

Direct Tax Alert

March 24, 2021

Key amendments to Finance Bill, 2021 at enactment stage

Background

The Finance Bill, 2021 ('FB 2021') was presented by the Hon'ble Finance Minister, Ms. Nirmala Sitharaman, on February 1, 2021¹. In light of the representations received from various stakeholders, the FM introduced amendments to FB 2021 ('Amended FB 2021') which has been passed by the Lok Sabha. There are some significant tax amendments pertaining to business restructuring (slump sale, dissolution or reconstitution of firm, depreciation on goodwill, etc.) which can potentially have wide ramifications for future as well as ongoing transactions. The other amendments are generally intended to address certain ambiguities arising from the wordings of proposals as contained in FB 2021.

Some of the key amendments to FB 2021 have been summarised below.

Amendments relating to business restructuring

Computation of capital gains arising from 'slump sale'

- The existing provisions of the Act do not provide for imputation of Fair Market Value for capital assets which are

transferred pursuant to a slump sale. The capital gain is computed basis the consideration agreed to between the parties to slump sale.

However, the Amended FB 2021 now provides that fair market value of capital assets (as computed in the manner which will be prescribed) transferred pursuant to

¹ Refer <https://dhruvaadvisors.com/files/Dhruva-Union-Budget-2021-22-Highlights.pdf> for our alert summarising the highlights of Union Budget 2021-22



slump sale shall be deemed to be the full value of consideration for the purposes of computing capital gains.

- The Amended FB 2021 further provides that no deduction of goodwill (except purchased goodwill) shall be allowed as part of net worth in computation of capital gains pursuant to a slump sale.

Taxation on dissolution / reconstitution of the specified entity

- The FB 2021 had introduced provisions for overhauling the provisions relating to reconstitution or dissolution of firm which have been modified in the amended FB 2021.
- The amended FB 2021 provides that any receipt of capital asset or stock in trade by a specified person (partner, member, etc.) in connection with the dissolution or reconstitution of the specified entity (Firm, AOP, BOI) will be taxable as capital gains or business income, as the case may be, in the hands of specified entity.
- Furthermore, receipt of money or capital asset by a specified person from a specified entity in connection with reconstitution of specified entity will also be taxable as capital gains in hands of specified entity which will be computed in accordance with the following formula:

$$A = B + C - D$$

Where,

A = Capital gains

B = Value of money received by specified person from specified entity on date of such receipt

C = Fair Market Value of capital asset received by specified person from specified entity on date of such receipt

D = Amount of balance in capital account (represented in any manner) of the specified person in books of accounts of specified entity at the time of its reconstitution

- Capital loss, if any, arising basis the aforesaid formula shall be ignored
- Revaluation of any asset/self-generated goodwill to be ignored in computing the capital balance of the partner.

Depreciation on goodwill

- As per the proposals contained in FB 2021, goodwill is no longer eligible for depreciation irrespective of the mode of its acquisition. However, there existed some ambiguity on whether depreciation on goodwill can be claimed if it already forms part of block of assets as on April 1, 2020.
- The Amended FB 2021 now provides that the cost of goodwill as reduced by the depreciation that would have been allowable² would need to be reduced in computing the Written Down Value of the block of assets on which depreciation can be made admissible.
- Therefore, goodwill which forms part of block of assets as on April 1, 2020 would not be eligible for depreciation from AY 2021-22 and onwards.

International Tax

Clarifications on Equalisation levy

- The amended FB 2021 clarifies that equalisation levy will not be charged on consideration for sale of goods / services which are owned / provided by a resident

² For AY commencing on or after 1 April 1988



in India or effectively connected with permanent establishment in India.

'Liable to tax' defined

- The Amended FB 2021 has modified the definition of expression 'liable to tax' as was originally proposed in FB 2021. As per the new definition, a person shall be considered as 'liable to tax' in a country, if there is an income-tax liability on such person under the law of that country for the time being in force and shall also include a person who has subsequently been exempted from such liability under the law of that country.

MAT

Adjustment to book profit under MAT provisions

- The FB 2021 provided that if an APA or a Secondary adjustment results in increase in book profit of the current year, on filing of application by the taxpayer, the AO would need to recompute MAT liability for the past year(s).
- The Amended FB 2021 provides that the aforementioned provisions will apply provided the assessee has not utilized the MAT credit in any subsequent years. It further states that no interest shall be payable to the assessee on refund, if any, which may arise to the assessee upon such recomputation of MAT liability.

Amendments with respect to Financial Services sector

ADIA, SWF/ PF

- Tax exemption for ADIA/ SWF/ PFs proposed to be extended to investment in Category I/ II AIF with a minimum 50% investment in:
 - a domestic holding company set up and registered after April 1, 2021

having minimum 75% investment in infrastructure entities; or

- NBFC-IDF/ IFC having minimum 90% lending to infrastructure entities

Tax Incentives for IFSC

- Exemption from capital gains taxation proposed for investment division of Offshore Banking Unit located in IFSC which:
 - has been granted Category I FPI registration by SEBI; and
 - has commenced operations on or before March 31, 2024
- Specified Fund (being Category III AIF located in IFSC) now entitled to exemption from capital gains on transfer of shares of an Indian company by the Resultant Fund (being SEBI registered Category I, II or III AIF located in IFSC) provided
 - shares of Indian company were originally transferred from specified Offshore Fund (Original Fund) or from its Wholly owned SPV to Resultant Fund on account of relocation and such gains were not chargeable to tax but for relocation
- Tax exemption for non-residents earning royalty from lease of aircraft to IFSC unit (which has commenced operations on or before March 31, 2024) now proposed to be extended to earning of interest income from such lease
 - Aircraft defined to mean an aircraft or helicopter or an engine of aircraft or helicopter or any part thereof
- Income from transfer of aircraft (as defined above), which was leased by an IFSC unit to a person, eligible for profit-linked tax holiday
 - Earlier proposal of the IFSC unit leasing to a domestic company engaged in operation of aircraft removed



- Dividend income and long-term capital gains arising to a resident individual, being an employee of specified Indian company, on GDRs listed and traded in IFSC proposed to be taxed at 10%

Tax incentives

- Benefit of concessional tax rate of 5% on investment by FPIs in specified debt securities is restored with effect from April 1, 2020.
- The Amended FB 2021 seeks to provide exemption from capital gains arising from transfer of capital asset from a public sector company to another public sector company or to Central Government or to State Government, under a plan approved by Central Government.

Assessment procedures

New procedure for reassessment and search cases

- The time limit for issuance of reassessment notice under the new procedure is reduced to three years, unless income amounting to more than INR 5 million represented by assets have escaped/ likely to escape assessment; in which case, the time limit is extended to ten years.

The Amended FB 2021, defines the term 'asset' to include immovable property, being land or building or both, shares and securities, loans and advances and deposits in bank accounts.

- In cases where a survey is conducted, the Assessing Officer is deemed to have information that income has escaped assessment for a period of three years preceding the year in which such survey

is conducted. Now, surveys undertaken for verifying (a) compliance with withholding tax provisions and (b) expenditure spent at an event/ ceremony or function are outside the ambit of such deeming provisions.

Tax Compliance and Miscellaneous matters

Interest accruing in Employee Provident Fund

- As per the provisions of FB 2021, interest accruing in Employee Provident Fund on employee contributions exceeding INR 250,000 per annum is made taxable from April 1, 2021. The amended FB 2021 has increased this limit to INR 500,000 in cases where no amount is contributed by the employer to the provident fund.

Rationalisation of provisions relating to tax audit

- The FB 2021 increased the threshold for non-applicability of tax audit to INR 100 million (earlier INR 50 million) in cases where:
 - person carries on business; and
 - receipts and payments in cash during the relevant FY does not exceed 5% of the respective amounts
- The Amended FB 2021 provides that payment or receipt by a cheque or a bank draft which is not account payee shall be deemed to be payment or receipt, as the case may be, in cash.

Miscellaneous

- LLP and HUF ineligible for presumptive taxation for professionals



Glossary of Terms

Abbreviation	Meaning
ADIA	Abu Dhabi Investment Authority
Act	Income-tax Act, 1961
AIF	Alternative Investment Fund
AO	Assessing Officer
AOP	Association of persons
APA	Advance Pricing Agreements
AY	Assessment Year
BOI	Body of Individuals
FY	Financial Year
FPI	Foreign Portfolio Investment
HUF	Hindu Undivided Family
IFSC	International Financial Service Centre
INR	Indian Rupee
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
NBFC	Non-Banking Financial Companies
NBFC-IDF/ IFC	Non-Banking Financial Companies Infrastructure Debt Fund / Infrastructure Finance Company
PE	Permanent Establishment
SWF	Sovereign Wealth Fund



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