

NEWS FLASH**Key amendments to the Finance Bill, 2022**

25 March 2022

This document summarises the significant direct tax amendments to the Finance Bill, 2022 as passed by the Lower house of the Parliament on 25 March 2022. These proposals are subject to the passage of the Finance Bill by the Upper house and Presidential assent after which the Finance Bill will become law. Further, the direct tax proposals in the Finance Bill, 2022 are effective from Financial Year ('FY') 2022-23 unless otherwise specifically stated. References to sections are to sections in the Income-tax Act, 1961 ('the IT Act') unless otherwise stated.

1. Meaning of Specified Fund [Section 10(4D)]

It is proposed that the exemption for income earned from an International Financial Services Centre ('IFSC') available to Specified Funds will not be available to those funds where the unit holders' residential status changes from non resident to resident. However, it is further proposed that exemption will continue to be available if the aggregate value and number of units such resident unit holder(s) not exceed five percent of the total units issued and fulfill other conditions as may be prescribed.

2. Scheme of taxation and withholding tax provisions relating to Virtual Digital Assets ('VDA') [New Sections 115BBH and 194S]

- i. A new scheme of taxation of income from transfer of VDA was proposed in the Finance Bill, 2022. It is now proposed that this new scheme of taxation shall apply notwithstanding anything contained in other provisions of the IT Act.
- ii. It was proposed that the deduction for Cost of Acquisition shall be allowed against the income from transfer of VDA. It is now proposed to emphasise that a deduction shall be allowed only for the actual Cost of Acquisition.
- iii. It was proposed that loss from the transfer of VDA shall not be allowed to be set-off against any other income. It is now proposed that loss from the transfer of VDA shall not be allowed to be set-off against any income. This proposal would mean that set-off of loss from transfer of one VDA against income from other VDA shall also not be allowed.
- iv. It is now proposed that the meaning of the term 'transfer' as provided in the IT Act shall apply to any VDA, whether it is a capital asset or not.
- v. It was proposed to withhold tax under section 194S on consideration payable to a resident for transfer of a VDA, subject to certain conditions. It was also proposed that if the tax had been withheld under Section 194S then no tax shall be withheld under section 194O *or any other withholding tax provisions under the IT Act*. It is now proposed to omit the reference *to any other withholding tax provisions under the IT Act* and restrict the reference only to section 194O.

3. Withholding tax on benefits or perquisites in respect of business or profession [New Section 194R]

- i. It was proposed that any person providing any benefit or perquisite, whether convertible into money or not, to a resident is required to withhold tax, wherein such benefit or perquisite arises from business or profession carried on by such resident.
- ii. It is now proposed that the Central Board of Direct Taxes ('CBDT'), with the prior approval of the Central Government, may issue guidelines for the purpose of removing difficulties in giving effect to the provisions of this section. Any guidelines issued by the CBDT in this regard shall be laid before each house of the Parliament and shall be binding on the tax authorities as well as on persons providing any such benefit or perquisite.

4. Updated Return of Income [Section 139(8A)]

- i. It is now proposed that a taxpayer who has already submitted a return of loss within the due date will be permitted to file an updated return, provided a positive income is declared in the updated return. However, it is also proposed to require taxpayers to file updated returns for all subsequent years where the amount of brought forward losses, unabsorbed depreciation or Minimum Alternate Tax or Alternate Minimum Tax credit would be impacted consequent to updating the loss return for the applicable FY.
- ii. Further, in search cases the taxpayer shall not be eligible to submit an updated tax return for any of the years prior to the year in which such search is initiated or survey was conducted.

5. Change in timelines for completion of the assessment, reassessment and recomputation of income [Sections 153 and 153B]

- i. The time limit for completion of all assessments, reassessments and recomputation for FY 2019-20 is proposed to be extended to 18 months from the current period of 12 months from the end of the relevant FY.
- ii. It is further proposed that all assessments for FY 2020-21 and onwards, where the books of account or documents or assets are seized or requisitioned, on or after 1 April 2020 be completed by 30 September 2022.

6. Penalty exposure for allowance of surcharge and cess in earlier years [Sections 155 and 270A]

- i. It was proposed that no deduction to be allowed for any surcharge and cess on income tax, with retrospective effect from FY 2004-05.
- ii. It is now proposed to allow the tax officers to recompute the taxpayer's total income for such previous year(s). The time limit of four years for such rectifications is proposed to be computed from end of 31 March 2022.
- iii. Any deduction claimed by the taxpayer is proposed to be considered as 'under-reported income' of that FY and will also be subject to levy of penalty.
- iv. It is, however, proposed to provide immunity from imposition of penalty on such 'under-reported income' if the recomputation is done at the request of the taxpayer and the tax due is paid. It is proposed that such request will have to be made in the prescribed form, within a time to be prescribed.

7. Succession to business [Section 170]

- i. It is proposed to limit the scope of section 170 by replacing the word 'business reorganisation' with 'succession'. Accordingly, in case of succession, the income tax proceedings made or initiated during the course of pendency of such succession, shall be deemed to have been made or initiated on the successor and all the provisions of the IT Act will be applicable to the successor.
- ii. Consequently, it is proposed to change the definition of 'pendency'. The revised proposed Explanation reads as 'pendency' means the period commencing from the date of filing of the application for such succession of the business to the date on which the order of succession is passed by the High Court or Tribunal or Adjudicating Authority as defined under the Insolvency and Bankruptcy Code, 2016.

8. Business reorganisation [Section 170A]

- i. It was proposed to insert a new section 170A wherein the successor is required to file a modified return after the order is passed giving approval for the business reorganisation.
- ii. It is now proposed to substitute the meaning of 'business reorganisation' to mean the reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons. It is also proposed to define 'successor' to mean all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

9. Exemption from tax not to extend to certain transactions [Section 56(2)(x)]

It is now proposed that any sum or property received without consideration or for inadequate consideration by any specified person from the respective specified trust or institutions, shall be taxable in the hands of such specified person.

10. Procedure where identical question of law is pending before High Courts ('HC') or ('SC') [New Section 158AB]

It was proposed that where the order of the Commissioner of Income Tax Appeals ['CIT(A)']/Income tax Appellate Tribunal ('ITAT'), is not in conformity with the final decision on the identical question of law by the jurisdictional HC or the SC, in any other case, the tax officer shall proceed with filing an appeal with the ITAT or the jurisdictional HC, as the case may be. Such appeal shall be filed before the ITAT or jurisdictional HC, as the case may be, within 60 days of communication of the order passed by the jurisdictional HC or the SC.

It is now proposed to require the tax officer to file the appeal before the ITAT within 60 days and before the HC within 120 days, as the case may be, from the communication of the order passed by the jurisdictional HC or the SC.

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