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TAX FLASH NEWS

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Proposed amendments to the Finance Bill, 2016

Background

The Finance Bill, 2016 (the Bill) was introduced by the Finance Minister in the Lok Sabha on 29 February 2016. On 5 May 2016, the amendments to the Bill have been tabled in the Lok Sabha by notice of amendments. The key amendments are summarised as follows:

Benefit of 25 per cent tax rates on certain domestic companies

The Bill had proposed to insert a new Section 115BA to provide the benefit of the concessional tax rate of 25 per cent to certain domestic companies engaged in the business of manufacturing or production of any article or thing, provided such company has been set-up and registered on or after 1 March 2016.

It is now proposed that benefit of concessional tax rate shall also be available to the companies engaged in research in relation to or distribution of article or thing manufactured or produced by it. It is also proposed that to avail of the concessional rate of tax, domestic company shall exercise the option in the prescribed manner on or before due date under Section 139(1) of the Income-tax Act, 1961 (the Act) for furnishing the first of the returns of income which the person is required to furnish under the provisions of the Act. Once the option to avail of the benefit of concessional tax rate has been exercised by the company for any previous year, it cannot subsequently withdraw the same or for any other previous year.

Unlisted shares held for 24 months or less would be treated as short-term capital asset

As per Section 2(42A) of the Act, any capital asset held by the taxpayer for a period of not more than 36 months immediately preceding the date of its transfer is treated as a short-term capital asset. The aforesaid period of 36 months is treated as 12 months in the case of shares held in a company. However, an amendment was made by the Finance Act (No. 2) Act, 2014 to provide that the said period of 12 months won't be applicable in respect of shares not listed on the recognised stock exchange. Hence, with effect from 1 April 2015, the unlisted share is treated as a short-term capital asset if it is held for not more than 36 months immediately preceding the date of its transfer.

It is now proposed that the period of 36 months would be substituted for a period of 24 months in the case of unlisted shares. In other words, unlisted shares of a company would be treated as a short-term capital asset if it is held for a period of 24 months or less immediately preceding the date of its transfer.

Levy of additional tax on dividend

The Bill had proposed an additional tax of 10 per cent if the amount of dividend received by a taxpayer exceeds INR10 lakh.

It is now proposed that dividend whether paid or declared or distributed by one or more domestic companies, the aggregate of dividend shall be considered for the limit of INR10 lakh but tax shall be payable only on the amount of dividend exceeding INR10 lakh.

Relief to certain non-residents from the tax deduction under Section 194LBB

The Finance Act, 2015 had inserted a special taxation regime in respect of Category I and II Alternative Investment Funds (investment fund) registered with the Securities and Exchange Board of India (SEBI). Under this regime, the income of the investment fund (not being in the nature of business income) is exempt in the hands of the investment fund. However, income received by the investor from the investment fund (other than the income which an at the level of investment fund) is taxable in their hands. Accordingly, Section 194LBB of the Act was inserted for deduction of tax in respect of payment made to such investors.

The existing provisions of Section 194LBB provide that in respect of any income credited or paid by the investment fund to its investor (resident or non-resident), a Tax Deduction at Source (TDS) shall be made by the investment fund at the rate of 10 per cent of the income. This TDS regime had created certain difficulties that non-resident investors, whose income was not taxable as per the relevant tax treaties, were not able to claim the benefit of lower or nil rate of taxation. Even Section 197 of the Act does not provide for any facility to the deductee to approach the Assessing Officer (AO) for seeking a certificate for TDS at a lower or nil rate in respect of deductions made under Section 194LBB.

The Bill proposed to amend the Section 194LBB to provide that tax shall be deducted at the rate of 10 per cent where the payee is a resident. Where the payee is non-resident (including a foreign company), the tax shall be deducted at the rates in force.

Now it proposes to insert a proviso that where the payee is a non-resident, no tax shall be deducted in respect of any income which is not chargeable to tax.

Withdrawal from recognised provident fund and superannuation fund

- The Bill had proposed that for specified employees, withdrawal from the recognised provident fund in respect of any amount of accumulated balance attributable to any contributions made on or after 1 April 2016 would be taxable upto 60 per cent. This clause has now been omitted, thereby, withdrawal of full accumulated balance would be considered non-taxable.
- The Bill had proposed that, for any payment from superannuation fund to an employee, on specified conditions, the commuted value (for contributions with effect from 1 April 2016) would be taxable upto 60 per cent. This clause has now been omitted and accordingly, payment from an approved superannuation fund to an employee would be considered non-taxable, subject to prescribed conditions.

Profit-linked deduction to eligible start-up now extended to LLP's

The Bill had proposed for a profit-linked deduction of 100 per cent provided to a start-up in a business involving innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property for any three consecutive assessment years out of five years, at the option of the taxpayer, subject to incorporation before 1 April 2019.

The definition of 'eligible start-up' has now been extended to include 'Limited Liability Partnership' (LLP) also. In other words, LLPs shall also be eligible to claim the profit-linked deduction subject to fulfillment of other conditions.

Transfer of shares through a recognised stock exchange located in IFSC

The Bill had proposed that no Securities Transaction Tax (STT) and Commodities Transaction Tax (CTT) shall be levied on transactions of securities carried out through

recognised stock exchange located in International Financial Services Centres (IFSC) where the consideration for such transaction is paid or payable in foreign currency. Consequently, it was proposed to amend Section 10(38) of the Act to provide that long-term capital gains arising from transfer of equity shares, equity oriented mutual fund or units of business trust shall be exempt from tax if the transaction is undertaken in foreign currency through a recognised stock exchange located in an IFSC, even if STT is not paid in respect of such transactions.

However, no such amendment was proposed to Section 111A of the Act relating to short-term capital gain arising from the transfer of listed securities. It is now proposed that short-term capital gains arising from the transfer of underlying securities shall be taxable at 15 per cent if the transaction is undertaken in foreign currency through a recognised stock exchange located in an IFSC, even if STT is not paid in respect of such transactions.

Amortisation of spectrum fees

The Bill proposed for an amortisation of capital expenditure on acquisition of any right to use spectrum at any time to be allowed as a deduction in equal installments over the useful life of the spectrum on an actual payment basis.

It has now been proposed for consequences in case of failure to comply with any of the conditions mentioned. In case, if subsequently, there is a failure to comply with any of the conditions, the deduction shall be deemed to have been wrongly allowed and the AO may re-compute the total income of the taxpayer for the respective previous years and rectify the income. It is also proposed that the provisions dealing with the rectification of mistake and the limitation period of four years shall apply from the end of the year in which the default is made.

It has further been proposed that the term ‘payment has actually been made’ for obtaining a right to use the spectrum would include expenditure payable in such manner as may be prescribed.

Profit-linked deductions in case of housing projects

The Bill had proposed for profit-linked deduction of 100 per cent provided to the business of developing and building affordable housing projects approved by the competent authority (in accordance with such guidelines as may be prescribed) before 31 March 2019, provided the same is completed within three years of obtaining such an approval, and other conditions are satisfied such as the minimum land area, specified municipal boundaries, etc.

It is now proposed to do away with the adherence to the prescribed guidelines as mentioned above. Further, the measurement of the limits of 25 kilometers from the municipal limits of the specified cities is now to be measured aerially. The condition with regards to the restriction 2000/60 sq. mts. is now proposed to be made applicable to any other place which was earlier restricted to the jurisdictions of a municipality or a cantonment board.

Tax on income from patent developed and registered in India

The Bill had proposed to insert a new Section 115BBF to tax royalty income in respect of a patent developed and registered in India at the rate of 10 per cent.

It is now proposed that the taxpayer may exercise the option for taxation of income from patents in accordance with the provisions of Section 115BBF, in the prescribed manner on or before the due date of furnishing of return of income under Section 139(1) of the Act of the relevant previous year. If the taxpayer opts for taxation of income from patents as per Section 115BBF in any previous year and fails to offer tax on income from patents as per Section 115BBF in any of the five succeeding assessment years then he shall not be eligible to claim benefit of said section for five assessment years subsequent to the assessment year in which such income has not been offered to tax as per Section 115BBF.

The word ‘developed’ proposed to mean at least 75 percent of the expenditure incurred in India by the eligible taxpayer for any invention in respect of which patent is granted under the Patents Act, 1970.

Rate of MAT for units located in IFSC

The Bill had proposed to reduce the Minimum Alternate Tax (MAT) rate from existing 18.5 per cent to 9 per cent in case of unit located in IFSC.

In order to enjoy the lower MAT rate, the following conditions were to be satisfied:

- The taxpayer is a unit established in IFSC
- The unit must be a new unit established on or after 1 April 2016
- It should derive its income solely in convertible foreign exchange

It is now proposed to withdraw the condition of the establishment of new IFSC unit after 1 April 2016. Consequently, the benefit of reduced rate of MAT will also be available to those units which have been set up before 1 April 2016.

Under-reporting of income

The Bill had proposed to include new provisions for levy of penalty in the cases of under-reporting and misreporting of income. It provides that the AO or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

It is now proposed to replace the word ‘may' with the word ‘may during the course of any proceedings under this Act'. Accordingly, AO or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may during the course of any proceedings under the Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

Authority for under-reporting of income

The Bill had proposed that where the amount of income in respect of which the taxpayer offers an explanation and the AO or the Commissioner or the Commissioner (Appeals), as the case may be, is satisfied that the explanation is bona fide, it shall not be considered as under-reported income.

It is now proposed to include Principal Commissioner as an authority with whom the taxpayer can offer his explanation and disclose all the material facts to substantiate his explanation.

Computation of tax on under-reported income

Currently, penalty on account of concealment of income or on furnishing of inaccurate particulars of income is levied under Section 271(1)(c) of the Act. In order to rationalise and bring objectivity, certainty and clarity in the penalty provisions, new Section 270A has been proposed to be inserted. It provides for levy of penalty in cases of under-reporting and misreporting of income. It is proposed that rate of the penalty shall be 50 per cent of tax in case of under-reporting of income and 200 per cent of tax in case of misreporting of income.

Following amendments to Section 270A have been proposed:

Scope of under-reporting of income

A person shall also be deemed to have under-reported his income where the amount of total income reassessed under the provisions of Section 115JB (Minimum Alternate Tax) or Section 115JC (Alternate Minimum Tax) of the Act, is greater than the deemed total income assessed or reassessed immediately before such assessment.

Tax payable on under-reporting of income

The Bill had proposed a flat tax rate of 30 per cent in respect of underreported income in case of Individuals, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI), Artificial Juridical person.

It is now proposed that the tax payable in respect of the underreported income shall be as under:

- Where the return of income has not been furnished and the income has been assessed for the first time, the tax shall be calculated on under-reported income as increased by a maximum amount not chargeable to tax as if it was the total income.
- Where the total income assessed or re-assessed is a loss, the tax shall be calculated on under-reported income as if it was the total income.
- In any other case - tax on under-reported income as increased by income under Section 143(1)(a)/income assessed, re-assessed or recomputed as if it was the total income less tax calculated on total income determined under Section 143(1)(a) or total income as assessed, re-assessed or recomputed in a preceding order.

Under-reporting of income shall be punishable as wilful attempt to evade tax

The Bill had proposed to insert a new Section 270A to levy penalty in case of under-reporting and misreporting of income by the taxpayer. However, there was no corresponding provision to invoke prosecution in this case. Section 276C of the Act provides for rigorous imprisonment of minimum three months to 7 years in case taxpayer has made willful attempt to evade tax.

It is now proposed to amend Section 276C of the Act to provide that under-reporting of income as per section 270A shall be punishable with rigorous imprisonment under Section 206C of the Act.

Penalty order under Section 270A(12) of the Act

The Bill had proposed that the penalty under Section 270A(1) shall be imposed, by an order in writing by AO, Commissioner or Commissioner (Appeals).

It is now proposed to include the word 'Principal Commissioner' within its ambit. Accordingly, penalty order under Section 270A(12) of the Act to be made in writing by AO, Commissioner (Appeals), Commissioner or Principal Commissioner.

Cost of asset declared under the Income Declaration Scheme

The Bill proposed to introduce the Income Declaration Scheme (the scheme) whereby, amongst other things, the undisclosed income would be taxed at 45 per cent.

It is now proposed that where in case a capital gain arises from the transfer of an asset declared under the scheme, and the tax, surcharge and penalty has been paid on the fair market value of the asset as on the date of commencement of the scheme, the cost of acquisition of such asset shall be deemed to be the fair market value taken into account for purposes of the scheme.

Immunity from penalty and prosecution in certain cases

The Bill had proposed to insert Section 270AA to provide immunity to the taxpayer from penalties under Section 270A and prosecution under Section 276C if the taxpayer pays the tax and interest within the time prescribed by the notice, provided taxpayer does not file an appeal against the order.

It is now proposed to also include immunity from prosecution under Section 276CC in the new Section 270AA of the Act.

Processing of returns before scrutiny assessment

The Bill had proposed mandatory processing of returns under Section 143(1) of the Act even when the scrutiny assessment notice is issued to the taxpayer. This amendment was proposed so that the taxpayer need not wait for refunds, if any, due to him till the scrutiny assessment was completed. The Bill had provided that return shall be processed before issuing assessment order under Section 143(3) of the Act.

It is now proposed that the processing of return is not necessary before the expiry of one year from the end of the financial year in which return is furnished, where a notice is issued for scrutiny assessment under Section 143(2) of the Act.

Tax on accreted income of trusts

The Bill proposed to insert a new Chapter XII-EB, containing Section 115TD, 115TE and 115TF under the Act to provide that 'accreted income' of a trust or institution registered under Section 12AA shall be chargeable to tax at the maximum marginal rates in following circumstances:

- If the trust or institution gets converted into any form which is not eligible under Section 12AA
- If the trust or institution gets merged into any entity which is not eligible under Section 12AA
- If the trust or institution, in case of dissolution, fails to transfer its assets to exempt entities under section 12AA and Section 10(23C) (iv), (v), (vi) & (via).

The difference between the fair market value of the assets and liabilities of the trust or institution would be treated as 'accreted income' and tax thereon shall be paid in addition to the income-tax chargeable in respect of the total income of such trust or institution.

Certain changes are proposed to Section 115TD, as under:

Assets which do not form part of accreted income

A proviso is inserted in Section 115TD to provide that the value of the following assets shall not be taken into consideration while computing the 'accreted income':

- Any asset acquired by a trust or institution out of its agricultural income
- Any asset acquired by the trust before getting registered under Section 12AA provided that no exemption under Section 11 or 12 is provided to trust or institution during that period

Time-limit to pay tax on accreted income

As per Section 115TD of the Act, a trust or an institution shall be deemed to have been converted into any form not eligible for registration under Section 12AA in a previous year on occurrence of following events:

- When registration granted to it under Section 12AA has been cancelled; or
- It has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it:
  - ➢ has not applied for fresh registration under Section 12AA in the said previous year; or
  - ➢ has filed an application for fresh registration under Section 12AA but the said application has been rejected.

It was proposed under Bill that the tax on accreted income shall be payable within 14 days from the date of receipt of order cancelling registration or date of the order rejecting an application for fresh registration. Now a new time-limit for payment of tax on accreted income has been proposed. It has been prescribed that tax on accreted income shall be paid within 14 days from:

- the date on which the period for filing appeal before the Tribunal against the order cancelling the registration (or order rejecting the application) expires if no appeal has been filed by the trust or the institution; or
- the date on which the order in any appeal, confirming the cancellation of the registration (or application), is received by the trust or institution.

Validity of registration obtained under Section 12A

It is proposed that registration under Section 12AA shall include any registration obtained under section 12A.

Tax collected at source

- The Bill had proposed that every seller of a motor vehicle shall collect Tax Collected at Source (TCS) at the rate of 1 per cent of the value of the motor car if such value exceeds INR10 lakh. Such tax was proposed to be collected from the buyer under Section 206C at the time of debiting the amount receivable or at the time of receipt, whichever happened earlier.

  Now it is proposed that tax shall be collected under Section 206C only at the time of receipt of consideration.

- The Bill had proposed to include any other goods (other than bullion or jewellery) and provision of services for the purpose of tax collected at source. However, the services were not included while calculating tax audit limits specified under Section 44AB of the Act from the total sales, gross receipts or turnover of the business or profession carried on by seller.

  It is now proposed to include the services provided by seller while calculating monetary limits specified under clause (a) or clause (b) of Section 44AB of the Act.

Phasing out of deduction on agricultural extension project

By virtue of the phasing out the measure in respect of deduction on the expenditure on notified agricultural extension project, the Bill had reduced the quantum of deduction to 100 per cent from the existing 150 per cent as applicable from 1 April 2018.

It is now proposed to defer the applicability of the reduced rate with effect from 1 April 2021.

Personal tax

Employer contribution in excess of 12 percent of salary or INR 150,000, whichever is lower, was to be considered taxable as per the proposed amendment. The restriction of employer contribution upto INR 150,000 has been removed, thereby, the contributions made by the employer in excess of 12 per cent of salary only would be considered taxable.

Note: The proposed amendments to the Bill will become law only after it receives the assent of the President of India.

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