news flash
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Amendments to Finance Bill, 2013

The Finance Bill, 2013 (the Bill) was introduced by the Hon'ble Finance Minister in the Lok Sabha (the Lower House of the Parliament) on 28 February 2013 as the Budget. The Bill was passed by Lok Sabha on 30 April 2013 after introducing several important amendments to the Budget and to the existing provisions of the Income Tax Act, 1961 (IT Act).

As per the procedure, the proposed amendments shall be required to passed in the Rajya Sabha (the Upper House of the Parliament) and shall then require the assent of the President of India to become a law in India.

Some of the amendments to the Budget proposals are summarised as follows:

A. Tax Residency Certificate (TRC)

As per Section 90(4) of the IT Act, in order to claim benefits of the Double Taxation Avoidance Agreement (a Treaty), a tax payer is required to furnish a TRC obtained from the Government of its country of residence containing the prescribed particulars as stated by the Central Board of Direct Taxes (CBDT).

The Bill had proposed an amendment to Section 90 and 90A of the IT Act suggesting that obtaining a TRC containing the prescribed particulars was a necessary but not a sufficient condition for availing Treaty benefits. After presentation of the Bill the Finance Minister vide Press Release dated 1 March 2013 had clarified that TRC produced by a resident of a contracting state as per the format of such contracting state shall be accepted as evidence that he is a resident of that contracting state.

Following upon this in the present Bill as passed by Lok Sabha, two unique changes have been made:

- The proposal of TRC being a necessary but not a sufficient condition for availing Treaty benefits has been withdrawn.
- However the tax payers would be required to furnish other documentation and information, as may be prescribed by the Indian revenue authorities.

Therefore the taxpayers can now claim benefits of a Treaty by furnishing a TRC in the format issued by the Government authorities of their home country.

However, the said relief is only a partial relief, since taxpayers claiming Treaty benefits may be required to furnish other documents and information as required by the revenue authorities.

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Accordingly, one would need to wait for notification in the Income Tax Rules, 1962 to know what additional documents / information would be required to sustain a claim of Treaty benefits.

B. Interest payments to Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs) – lower withholding of 5 percent

In order to attract foreign investments in rupee denominated long term infrastructure bonds the provisions of Section 194LD of the IT Act had been introduced.

The said Section provides for taxing interest payments to FIIs and QFIs on investments in rupee denominated corporate bonds and government securities at a lower rate of 5 percent (plus applicable surcharge and cess) for a specified period of 1 June 2013 to 31 May 2015. Accordingly, taxes shall also be withheld at lower rate of 5 percent (plus applicable surcharge and cess), provided rate of interest does not exceed the rate as may be notified by the Central Government in this behalf.

Attention is invited to the fact that in cases where QFIs or FIIs do not have Permanent Account Number (PAN), the rate of withholding on the aforesaid interest shall be 20 percent. PAN is essentially a unique tax payer identification number issued to each tax payer by the tax authorities in India.

C. Withholding tax on interest on long-term infrastructure bonds

Section 194LC of the IT Act, provided for concessional tax rate of 5 percent (plus applicable surcharge and cess) on interest payments made to non-residents towards approved loans or long term infrastructure bonds in foreign currency. However, in cases where the non-residents (payee) were not able to furnish PAN the higher rate of withholding tax of 20 percent was applicable as per the provisions of Section 206AA of the IT Act.

As per amendment to Section 206AA of the IT Act, interest payments pertaining to long term infrastructure bonds as mentioned in Section 194LC of the IT Act shall be liable to withholding at lower rate of 5 percent (plus applicable surcharge and cess) and not higher rate of 20 percent even if PAN has not been obtained by the payee.

However, in cases where interest is payable to non-residents on approved loans borrowed in foreign currency (other than those stated above) and the payee does not have a PAN the rate of withholding of taxes shall be 20 percent.

D. Obtaining Tax deduction Account Number (TAN) for withholding tax on payment upon transfer of certain immovable property

As per the provisions of Section 194IA of the IT Act, in case of transfer of immovable property exceeding a sum of rupees five million the purchaser was required to withhold taxes at the rate of 1 percent of the consideration paid to the seller (payee).

Consequently, the purchaser would have been required to undergo the procedure of obtaining a TAN from the tax authorities, filing of withholding (tax deducted at source) statements, issuing withholding tax certificate etc.

In order to deposit the taxes withheld with the Central Government, the payer was required to apply for TAN as per provisions of Section 203A of the IT Act. However, the requirement of obtaining TAN has now been done away with where the only obligation to withhold taxes arises

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due to purchase of such immovable property. Thus, those who buy any property over rupees five million will be required to withhold taxes at the rate of 1 percent from the consideration paid to the transferor, but will not need a TAN to deposit it with the tax authorities.

E. Exemption to a foreign company on income earned from sale of goods or rendering of services as notified by Central Government

As per Section 10(48) of the IT Act, exemption to non-residents was available for income earned in India in Indian currency on account of sale of crude oil to any person in India subject to adhering to the prescribed conditions.

In addition to income received from sale of crude oil, income from sale of any other goods or rendering of services, as may be notified by the Central Government shall also be exempt in India.

Accordingly, one would need to wait for the notification issued by the Central Government specifying the various goods and services that shall fall within the purview of the said Section for the purposes of claiming exemption.

F. No Wealth Tax on agricultural land

The definition of urban land was amended to provide for population criteria while defining the term urban land. As a result, the definition of urban land was split into three parts.

As a result, some plots earlier treated as agricultural land now became urban land, under the proposed provisions of the Wealth Tax Act. Accordingly, a specific amendment has been inserted to clarify that lands classified as agricultural land in government records and land used for agricultural purposes are out of the purview of the definition of urban land, while calculating wealth tax liability of the tax payer.

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