

Budget 2021 - Other Key Proposals (Part 7)

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To provide certainty and relief to institutional investors, the Finance Bill, 2021 (**Bill**) proposes to rationalise certain provisions relating to tax deduction and tax collection at source. The Bill also extends certain benefits to eligible start-ups by a year and proposes to penalize non-filers of income-tax returns.

With the assessment (before the tax assessing officer) and first appeal proceedings (before the Commissioner (Appeals) being already made faceless, to encourage greater efficiency and transparency in tax administration in India, the Bill suggests amendments to make the second appeal proceedings (before the tax tribunals) faceless as well. Additionally, due to several procedural delays, the experience of taxpayers in relation to the current advance ruling regime has not been satisfactory and therefore the Bill proposes an overhaul of the existing regime. It also proposes steps to provide certainty regarding tax assessments by *inter alia* reducing the time period for issue of notice for assessment or reassessment of income.

We discuss some of these developments below.

The Finance Bill, 2021 proposes several amendments to rationalize the provisions of tax deduction and tax collection at source and improve the effectiveness of tax administration in India.

1 Amendments relating to tax deduction at source (TDS)/tax collection at source (TCS) provisions

- a. The Bill proposes an amendment to provide that in case of a payee (registered as a Foreign Institutional Investor (**FII**) with Securities and Exchange Board of India) based in a treaty jurisdiction (and such payee has furnished the tax residency certificate), tax shall be withheld at the rate of 20% or the rate of tax provided in the treaty, whichever is lower. This amendment puts to rest uncertainty for FIIs following the decision of the Supreme Court in the *PILCOM v. CIT* case, pursuant to which certain payers had begun withholding tax at the specified rate of 20% even in cases wherein the treaty provided a lower rate of tax.

This amendment will take effect from 1 April 2021 and is expected to provide significant relief to FIIs.

- b. The Income Tax Act (**ITA**) did not provide for TDS on purchase of goods so far. However, through the Finance Act, 2020, transactions of sale / purchase of goods were brought within the ambit of the TCS provisions (i.e. the 'seller' was mandated to collect TCS at 0.1% on sale of goods, subject to fulfilment of specified conditions). The Bill now proposes to provide for TDS at 0.1% by the 'buyer' for paying any sum to any resident (i.e. 'seller') for purchase of goods if (i) the buyer's total sales, gross receipts or turnover from business exceeded INR 10 crores during the immediately preceding financial year, and (ii) the value of goods purchased from the seller exceeds INR 50 lakhs.

The general rule however is that a transaction on which there is a TDS or TCS obligation under any other provision of the ITA would not be subjected to TDS under the newly proposed provision. The only exception to this general rule is, if on a transaction, the buyer and seller both need to apply 0.1% TDS and 0.1% TCS respectively, the transaction would only be subject to TDS at 0.1% (i.e. TCS obligation would not have to be discharged).

The amendment will take effect from 1 July 2021.

- c. The Bill proposes to introduce a special provision to provide for a higher rate for TDS for non-filers of income-tax returns. This provision will apply to a person who has not filed tax returns for two financial years immediately preceding the year in which tax is required to be deducted or collected (as the case may be) and the time limit for filing such returns has expired for both the years. Further, the aggregate of tax deducted at source and tax collected at source for the specified person should be at least INR 50,000 in each of these two years. However, a non-resident who does not have a permanent establishment in India will not be covered by this provision.

This amendment will take effect from 1 July 2021.

2 Benefits to eligible start-ups extended by a year

Currently, eligible start-ups incorporated before 1 April 2021 are entitled to certain specified benefits under the ITA subject to fulfilment of specified conditions. To promote *atmanirbhar bharat* and incentivize investments in eligible start-ups, the Bill proposes to extend the outer date of incorporation for start-ups to 31 March 2022.

Further, a rollover benefit is available in respect of capital gains arising from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by an eligible assessee on or before 31 March 2021. The assessee is required to utilise the net consideration for subscribing to the equity shares of an eligible start-up before the due date of furnishing of return of income. The eligible start-up is required to

utilise this amount for purchase of new asset within one year from the date of subscription in equity shares by the assessee. The Bill proposes to extend the outer date for transfer of residential property from 31 March 2021 to 31 March 2022.

These amendments will take effect from 1 April 2021.

3 Improving effectiveness of tax administration

3.1 Time limit to file belated return and to revise original return reduced

The Bill proposes to reduce the last date for filing of belated or revised returns of income by three months. The belated return or revised return can now be filed three months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

This amendment will take effect from 1 April 2021.

3.2 Constitution of the Board for Advance Rulings

The Authority for Advance Rulings (**AAR**) has not been able to dispose-off applications in a timely manner. To counter this pendency, the Bill proposes to constitute a Board of Advance Ruling (**BAR**) and cease the operations of the AAR.

Advance rulings pronounced by the BAR would not be binding either on the applicant or the Income-tax Department. If aggrieved, the applicant or the Income-tax Department may file an appeal against the ruling and invoke the appellate jurisdiction of the High Court. This is a significant deviation from the current regime wherein the rulings pronounced by the AAR are binding both on the applicant and the Income-tax Department.

These amendments will take effect from 1 April 2021.

3.3 Faceless proceedings before the Income-tax Appellate Tribunal in a jurisdiction-less manner

Along the lines of Faceless Assessment, Faceless Appeal and Faceless Penalty Schemes, the Bill proposes to empower the Central Government to notify a faceless scheme under which Income-tax Appellate Tribunal (**ITAT**) proceedings would be conducted on the same lines as the Faceless Appeal Scheme. This will not only reduce cost of compliance for taxpayers, increase transparency in disposal of appeals but will also help in achieving even work distribution amongst different benches of the ITAT resulting in better utilisation of resources.

This amendment will take effect from 1 April 2021.

3.4 Constitution of Dispute Resolution Committee for small and medium taxpayers

To provide tax certainty to small taxpayers, the Bill proposes to constitute one or more Dispute Resolution Committee (**DRC**) for settling tax disputes at the initial stage. DRC will resolve disputes only in cases where the returned income is up to INR 50 lakhs and the aggregate amount of variation proposed in specified order is up to INR 10 lakhs.

This amendment will take effect from 1 April 2021.

3.5 Discontinuance of Income-tax Settlement Commission

The Bill proposes to discontinue Income-tax Settlement Commission and to constitute an interim board for settlement of pending cases with effect from 1 February 2021.

3.6 Reduction of time limit for completing assessment

Section 153 of the ITA provides time limits for completion of assessment, reassessment and re-computation of income. With the advent of the Faceless Assessment Scheme, the Bill proposes to reduce the time limit for completion of assessment proceedings to 9 months from the end of the assessment year in which the income was first assessable.

This amendment will take effect from 1 April 2021.

3.7 Reduction of time limit for issuance of notice for initiation of scrutiny proceedings

Currently, an annual return of income filed by a taxpayer may be subject to scrutiny by the Income-tax Department by issuing a notice under Section 143(2) of the ITA. Such notice can be issued within six months from the end of the financial year in which the annual return of income is furnished. The Bill proposes to reduce the time period for issuance of notice under Section 143(2) of the ITA from six months to three months from the end of the financial year in which the annual return of income is furnished.

This amendment will take effect from 1 April 2021.

3.8 Clarification regarding the scope of the Direct Tax Vivad se Vishwas Act, 2020 (VsV Scheme)

The Bill clarifies that appeals arising out of orders passed by the Income Tax Settlement Commission will not be covered under the VsV Scheme. The said amendments are proposed to take effect retrospectively from 17 March 2020.

4 Amendment of provisions for reassessments and search assessments

4.1 Time period for re-opening of assessments reduced

The Bill proposes to completely reform the system of assessment, reassessment or re-computation of income which has escaped assessment. It is proposed that in normal cases, no notice will be issued if three years have elapsed from the end of the relevant assessment year. However, in specific cases where the Assessing Officer has in his possession evidence which reveals that the income escaping assessment amounts to or is likely to amount to INR 50 lakhs or more, notice can be issued beyond the period of three years but not beyond the period of ten years from the end of the relevant assessment year.

4.2 Abolition of Section 153A and 153C of the ITA

Section 153A of the ITA deals with assessment procedures following the initiation of a search. Section 153C of the ITA deals with assessment or reassessment of income of a person other than the person for whom the search was initiated, subject to specified conditions. In such cases, tax authorities can assess or reassess the income of taxpayer for the past six assessment years.

The Bill proposes a completely new procedure for assessment in case of initiation of search, as follows:

- The applicability of Section 153A and 153C of the ITA will be limited to cases where search has been conducted on or before 31 March 2021.
- For a search conducted after 31 March 2021, assessment or re-assessment will be done under section 147 of the ITA. (Section 147 of the ITA grants power to the tax authorities to assess or reassess or re-compute the income of a person for earlier assessment years.)
- In case of search and survey, the assessing officer will be deemed to have information that income has escaped assessment for three assessment years immediately preceding the relevant year in which a search or survey was conducted.

These amendments will take effect from 1 April 2021.

5 Provisional attachment of a taxpayer's property/assets in fake invoice cases

The ITA provides for imposition of a penalty on a taxpayer or another person who causes such taxpayer to make a false entry or omit an entry from a taxpayer's books of accounts. To avoid the evasion of such penalty by the taxpayer, the Bill proposes to allow the tax authorities to provisionally attach the taxpayers' property in cases where they are likely to thwart the recovery of penalty. However, this will only be allowed in cases where the penalty is likely to exceed INR 2 crores.

This amendment will take effect from 1 April 2021.

Our detailed updates on key tax proposals across different areas can be accessed through the links below:

1. [Implications for InvITs and REITs](#)
2. [Rationalisation of Equalisation Levy provisions](#)
3. [Impact on mergers and acquisitions](#)
4. [Tax incentives for International Financial Services Centre](#)
5. [Key tax proposals for housing sector](#)
6. [Key tax proposals for employees](#)
7. [Other key proposals](#)
8. [Key indirect tax proposals](#)

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