Finance Act (No. 2), 2024 enacted

20 August 2024

Summary

The Finance Bill (No.2), 2024 (Finance Bill, 2024), was introduced in the Lok Sabha by the Hon'ble Finance Minister on 23 July 2024. Thereafter, based on inputs and representations received from various stakeholders, certain amendments have been made in few proposals. Finance Bill, 2024 incorporating these changes has received the President's assent on 16 August 2024.

The Finance Bill, 2024, has now been enacted as the Finance (No.2) Act, 2024 (Finance Act, 2024), and the key amendments made to the Finance Bill, 2024 are:

Capital gains

Relief provided to individuals or Hindu Undivided Family (HUFs) who are residents of India

The Finance Bill, 2024 had, in relation to transfer of a long-term capital asset on or after 23 July 2024, proposed to withdraw Indexation benefit and revise the tax rate on long-term capital gain (LTCG) to 12.5% (earlier, the tax rate was 20% with Indexation benefit)[1]. Further, while the Indexation benefit was proposed to be removed, for capital assets acquired before 1 April 2001 the option to choose FMV[2] on 1 April 2001 continued to be available.

The rationale for these changes was to simplify the capital gains tax regime. However, in case of sale of land or building or both, in several cases, even with the lower LTCG tax rate of 12.5%, the tax outflow was expected to be significantly higher on account of removal of indexation benefit. Considering stakeholder inputs, relief has been provided in case of transfer of a long-term capital asset being land or building or both acquired before 23 July 2024.

Accordingly, if these assets were acquired before 23 July 2024 by individuals and HUFs (who are residents) and are sold on or after 23 July 2024, the tax on LTCG is required to be computed as per the amended provisions.[3] If such tax amount exceeds tax computed as per the earlier capital gains regime (i.e., 20% after considering indexation benefit), the excess tax will be ignored.

It is pertinent to note that the relief has been provided only to individuals and HUFs who are residents, and thus, the Non-Resident Indians (and other non-residents) cannot take benefit of the aforesaid relief. Similarly, this relief will not be available if the real estate is held by such individuals and HUFs not directly but through a company or Limited Liability Partnership etc. Also, the relief has been provided only to restrict the tax outflow up to the tax under the old capital gains tax regime and it cannot result in carrying forward any loss on account of indexation under the earlier capital gains tax regime.

[1] As specified under section 112(1)(a) of the Income-tax Act, 1961 (the Act)
[2] Fair Market Value
[3] 12.5% without indexation benefit

Capital gains tax rates for non-residents (NR) or foreign company

- The changes in the LTCG on sale of unlisted securities or shares[4] by NR or foreign company are as follows:
  - **Sale before 23 July 2024:** Taxable at 10% (without benefit of indexation or foreign currency conversion benefit).
  - **Sale on or after 23 July 2024:** Taxable at 12.5% (without benefit of indexation or foreign currency conversion benefit)

Earlier the Finance Bill, 2024 had not specifically dealt with the tax rate on LTCG arising from transfer of such capital assets on or after 23 July 2024 which could mean that the applicable LTCG tax will be 12.5% with foreign currency benefit. This has now been addressed by specifically providing that the tax rate on LTCG arising from transfer of such capital assets on or after 23 July 2024 will be 12.5% and the LTCG will be computed in INR and without benefit of indexation.

Procedural changes

Reassessment

The Finance Bill, 2024 revamped the reassessment provisions with effect from 1 September 2024. The time limit for issue of notice for reassessment proceedings was proposed to be reduced from ten years to five years three months.

The amendments now provide that assessing officer can issue a notice for reassessment[5] based on the information received under the notified scheme[6] and hence tax officers can initiate reopening of proceedings based on the scheme notified for faceless collection of information.

Special procedure for assessment of search cases

In order to make the procedure of assessment of search cases cost effective and efficient, a new scheme of block assessment was introduced for search and seizure conducted on or after 1 September 2024. The block period[7] would be six assessment years preceding the year in which the search was initiated[8] or any requisition was made[9]. As per the scheme, undisclosed income would be taxed at 60%.

The Finance Bill 2024 had included incorrect claim of any expenditure, deduction or allowance in the definition of undisclosed income. The definition of "undisclosed income" [10] has been expanded now. "Undisclosed income" would now include any exemption claimed by the taxpayer, which is found to be incorrect.

Others

TDS[11]/TCS[12] credit by employer

With effect from 1 October 2024, the Finance Bill, 2024 had proposed to allow the credit of tax deducted /collected at source under the provisions of the Act while computing TDS on salary by the employer.

But as per these provisions TDS on salary could not be reduced on account providing credit for TDS/TCS. This would have mitigated the benefit under these provisions. For example, TCS is levied on certain transactions rather than on income and there is no corresponding income. In such cases, if credit for TDS/TCS is given, it would reduce the amount of tax deducted under the head salaries. An amendment has now been carried out to address this issue.

[4] Shares of a closely held company
[5] under section 148 of the Act
[6] Notified under section 135A of the Act
[7] This would also include the period starting from 1 April of the previous year in which search was initiated or requisition was made and ending on the date of the execution of the last of the authorisations for such search or requisition
[8] Under section 132 of the Act
[9] Under section 132A of the Act
[10] As per section 158B of the Act
[11] Tax deducted at source
[12] Tax collected at source