

Tax Alert: Finance Act 2021 enacted

30 March 2021



Summary

The Finance Bill, 2021, (Finance Bill) received the President's assent on 28 March 2021. The Finance Act, 2021, (Finance Act) has amended various provisions proposed in the Finance Bill including:

- A person would be said to be 'liable to tax' only if there is 'income tax liability' on such person under the law of a country and will include a person who has been subsequently exempted from income tax liability.
- Equalisation levy shall not be applicable on goods owned and services provided by a person resident in India or by a permanent establishment (PE) of a non-resident in India transacted over an overseas e-commerce platform.
- Clarity has been provided on certain aspects of taxation of capital/other assets transferred to certain specified persons on reconstitution of specified entities.
- Consequential amendments have been introduced for calculation of written down value (WDV), in order to reduce goodwill previously included within the block of assets.

Some of the key changes brought in by the Finance Act are:

Individual taxation

Taxability of interest on provident fund

- The Finance Bill proposed to amend the provisions relating to exemption of interest earned on contribution to Provident Fund (PF), Statutory Provident Fund (SPF) and Recognised Provident Fund (RPF) by providing that

interest which relates to employees' contribution above INR 2.5 lakh in the previous year shall not be exempt from tax.

- The Finance Act has now amended the provision to provide that in cases where there is no contribution by the employer, the limit of INR 2.5 lakh shall be increased to INR 5 lakh.

Corporate and international taxation

Tax audit

- The Finance Bill proposed to increase the turnover threshold for tax audit from INR 5 crore from INR 10 crore, in case the cash receipts and payments do not exceed 5% of the total receipts and payments, respectively.
- The Finance Act has now clarified that for computing the limit of INR 10 crore, the payment or receipts through non-account payee cheque or non-account payee draft shall be treated as cash transaction.

Liable to tax

- The Finance Bill had proposed to define the term 'liable to tax' as a person who is liable to tax under any law in any country and shall include a case where such income has been subsequently exempted.
- The Finance Act has now amended the definition by specifying that a person would be said to be 'liable to tax' only if there is income tax liability on such person under the law of a country and

will include a person who has been subsequently exempted from income tax liability.

Equalisation levy (EL)

- The Finance Act has provided relaxation in respect of goods and services owned and provided by a person resident in India or by a PE of a non-resident in India, transacted over an overseas e-commerce platform. Such transaction will now be outside the ambit of EL provisions.

Depreciation on goodwill

- The Finance Bill proposed to prohibit depreciation on goodwill by amending various provisions of the Act.
- The Finance Act has now provided a consequential amendment¹ for computation of WDV, in order to reduce goodwill previously included within the block of assets.
- It has also been clarified that while calculating WDV, the depreciation already claimed on goodwill shall be reduced. However, the reduction in the

¹ Section 43(6)(c)(ii) of the Income-tax Act, 1961 (the Act)

block should not exceed the value of block of asset.

Minimum Alternate Tax (MAT)

- The Finance Bill proposed to adjust the earlier years' book profits for the purpose of MAT computation for secondary adjustment(s) or advance pricing agreement (APA) by making an application to the tax officer, who was required to dispose it off within four years from the end of the year in which the application is received.
- As per the proposed provision, the tax officer, on an application by the taxpayer, shall recompute the book profit of the past years and tax payable thereon, if current year's income of the taxpayer has increased due to APA or secondary adjustment.
- The Finance Act has now restricted the benefit of above provision to a taxpayer who has not utilised the MAT credit in any subsequent AY.

- Further, these provisions would also apply for past years beginning on or before AY 2020-21. However, the taxpayer shall not be eligible to claim the interest on the refund, if any, arising on account of reduction in tax payable due to re-computation of profit of past years.

Fees for default in filing of income tax return

- The Finance Bill proposed to reduce the last date of filing belated return to 9 months from the end of the relevant previous year. However, no amendment was made to provision² relating to late fees, which provided for fees of INR 10,000 when return is filed after 31 December till 31 March by a person having total income of more than INR 5 lakh.
- The Finance Act has now amended this provision to remove the fees of INR 10,000 since the return of income cannot be filed after 31 December. Therefore, the late filing fee has been

² Section 234F of the Act provided for late fees of INR 5000 by a person having total income of more than INR 5 lakh who filed belated return till 31 December. Such fees was INR 10,000 when the belated return was filed by

such person after 31 December till 31 March. Further, for a person having total income up to INR 5 lakh, the fees was INR 1,000.

revised to INR 5,000 if the amount of total income is above INR 5 lakh and INR 1,000 if the amount of total income is up to INR 5 lakh.

Fees for default in intimating Aadhaar number

- The Finance Act has inserted a new provision³ to impose fees in case of default in intimating Aadhaar number by a taxpayer.
- As per new provision, if a person is required to intimate his Aadhaar number under the Act⁴ and such person fails to do so, he shall be liable to pay a fee, as may be prescribed, not exceeding INR 1,000 at the time of making such intimation.

Provisions relating to capital gains

Transfer of capital asset, money or stock in trade by a partner or member on dissolution/reconstitution

- The Finance Bill proposed to substitute the existing provision relating to taxability of capital gain on distribution of capital assets to partners or members as the case may be on the dissolution or otherwise of a firm or association of persons (AOP) or body of individuals (BOI).
- The Finance Act has now further amended above provisions⁵ by prescribing a formula⁶ to compute the capital gain on transfer of capital asset or money by a specified entity to the specified persons on reconstitution. Further, the amended provision excludes 'dissolution'.
- Also, a new provision⁷ has been introduced under the Act to provide the taxability on transfer of 'capital asset' or 'stock in trade' by specified entity to specified person on 'dissolution or reconstitution' of such specified entity.
- As per this new provision, the gain from transfer of capital asset would be

³ Section 234H has been inserted to levy a fee for default in intimating the Aadhaar Number.

⁴ Section 139AA requires every person eligible to obtain Aadhaar Number to quote his Aadhaar Number in the application for PAN and in the return of income.

⁵ Section 45(4)

⁶ $A=B+C-D$ where A= income chargeable as Capital Gain, B= value of money, C=FMV of capital asset, D= Balance of Capital Account as on date of reconstitution

⁷ Section 9B

taxable as capital gains and profit from transfer of stock in trade would be taxable as business income.

Further, to remove any double taxation, the computation provision⁸ has also been amended.

Slump sale

- The Finance Act has amended the computation methodology of capital gains on slump sale transactions. It has provided that the fair market value (FMV) of the capital assets as on the date of transfer, calculated in the manner to be prescribed, shall be treated as full value of consideration received or accrued as a result of transfer of such capital asset.
- Further, the value goodwill, which has not been acquired by the taxpayer by purchase from previous owner, shall be taken as nil while computing the net worth of the undertaking.

Tax incentives for units located in International Financial Service Centre (IFSC)

Aircraft leasing activities

- In order to promote aircraft leasing and financing activities in IFSC, the Finance Bill had proposed to provide incentive whereby royalty income received by a non-resident on account of lease of aircraft, paid by a unit in an IFSC would be tax exempt, if the payer is eligible for tax deduction under the provisions of the Act⁹ and has commenced its operations by 31 March 2024.
- The Finance Act has now extended the exemption to interest income, in addition to royalty income earned by non-residents on account of leasing of an aircraft to a unit located in an IFSC.
- Further, the meaning of the term 'aircraft' has now been defined to mean 'an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof.'

⁸ Section 48(iii)

⁹ Section 80LA

- The Finance Bill also proposed to provide tax holiday on income earned by a unit in IFSC, from transfer of aircraft or aircraft engine, subject to the certain conditions, which inter alia included that the aircraft or aircraft engine was leased by a unit in IFSC to a domestic company.
- The Finance Act has now removed the condition of transfer being made to a domestic company, engaged in the business of operation of aircraft before such transfer.

Investment division of an offshore banking unit

- The Finance Bill proposed¹⁰ to exempt investment division of foreign banks in respect of income from transfer of specified securities if it is located in an IFSC. This is subject to certain conditions, which inter alia, included the offshore banking unit in IFSC to be registered as a Category III Alternative Investment Fund (AIF). Further, it was also proposed to provide the

concessional tax¹¹ regime to investment division of an offshore banking unit with the condition of the offshore banking unit in IFSC to be registered as a Category III Foreign Portfolio Investor (FPI).

- The Finance Act has now changed this condition, to requirement of registration as Category I FPI under both situations.

Sovereign wealth funds

- The Finance Bill had proposed to extend the scope of tax exemption for sovereign wealth funds (SWFs)/pension funds (PF) by including investment in Category I and Category II AIFs having minimum 50% investments in eligible infrastructure company or Infrastructure Investment Trusts (InvITs).
- The Finance Act has now provided that the Category I and II AIFs are allowed to make investments in the following companies as well:
 - Domestic holding companies set up on or after 1 April 2021 having

¹⁰ Section 10(4D) as proposed by the Finance Bill.

¹¹ Section 115AD of the Act was amended to provide the concessional tax regime to investment division of an offshore banking unit.

- minimum 75% investments in notified infrastructure company;
- Non-banking financial companies – Infrastructure Debt Fund (IDF)/

Infrastructure Finance Company (IFC) with at least 90% lending to notified infrastructure entities.

Our comments

The Finance Act has made attempts to address several concerns raised by the stakeholders over the proposed Bill presented by the finance minister, which is a welcome move.

Contact us

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