Budget 2022: Key Tax Proposals Impacting Business Reorganisations

8 February 2022

The Finance Bill, 2022 introduces amendments to provide clarity and reduce protracted litigation for entities undergoing business succession / reorganisation.

The Government has been making consistent efforts to simplify and rationalise the tax framework in India. Accordingly, the Finance Bill, 2022 (**Bill**) proposes several amendments to address practical nuances and anomalies arising in business successions/reorganisations.

The Income Tax Act, 1961 (**ITA**) provides a tax framework for business successions and reorganisations. Specifically, where a business is succeeded by any other entity, which subsequently continues to carry on that business, the seller is assessed for the income of the business up to the date of succession, and the acquirer is assessed for the income of the business after the date of succession. Tax dues of the business up to the date of succession cannot ordinarily be recovered from the acquirer (unless such dues cannot be recovered from the seller). While these are the broad contours of the provision governing business successions/reorganisations, there are certain practical nuances that have led to protracted litigation and nullification of tax demands imposed on entities involved in such transactions. Certain amendments have been proposed to address these procedural anomalies, as discussed below.

1 Validity of tax assessments

The process of business reorganisation often commences with the relevant entities making applications for approval from the jurisdictional authority. The process of approval is often quite protracted, and reorganisations are sometimes made effective retrospectively. In such a scenario, particularly in the case of amalgamations, income-tax proceedings carried out on the predecessor entity during the pendency of the approval are often held to be illegal by courts, since the predecessor entity ceases to exist during the proceedings. To clarify that such proceedings are valid, the Bill proposes to insert a provision to the effect that in the event of a business reorganisation, any assessment or other proceedings pending or completed on the predecessor entity will be deemed to have been made on the successor entity.

2 Filing of tax returns

The affairs of the successor entity undergo a complete change from the date of reorganisation. Further, due to the indefinite timeline of the approval process, there is typically a gap between the date from which the order is deemed to apply (**Appointed Date**), and the date on which the approval is issued (**Effective Date**). This adversely impacts the entities undergoing the reorganisation, as they are unable to modify the returns which have already been filed in accordance with the reorganisation. Accordingly, the Bill proposes to insert a new provision to enable such entities to file modified returns for the period between the Appointed Date and the Effective Date.

3 Recasting of tax dues

Under the Insolvency and Bankruptcy Code, 2016, income tax liabilities of sick companies may be recast as a part of the restructuring process to ensure the future viability of such entities. Currently, there is no procedure or mechanism provided in the ITA to reduce such tax demands from the outstanding demand register. The Bill proposes to insert a new provision to give effect to the orders of the competent authority and modify tax demands in accordance with such directions.

These amendments will take effect from 1 April 2022. The proposed amendments are a welcome move, as they bring clarity, transparency and reiterate the commitment of the Government towards rationalisation and simplification of the tax framework in India.
