

Amendments to Finance (No. 2) Bill, 2019 as passed by Lok Sabha

July 23, 2019

In brief

The Finance (No. 2) Bill, 2019 was passed by the Lok Sabha on 18 July 2019, with 15 amendments related to Direct Tax proposals made earlier as part of the Union Budget presented on 5 July 2019. Some of the major amendments relating to the provisions of the Income-tax Act, 1961 (Act) have been discussed below.

In detail

Clause No. as per the Finance (No.2) Bill, 2019	Section in the Income-tax Act, 1961	Amendment as tabled in Lok Sabha on 5 July 2019	Amendment as passed by Lok Sabha on 18 July 2019	Comments
4	9	It was proposed that income of the nature referred to in section 2(24)(xviii) of the Act, arising from any sum of money paid, or any property situated in India transferred, on or after 5 July 2019, by a resident in India to a person outside India, shall be deemed to accrue or arise in India.	Income arising from transfer of <i>property</i> situated in India is now removed from the ambit of this provision. Further, the phrase “person outside India” is replaced with “non-resident, not being a company, or a foreign company”.	With this amendment, the scope of this provision will be restricted to “sum of money” paid without consideration. Further, the ambiguity surrounding the meaning of the phrase “person outside India” is now removed.
6	10	It was proposed to amend clause (viiab) of section 47 of the Act to provide an exclusion from capital gains tax arising on sale of specified securities on a recognised stock exchange in an International Financial Services Centre (IFSC) to Category III Alternate Investment Funds (AIFs):	The capital gains tax exemption in section 47(viiab) of the Act for Category III AIF is now removed (<i>accordingly, relevant amendments in clause 17 of the Finance Bill have been deleted</i>). It is now proposed to	Earlier the proposal required that all the units of the AIF should be held by NRs. This leads to concerns regarding the applicability of the capital gains tax exclusion, where units are held by resident sponsors or managers of AIFs.

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		<ul style="list-style-type: none"> That are located in any IFSC; That derive income solely in convertible foreign exchange; and All units of which are held by non-residents (NRs). 	provide an exemption under section 10 of the Act for any income earned by Category III AIFs on transfer of specified securities on a recognised stock exchange in an IFSC where the consideration is in convertible foreign exchange to the extent the income relates to units held by NRs.	This amendment now clarifies that the exemption will be available to a Category III AIF in respect to units held by NRs, excluding sponsors or managers.
7	10(23C)	It was proposed to amend the provisions of section 12AA of the Act to provide that the registration of a charitable trust or institution may be denied or cancelled if the trust or institution has not complied with the provisions of other laws that are material to the purpose of achieving its objective.	Now, provisos to clauses (iv), (v), (vi), (via) of section 10(23C) of the Act allowing exemption to fund, trust, institutions, university, other educational university, hospital and any medical institution are amended to provide the following: <ol style="list-style-type: none"> Before granting the registration under section 12AA of the Act, prescribed authority would also satisfy himself about compliance to the requirement of any other law that is material for the purpose of achieving its object; and registration may be withdrawn if such trust or institution has not complied with the requirements of any other law that is material for the purpose of achieving its objects. Further, such registration can be so cancelled only if the order or decree holding such non-compliance is either not disputed by such trust or institution or has attained finality. 	Additional conditions inserted in section 12AA of the Act in relation to grant and cancellation of registration is also incorporated in section 10(23C) of the Act. This amendment now clarifies that the exemption would be available only where the prescribed authority is satisfied with the compliance with other laws. Additionally, the exemption may be withdrawn where such conditions are not fulfilled.
21	56(2)(viib)	It was proposed to insert a second proviso to section	Now, the second proviso to section 56(2)(viib) of the Act	The second proviso to section 56(2)(viib) of the

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		56(2)(viib) of the Act to withdraw the exemption granted to certain notified companies (start-up companies) on failure to comply with the specified conditions and to tax the difference between the consideration received and face value of shares issued by the company, in the year of such failure.	is amended to – a) Tax the difference between the consideration received and the fair market value (<i>instead of face value</i>) of the shares issued by the company, in the year of such failure. b) Levy of penalty under section 270A of the Act deeming underreporting of income by such company.	Act is amended to – • Penalise the companies who have initially obtained the benefit of such exemption but are now not eligible for the same; and • Bring parity with other situations and to tax the difference between the consideration received and fair market value (instead of face value).
21	56(2)(viib)	It was proposed that exemption from applicability of section 56(2)(viib) of the Act will be extended to shares issued by a venture capital undertaking to a Category II AIF.	Now, clause “aa” of the Explanation to section 56(2)(viib) of the Act is amended to substitute the words “ <i>Category II</i> ” with the words “ <i>Category I or a Category II</i> ”.	This amendment now clarifies that the exemption will be available for shares issued by a venture capital undertaking either to a Category I or II AIF.
37	115R	It was proposed to exempt mutual funds (MF) from distribution tax on the income distributed to their investors out of income derived from transactions done on a recognised stock exchange <i>located in any IFSC</i> , if: <ul style="list-style-type: none"> • It is located in an IFSC; • <i>It is deriving income solely in convertible foreign exchange</i>; and • All the units are held by NRs. 	The condition for specified MF deriving income solely in convertible foreign exchange has now been removed. It is now proposed that the tax exemption will be available for distribution of income derived out of transactions on recognised stock exchange located in an IFSC, where the transaction is in convertible foreign exchange.	The previous proposal restricted the tax exemption on distribution of income by a MF if the MF had any income in Indian rupees. Further, the amendment clarifies that distribution exemption is in respect of income from IFSC transactions alone.
45	194-IA	It was proposed that section 194-IA of the Act would be amended to expand the definition of “consideration for immovable property” to include all charges/ fees of the nature of club membership, car parking, electricity and water facility, maintenance, advance or any other charge of similar nature that are incidental to the transfer of immovable	The phrase “consideration for immovable property” is now replaced with “consideration for transfer of any immovable property”.	This amendment aligns the proposed explanation with the provisions of section 194-IA of the Act that refer to “transfer” of immovable property.

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46	194M	It was proposed that section 194M will be inserted in the Act to deduct tax at source (TDS) at the rate of 5% on the sum, or the aggregate of sums, paid or credited by an individual or HUF on account of contractual work or professional fees, if such individual or HUF is not required to deduct tax at source under sections 194C or 194J of the Act and such sum, or aggregate of such sums paid to a resident, exceeds INR 5m in a year.	Under the ambit of the new section 194M it will now also include payments made by individuals or HUF by way of commission (not the commission referred to in section 194D of the Act) or brokerage as per section 194H of the Act.	This amendment now means that an individual or HUF who will utilise the services of a resident contractor or professional or agent for personal use/ for business or profession not subject to tax audit, will now be liable to deduct TDS at the rate of 5% if the threshold exceeds INR 5m.
46	194N	It was proposed to insert a new section 194N that provides for levy of TDS at the rate of 2% on aggregate cash payments in excess of INR 10m made during a financial year by (i) banking company or (ii) cooperative bank or (iii) post office, to any person (recipient) in respect of <i>an account</i> maintained by such person.	Now, it has been amended to substitute the words to “ <i>from an account</i> ” with “ <i>from one or more accounts</i> ”.	Earlier, in the said section, it was proposed to include withdrawal only from one particular bank account. Now it’s clarified to include all accounts maintained by a person to determine the withdrawal threshold limit of INR 10m.
New Clause 48A	198		Amendment to section 198 of the Act to include the following proviso: “ <i>Provided further that the sum deducted in accordance with the provisions of section 194N for the purpose of computing the income of an assessee, shall not be deemed to be income received.</i> ”	This amendment clarifies that the sum deducted under section 194N would not be deemed to be income of the recipient.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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