

# TAX FLASH NEWS

24 March 2021

## Proposed amendments to the Finance Bill, 2021

On 1 February 2021, the Finance Minister presented the Finance Bill, 2021 (the Bill) in the Lok Sabha. On 23 March, the Lok Sabha has passed the Bill with certain amendments<sup>1</sup> (the amended Bill). Key amendments are summarised as follows:

### Equalisation levy

The Bill had proposed that 'consideration received or receivable from ecommerce supply or services' shall include –

- (i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods;
- (ii) consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

The amended Bill has proposed that the above shall not include consideration for sale of such goods/ provision of services which are owned/provided by a person resident in India or by a Permanent Establishment (PE) in India of a person non-resident in India, if sale of such goods/ provision of such services is effectively connected with such PE.

### Amendment to the definition of 'liable to tax'

Under the Bill, the term 'liable to tax' has been defined to mean that there is a liability of tax on a person under any law in any country and includes cases where exemptions are granted subsequent to imposition of such tax. The Amended Bill has substituted this definition of the term 'liable to tax' by providing that in relation to a person and with reference to a country, means that there is an income tax liability on such person under the law of that country for the time being in force and shall include a person has subsequently been exempted from such liability under the law of that country.

<sup>1</sup> Notice of Amendments, dated 22 March 2021 – Source: Taxman

### Exemption to institutions engaged in infrastructure and developmental financing

In her speech, the Finance Minister had proposed to set up of a Development Financial Institution. The amendment Bill has proposed to exempt from tax:

- The income of the institution established for financing the infrastructure and development, set up under an Act of Parliament and notified by the central government, for a period of ten consecutive assessment years from its set-up
- The income of a developmental financing institution licensed by the Reserve Bank of India, set up under an Act of Parliament and notified by the central government for a period of first five consecutive assessment years from its set-up. The exemption may be extended by a maximum of another five consecutive assessment years by the central government.

The amendment Bill has also proposed to provide exemption from capital gains tax for:

- Any transfer of capital asset by India Infrastructure Finance Company Limited to an institution established for financing the infrastructure and development set up under an Act of Parliament and notified by the central government
- Any transfer of capital asset, under a plan approved by the central government, by a public sector company to another public sector company notified by the central government or to the central government or to a state government.

Section 49 of the Act has been proposed to be amended to provide that in the above two cases, the cost of the previous owner as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the taxpayer shall be deemed to be the cost to the taxpayer.

Further, such transfers shall be excluded from the purview of Section 56(2)(x) in the hands of the recipient.

### Existing goodwill to be reduced from tax written down value (WDV) of intangible block of asset

- The amended Bill has proposed to exclude the amount of addition on account of acquisition of goodwill of a business or profession from being adjusted against the opening block of assets for the purpose of computation of closing WDV of assets.
- It has been proposed to reduce the block of assets by an amount equal to the actual cost of goodwill falling within the block of asset, as reduced by:
  - The amount of depreciation actually allowed to the taxpayer for such goodwill prior to AY 1988-89
  - The amount of depreciation that would have been allowed to the taxpayer for such goodwill post AY 1988-89, as if the goodwill was the only asset within such block

This amendment is effective for AY 2021-22 where tax depreciation was claimed on goodwill for business or profession in AY 2020-21. Further the reduction as mentioned in this point shall not exceed the WDV of the block of assets.

### Receipt of money / capital asset on reconstitution of specified entity

- The Finance Bill had proposed to expand the scope of Section 45(4) regarding the distribution of capital assets on dissolution of firm / AOP / BOI by substituting Section 45(4) with a new Section 45(4) which provided for taxability of capital assets received by specified persons representing amount in their capital account and inserting a new sub-section (4A) which provided for taxability of money / capital assets received by specified persons representing amount in excess of their capital account.
- The amended Bill has proposed to simplify Section 45(4) and 45(4A) by substituting it with a new section 45(4), in conjunction with a newly inserted Section 9B.
- Section 9B provides that where a specified person receives any stock in trade or capital asset or both on reconstitution or dissolution of a specified entity, then such asset is deemed to be transferred to the specified person in the year of receipt and deemed to be the income of the specified entity. Further, FMV as on the date of receipt is deemed to be the full value of consideration.
- The Board is empowered to issue guidelines in case of any difficulty in giving effect to the provisions of Section 9B and 45(4) and such guidelines shall be binding on the assessee and the tax authorities.
- Reconstitution is defined to mean “where
  - One or more of its partners or members, as the case may be, of such specified entity ceases to be partners or members; or
  - One or more new partners or members, as the case may be, are admitted in such specified entity in such circumstances that one or more of the persons who were partners or members, as the case may be, of the specified entity, before the change, continue as partner or partners or member or members after the change; or
  - All the partners or members, as the case may be, of such specified entity continue with a change in their respective share or in the shares of some of them”.
- Specified entity is defined to mean “a firm or other association of persons or body of individuals (not being a company or a cooperative society) in any previous year.”
- Specified person is defined to mean “a person, who is a partner of a firm or member of other association of persons or body of individuals (not being a company or a cooperative society) in any previous year”.
- The new Section 45(4) provides that any profits from money or capital asset received by a specified person on account of reconstitution of a specified entity, shall be deemed to be ‘Capital Gains’ of the specified entity.
- The amended bill also provides for a formula for computing capital gains under this section which is as follows:
  - Money received + FMV of the capital asset received – Amount of balance in capital account of the specified person = Income Chargeable to specified entity as Capital gains.
  - While computing balance in capital account, revaluation of asset or self-generated asset to be ignored.
- Consequent amendments have also been made in Section 48 in this regard.

## Slump Sale

The amended Bill has proposed to replace Section 50B(2) to provide that the FMV of the undertaking transferred shall be deemed to be the full value of consideration in case of a slump sale.

Further, the amended Bill has also proposed to clarify that the value of goodwill that has not been purchased by the taxpayer shall be considered as nil for the purpose of computation of net worth of the undertaking.

## Minimum Alternate tax (MAT) relief for secondary adjustment or APA

Under the provisions of MAT, if there is an increase in book profit of a previous year due to income of past year or years included in the book profit on account of an advance pricing agreement or on account of secondary adjustment, the taxpayer being a company can make an application before an AO to recompute book profit of past years. The amended Bill has proposed that the above provisions will apply to AY beginning on or before 1 April 2020 only if the taxpayer has not utilised the MAT credit in any subsequent AY. It is further provided that no interest shall be payable on refund arising out of this provision.

## Threshold for taxation of interest income on employee contribution to Provident Fund

The Bill had proposed that interest accrued on employee/ individual's contribution (in excess of INR 250,000) to a provident fund account would be taxable. In addition to this provision, the amended Bill has included a case where contributions to Provident Fund are made only by employee and there is no contribution by employer to such account. In such cases, Interest accrued on employee/ individual's contribution in excess of INR 500,000 will be taxable.

## Minimum equity component for nonqualifying ULIP for concessional long-term capital gains (LTCG) tax rate

The Bill had proposed to change taxation regime of ULIPs to make ULIPs with high premium (more than INR 2,50,000) taxable as capital gains. The LTCG rate will be 10 per cent at par with equity instruments like listed equity shares and equity oriented mutual funds, if equity component of the investment under ULIP is minimum 65 per cent in case of direct investment in listed equity shares of domestic companies and 90 per cent in case of indirect investment through fund of funds.

The amended Bill has proposed to provide that the minimum equity component of 65 per cent or 90 per cent as the case may be, is required to be satisfied throughout the term of such ULIP in order to be eligible for concessional LTCG rate of 10 per cent.

## Hindu undivided family (HUF) not eligible taxpayer for presumptive taxation scheme for professionals

The Bill had proposed a presumptive taxation scheme for professionals applicable to the taxpayer, being an individual, HUF or partnership firm, but not to Limited Liability Partnership (LLP) as defined under the LLP Act, 2008. The amended Bill has proposed to remove HUF from the above provisions.

## Investment division of offshore banking unit in IFSC

The Bill had proposed that income of investment division of offshore banking unit in IFSC would be exempt from tax (other than Indian equity). For this purpose, investment division of offshore banking unit was defined as Category III AIF regulated under SEBI (AIF) Regulations, 2012 or which commenced its operations on or before 31 March 2024. The amended Bill has now proposed that investment division of offshore banking unit in IFSC would mean Category I FPI under SEBI (FPI) Regulations, 2019.

Consequential amendment has also been proposed in Section 115AD that such provisions shall be applicable to income of an investment division of offshore banking unit in IFSC classified as Category-I portfolio investor under the SEBI (FPI) Regulations.

## Relocation of offshore fund to IFSC and Cat III AIF in IFSC

The Bill had proposed that capital gains arising to a non-resident on transfer of shares of an Indian company acquired / relocated from offshore fund would be exempt if capital gains on such shares were not chargeable to tax had that relocation not taken place. The amended Bill has proposed to provide similar benefits to a Specified Fund. The Specified Fund *inter-alia* is defined as a Category III AIF located in IFSC whose all units are held by non-residents (except units held by sponsor or manager).

As per the Bill the aforesaid exemption would be available where shares of an Indian company are transferred by an offshore fund to a resultant AIF in IFSC. The amended Bill has proposed to extend this exemption even to cases where shares of the Indian company is transferred by a wholly owned SPV of the offshore fund.

## Definition of Global Depository Receipts (GDRs) expanded to include GDRs created in IFSC

The amended Bill has proposed to expand the scope of Section 115ACA [which deals with taxation of income from Global Depository Receipts (GDRs) in the hands of specified resident individuals] to include GDRs created in an International Financial Services Centre (IFSC).

It has been further proposed that GDRs shall also include any instrument issued against the issue of inter-alia ordinary shares of issuing company being a company incorporated outside India, if such depository receipt or certificate is listed and traded on any IFSC.

## Aircraft leasing

The Bill had proposed to exempt income by way of royalty received by a non-resident from an IFSC unit on account of lease of aircraft subject to condition that IFSC unit has commenced operations before 1 April 2024. The amended Bill has proposed to expand the scope of said exemption to interest income received by a non-resident on account of lease of aircraft to IFSC unit.

The Bill had proposed to provide 100 per cent tax deduction to IFSC unit in respect of income arising from transfer of aircraft which was leased to a domestic company subject to condition that IFSC unit has commenced operations before 1 April 2024. The amended Bill has proposed to expand the scope of this deduction to provide that IFSC unit would be eligible to claim such deduction provided such aircraft was leased to any person (as against leased only to domestic company earlier).

There was no definition of 'aircraft' under the Bill. For the purpose of the above-mentioned tax exemption/deduction, the amended Bill has proposed to define aircraft to mean aircraft, helicopter and engine of aircraft/helicopter or any part thereof.

## Meaning of 'asset' for applicability of extended time limitation period under the new reassessment regime

The Bill had proposed to introduce a new regime for re-assessment for cases of income escaping assessment including search and survey cases, to reduce litigation and provide ease of doing business. The amended Bill has proposed to exclude certain survey cases i.e. cases for verification of tax deducted or collected at source, cases for the scale of expenditure incurred in connection with any function, ceremony or event, etc. Further recomputation is included in addition to the term assessment or reassessment for the purpose of the said provision.

The Bill had proposed that only in specific cases where the income escaping assessment (represented in the form of an asset) exceeds / likely to exceed Rs. 50 lakhs or more, time-limit of 3 years stands enhanced to 10 years (reopening with prior approval of PCCIT). The amended Bill has proposed to define the term 'asset' for the purpose this provision to include immovable property, being land or building or both, shares and securities, loans and advances and deposit in bank account.

## Time-limit for completion of assessment

The amended Bill has proposed to restrict the time-limit for completion of assessment under Section 143 or Section 144 for assessment year commencing on or after 1 April 2021 to 9 months from the end of the assessment year in which income becomes first assessable.

It has also been proposed that when the taxpayer exercises option to withdraw application which is pending before the Income Tax Settlement Commission (under Section 245M), the period of limitation available after exclusion of the period commencing from application being filed before the Interim Board upto the date of withdrawal of application, will not be less than one year<sup>2</sup>.

## Other amendments

- The Bill had proposed that the turnover threshold for the applicability of tax audit for persons carrying on business to be increased from INR5 crore to INR10 crore provided that the aggregate of the receipts in cash do not exceed 5 per cent of all amounts received including for total sales, turnover or gross receipts and aggregate of payments in cash do not exceed 5 per cent of all payments. The amended Bill has proposed that the payment of receipt by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt in cash.
- As per the provisions of 234F, a person required to furnish a return of income fails to do so within the prescribed time shall pay, by way of a fee, a sum of INR 5000. The amended Bill has proposed that if the total income of the person does not exceed INR 5 lakh, the fee payable shall not exceed INR 1000.
- The Act provides powers to the Principal Commissioner of Income Tax and Commissioner of Income Tax to call for and examine any records of any tax proceedings, and where the order passed in such proceedings was prejudicial to the interest of revenue, such tax authority could then modify or enhance the assessment. The amended Bill has proposed to extend such powers even to the Principal Chief Commissioner of Income Tax and the Chief Commissioner of Income Tax.
- The amended Bill has proposed to introduce a new provision (section 234H) where a person is required to intimate his Aadhaar number and if such person fails to do so on or before a specified date, he shall be liable to pay fee not exceeding INR 1000, at the time of making intimation under the relevant provisions after such specified date.

<sup>2</sup> Similar amendment has been made in Section 153B with respect to time limit for completion of assessment in case of search or requisition (under Section 153A).

## Our comments

The amended Bill has proposed certain amendments relating to the definition of 'liable to tax', transfer between firm and the partners, expansion of scope of exemptions (under Section 10), exclusion of self-generated goodwill from the net worth of undertaking transferred as slump sale, limitation period under Section 153, revisionary proceedings under Section 263, clarification on MAT, etc.

The amendments with respect to Equalization Levy and slump sale may have a significant impact. Further, given that both these amendments are effective 1 April 2020, one may need to analyse the impact in detail even in respect of those transactions which have been undertaken during financial year 2020-21.

The substituted provisions for taxation of reconstitution of partnership firm/LLP also provide more clarity. However, with respect to 'depreciation on goodwill', various representations were made that depreciation should be allowed on acquired goodwill. However, the amended Bill has not made any such amendment.

It has been proposed to define the term 'asset' for the purpose of reopening of cases upto 10 years. Certain survey cases i.e. cases for verification of tax deducted or collected at source, cases for the scale of expenditure incurred in connection with any function, ceremony or event, etc. have been excluded from the new tax regime.

The Finance Minister in her budget speech had proposed to set up of a Development Financial Institution to meet the long term debt financing required for infrastructure development. In this relation, the amended Bill has introduced provisions to provide tax exemption to specified institutions engaged in infrastructure and developmental financing.



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