Government Amendments to the Finance Bill 2016

Clause 3

Clause (29A) of section 2 of the Income-tax Act defines "long-term capital asset" to mean a capital asset which is not a short-term capital asset. Clause (42A) of section 2 of the IT Act defines short-term capital asset to mean a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer.

In view of the budget announcement, it is proposed to provide that in case of shares of unlisted companies period of holding shall be more than 24 months instead of more than 36 months for them to be treated as long term capital asset.

Clause 7

Para 138 and 139 of Finance Minister's budget speech 2016-17 are reproduced below:-

"138. In case of superannuation funds and recognized provident funds, including EPF, the same norm of 40% of corpus to be tax free will apply in respect of corpus created out of contributions made after 1.4.2016.

139. Further, the annuity fund which goes to the legal heir after the death of pensioner will not be taxable in all three cases. Also, we are proposing a monetary limit for contribution of employer in recognized Provident and Superannuation Fund of Rs. 1.5 lakh per annum for taking tax benefit."

Subsequent to the introduction of the Finance Bill in the Parliament, in a statement made in the Lok Sabha on 8th March, 2016, the Finance Minister made the following announcement:-

"In view of the representations received, the Government would like to do a comprehensive review of this proposal and, therefore, I withdraw the proposals made in para 138 and 139 of my budget speech. The proposal of 40 per cent exemption given to NPS subscribers at the time of withdrawal remains...."

The proposed amendment is to give effect to the aforesaid announcements.

Clause 16

In order to provide clarity on the tax treatment of expenditure for obtaining right to use spectrum for telecommunication services, the Finance Bill, 2016 vide clause 16 proposed to insert a new section 35ABA in the IT Act to provide that the fees paid for obtaining right to use the spectrum is to be amortized over the period for which the right to use the spectrum has been granted. Further, the deduction shall be available in equal installments over the period beginning from the year of actual payment to the year upto which the right to use spectrum remains in force.

Department of Telecommunication has allowed for two options (i) upfront payment (ii) the payment for acquiring right to use spectrum to be paid over installments along with interest. In order to provide a level playing field, it is proposed to provide that the scope of amortization regime for acquisition of spectrum shall be extended to include, not only actual payments but also liability incurred in terms of provision made for payment of spectrum fees as per the installment scheme granted by the Dept. of Telecommunication provided the installments are paid within the specified time. It is further proposed to provide that where, in a previous year, any deduction has been claimed and granted to the assessee and subsequently there is failure to comply with any of the conditions specified in the scheme, then such deduction shall be deemed to have been wrongly allowed and Assessing Officer may re-compute the total income of the assessee for the said previous year by making necessary rectification.

Clause 19

Section 35CCC of the Act provides for weighted deduction of 150 per cent of expenditure incurred on notified agricultural extension project. In view of the phasing out plan of deductions announced by the Government, the Finance Bill, 2016 proposes to amend section 35CCC of the Act to restrict the deduction to 100% from financial year 2017-18 (Assessment Year 2018-19).

Considering the importance and the need for support to agriculture, it is proposed to extend the benefit of weighted deduction under section 35CCC for notified agricultural extension project till 31.03.2020 i.e up to financial year 2019-20 (Assessment Year 2020-21).

New clause 29A

The Finance Bill, 2016 seeks to provide for an Income Declaration Scheme, 2016. The Scheme provides that where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of the Scheme shall be deemed to be the undisclosed income for the purposes of the scheme.

As a consequence of the provisions of this Scheme, an amendment in section 49 of the IT Act is proposed to be carried out so as to provide that the cost of acquisition for the purposes of computation of capital gains upon subsequent transfer of such asset by the declarant shall be the fair market value as on the date of commencement of the Scheme**.**

In view of the above, it is proposed to insert Clause 29A in the Finance Bill, 2016 so as to amend section 49 of the IT Act. This amendment will be effective for the assessment year 2017-18 and subsequent assessment years.

Clause 41

Clause 41 of the Finance Bill, 2016 seeks to provide tax benefit for 'start-up'. For this purpose it is proposed to define start-up as a 'company' whose turnover does not exceed Rs. 25 crore in any of the previous years beginning on or after 01.04.2016 and ending on 31.03.2021.

It is proposed to include, in addition to company, the Limited Liability Partnership (LLP) in the definition of the term 'start-up'.

Clause 43

Clause 43 of the Finance Bill 2016 seeks to insert a new section 80-IBA in the IT Act to provide that, subject to fulfillment of certain conditions, the activity of developing and building housing projects shall be allowed 100% deduction of profits derived from such projects.

Representations have been received seeking clarification regarding certain conditions specified in the proposed new section. Accordingly, it is proposed to provide for the following:-

a) the distance from municipal limits shall be measured aerially;

b) the limits for size of plot of land and size of residential unit will be 1000 square metres and 30 square metres respectively in four metros namely, Chennai, Delhi, Kolkata and Mumbai and any place which is not more than 25 km from these metros; and in any other place, the size limits for a plot of land and size of residential unit will be 2000 square metres and 60 square metres respectively;
c) the Competent Authority, for the purposes of the proposed new section 80-IBA, shall be the authority empowered to approve the building plan by or under any law for the time being in force;
d) approval of the competent authority shall be required for the building plan; and
e) the project, in respect of which deduction is being sought, should be the only project on such plot of land.

New clause 47A

The Finance Bill, 2016 seeks to provide exemption from payment of Securities Transaction Tax (STT) on transactions undertaken in foreign currency on a recognised stock exchange in International Financial Services Centre (IFSC) and extends the benefit of exemption for long term capital gains. However, by implication, benefit of 15% of tax on short term capital gain under section 111A may be denied in case of such transactions owing to non-fulfilment of condition of payment of STT.

Accordingly, it is proposed to amend section 111A of the IT Act so as to provide that the concessional rate of 15% on short term capital gain will be available in respect of the transactions which take place in foreign currency on a recognised stock exchange even if STT is not paid. This amendment will be effective for the assessment year 2017-18 and subsequent assessment years.

Clause 49

In order to provide relief to newly setup domestic companies engaged solely in the business of manufacturing or production of any article or thing, the Finance Bill, 2016 proposes to insert a new section to provide that the income payable in respect of the total income of a domestic company for any previous year relevant to the Assessment Year beginning on or after 01.04.2017 shall be computed @ 25% at the option of the company. For the purposes of availing benefit of this section the company has to fulfil certain conditions including that it has been setup and registered on or after 01.03.2016 and has not claimed any benefit under the provision of section 10AA or accelerated depreciation, investment allowance or any profit linked deduction etc. The option by the company is to be furnished on or before the due date of furnishing the return of income.

It is proposed to amend clause 49 so as to clarify that, -

i. for the purpose of availing benefit of section 115BA, the company should not be engaged in any business other than that of manufacture or production of any article or thing and the associated activities in the nature of research in relation to, or distribution of, any article or thing manufactured or produced by it;
ii. the option is to be exercised by the company on or before the due date of filing of first return of income which it is required to furnish and cannot be exercised thereafter; and
iii. the option once exercised cannot be changed in any subsequent year.

Clause 50

Clause 50 of the Finance Bill, 2016 seeks to insert a new section 115BBDA in the IT Act to provide that any income by way of dividend in excess of Rs. 10 Lakh from domestic companies shall be chargeable to tax at the rate of 10% on gross basis in the hands of an assessee being an individual, an HUF or a firm, resident in India.

It is proposed to clarify that tax shall be chargeable on dividend income only to the extent it is in excess of Rs. 10 lakh in aggregate as received from a domestic company or companies. This amendment will be effective for the assessment year 2017-18 and subsequent assessment years.

Clause 52

In order to encourage indigenous research & development activities and to make India a global R & D hub, the Finance Bill, 2016 proposes to insert a new section 115BBF in the IT Act, to provide that a person resident in India deriving income by way of royalty from patent developed and registered in India will be taxed at a flat rate of 10% on gross basis.

It is proposed to amend the provisions of proposed Section 115BBF of the Act to provide option to eligible assesse to tax on gross basis. Further, once the option is exercised, the assessee shall remain in that regime for a period of five years. If the assessee opts out of the scheme before the expiry of the period of five years, he shall not be eligible to take the benefit of the provisions of section 115BBF for a period of five years subsequent to the year in which he does not declare income in accordance with the provisions of the proposed section 115BBF.

It is also proposed to provide that 75% of the total expenses incurred for developing patent shall be incurred by the resident himself in India.

Clause 53

The Finance Bill, 2016 seeks to provide concessional rate of MAT at 9% in case of units, being companies, which are located in IFSC and incorporated on or after 01.04.2016.

It has been represented that concessional rate of MAT at 9% may also be made available to units, being companies, which are located in IFSC and incorporated prior to 01.04.2016.

Accordingly, it is proposed to delete the condition that units should be set-up on or after 01.04.2016.

Clause 60

Clause 60 of the Finance Bill, 2016 proposes to insert a new Chapter XII-EB in the Income-tax Act consisting of sections 115TD to 115TF. Under the proposed provisions an additional tax at the maximum marginal rate is to be paid by a charitable trust or institution on its net assets on specified date if the trust or institution which has been granted registration under section 12AA of the Income-tax Act,

i. either converts into a form which is not eligible for registration under section 12AA; or
ii. gets merged into an entity which is not another trust or institution having similar object and registered under section 12AA; or
iii. on its dissolution the assets are not transferred to another registered charitable institution,

It has been represented that levy of such tax on mere order of cancellation of registration would lead to genuine hardship as in several cases the cancellation of registration by the tax administration is not upheld by the appellate authority. Further many organisations obtain section 12AA registration after several years of their creation and there is no provision for condonation of delay. Therefore, such institutions have duly paid taxes before their registration under section 12AA. It has also been represented that there are certain exempt income like agriculture income which should not be taxed at the time of exit from the regime.

Accordingly, it is proposed to amend clause 60 of the Finance Bill in order to provide that: -

i. the additional income-tax on accreted income, in the cases where registration under section 12AA has been cancelled or application for fresh registration under section 12AA has been rejected, and an appeal has been filed against such order would apply only from the date on which such order of cancellation or rejection has been upheld by ITAT;

ii. for the purpose of computation of accreted income, the assets as on the beginning of the previous year from which the registration under section 12AA or section 12A is applicable shall be excluded. However, if the trust or institution has been allowed to claim benefit under section 11 & 12 for any earlier previous year on the basis of registration under section 12AA (although of a later date) then the asset to be excluded shall be those which the trust or institution had at the beginning of the year being earliest of such previous years; and

iii. If it is established that any asset is acquired directly from agricultural income by the trust or institution, then such asset and liability relating thereto shall be excluded while computing the accreted income.

Clause 66

Existing section 143(1D) provides that processing of a return shall not be necessary, where a notice has been issued to the assessee under section 143(2). By the Finance Bill, a proviso has been added to the said sub-section to read that *"Provided that such return shall be processed before the issuance of an order under sub-section (3)"*.

Clarifications have been sought on the proposed amendment regarding the time available for processing of returns selected for scrutiny.

It is proposed to amend sub-section (1D) of section 143 to provide that the processing of return shall not be necessary before expiry of the period provided for processing of return where a notice has been issued to the assessee under section 143(2). However, such return shall be processed before the issuance of the assessment order.

Clause 81

Section 194LBB provides for deduction of tax @10% by Category – I & II Alternate Investment Fund (AIFs) on payments made to their investors. The proposed clause 81 seeks to amend section 194LBB in order to provide that tax deduction shall be @10% where the payee is a resident and at the "rates in force" where the payee is a non-resident.

It is proposed to amend clause 81 to provide that no deduction shall be effected in respect of any income which is not chargeable to tax under the provisions of the IT Act in case the payee is a non-resident.

Clause 86

The existing provisions of section 206C of the Act, *inter alia,* provide that the seller shall collect tax at source at specified rate from the buyer at the time of sale of specified items such as alcoholic liquor for human consumption, tendu leaves, scrap, mineral being coal or lignite or iron ore, bullion etc. in cash exceeding two lakh rupees.

In order to bring high value transactions within the tax net, the Finance Bill, 2016, *inter alia,* proposes to amend the aforesaid section, vide clause 86, to provide that the seller shall collect the tax at the rate of one per cent from the purchaser on sale of motor vehicle of the value exceeding ten lakh rupees.

In order to clarify that retail sale of motor vehicle of the value exceeding ten lakh rupees is also liable to TCS, it is proposed to amend the provisions of clause 86 of the Finance Bill, 2016 to clarify that buyer for the purposes of tax collection at source shall be a person who obtains in any sale, motor vehicle of the value exceeding rupees ten Lakh.

Clause 96

Brief

The proposed section gives power to Assessing Officer, Commissioner (Appeals), Principal Commissioner or Commissioner to levy penalty for under-reporting or misreporting of income. However, the proposed section does not mention the point of time for initiation of penalty proceedings by the respective authorities. It is hence proposed to provide that initiation of penalty under the proposed section 270A is to be made during the course of assessment, appellate or revision proceedings, as the case may be.

Sub-section (2) of the proposed section 270A provides circumstances as to when a person shall be considered to have under-reported his income. However it does not include the situation when the amount of deemed total income reassessed as per the provisions of section 115JB or 115JC is greater than deemed total income assessed or reassessed immediately before such reassessment. It is proposed to provide for the said situation by inserting a new clause in sub-section (2) of section 270A.

As per sub-section (10) of the proposed section 270A, the tax payable on under-reported income shall be amount of tax calculated:

(a) in the case of a company, firm or local authority, on under-reported income as if the under-reported income were the total income; and
(b) in case of any other assessee, at the rate of 30% on under-reported income.

With a view to rationalize the method for computation of tax for the purposes of determining the quantum of penalty , it is proposed that the penalty be linked to tax determined on the under reported income at the applicable rate. The income which has been taxed earlier or the maximum amount not chargeable to tax, as the case may be, shall be taken into account for the purpose of determination of tax on under reported income.

Clause 97

The proposed section 270AA provides for immunity from levy of penalty for under reported income and prosecution under section 276C of the IT Act if the assessee pays tax on the assessed income and does not file any appeal against the assessment order.

Section 276CC of the Income-tax Act provides for prosecution in case of wilful failure to furnish return of income. It is proposed to extend the immunity available in proposed section 270AA to initiation of proceedings under section 276CC.

New clause106A

Clause 96 of the Finance Bill, 2016 proposes to insert a new section 270A in the IT Act to provide for levy of penalty on under reported income. Section 270A proposes to substitute the penalty for concealment of income as provided under section 271(1)(c) of the IT Act.

Section 276C of the IT Act provides for prosecution for wilful attempt to evade tax. It is proposed to amend section 276C of the Income-tax Act to provide for initiation of proceedings under the said section in cases of under-reporting of income under section 270A.

Clause 112

The Finance Bill, 2016 proposes to provide for a monetary limit of Rs. 1.5 lakh per annum on the contribution by the employer in recognized Provident Fund for the purpose of tax benefit to the employee.

In view of the announcement made by the Finance Minister in the Lok Sabha on 08.03.2016, it is proposed to withdraw the proposed amendment.

Clause 192

Chapter IX of the Finance Bill seeks to introduce the Income Declaration Scheme, 2016 which provides an opportunity to persons who have not paid full tax in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to 45% of such undisclosed income so declared.

It is proposed to import section 138 and 119 of the Income-tax Act to the Income Declaration Scheme, 2016.