

Budget 2021 - Key Tax Proposals For Employees (Part 6)

04 March 2021

This update covers:

- 1** Consequences on delay in contributing employee's contribution towards provident fund (or similar welfare fund)_____1
- 2** Advance tax liability on dividend income to arise only after the declaration of dividend_____2

Earlier, in relation to contribution to welfare funds (e.g. provident fund) by employers on behalf of their employees, the employers were allowed to make the contribution until the due date of furnishing return of income under the Income Tax Act (**ITA**) to claim an expense deduction for such contribution. The Finance Bill, 2021 (**Bill**) proposes to ensure that, if an expense deduction is to be claimed, such contributions are made by the employers within the due date specified under the respective welfare legislations. Further, pursuant to the taxability of dividend income in the hands of shareholders, there was a risk of interest liability on shareholders for non-payment of advance tax on such dividend income since it could not be determined in the beginning of the year when the advance tax liability is ascertained. The Bill proposes to remove any interest liability on non-payment of advance tax on dividend income.

We discuss some of these developments below.

1 Consequences on delay in contributing employee's contribution towards provident fund (or similar welfare fund)

Section 43B of the ITA specifies the list of deductions that are admissible as a tax-deductible expenditure only upon their actual payment. Currently, if the employer's contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees is actually paid by the employer on or before the due date for furnishing the return of the income for the relevant financial year, such employer is entitled to a deduction for that financial year.

Section 43B of the ITA pertains to only employer's contributions and not employee contributions, which are dealt with under section 36(1)(va) of the ITA. According to Section 36(1)(va), employee contributions to such

The Finance Bill, 2021 proposes to deny expense deduction to employers in relation to contribution made by them to welfare funds (e.g. provident fund) on behalf of their employees unless such contribution is made in a timely manner. The Bill also proposes to alleviate the levy of interest on non-payment of advance tax on dividend income.

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funds must be deposited by the employer by the due date under the relevant labour law/enactment (and not the due date for furnishing the return of income for the year). However, some courts have applied the extended concept of due date pertaining to employer contributions (as provided under section 43B) to employee contributions under section 36(1)(va) as well.

The Bill proposes to introduce amendments to clarify that the concept of due date as provided for employer contributions under section 43B would not be applicable to employee contributions which are governed by section 36(1)(va).

The impact of these amendments would be that in case the employee contributions to the welfare funds are not deposited by the employer on or before the due date prescribed under the relevant labour law/enactment (and not the due date for furnishing the return of income for the year), the employee contributions to the welfare funds would be treated as taxable income in the hands of the employer. This amendment will take effect from 1 April 2021.

2 **Advance tax liability on dividend income to arise only after the declaration of dividend**

The ITA provides for payment of interest by a taxpayer who does not pay or fails to pay on time instalments of advance tax. Currently, the taxpayer is liable to pay simple interest at the rate of 1% per month for a period of three months on the amount of shortfall calculated with respect to the due dates for advance tax instalments.

Pursuant to the abolishment of dividend distribution tax regime, the amount of dividend income cannot be estimated correctly by the shareholders paying advance tax. The Bill therefore proposes to provide that advance tax liability on dividend income shall arise only after the declaration/payment of dividend. Accordingly, interest on the shortfall in payment of advance tax on account of dividend income (except deemed dividend income) will not be charged provided the taxpayer has paid full tax on such income in subsequent instalments.

This amendment will take effect from 1 April 2021.

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- [Implications for InvITs and REITs](#)
- [Rationalisation of Equalisation Levy provisions](#)
- [Impact on mergers and acquisitions](#)
- [Tax incentives for International Financial Services Centre](#)
- [Key tax proposals for housing sector](#)
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