

AMENDMENTS TO THE PROPOSALS OF THE UNION BUDGET 2024



Recently, both the houses of Parliament have passed the Finance (No. 2) Bill, 2024 (the Finance Bill) along with the amendments. The key amendments made to the Finance Bill, from Direct and Indirect tax perspective, are captured as under:

Direct Tax

The following two substantial amendments have been proposed:

- Indexation benefit vis-à-vis long-term capital gains arising from transfer of land or building or both acquired before July 23, 2024 by resident individual and HUF.
- No benefit of computation in foreign exchange terms for long-term capital gains from transfer of unlisted securities or shares of a closely held company by non-residents.

The above-referred two amendments have been explained in this alert.

Indexation benefit vis-à-vis long-term capital gains arising from transfer of land or building or both on or after July 23, 2024 by resident individual and HUF

Proposal in the Finance Bill

- The Finance Bill proposed to discontinue the indexation benefit available on the transfer of any long-term capital asset like shares and securities, immovable properties etc. for transfers made on or after July 23, 2024. This was done considering the reduction of the long-term capital gains on these assets from 20% to 12.5%.

Amendments to the Finance Bill

- There was severe resentment to the withdrawal of indexation with strong representations from various quarters to restore it. After considering the genuine hardship arising from the withdrawal of indexation benefits, it is proposed to allow the indexation benefit on long term capital gains arising from the transfer of land or building, or both, acquired before July 23, 2024, by resident individual and HUF.
- Accordingly, if the tax liability arising on the transfer of a long-term capital asset, **being land or building or both**, computed at a tax rate of 20% after applying the indexation benefit is lower than the tax liability computed at 12.5% without applying the indexation benefit, the excess shall be ignored.

Dhruva Comments

- This is a welcome amendment that attempts to neutralize the additional tax liability arising from the withdrawal of the indexation benefits.
- The relaxation is provided only to resident individual and HUF and not extended to any non-resident or any other resident taxpayer.
- The proposed relaxation does not alter the provisions dealing with the computation of capital gain income. Hence no loss on account of indexation benefit will be allowed to be set-off or carried forward to subsequent years.
- The benefit available under section 54 etc. needs to be considered while computing capital gain tax liability at the rate of 20% with indexation as well as while computing capital gain tax liability at the rate of 12.5% without applying indexation.
- The long-term capital gains arising from transfer of rights in an immovable property such as leasehold rights, FSI, etc., on or after July 23, 2024, shall not be eligible for indexation benefit.

Benefit of foreign exchange fluctuation and indexation on long-term capital gains from transfer of unlisted securities or shares of a closely held company by non-residents

Proposal in the Finance Bill

- The Finance Bill proposed that the long-term capital gains on the transfer of **unlisted securities or shares of a closely held company by non-residents** (without payment of STT) on or after July 23, 2024, shall be increased from 10% to 12.5%. However, the prevailing rate of 10% applied without benefit of computation of capital gains in foreign exchange terms. Inadvertently, the Finance Bill did not restrict this benefit while increasing the rate to 12.5%.

Amendments to the Finance Bill

- The long-term capital gains arising from the transfer of a long-term capital asset, being unlisted securities or shares of a closely held company, shall be taxable at 12.5%. These gains will be computed without the benefit of computing the gains in foreign exchange terms.

Dhruva Comments

- The amendment to the Finance Bill, provides for differential treatment in the taxation of capital gains arising from the transfer of long-term capital assets, being unlisted securities or shares in a closely held company and all other long term capital assets, by restricting the benefit of indexation and foreign exchange fluctuation.
- However, it would be interesting to examine with respect to cases where the foreign exchange fluctuation benefit results into loss. In such cases, whether a non-resident taxpayer is liable to pay taxes on the long-term capital gain at the rate of 12.5% as computed without taking into consideration foreign exchange fluctuations

Indirect Tax

(To be effective from the date of enactment of the Finance Bill, 2024)

- Section 3 of the Customs Tariff Act, 1975 ('Tariff Act') provides for levy of additional duties of customs including countervailing duty, special additional duty and integrated tax on import of goods. In respect of these duties, sub-section (12) to Section 3, creates an applicability to the provisions of the Customs Act, 1962 and the rules made thereunder in as far as they relate to drawbacks, refunds and duty exemption.

- Section 3(12) of the Tariff Act is now proposed to be substituted with a new provision, which enables applicability of provisions of the Customs Act, 1962 and the rules made thereunder (to the specified duties under Section 3) in as far as they relate to and without limiting to date of determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties.
- Similar amendment has been proposed to the following sections:
 - Section 8B(9) of Tariff Act: Safeguard Duty
 - Section 9(7A) of Tariff Act: Countervailing duty
 - Section 9A(8) of Tariff Act: Anti-dumping duty
 - Section 134(4) of Finance Act, 2003: National Calamity Contingent Duty
 - Section 110(5) of Finance Act, 2018: Social Welfare Surcharge
 - Section 111(3) of Finance Act, 2018: Road and Infrastructure Cess
 - Section 141(5) of Finance Act, 2020: Health Cess
 - Section 124(5) of Finance Act, 2021: Agriculture Infrastructure and Development Cess.
- Amendment has also been proposed to the following levy of excise duties to enable applicability of provisions of the Central Excise Act, 1944 and the rules made thereunder, in as far as they relate to and without limiting to date of determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties, to the following duties:
 - Section 147 of Finance Act, 2002: Special Additional Excise Duty
 - Section 85(3) of Finance Act, 2005: Additional Duty of Excise
 - Section 112(3) of Finance Act, 2018: Road and Infrastructure Cess
 - Section 125(4) of Finance Act, 2021: Agriculture Infrastructure and Development cess.

Dhruva Comments

The levy of interest and penalty on additional duties of customs duties, in the absence of enabling provision under the Tariff Act, has been a subject matter of challenge. The Hon'ble Supreme Court in the case of Mahindra and Mahindra Ltd¹, has dismissed the Special Leave Petition filed by Revenue against the Bombay High Court's decision², wherein it was held that without a clear enabling provision in the Tariff Act, interest and penalty cannot be imposed for non-payment or short payment of the additional duties of customs. These amendments provide for an enabling provision creating a charge of interest, penalty, appeals, recovery etc. towards such additional duties of customs and central excise.

¹ 2023 (8) TMI 135 - SC ORDER

² 2022 (10) TMI 212 - BOMBAY HIGH COURT

ADDRESSES**Mumbai**

1101, One World Center, 11th floor,
Tower 2B, 841 Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91-22-6108-1000 / 1900

Ahmedabad

402, 4th Floor, Venus Atlantis,
100 Feet Road, Prahladnagar,
Ahmedabad - 380 015
Tel: +91-79-6134-3434

Delhi / NCR

305-307, Emaar Capital Tower - 1,
MG Road, Sector 26, Gurgaon
Haryana - 122 002
Tel: +91-124-668-7000

Delhi

1007-1008, 10th Floor,
Kailash Building, KG Marg,
Connaught Place,
New Delhi-110001

Pune

305, Pride Gateway,
Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730-1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata,
West Bengal – 700016
Tel: +91-33-6637-1000

Dubai

Dhruva Consultants
Emaar Square Building 4, 2nd Floor,
Office 207, Downtown,
P.O. Box 127165
Dubai, UAE
Tel: +971-4- 240-8477

Abu Dhabi

Dhruva Consultants
1905 Addax Tower, City of Lights, Al
Reem Island, Abu Dhabi, UAE
Tel: +971-2-678-0054

Singapore

NeoDhruva Consultants
#16-04, 20 Collyer Quay,
Singapore 049319
Tel: +65 9144 6415

CONTACTS**Dinesh Kanabar**

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Punit Shah (Mumbai)

punit.shah@dhruvaadvisors.com

Mehul Bheda (Ahmedabad)

mehul.bheda@dhruvaadvisors.com

Vaibhav Gupta (Delhi/NCR)

vaibhav.gupta@dhruvaadvisors.com

Sandeep Bhalla (Pune)

sandeep.bhalla@dhruvaadvisors.com

Aditya Hans (Kolkata)

aditya.hans@dhruvaadvisors.com

Nimish Goel (Middle East)

nimish.goel@dhruvaadvisors.com

Dilpreet Singh Obhan (Singapore)

dilpreet.singh@dhruvaadvisors.com

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