

HIGHLIGHTS OF NOTICE OF AMENDMENTS TO THE FINANCE BILL, 2013

1. Reference to FEMA, 1999 in the place of FERA, 1973/ FERA, 1947 under the Income-tax Act, 1961

Even after repeal of “Foreign Exchange Regulation Act, 1973”, the Income-tax Act, 1961 continued to make a reference to the said Act in many of its sections, for example, section 10(4)(ii), 10(4B), etc. In order to correct this apparent mistake, a new clause (3A) is proposed to be inserted in the Finance Bill, 2013 for substitution of the expression “Foreign Exchange Management Act, 1999” in place of “Foreign Exchange Regulation Act, 1973” at all places in the Income-tax Act, 1961.

A specific amendment has also been made in section 138 to substitute “Foreign Exchange Regulation Act, 1947” with “Foreign Exchange Management Act, 1999”.

2. “Authorised Person” under FEMA, 1999 to be the “person responsible for paying” for the purpose of Chapter XVII and section 285

Section 204 provides for the meaning of the term “person responsible for paying” for the purpose of Chapter XVII and section 285.

Clause (iia) of section 204 provides that the authorized dealer shall be the person responsible for remitting the amount of consideration to a non-resident for the transfer of long term capital asset or crediting such sum to his Non-resident (External) Account maintained in accordance with FERA, 1973.

Consequent to the proposed substitution of the expression “FERA, 1973” with “FEMA 1999”, reference to the term “Authorised dealer” under FERA, 1973 is also proposed to be substituted with the term “Authorized person” under FEMA, 1999.

3. Scope of exemption of income received in India in Indian currency by a foreign company to be expanded

Section 10(48) was inserted by the Finance Act, 2012 w.e.f. A.Y.2012-13 to exempt any income received in India in Indian currency by a foreign company on account of sale of crude oil to any person in India.

The scope of section 10(48) is now proposed to be enlarged w.e.f. A.Y.2014-15 so as to also provide exemption in respect of income received in India in Indian currency by a foreign company from the sale of any other goods or rendering of services as may be notified by the Central Government in this behalf to any person.

4. Trading in commodity derivatives not to be considered as a speculative transaction

The Commodities transaction tax is proposed to be introduced in a limited way by insertion of Chapter VII in the Finance Bill, 2013. The Finance Minister, in his budget speech, had clarified that trading in commodity derivatives will not be considered as a speculative transaction. However, no amendment was proposed to this effect by the Finance Bill, 2013 in

section 43(5) defining a speculative transaction. Consequently, in the absence of specific exclusion provision in section 43(5), characterisation of commodity derivative transactions (including those which are subject to CTT) would be governed by the existing provisions and they run the risk of being treated as speculative transactions, unless established by the taxpayer to be for hedging purpose.

In order to give effect to the clarification given by the Finance Minister in his budget speech, section 43(5) is proposed to be amended by inserting sub-clause (e) in its proviso to exclude an eligible transaction in respect of trading in commodity derivatives carried out in a recognized stock exchange from the definition of “speculative transaction”. Explanation 2 is proposed to be inserted to define the term “eligible transaction” in relation to commodity derivatives.

5. Requirement of TRC to contain “prescribed particulars” to be dispensed with

Sub-section (4) of 90 and 90A provides that treaty benefit will not be available to any Non Resident unless he furnishes TRC from the Government of his country of residence containing such particulars as may be prescribed. The Finance Bill, 2013 had proposed to insert sub-section (5) in sections 90 and 90A to provide that TRC shall be a necessary but not a sufficient condition for claiming any relief under a DTAA.

The Finance Minister had subsequently clarified, by way of Press Release dated 1st March 2013, that the TRC issued by the Government of a foreign country would be accepted as evidence of tax residency and the tax authorities cannot go behind the TRC to question the residential status.

In order to incorporate the said clarification in the statute, sub-section (4) of sections 90 and 90A is proposed to be amended to substitute the words “a certificate containing such particulars as may be prescribed of his being a resident” with the words “a certificate of his being a resident”. Therefore, a certificate issued by the Government of a foreign country would constitute proof of tax residency, without any further conditions regarding furnishing of prescribed particulars therein.

Also, sub-section (5) of sections 90 and 90A which provided that TRC shall be a necessary but not a sufficient condition for claiming any relief under a DTAA is proposed to be substituted to provide that the assessee referred to under sub-section (4) of sections 90 and 90A shall also provide such other documents and information, as may be prescribed.

6. New time limits for completion of assessment or reassessment under sections 153 and 153B in cases where reference is made to TPO to apply irrespective of the date of reference to TPO or the date of passing of order under section 92CA(3)

Section 153 provides for the time limit for completion of assessments and reassessments. With respect to income first assessable in the A.Y.2009-10 or any subsequent assessment year, the Finance Act, 2012 had extended the time limit for completion of assessment under section 143(3) or section 144 from 33 months to 3 years in case where, during the course of the assessment proceeding, reference is made to the Transfer Pricing Officer (TPO) under section 92CA(1).

Further, where notice under section 148 is served on or after 1.4.2010, the Finance Act, 2012 had extended the time limit for completion of assessment, reassessment or recomputation under section 147 from 21 months to 2 years from the end of the financial year in which notice under section 148 was served in a case where reference under section 92CA(1) is made during the course of the assessment proceeding to the TPO.

However, in both the above cases, the extended time limit was applicable only if the reference was made –

- on or after 1st July, 2012 or
- before 1st July, 2012 but the order of TPO has not been made upto that date.

The said provisions are now proposed to be amended to provide that the extended time limits of 3 years and 2 years, respectively, will be applicable irrespective of the time of making reference to TPO and date of passing of order by the TPO.

Section 153B which deals with the time limit for completion of assessment in case of search or requisition, is also proposed to be amended on the similar lines.

7. No requirement to obtain TAN by transferee deducting tax under section 194-IA

Section 194-IA was proposed to be inserted by the Finance Bill, 2013 to provide for deduction of tax at source @ 1% on consideration for transfer of immovable property, other than agricultural land. However, no tax is to be deducted if the consideration for transfer of immovable property is less than Rs.50 lakhs.

Since this provision requires deduction of tax by the transferee, it presupposes that the transferee should have a TAN. This may cause genuine hardship to those transferees who do not possess a TAN. Further, it would be an additional burden to require such persons to apply for and obtain TAN for a single transaction.

To address this concern, sub-section (3) has now been inserted in section 194-IA to provide that provisions of section 203A containing the requirement of obtaining TAN, shall not apply to a person required to deduct tax in accordance with the provisions of section 194-IA.

8. Higher TDS under section 206AA not to be applicable in respect of tax deductible under section 194LC

Section 194LC, inserted by the Finance Act, 2012, provides for a concessional rate of withholding tax @ 5% on payments to non-residents in a case where an Indian Company borrows money in foreign currency from a source outside India either under a loan agreement or by way of issue of long-term infrastructure bonds.

Though the provision provides for concessional rate of tax @ 5%, in absence of PAN of the Non Resident lender, section 206AA mandates withholding at higher rate of 20%. This is perceived to be onerous considering that section 115A envisages exemption from filing return for the Non Resident where tax is deducted by the borrower and paid to the Government. Hence, obtaining PAN for the sole purpose of avoiding adverse impact of section 206AA results in an empty formality.

To address this concern, sub-section (7) is proposed to be inserted in section 206AA to provide that the provisions of section 206AA shall not apply in respect of payment of interest on long term infrastructure bonds, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company.

9. Introduction of new section 194LD to provide concessional rate of TDS in respect of interest income of a non-resident from rupee-denominated bonds or government securities consequent to the amendment in section 206AA

The Finance Act, 2012 had amended section 115A to provide that Interest payable by an Indian company to a foreign company or a non-corporate non-resident in respect of borrowing made in foreign currency from sources outside India between 1.7.2012 and 30.6.2015 would be subject to tax at a concessional rate of 5% on gross interest (as against the rate of 20% of gross interest applicable in respect of other interest received by a non-corporate non-resident or foreign company from Government or an Indian concern on money borrowed or debt incurred by it in foreign currency).

To avail this concessional rate, the borrowing should be from a source outside India under a loan agreement or by way of issue of long-term infrastructure bonds approved by the Central Government. Such interest paid by an Indian company to a non-corporate non-resident or a foreign company would be subject to TDS@5% under section 194LC.

For enabling subscription by a non-resident in the long term infrastructure bonds issued by an Indian company in India (rupee denominated bond), a proviso was proposed to be inserted in section 194LC(2) by the Finance Bill, 2013 to provide that where a non-resident deposits foreign currency in a designated bank account and such money as converted in rupees is utilized for subscription to a long-term infrastructure bond issue of an Indian company, then, for the purpose of this section, the borrowing by the company shall be deemed to be in foreign currency.

Accordingly, as per the above proposal, tax would be deducted at the lower rate of 5% in respect of interest income arising to the non-resident from such rupee denominated long-term infrastructure bonds provided the conditions specified in the section are fulfilled.

In order to exempt non-residents and foreign companies from the applicability of higher rate of TDS on account of non-furnishing of PAN, it is now proposed that the provisions of section 206AA would not be made applicable to TDS under section 194LC.

Therefore, for providing a concessional rate of TDS in respect of interest income arising from rupee denominated bonds or government securities, a separate section 194LD is proposed to be inserted. This section provides for concessional rate of TDS in respect of interest on such bonds and government securities payable to FIIs and QFIs during the period from 1.6.2013 to 31.5.2015. It may be noted that the provisions of section 206AA would be applicable in respect of TDS under section 194LD.

Consequential amendments are proposed to be made in section 115A providing for taxability of certain income of, inter alia, foreign companies and section 195 providing for deduction of tax at source in respect of payments to, inter alia, foreign companies.

Likewise, consequential amendments are also proposed to be made in section 115AD providing for taxability of certain income of FIIs and section 196D providing for deduction of tax at source in respect of income payable to FIIs.

10. TCS provisions under section 206C to also be attracted on cash sale of gold coins and articles weighing 10 gms or less

The Finance Act, 2012 had inserted sub-section (1D) in section 206C to provide for collection of tax at source on sale of bullion or jewellery in cash, if the consideration exceeds Rs.2 lakh and Rs.5 lakh, respectively.

A coin or article weighing 10 gms or less was, however, excluded from the applicability of the provisions of this section.

Since the exclusion was giving an opportunity for misuse, the same is now proposed to be withdrawn with effect from 1.6.2013. Consequently, the provisions for tax collection at source under section 206C would be attracted even in respect of cash sale of coins or articles weighing 10 gms or less, if the consideration exceeds Rs. 2 lakh.

11. Sitting or Retired Judge of High Court with at least 7 years of service eligible for appointment as President of Appellate Tribunal

Section 252(3) provides that the Central Government shall appoint the senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President thereof.

Sub-section (3) of section 252 is proposed to be substituted to provide that a person who is a sitting or retired judge of a High Court and who has completed not less than 7 years of service as a judge in a High Court may also be appointed by the Central Government as a President.

12. Land classified as agricultural land in the records of the Government and used for agricultural purposes not an asset chargeable to wealth-tax

Section 2(ea) of the Wealth-tax Act, 1957 is proposed to be amended to clarify the real intent of the law, i.e., the agricultural land in the records of the Government and used for agricultural purposes shall not be considered as urban land even if it falls within the specified urban limits. Consequently, such land would not be chargeable to wealth-tax.