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Direct Tax Alert

March 28, 2022

Lok Sabha clears Finance Bill, 2022 with amendments

The Hon'ble Finance Minister presented the Finance Bill, 2022 ('the Bill')[1] before the august house of Parliament on February 1, 2022. The Lok Sabha (the lower house of Parliament) has passed the Bill along with amendments. Some of the key amendments to the Bill have been summarised below:

Filling of updated tax returns

- As a step towards ending protracted litigation and achieving tax certainty, the Bill had introduced new provisions enabling the taxpayer to file updated tax returns subject to certain conditions.
- The Amended Finance Bill, 2022 ('the amended FB, 2022') allows filling of updated tax return in respect of a loss return provided the original return of loss was filed on or before due date specified under section 139(1) of the Income-Tax Act, 1961 ('the Act'). Further, it provides that such updated tax return should be a return of income and not a return of loss.
- The amended FB, 2022, further provides that tax returns of subsequent years should also be updated as a result of updating the loss return of the earlier year. This would be required in cases where loss or unabsorbed depreciation or MAT credit carried forward to subsequent years is to be reduced as a result of

[1] Refer https://dhruvaadvisors.com/insights/files/Dhruva-Union-Budget-Analysis-2022.pdf for our alert summarising the highlights of Union Budget 2022-23

furnishing of updated return in the preceding year.

- The amended FB, 2022, also provides that in cases of search, the taxpayer will not be able to furnish the updated tax return for the year of search and also for any preceding years. The Bill had earlier restricted this for the year of search and 2 preceding years only.

Penalty for deduction of Cess

- The Bill had introduced a retrospective amendment restricting deduction of education cess in computation of taxable income. The Amended FB, 2022, further provides that claim of deduction in respect of education cess or surcharge, which is now not allowable as a deduction, shall be deemed to be under-reported income and penalty would be leviable under Section 270A.
- In order to safeguard from penalty proceedings, the amended Bill, 2022, gives a leeway to taxpayers to approach the Assessing Officer ('AO') within a time to be prescribed and in a manner to be prescribed with a request to recompute the total income without deduction of cess and surcharge. In such cases, if applicable taxes are paid, the penalty proceedings would not apply.
- The amended Bill, 2022, also gives powers to the AO to initiate rectification proceedings under section 154 of the Act and recompute the taxable income. It is also provided that the limitation period of 4 years available with the AO to initiate rectification proceedings shall commence from 1 April 2021.

Succession and corporate restructuring

- The Bill provided that the assessment or reassessment or other proceedings, made on the predecessor during the course of pendency of 'business reorganisation' shall be deemed to have been made on the successor. Accordingly, the AO would not be liable to re-initiate the proceedings against the successor.
- The Amended FB, 2022 expands the scope of this provision to 'succession'. Accordingly, assessment, reassessment or other proceedings made or initiated against the predecessor would be deemed to be made or initiated against the successor.
- The provisions of modified return under Section 170A would continue to be applicable in case of business re-organisations like merger, demerger and amalgamations.

Taxation of units of International Financial Services Centre ('IFSC')

- Existing Section 10(4D) of the Act, *inter-alia,* exempts income accrued or arisen to or received by a specified fund as a result of transfer of specified capital asset[2], on a recognised stock exchange located in IFSC if the consideration for such transaction is paid or payable in convertible foreign exchange.

[2] Specified capital asset includes bond or Global Depository Receipt referred to in sub-section (1) of section 115AC; or rupee denominated bond of an Indian company; or derivative; or other notified securities

- The benefit of above exemption is available to Category-III Alternative Investment Fund (AIF) located in IFSC, wherein all the units (other than units held by sponsor or manager) are held by non-residents.
- The amended FB, 2022, provides for a relaxation in cases where non-residents become residents in a subsequent year. It provides that in such cases the exemption will continue to be available if the aggregate value and number of the units held by such resident does not exceed 5% of the total units.

Taxation of Virtual Digital Asset ('VDA')

- The Bill had introduced new provisions providing for a rate and manner of computation of tax on transfer of a VDA (cryptocurrencies, etc.)
- The Bill had proposed that no set off of loss from transfer of VDA shall be allowed against income computed under "any other provision" of the Act. There was an ambiguity as to whether this restriction on set-off of loss was only limited to 'other provisions' i.e., could loss pertaining to one VDA be set off against the income arising from transfer of another VDA as they are part of the same provisions. The amendment now proposes to remove the reference to the word "other" and thus clarifies that loss of one VDA cannot be set off against income under any provision of the Act including income from other VDA. This is in line with the recent written reply by the Minister of State for Finance to the Lok Sabha clarifying that loss from one VDA will not be allowed to be set off against income from another VDA.
- Further, it is provided that the definition of "transfer" under section 2(47) shall apply to any VDA whether it is a capital asset or not.

Increase in time limit for completion of regular assessment for AY 2020-21

- The time limit for completion of regular assessment for AY 2020-21 has been increased from 12 months (March 31, 2022) to 18 months (September 30, 2022).

Time limit for completion of assessment in search or requisition cases for AY 2021-22

- In cases where the last authorization for search or requisition was made during Financial Year 2020-21 or books of accounts/documents/assets seized or requisitioned were handed over to the tax officer during FY 2020-21, time limit for completion of assessment for AY 2021-22 has been extended to September 30, 2022 (from 12 months to 18 months).

Miscellaneous Amendments:

- The provisions of section 56(2)(x) triggers taxation in hands of the recipient if any sum of money, specified properties, and immoveable property is received for no or inadequate consideration. One of the exclusion from the purview of the said section is receipt of such properties from or by any registered trust or institution or by any university, medical institution, hospital, etc. The amended FB, 2022, now provides that this exclusion shall not apply if the receipt is by a specified person[3].

- The amended FB, 2022, expands the definition of 'books of accounts' to include accounts maintained in electronic or digital form. Therefore, the taxpayers maintaining books of accounts in electronic or digital form would now not be required to maintain printouts of the same.

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For any queries in relation to this tax alert, please feel free to reach out.

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[3] Inter-alia includes author of the trust, trustee of the trust or manager of the institution, any relative of such author, founder, person, member, trustee or manager, any person who has made a substantial contribution to the trust or institution, etc.

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