupee.

In order to encourage investment in the capital markets, the Finance Minister declared to withdraw the enhanced surcharge levied by the Finance (No.2) Act, 2019 on long term and short term capital gains arising from transfer of equity shares/units referred to in Section 112A and 111A respectively.

Today morning, the government has issued a press release clarifying that the enhanced surcharge has been removed on income arising from the transfer of equity shares / units referred to in Section 112A and 111A of the Act. Further it has been clarified that the tax payable on gains arising from the transfer of derivatives (futures & options) by FPIs which are liable to special rate of tax under Section 115AD shall also be exempt from the levy of the enhanced surcharge. Therefore, the enhanced surcharge has been withdrawn for both the domestic as well as foreign investors on the above-mentioned transactions of transfer resulting into long term / short term capital gains. It has also been clarified that the tax payable at normal rate on the business income arising from the transfer of derivatives to a person other than FPI shall be liable for the enhanced surcharge.

Our comments

As per the sources, post declaration of the enhanced surcharge in the budget, the market capitalisation of the BSE-listed companies fell substantially. Further due to this move, FPIs started exploring investment opportunities in other countries.

To prevent such situation and to boost the confidence of FPIs, the Finance Minister has now declared to remove the enhanced surcharge levied in the Finance (No.2) Act, 2019. This move will provide confidence to the foreign investors and thus help to revive investment in the Indian market.

However, it is important to note that the above relief has not been extended to other securities such as debt securities, etc.

Relief to start-ups from angel tax provisions

Section 56(2)(viib) provides that the amount raised by a start-up in excess of its fair market value (FMV) i.e. excess share premium would be deemed as income from other sources and would be taxed at 30 per cent. It is dubbed as 'angel tax' due to its impact on investments made by angel investors in start-up ventures. Various start-ups had received notices under Section 56(2)(viib) to pay tax on such excess share premium raised by them. The start-ups were facing hardship due to these angel tax provisions. Various representations were made to withdraw the same.

To mitigate genuine difficulties of start-ups and their investors, it has been declared that Section 56(2)(viib) shall not be applicable to start-ups registered with Department of Industrial Policy & Promotion (DPIIT). Accordingly, the angel tax on such start-ups has been withdrawn.

Our comments

This move will provide much needed relief to start-up companies and it will help to attract investments in this sector. The start-up companies were questioned by the tax authorities on the issue of genuineness of money received against the issue of shares. This was against the intention of the government to boost start-up environment in India. Thus this relief will help start-up companies to raise funds without any hurdle from the tax department.

Faceless assessment

Litigation with tax authorities in India has always been a long-drawn process. Many times, it takes more than a decade to arrive at a conclusion or settlement. As a result of this, the processing of tax returns and subsequent revenue audit proceedings take a whole lot of time to reach its finality.

The existing system of scrutiny assessment involves personal interactions between the taxpayer and the tax department, which may leads to certain undesirable practices.

In order to address complaints of harassment on account of issue of notices, summons, orders, etc. by certain tax authorities, the following measures have been taken by the government:

- On or after 1 October 2019 all notices, summons, orders, etc. shall be issued through a centralised computer system and will contain a computer generated unique document identification number.
- Any communication issued without computer generated unique document identification number shall be non-est in law.
- All old notices to be decided by 1 October 2019 or uploaded again through the system.
- From 1 October 2019 all notices to be disposed of within three months from the date of reply.

Our comments

The faceless assessment will bring certainty and will help to reduce litigation. It will also reduce corruption as the taxpayer will not know the tax officer who is assessing his case. Further it will also help to complete the assessment and determine the final tax liability of the taxpayer in a timely manner.

Additional depreciation

The Indian automobile industry is going through a prolonged slowdown from last several months. As per sources, automobile sales in India has witnessed its sharpest decline in last two decades.

To provide relief to the automobile industry, inter alia, it has been provided that additional depreciation of 15 per cent on all vehicles acquired till 31 March 2020 will be available to taxpayers. Accordingly, total depreciation on vehicles will go upto to 30 per cent including current depreciation available at the rate of 15 per cent.

Our comments

Providing additional depreciation on all vehicles along with various other measures will help to revive demand in the automobile industry. However, this industry may require some more incentives under the Act for e.g. extension of weighted deduction on R&D expenditure.

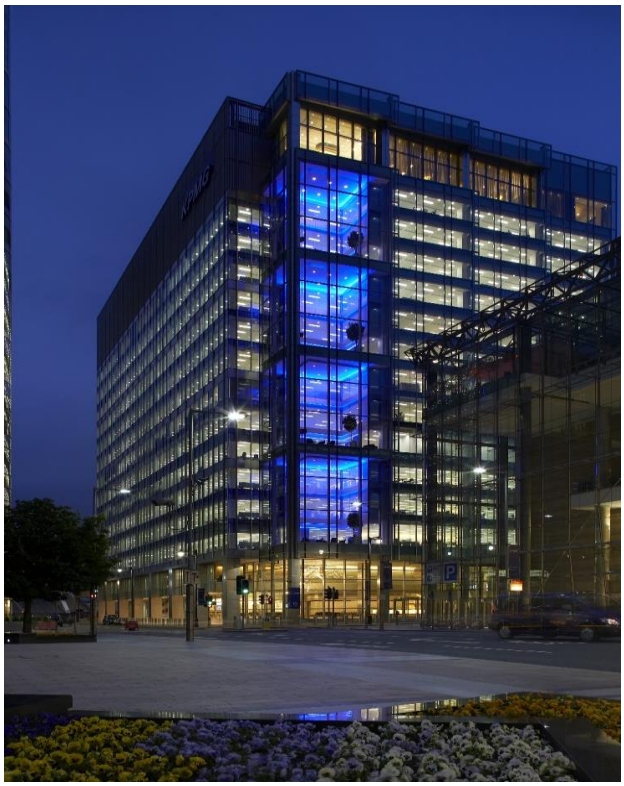
GST refunds

In a major boost to the Micro, Small and Medium Enterprises sector (MSME), the Government has announced the release of all refunds which are pending since the inception of the GST law within a period of 30 days.

In addition, all future refund claims of MSME, shall be paid within a period of 60 days from the date of filing of the application.

Our comments

These measures would certainly help to address the existing liquidity crunch faced by this sector. However, it needs to be seen the manner in which timeline set of 60 days for clearing refund claims would be implemented. It would be apt if the timeline of 60 days are also made applicable across all sectors.



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