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**Amendments to the  
Finance Bill, 2021**

**Direct Taxes**

**The Chamber of Tax Consultants  
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# Definition of “Liable to Tax”

- Definition of “liable to tax” inserted vide s.2(29A) w.e.f. AY 2021-22
- Original definition - *“liable to tax” in relation to a person, means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided*
- Amended definition - *“liable to tax” in relation to a person and with reference to a country, means that there is an income-tax liability of tax on such person under any the law of that country for the time being in force in any country, and shall include a case ~~where subsequent to imposition of tax liability, an exemption has been provided~~ person who has subsequently been exempted from such liability under the law of that country*
- Liability to tax now to be verified vis-à-vis a specific country
- Only income tax liability to be considered and not any other tax liability (GST, VAT, etc)
- Definition to be read in conjunction with section 6(1A)
- Whether applicable to DTAAs?
- Issue for Fiscally Transparent Entity – entity not liable to tax, but members liable
- Residents of non-treaty countries having no income tax laws – Oman, Qatar

# Taxation of ULIPs

- S.10(10D) – exemption for sum received under life insurance policy
- 4<sup>th</sup> proviso added – not applicable to ULIP issued on or after 1<sup>st</sup> Feb 2021 if premium payable for any of the years during the term of policy exceeds Rs 2,50,000
- Amendment of explanation to s.112A – definition of Equity Oriented Mutual Fund – ULIPs not exempt under s.10(10D) due to 4<sup>th</sup> & 5<sup>th</sup> proviso included under clause (a)
- Clause (a)(ii) of expln to s.112A would also have to be fulfilled to qualify as EOF – 65% of total proceeds of such fund is invested in equity shares of listed domestic companies or 90% is invested in fund which invests 90% in equities
  
- *Second proviso inserted - for non-exempt ULIP, this requirement to be met throughout term of policy* – if requirement not met for any part of term of policy, not to be regarded as EOF – to be computed vis-à-vis annual average of monthly averages (1<sup>st</sup> proviso)
- Rate of 10% without indexation for LTCG u/s 112A, rate of 15% for STCG u/s 111A
- Manner of computation of gain to be notified – for non-EO ULIPS, whether indexation would be available?
- Holding period – 12 months for EO ULIPs, 36 months for others

# Depreciation on Goodwill

- S.2(11), s.32(1)(ii) and expln 3(b) to S.32(1) - intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature
- CIT vs Smifs Securities Ltd 348 ITR 302 (SC) - 'goodwill' is an asset under Explanation 3(b) to section 32(1)
- Words “not being goodwill of a business or profession” added in all 3 places wef AY 2021-22
- Earlier doubt - If goodwill already forming part of block of intangible assets, is block required to be adjusted, if goodwill not the only asset in the block?
- Now requirement of adjustment inserted by amending definition of wdv in s.43(6) – *actual cost of goodwill as reduced by depreciation that would have been allowable on such goodwill for AY 1988-89 onwards as if goodwill was the only asset in the relevant block of assets*
- Reduction to be carried out in AY 2021-22, where goodwill was part of the block of assets on which depreciation obtained for the immediately preceding previous year – reduction not to exceed the wdv
- Also specific clause added – *increase on account of acquisition of goodwill of a business or profession* not to be considered for increase in the block

# Depreciation on Goodwill

- If goodwill already sold, no adjustment requirement as not part of block
  - no requirement to compute capital gains on past sale
- If depreciation not claimed on goodwill in the past, not entered the block of intangible assets – no impact
- If depreciation claimed only for some years, notional depreciation adjustment? Benefit?
- Proviso to s.50 retained – if goodwill forms part of a block, wdv and STCG to be determined in prescribed manner

# Slump Sale - Goodwill

- Earlier amendment – s.2(42C) – definition of slump sale – *transfer of undertaking as a result of the sale* replaced by *transfer of undertaking, by any means* – extended to cover slump exchange
- Now amendments to s.50B – sub-section (2) earlier deemed net worth to be cost of acquisition and cost of improvement – explanation 1 and 2 defined net worth
- Insertion of clause in explanation 2 – while computing net worth, *value of capital asset being goodwill of business or profession which has not been acquired by the assessee by purchase from a previous owner to be taken as Nil*
  
- Acquisition as part of a purchase on slump sale basis should be eligible as purchase
- Amalgamation in nature of purchase – whether applicable?
- Purchased goodwill – if depreciation not claimed, value to be taken at cost – revaluation to be ignored as per explanation 1 – both upward and downward
- If depreciation claimed on purchased goodwill, wdv of block as per s.43(6)(c)(i)(C) to be substituted – adjustment to be made to wdv for goodwill in AY 2021-22, not to opening wdv
  - If slump sale in AY 2021-22, opening wdv plus adjustments in (i)(A) and (i)(B) – not adjustments as per (ii) – no adjustment required for
  - If slump sale after AY 2021-22, opening wdv would have been adjusted in AY 2021-22 – goodwill value would not be part of wdv

# Slump Sale – Deemed Consideration

- Now also – *FMV of capital assets on date of transfer, calculated in prescribed manner, deemed to be full value of consideration received or accruing as a result of transfer of such capital asset*
- Applicable from AY 2021-22 - for transactions on or after 1<sup>st</sup> April 2020
- FMV to be taken as consideration – rules to be prescribed
  
- Since rules not notified before 1<sup>st</sup> April 2021, whether can argue that not applicable till such time as rules are framed?
  - Rule 8D – *CIT v Essar Teleholdings Ltd 401 ITR 445 (SC)*
  - *CIT v. Scindia Steam Navigation Co. Ltd., AIR 1961 SC 1633 - as the liability to pay tax is computed according to the law in force at the beginning of the assessment year i.e. the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year.*
- May require adjustments similar to rule 11UA

# Slump Sale – Deemed Consideration

- Deeming fiction not only if FMV is higher than actual consideration – what if actual consideration is higher than FMV as per rules?
- Non-exempt conversion of proprietary concern/partnership firm into company or vice versa read with amended definition of slump sale – impact
- Intra-group reorganization may now get more complex



# Receipt of Capital Asset/Stock-in-Trade by Partner from Firm – s.9B

- New section – income on receipt of capital asset or stock in trade (SIT) by specified person (partner/member) from specified entity (partnership firm/AOP/BOI) – corresponding to existing section 45(4)
- Receipt by partner during previous year of capital asset or stock-in-trade or both from firm in connection with dissolution or reconstitution of such firm
- Firm deemed to have transferred such capital asset/SIT/both to partner in year in which such capital asset/SIT/both received by partner
- Profits and gains from such deemed transfer of capital asset/SIT/both by firm:
  - deemed to be income of firm of previous year in which capital asset/SIT/both received by partner; and
  - chargeable to tax as income of firm under “Profits and gains of Business or Profession” or “Capital Gains” as the case may be
- FMV of capital asset/SIT/both deemed to be full value of consideration received/accruing as result of deemed transfer of capital asset/SIT/both by firm
- Definition of reconstitution –
  - One or more partners cease to be partners
  - One or more new partners are admitted such that one or more persons who were partners before the change continue to be partners after the change
  - All partners continue with change in respective shares of some/all of them

# Receipt of Capital Asset/Stock-in-Trade by Partner from Firm – s.9B

- Effective AY 2021-22 – charge of tax in year of receipt by partner
  - Whether applicable to dissolution/retirement in earlier year with receipt after 1.4.2020?
- Receipt – whether only actual receipt or also constructive receipt?
- Receipt only from specified entity – not from other partners
  - If assigned to other partners, will s.45(1) or s.56(2)(x) apply?
- No definition of Fair Market Value – not to be prescribed – whether valuation u/s 50C/43CA/50CA/56(2)(x) can be applied? Or s.2(22B)?
  - Would both s.9B and s.50C/43CA/50CA apply simultaneously?
    - ITAT decision in *United Marine Academy 130 ITD 113 (Mum)(SB)* – s.50 & 50C
- No corresponding adjustment for cost in hands of partners – deduction u/s 48(iii) for entity applicable only to s.45(4) situations
- Period of holding for Capital Asset – to be determined on basis of date of acquisition of capital asset – date of transfer would be date of receipt by partner?
  - No amendment to s.2(47)
- Can s.54EC exemption be claimed in respect of CG u/s 9B?
  - What is date of transfer – date of dissolution/change of constitution or date of receipt?
- Treatment where capital asset forms part of block of assets – whether reduction to wdv required u/s 43(6)?

# Receipt of Money/Capital Asset by Partner from Firm – s.45(4)

- Where partner receives money/capital asset/both from firm during the year from firm in connection with reconstitution of firm
- Profits and gains arising from such receipt by partner chargeable to income tax as income of firm under head “Capital Gains”
- Deemed to be income of firm of previous year in which money/capital asset/both received by partner
- Profits and Gains to be determined as per following formula:
  - Income Chargeable to tax under this sub-section as Capital Gains (A) =*
  - Money received by partner from firm on date of such receipt (B)*
  - + FMV of capital asset received by partner from firm on date of such receipt (C)*
  - Balance in Capital Account of partner in books of account of firm at time of reconstitution (D)*
  - If A is negative, value deemed to be Zero
  - Balance in Capital Account represented in any manner – without taking into account increase due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset
- When capital asset received by partner in connection with reconstitution, provisions to operate in addition to provisions of s.9B – taxation to be worked out independently

# Receipt of Money/Capital Asset by Partner from Firm – s.45(4)

- Effective AY 2021-22 – charge of tax in year of receipt by partner from firm
- Gain of partner taxed in hands of firm – can firm recover tax from partner?
- Applicable only on reconstitution – not on dissolution
  - If only money received by partner on dissolution, excess amount not taxable – short amount received by partner also not taxable – overall neutral on dissolution
- Only receipt of money or capital asset
  - Receipt of SIT not covered – gain of partner not taxable?
    - Whether SIT gets converted to capital asset at the time of withdrawal? *DLF Universal Ltd vs DCIT 123 ITD 1 (Del)(SB)*
  - Whether receipt of agricultural land in rural area covered?
    - Controversy u/s 56(2)(x) and 46(2)
- Receipt by legal heirs of deceased partner – whether covered?
- No specific exemption for partner
  - Exempt under principle of reconstitution not being transfer?
  - Exempt u/s 10(2A) – share in total income of firm?
- Loss cannot be claimed – (A) to be taken as zero if negative
  - S.48(iii) would also be nil
- Computation vis-à-vis each partner
  - If some partners gains, some partners loss – only gains to be taken, not losses

# Receipt of Money/Capital Asset by Partner from Firm – s.45(4)

- Would capital balance include current account and loan balance of partners?
- Are proportionate share of reserves to be considered as part of capital balance?
- Waiver of debit balance – whether taxable
- If negative capital balance, manner of computation
  - Negative to be added to money and capital asset received?
  - *DCIT vs Summit Securities Ltd 135 ITD 99 (Mum)(SB)* – in context of s.50B, negative figure of net worth cannot be ignored for working out capital gains in case of a slump sale
- Determination of holding period – from date of admission of partner?
  - No indexation available – gain to be taxed as per formula
  - What if increase in profit share within last 3 years?
- If settlement spread over more than one year – manner of computation
  - *Cable & Wireless Ltd vs V H Gangal 90 ITR 84 (Bom)* – receipt of monies on liquidation over multiple years – taxable in each year of receipt
  - Capital balance to be first adjusted against initial amounts received by partners?
- If settlement in different years, is capital balance to be reduced in subsequent years by earlier years payments/capital assets?
- What if revaluation and payment well before reconstitution – no payment on reconstitution?

# Overall Impact – s.9B and s.45(4)

Type of Transaction	Settlement by way of	Section 9B Applicability	Section 45(4) Applicability
Retirement of partner	Nil	No	No
Retirement of partner	Money	No	Yes
Retirement of partner	Capital Assets	Yes	Yes
Retirement of partner	Stock-in-trade	Yes	No
Admission of partner with creation of goodwill before admission	Nil	No	No
Admission of partner with creation of goodwill before admission	Money	No	Yes
Admission of partner with creation of goodwill before admission	Capital Assets	Yes	Yes
Admission of partner with creation of goodwill before admission	Stock-in-Trade	Yes	No

# Overall Impact – s.9B and s.45(4)

Type of Transaction	Settlement by way of	Section 9B Applicability	Section 45(4) Applicability
Change in profit sharing ratio	Nil	No	No
Change in profit sharing ratio	Money	No	Yes
Change in profit sharing ratio	Capital Asset	Yes	Yes
Change in profit sharing ratio	Stock-in-trade	Yes	No
Dissolution of Firm	Nil	No	No
Dissolution of Firm	Money	No	No
Dissolution of Firm	Capital Asset	Yes	No
Dissolution of Firm	Stock-in-Trade	Yes	No

- Where both s.9B and s.45(4) apply, can one apply s.45(4) first, then s.9B after factoring in s.48(iii)?
  - Expl Memo – objective to avoid double taxation





# Illustrative Example – s.9B and s.45(4)

**AY 2022-23**

## **Section 9B Computation**

FMV of stock-in-trade on 15.7.2021	Rs 7,00,000
Book value	<u>Rs 6,00,000</u>
Business Profits	<u>Rs 1,00,000</u>

## **Section 45(4) Computation**

Money received	Rs 50,00,000
Less: Capital Balance	<u>Rs 80,00,000</u>
	(-) <u>Rs 30,00,000</u>
Capital Gains	Rs Nil

# Illustrative Example – s.9B and s.45(4)

**AY 2023-24**

## **Section 9B Computation**

FMV of land on 30.4.2022	Rs 45,00,000
Indexed Cost	<u>Rs 15,00,000</u>
	Rs 30,00,000
Less: Deduction u/s 48(iii) (if attributable to asset, subject to rules)	<u>Rs 15,00,000</u>
Capital Gains	<u>Rs 15,00,000</u>

## **Section 45(4) Computation**

Capital asset received	Rs 45,00,000
Less: Capital Balance	<u>Rs 30,00,000</u>
Capital Gains	<u>Rs 15,00,000</u>

# Minimum Alternate Tax – s.115JB

- Sub-section (2D) – Where increase in book profits due to income of past years on account of APA or on account of secondary adjustment, on application by assessee, AO to recompute book profits of past years and tax payable for the year in the prescribed manner
- *Applicable only if tax credit not utilized u/s 115JAA*
  - What if partial tax credit utilized?
- *Applicable from AY 2020-21 – also no interest payable on refund arising on account of such recomputation*

# Reassessment

- Section 148 – deeming fiction that AO has information suggesting that income has escaped assessment –
  - earlier all cases of survey u/s 133A on or after 1.4.2021 – now *TDS surveys (sub-section 2A) and surveys of functions, ceremonies & events (sub-section 5) excluded*
  - Earlier all seizure or requisition on or after 1.4.2021 – *now only seizure or requisition u/s 132/132A*
- Section 148 - extended time limit of 10 years from end of relevant assessment year for issue of notice of reassessment – AO has in his possession books of accounts or other documents or evidence which reveal that income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to Rs 50 lakh or more for that year
  - *“asset” now defined – shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account*
  - Inclusive definition

# Other Amendments

- Loss of exemption for PF interest on contribution exceeding Rs 2,50,000 in any year after 1<sup>st</sup> April 2021 – *Limit enhanced to Rs 5,00,000 if contribution in a fund in which no contribution by employer*
- Section 44AB enhanced limit from Rs 5 crore to Rs 10 crore where cash receipts/payments not exceeding 5% of gross receipts/payments – *payment/receipt by cheque/draft other than account payee to be regarded as in cash*
- Section 44ADA restricted to individual, HUF or partnership firm other than LLP – *HUF removed from list of eligible entities*
- Time limit for belated and revised returns – change of language – 3 months before end of assessment year
- Section 234F fee for default in filing return u/s 139(1) – was Rs 5,000 if filed before 31<sup>st</sup> December, Rs 10,000 in other cases (limited to Rs 1,000 where income up to Rs 5,00,000) – *now Rs 5,000 in all cases, subject to limit of Rs 1,000 where income up to Rs 5,00,000*

# Other Amendments

- *New Section 234H – fee of Rs 1,000 for delay in linking PAN to Aadhar*
- *Equalisation levy on e-commerce purchase and sale of goods and services*
  - *exclusion for consideration for sale of goods owned by person resident in india or by PE of non-resident in India if sale of goods effectively connected with such PE*
  - *Exclusion for consideration for provision of services provided by person resident in India or by PE in India of person non-resident in India if provision of such services effectively connected with such PE*

Thank  
you

