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Significant Tax Proposals in Finance Bill 2024 – A Perspective

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The Government of India presented the Union Budget ("Budget") for FY 2024-25 in the Parliament on 23 July 2024. The proposals bolster India's commitment towards promoting foreign investment into India, simplifying the tax regime, streamlining tax litigation, and promoting growth in various sectors.

This Budget also reflects Government's earnest efforts to take Bharat on the path of strong development and all-round prosperity through a structured impetus on building productivity and resilience in agriculture, employment & skilling, including human resource development, manufacturing & services, urban development, energy security, and infrastructure. The Budget has key proposals for the infrastructure sector, with a major boost being given to the manufacturing sector in the form of employment linked incentives.

India Inc. and global investors eagerly await the proposed changes to the exchange control regime for foreign direct investment as well as overseas investment, with the Hon'ble Finance Minister emphasizing the need for simplicity and promotion of overseas investment using Indian rupee as the currency. The Government has also proposed key administrative measures to promote digitalization of land records. With a view to protect small investors and decrease market volatility, the Government has also proposed hiking the Securities Transaction Tax rates.

As highlighted above, some of the key changes in the direct tax regime, which are critical for the taxpayers, is summarized and discussed below.

Vivad Se Vishwas 2.0 – Path towards resolving pending cases

Currently, there is high pendency of tax cases before various appellate fora. The Government had earlier launched the Vivad se Vishwas Scheme (VsV Scheme) back in 2020 for settlement of tax disputes, which received a good response from taxpayers. Aside from settling longstanding tax disputes, the Government was able to recover substantial revenue from such settlements as well.

The Bill proposes to re-introduce the tax disputes settlement scheme (Direct Tax Vivas se Vishwas Scheme, 2024), with the finer details to be notified separately.

As per the proposed scheme, the benefit of the VsV Scheme can be availed in following scenarios:

- Appeals or writs or special leave petitions filed by the taxpayers or by Income tax authority or by both parties, which are pending as of 22 July 2024, before the appellate forum, i.e. supreme court, high courts, Income Tax Appellate Tribunal ("ITAT"), Commissioner of Income Tax (Appeals) ("CIT(A)") or Joint Commissioner of Income Tax (Appeals) ("JCIT(A)");
- Objections filed before the Dispute Resolution Panel (DRP) for which the directions were not received on or before 22 July 2024;
- DRP directions received but the assessing officer has not completed the assessment on or before 22 July 2024; and
- Person who has filed application for revision under section 264 of the Income Tax Act, 1961 ("the Act") as on 22 July 2024.

The taxpayers who wish to avail the benefit of the VsV Scheme will be able to settle the cases, upon payment of the following principal tax/interest/penalty/fee as the case may be:

Nature	Amount payable under this Scheme on or before 31 December 2024	Amount payable under this Scheme on or after 1 January 2025 but before the last specified date
Where dispute concerns tax, interest and penalty and the appeal has been filed after 31 January 2020 but before 22 July 2024	100% of disputed principal tax	110% of disputed principal tax
Where matter concerns tax, interest and penalty and the appeal is pending (at the same forum) since 31 January 2020	110% of disputed principal tax	120% of disputed principal tax
Where matter concerns disputed interest, penalty or fee and the appeal has been filed after 31 January 2020 but before 22 July 2024	25% of such disputed interest, penalty or fee	30% of such disputed interest, penalty or fee
Where the matter concerns disputed interest, penalty or fee and appeal is pending (at the same forum) since 31 January 2020	30% of disputed interest, penalty or fee	35% of disputed interest, penalty or fee

In the following cases, the tax/penalty/interest or fee, would be reduced by 50%:

- The income tax department has filed an appeal and the taxpayer wishes to settle such an appeal.
- An appeal is pending before the JCIT(A), CIT(A), DRP on any issue on which the taxpayer had received a favourable decision from ITAT (which was not reversed by high court or supreme court) or favourable decision from high court (which was not reversed by supreme court).
- An appeal is pending before ITAT on any issue on which the taxpayer has received a favourable decision from high court (which was not reversed by supreme court).

Once the declaration is accepted, the declarant will be granted immunity from levy of penalty, prosecution, as well as interest under the IT Act.

This is a great opportunity for taxpayers to put an end to tax disputes once and for all.

Exclusion from the VsV Scheme

The following taxpayers will not be eligible to claim benefit under the VsV Scheme:

- Where assessment or re-assessment is made based on the income tax search under sections 132 or 132A of the Act;
- Where the tax dispute relates to a prosecution case instituted on or before the date of filing of declaration;
- Where the tax dispute is related to any undisclosed income from a source located outside India or undisclosed asset located outside India;
- Tax dispute relates to assessment or reassessment made based on the exchange of information received from foreign countries;
- Where order of detention has been passed under the Foreign Exchange and Prevention of Smuggling Activities Act, 1974; and
- Prosecution has been initiated under the criminal laws of India

Re-assessment regime revamped again, maximum time limit to re-open assessment reduced to 5 (five) years

Sections 147 to 151 of the Act relate to the re-assessment of income which has escaped assessment. Section 149 of the Act provided for time limit to re-open assessment for up to 4 (four) years from the end of the assessment year (if income escaped is less than INR 1 lakh) and up to 6 (six) years (if income escaped is more than INR 1 lakh).

Thereafter, the re-assessment provisions were revamped completely vide the Finance Act 2021, wherein section 148A of the IT Act was introduced, which provided for issuing of show cause notice and opportunity to be heard to the assessee as per the procedure laid down in section 148 of the IT Act.

The time limit to re-open assessment was modified and the tax department was permitted to re-open the assessment for up to 3 (three) years and maximum of 10 (ten) years (wherein income in the form of asset has escaped assessment amounting to INR 50 lakhs or more) from the end of the assessment year, wherein income has escaped assessment.

Subsequently, vide Finance Act 2022, re-assessment provisions were further modified wherein the definition of scope of information to reopen was widened. However, the revamped re-assessment provisions introduced in 2021 and 2022, were subject to multiple litigation and the high courts and supreme court were flooded with various writ petitions filed by taxpayers challenging the provisions and validity of notices/proceedings. Further, the time limits also clashed with the timelines provided under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, which resulted in a plethora of litigation subsequently.

Further, the provisions of section 148A were required to be followed before the issuance of notice under section 148 of the IT Act. However, there were specific timelines related to the procedure prescribed under section 148A of the Act and this led to various interpretational challenges which were also subject to litigation.

Accordingly, the Finance Minister in her Budget speech has stated that certain amendments are proposed to the Finance Bill 2024 in order to simplify the re-assessment provisions. Under the proposed regime, the timeline for issuance of show cause notice under Section 148A of the IT Act would be:

- 3 (three) years from the end of the relevant Assessment Year ("AY"); or
- 5 (five) years from the end of the relevant AY if the income escaping assessment is INR 50 lakhs or more.

The timeline for issuing reopening notice under Section 148 of the IT Act, has been proposed to be revised to

- 3 (three) years and 3 (three) months from the end of the relevant AY; or
- 5 (five) years and 3 (three) months from the end of the relevant AY if the income escaping assessment is INR 50 lakhs or more.

As per the proposed amendments, there is an additional 3 month period for the tax department to issue notice under section 148 of the Act. The tax department is now provided with a consolidated time limit of 3 months to complete the procedure prescribed under section 148A as against the specific time limits provided under the Act. The definition of 'information' under section 148 has been expanded to include information emanating from survey conducted under section 133A of the Act.

The amendments are proposed to be effective from 1 September 2024. These amendments are a welcome move which will result in bringing tax certainty.

However, considering the fact that these amendments are prospective in effect, the pending litigation at all courts in relation to the validity of the re-assessments and various interpretational disputes will continue to be adjudicated by the courts.

'Angel tax' no more – Boost for 'start-ups'

Currently, as per the provisions of the IT Act, at the time of issuance of shares by a closely held company, any consideration received in excess of the fair market value of such shares (determined as per prescribed rules), is taxed as ordinary income for the issuing company, under section 56(2)(vii)(b) of the Act, which is widely referred to as 'angel tax'.

This tax applies to shares issued to resident as well as non-resident investors (the scope was widened to cover non-resident investors from 1 April 2023), with certain specified exemptions such as issue of shares by start-ups

or venture capital funds recognized by the Department for Promotion of Industry and Internal Trade.

Several companies, especially startups, who were looking for funding and investment from resident and non-resident investors, have faced significant litigation on this issue, wherein the department would challenge the valuation of the shares issued and tax the excess fair market value of such shares as income in the hands of the company/start-up issuing the shares.

In a welcome move, the Finance Bill, 2024 proposes to abolish angel tax altogether from FY 2024-25 and onwards.

Notably from a Section 68 perspective which seeks to tax (albeit at a higher rate of 60% plus surcharge and cess) inter alia the company on receipt of share capital, share premium in certain scenarios, the requirement to demonstrate the identity, genuineness and creditworthiness of the investors (other than VCFs) will continue to be relevant.

Revamp of 'Capital Gains' regime

Section 2(42A) of the Act defines the term 'short term capital asset', which provided for holding period of 12 months, 24 months and 36 months, depending on the capital asset, for purpose of taxability of capital gains on the transfer of capital asset.

Pursuant to the proposed amendment in the Finance Bill, 2024, the holding period for all listed securities, including units of business trust, will now be a common period of 12 months to be classified as long-term capital asset. All other assets will qualify as long-term capital assets if held for 24 months or more. Therefore, the maximum period for an asset to qualify as long term capital asset is reduced from 36 months to 24 months (other than slump sale).

However, gains from unlisted bonds and debentures transferred, redeemed or maturing on or after 23 July 2024 will be treated as Short-term Capital Gains ("STCG") irrespective of the holding period.

As per the amendment proposed, no indexation benefit will be available, for purpose of computing long term capital gains. This will lead to additional burden on the taxpayers on account of higher capital gains.

The tax department has clarified in media that indexation benefits for properties bought prior to 2001 will be available and it was stated that the taxpayer can choose the cost of acquisition as on 1 April 2001 from the cost of acquisition to the assessee or fair market value (not exceeding the stamp duty value) of such asset as on 1 April 2001.

In addition to the above changes, the Finance Bill, 2024 also proposes to make changes in the tax rates for short term and long term capital gains, which is summarised below:

Capital Asset	Nature of Capital Gains	Tax Rate	
		Current	Proposed w.e.f. 23 July 2024
Listed equity shares/equity oriented funds	Long Term	10% of gains exceeding INR 1 lakh	12.5% of gains exceeding INR 1.25 lakhs
	Short Term	15%	20%
Listed units of ReIT/ InvIT	Long Term	10%	12.5%
	Short Term	15%	20%
Other listed securities	Long Term	Indian resident: 20% (with indexation) 10% (without indexation) Non-resident: 10%	12.5% (without indexation)
	Short Term	Applicable rate	Applicable rate
Other assets (Immoveable property, gold, etc)	Long Term	20%	12.5%
	Short Term	Applicable rate	Applicable rate

All in all, there were lots of expectations that the Budget will effectively reduce the tax burden on the individual taxpayers and frankly there is some disappointment on this front. However, the Government's intentions to rationalise the direct tax provisions can be appreciated and the Government has announced a comprehensive, time-bound review of the existing provisions of the Act, which would be closely watched by the stakeholders. Simplification/rationalisation of the tax laws coupled with its fair administration, will really go a long way in delivering value added services to the taxpayers who contribute to the growth of nation by duly paying their taxes.