

Note regarding roll-back of some of the tough provisions proposed in the Finance Bill, 2012, and changes providing additional reliefs

You may be aware that a number of tough provisions were proposed to be introduced into the Income-Tax Act, 1961 (the Act), vide the Finance Bill, 2012. However, there were large-scale protests and representations against a number of amendments proposed by the Finance Bill, 2012.

As a result of the aforesaid protests and representations, there has been roll-back or reduction in the rigour, in respect of some of the aforesaid proposed amendments. The same were announced by the Finance Minister in his speech, while introducing the Finance Bill, 2012, for consideration. Besides, in certain respects, some additional reliefs have also been announced by the Finance Minister. The same are briefly discussed as follows :

1. General Anti-Avoidance Rules (GAAR)

In respect of the GAAR provisions proposed in the Finance Bill, 2012, the Finance Minister has announced the following changes :

- (i) Removal of onus of proof entirely from the tax-payer to the Revenue Department, before any action can be initiated under GAAR.
- (ii) Introduction of an independent member in the GAAR approving panel, to ensure objectivity and transparency. One member of the panel would now be an officer of the level of Joint Secretary or above, from the Ministry of Law.
- (iii) Provision that any tax-payer, whether resident or non-resident, can approach the Authority for Advanced Rulings (AAR), for a ruling as to whether an arrangement to be undertaken by the tax-payer is permissible or not under the GAAR provisions.

Besides, in order to provide greater clarity and certainty in the matters relating to GAAR, a Committee has been constituted to give recommendations for formulating the rules and guidelines in implementation of the GAAR provisions.

Besides, to provide more time to both the tax-payers and tax administration, the applicability of the GAAR provisions has been deferred by one year and now the same will apply to the income of the financial year (FY) 2013-14 and subsequent years.

2. Amendments relating to Double Taxation Avoidance Agreement (DTAA)

As per the amendment, vide Finance Bill, 2012, *Explanation 3* has been inserted after *Explanation 2* in sections 90 and 90A, which is clarificatory in nature and which provides that where any term is used in any DTAA and not defined therein or the Income-Tax Act, 1961 (the Act), but is assigned a meaning to it in the Notification issued in sections 90(3) and 90A(3) and such Notification is in force, then the meaning assigned to such term shall be deemed to have the effect from the date on which the said agreement came into force.

In this regard, the Finance Minister has clarified that the clarificatory amendments do not override the provisions of the DTAA, which India has with 82 countries. It would only impact those cases where the transaction has been routed through low tax or no tax countries with whom India does not have a DTAA.

3. Retrospective clarificatory amendments

In this regard, the Finance Minister has stated that such amendments will not be used to reopen any cases where assessment orders have already been finalized. In addition, the Finance Minister has also stated that he has directed the CBDT to issue a policy Circular to clearly state this position after the passage of the Finance Bill.

4. Reduction of tax on capital gains in case of non-resident investors, including private equity investors.

In this regard, the Finance Minister has stated that currently long-term capital gains arising from the sale of unlisted securities in the case of foreign institutional investors (FIIs) is taxed at the rate of 10%, while other non-resident investors, including private equity investors are taxed at the rate of 20%. In order to give parity to such investors, the rate of tax in their cases will be reduced from 20% to 10% on the same lines, as applicable to FIIs.

5. Benefit of tax exemption on long-term capital gains, in respect of sale of unlisted securities in initial public offer (IPO)

It was further announced by the Finance Minister that in order to promote further depth of capital markets through listing of companies, the benefit of tax exemption will also be extended to long-term capital gains on the sale of unlisted securities in an initial public offer. For the aforesaid purpose, the securities transaction tax (STT) will be levied at the rate of 0.2% on such sale of unlisted securities.

6. Taxation of receipt of the amount in excess of the fair market value of the shares of a closely held company

In section 56(2) of the Act, a new clause (viib) was inserted, vide Finance Bill, 2012, in order to bring to tax any consideration received by a closely held company, in excess of the fair market value of its shares.

Keeping in view the concerns raised by 'Angel', investors who invest in start-up companies, an enabling provision has been made in section 56(2)(viib), for exemption to a notified class of investors.

7. Tax rate on interest on monies borrowed in foreign currency, by way of issue of long-term infrastructure bonds, to be reduced to 5%.

The Finance Bill, 2012, vide amendment of section 115A of the Act, proposed a lower rate of withholding tax of 5% for funding specific sectors through borrowings.

To further facilitate access to such borrowings, lower rate of TDS is extended to all businesses. Further, the lower rate of tax would also be available for funds raised through long-term infrastructure bonds, in addition to borrowings under a loan agreement.

8. Withdrawal of provision reg.TDS in respect of payment on transfer of certain immovable property, other than agricultural land

As per new section 194LAA proposed to be inserted, vide Finance Bill, 2012, it was provided that any person, being a transferee, responsible for paying to a resident transferor any sum, by way of consideration for transfer of any immovable property (other than agricultural land), shall deduct an amount equal to 1% of such sum as income-tax, at the time of payment thereof.

On a number of representations pointing out the additional compliance burden, the aforesaid provision would impose the aforesaid proposal to insert section 194LAA, as been withdrawn.

As a result, no tax would be deductible at source in respect of sale consideration at the time of transfer of / sale of an immovable property.

9. Relief in respect of tax collection at source (TCS) by the seller, in respect of sale consideration in cash for sale of bullion or jewellery.

As per new sub-section (1D) in section 206C of the Act, it was proposed that tax collection at source (TCS) will be made by the seller at the rate of 1% of the sale amount from the buyer for all cash transactions, exceeding Rs.2 lakhs, in respect of sale of bullion and jewellery.

In view of a number of representations made by the jewellery industry that the aforesaid measure would cause undue hardship, the threshold limit for TCS on cash purchases of jewellery has been raised to Rs.5 lakhs from Rs.2 lakhs. However, the threshold limit of TCS on cash purchase of bullion, has been retained at Rs.2 lakhs.

It is also clarified that bullion would not include any coin or other article weighing 10 gms or less.

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