

# ***Finance (No. 2) Bill, 2014 passed in Lok Sabha – Changes in tax proposals explained***

*July 28, 2014*

## ***In brief***

The Finance Minister (FM), Mr. Arun Jaitley had presented the Union Budget 2014-15 on July 10, 2014. The Lok Sabha has passed the Finance (No. 2) Bill, 2014 (Finance Bill) with a few amendments, which are summarised below.

### ***Direct Taxes***

#### ***Unlisted securities and units of mutual funds held for more than 12 months deemed to be long term capital assets if transferred between April 1, 2014 to July 10, 2014***

The Finance Bill had originally proposed that unlisted shares and units of a non-equity-oriented mutual fund would be categorised as long-term capital assets only if they were held for more than 36 months, prior to transfer. This was proposed to be effective from April 1, 2014.

The amended Finance Bill has provided that if the unlisted shares and units of a non-equity-oriented mutual fund are transferred during the period from April 1, 2014 to July 10, 2014, then such shares/units would continue to be characterised as long-term capital assets, they have been held for a period of more than 12 months (instead of more than 36 months).

#### ***Mandatory 20 per cent rate for long-term capital gains on units of a non-equity-oriented mutual fund to be on a prospective basis after July 10, 2014***

The Finance Bill had originally proposed that long-term capital gains from the transfer of units of a non-equity-oriented mutual fund would be taxed at the rate of 20 per cent. Therefore, the taxpayers did not have the option to pay tax at the rate of 10 per cent (without availing of the benefit of indexation) in respect of such gains.

The amended Finance Bill has provided taxpayers can continue to avail the lower tax rate of 10 per cent (without availing of the benefit of indexation) in respect of long-term capital gains arising on the transfer of units of a non-equity-oriented mutual fund during April 1, 2014 to July 10, 2014.

#### ***Determination of arm's length price (ALP) when more than one price is determined by most appropriate method***

The existing TP regulations provide that where more than one price is determined by most appropriate method, the arithmetic mean of all such prices is taken for determination of arm's length price with a tolerable range. This has resulted in much litigation for taxpayers.

The FM in his budget speech had proposed the use of range for determination of ALP, but the legislative provisions in this regard were not prescribed.

The amended Finance Bill has replaced the provisions with respect to arithmetic mean and tolerable range from April 1, 2015, and has provided that where more than one price is determined by the most appropriate method, the ALP shall be computed in such manner as may be prescribed.

### ***Taxpayers can approach Settlement Commission even for pending re-assessment cases***

The existing provisions do not permit taxpayers to approach the Settlement Commission during the pendency of reassessment proceedings.

The FM had mentioned in his budget speech about expanding the scope of the Income-tax Settlement Commission to make it more effective, but the legislative provisions in this regard were not prescribed.

The amended Finance Bill has now provided that from October 1, 2014, a taxpayer can apply for settlement of even those cases that are pending for re-assessment proceedings under both, Income-tax Act, 1961 and Wealth-tax Act, 1957.

### ***Resident taxpayers can approach Authority for Advance Ruling (AAR)***

The FM had mentioned in his budget speech about enabling resident taxpayers to obtain an advance ruling in respect of their income tax liability above a defined threshold, but the legislative provisions in this regard were not prescribed.

The amended Finance Bill has now provided that from October 1, 2014, specified class of resident taxpayers can approach the AAR for determining their tax liability arising out of transaction undertaken or proposed to be undertaken by them. The Central Government may notify the class of resident persons eligible to obtain the advance ruling.

### ***Strengthening of AAR***

The FM had mentioned in his budget speech that he would be strengthening the AAR by setting up additional benches. The legislative provisions in this regard were yet to be prescribed.

The amended Finance Bill has now made the following changes in the AAR mechanism:

- The existing provisions provide that the AAR would only consist of three members, namely, a Chairman, an officer of Indian Revenue Service and an officer of Indian Legal Service. The amended Finance Bill provides for additional appointment of Vice-Chairmen as member of AAR. Further, the Central Government has been empowered to appoint such number of Vice-Chairmen, revenue members and law members as it deems fit.
- Setting up additional benches of the AAR at such places as specified by the Central Government.

### ***Eligibility criteria for appointment of members of AAR:***

- a) Chairman – Only a person who has been a judge of the Supreme Court would be eligible for appointment.
- b) Vice-Chairman – Person who has been a judge of a High Court can be appointed.
- c) Changes have been made with respect to the eligibility of the members from the revenue.

### ***Power to CBDT to relax fee applicable for defaults in furnishing TDS/ TCS payments within due date***

The Central Board of Direct Taxes is now empowered to issue general or special orders for relaxation, etc. in respect of fee imposed under section 234E of the Act for default in furnishing Tax Deducted at Source / Tax Collected at Source statements.

## ***Indirect taxes***

### ***Provision of filing fees for application for grant of stay to the Tribunal***

Provision of filing fees for application for grant of stay to the Tribunal have been removed (Section 129A Customs Act/ Section 35B of Central Excise Act)

### ***Provision for pre-deposit (Section 129E of the Customs Act/ Section 35F of the Central Excise Act)***

Pre-deposit of 7.5% or 10% respectively is payable on the duty in case where duty, or duty and penalty, are in dispute or on penalty, where such penalty is in dispute.

This implies that:

- a) pre-deposit percentage should be computed only on the duty amount, where SCN/ Impugned Order demands both duty and penalty; and
- b) only to penalty, where penalty is in dispute.

### ***Section 129EE of the Customs Act/ Section 35FF of the Central Excise Act replaced with a new Section (Interest on delayed refund of amount deposited under Section 129E)***

The substituted section states that where the amount deposited under Section 129E (i.e., provision on pre-deposit) is required to be refunded consequent to the order of the Appellate Authority (i.e. Commissioner Appeals or CESTAT), an interest of not less than 5% and not exceeding 36% p.a. (as fixed by the Central Government) be paid till the date of refund.

Any deposits prior to enactment of Finance Bill, 2014 will be governed by the old provision.

## **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:

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