CA AG & ASSOCIATES

H.O : 2A, J.K. TOWER, ADALAT ROAD, AURANGABAD - 431 005.

CHARTERED ACCOUNTANTS

PHONE : 0240-233 9991/92, FAX : 0240-233 9990
Email : aurangabad@caagassociates.com
Web : www.caagassociates.com

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Finance Bill, 2016 – Passed by Lok Sabha after some amendments

Background

The Finance Bill, 2016 was introduced in the Lok Sabha by the Hon'ble Finance Minister Shri Arun Jaitley on February 29, 2016.

Several representations were made to the Hon'ble Finance Minister on issues that were faced by the taxpayers and certain sections that required minor amendments. Shri Arun Jaitley has taken these into consideration and had moved for 47 amendments to be made to the Finance Bill, 2016 by the Lok Sabha.

Proposed amendments

The following is a synopsis of the major changes made by the Lok Sabha in the Finance Bill, 2016 as passed by it on May 5, 2016.

- Shares of an unlisted company to be treated as Long Term Capital Asset if held for a period of 24 months.

- The Finance Bill, 2016 proposed to tax the provident fund due and becoming in excess of 40% of the total amount due or Rs 1,50,000, whichever was less. After several representations to the Finance Ministry on withdrawal of such tax, the Lok Sabha has withdrawn the levy of tax on provident funds.

  Note – Employer's contribution to Provident Fund paid to employees in excess of 12% of their salary continues to be taxable in the hands of the employees.

- The Finance Bill, 2016 proposed to insert a new section 35ABA to provide that the spectrum fee paid obtaining the right to use the spectrum shall be allowed to be deducted equally over the period of the spectrum. However, the Finance Bill did not address the issue of disallowance of such deduction in case of subsequent failure to compliance with the conditions.

  The amendment provides that in case of failure to comply with the conditions, the deduction shall be treated as wrongly allowed and the Assessing Officer may re-compute the total income of the assessee for the respective previous years by way of rectification u/s 154. Further, it also provides that the window of rectification (i.e. four years) would be taken from the end of the year in which there is failure to comply with the conditions specified.

- Finance Bill, 2016 had proposed to limit the deduction on expenditure incurred on agricultural extension projects to 100% wef April 1, 2018.

  The Finance Bill, 2016 as passed by the Lok Sabha has deferred the application of this section to April 1, 2021.

- Finance Bill, 2016 proposed the Income Declaration Scheme, 2016 under which an assessee was given the opportunity to declare their previously undisclosed income / asset by paying tax and penalty as had been prescribed on the fair market value of such assets.

  The amendment by the Lok Sabha has logically proposed that where capital gains arises from transfer of assets so disclosed, the cost of acquisition of assets would be taken as the fair market value which had been taken for the purpose of taxation under the scheme.

- The deduction of 100% of the profits for first 3 out of 5 years for eligible start-ups was proposed by the Finance Bill. However, the definition for eligible start-ups included only companies. The same has now been amended to also be extended to LLPs.

- Finance Bill, 2016 proposed a 100% deduction in respect of profits from eligible housing projects. The benefit of the housing project was restricted to projects within
  - Chennai, Delhi, Kolkata or Mumbai or 25kms from limits of municipal limits of these cities
  - Within jurisdiction of any other municipality or cantonment board

  The Bill did not consider areas which are beyond municipal limits.

  Also, due to ambiguity in language, it could be argued that the applicability of the section extends to residential units with a carpet area of upto 30 sq mt / 60 sq mt as may be applicable.

  The amendments made seek to address these ambiguities and it has been clarified that the benefit of the section would extend to housing projects located anywhere in India. Also, it has been clarified that the benefit would be applicable only to residential units with a built-up area of upto 30 sq mt / 60 sq mt as may be applicable.

- Finance Bill, 2016 proposed to exempt levy of tax on transaction in securities on a recognised stock exchange located in International Financial Services Centres (IFSC). Hence, an amendment was proposed in section 10(38) to exempt long term gains on such transaction. However, a consequent amendment was not made u/s 111A for short term gains.

  The amendment proposes to extend such benefit to short term gains from transaction in such securities.

- The beneficial rate of 25% has been extended to cover companies which are engaged in the production or manufacturing of any article or thing and also to companies engaged in research in relation to or distribution of article or thing manufactured or produced by it.

  Further, it has been proposed that the companies must exercise their option to avail such beneficial rate of tax before furnishing their first return of income after such section is applicable. Also, the option once exercised cannot be withdrawn in the subsequent year.

- The Finance Bill, 2016 proposed to tax royalty income in respect of a patent developed and registered in India at a beneficial rate of 10%.

  The Finance Bill, 2016 as passed by the Lok Sabha has proposed that if assessee opts to offer for taxation of income from patents as per section 115BBF in any previous year and fails to offer tax on income from patents as per section 115BBF in any of the 5 succeeding assessment years then he shall not be eligible to claim benefit of said section for 5 assessment years subsequent to the assessment year in which such income has not been offered to tax as per section 115BBF.

  Further, the clause that expenditure for development of such patents should be incurred in India has been relaxed to state that at least 75% of the expenditure should be incurred in India.

- The Finance Bill, 2016 had provided that return shall be processed before issuing assessment order under section 143(3). However, the finance bill as passed by the Lok Sabha provides that the processing of return is not necessary before the expiry of one year from the end of the financial year in which return is furnished, where a notice is issued for scrutiny assessment under Section 143(2). This may result in delay for issuance of refunds in case the return is selected for scrutiny.

- Scope of penal provisions under section 276C is widened to cover cases of under-reporting of income.

  Section 276C provides for rigorous imprisonment of minimum 3 months to 7 years in case an assessee has made wilful attempt to evade tax.

Our comments

- The amendments address some of the key issues which were raised and represented by tax payers and also provides clarity with respect to certain sections, the language of which left some ambiguity in their interpretation.

- The Finance Bill, 2016 as passed by the Lok Sabha will now be taken up for discussion by the Rajya Sabha.

- The recommendations, if any, made by the Rajya Sabha will then be placed before the Lok Sabha which may either accept or reject such changes post which the Bill would be sent for the President's assent.