KPMG

Foreign Portfolio Investors

August 2024

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Tax-bill, case laws

The Finance (No.2) Bill, 2024

The Honorable Finance Minister of India, Ms. Nirmala Sitharaman tabled the Union Budget 2024 before the Parliament on 23 July 2024.

Proposed change in period of holding to determine the classification of capital asset and rates of tax on capital gain (w.e.f. from 23 July 2024)

All listed securities held up to 12 months are short-term capital assets and beyond 12 months are long-term capital assets.

All unlisted securities held up to 24 months are short-term capital assets and beyond 24 months is long-term capital assets.

Security	Tax on LTCG[1] (per cent)	Tax on STCG (per cent)
Listed equity shares, units of equity-oriented mutual funds (MF), units of business trust	12.5[2]	20
Listed bonds/debentures, derivatives	10[3]	30
Specified Mutual Funds (SMF)**, market linked debentures	NA**	30
Other assets	10[3]	30

*** Deemed to be short-term capital asset irrespective of period of holding.*

Taxation of SMF (w.e.f. 1 April 2025)

Currently SMF is defined to mean a mutual fund where ≤35 per cent of total proceeds are invested in equity shares of domestic companies. The definition of SMF is proposed to be amended to mean:

- Mutual fund scheme investing >65 per cent in debt and money market instruments; or
- Fund of Fund investing 65 per cent or more in mutual fund scheme mentioned in above.

Amendment in rates of Security Transaction Tax (STT) levied on the value of taxable securities transactions (w.e.f. 1 October 2024)

Transactions	Current STT rates (per cent)	Proposed STT rates (per cent)
Futures	0.0625	0.1
Options	0.0125	0.02

Tax on income arising on account of buyback of shares (w.e.f. 1 October 2024)

Currently, the Indian company is responsible for paying buyback tax and the corresponding income arising to the shareholder is exempt.

It is proposed that proceeds received by a shareholder on account of buyback of shares will be considered as dividend income.

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1. Long-term capital gain (LTCG), short-term capital gain (STCG).
2. Threshold limit for levying tax on LTCG is proposed to be increased to INR0.125 million.
3. A uniform rate of tax on LTCG has been proposed at 12.5 per cent. It needs to be seen whether the 10 per cent tax rate on LTCG on FPI non-equity securities will be increased.

Further, the shareholder whose shares have been extinguished under buyback will generate a capital loss (on account of cost of acquisition), which may be offset against capital gains or carried forward.

Cost of acquisition under Offer For Sale (OFS) (w.e.f FY 2017-18 onwards)

There is a method prescribed to compute cost of acquisition in case of transfer of listed shares (acquired prior to 1 February 2018). However, there was no clear mechanism to compute cost in case of unlisted shares acquired prior to 31 January 2018 and transferred under OFS.

It is proposed that cost of acquisition of shares under OFS to be indexed from the year of acquisition till FY 2017-18.

Change in time limit for reassessment proceedings (w.e.f. 1 September 2024)

Cases	Time limit for issuance of notice for reassessment	
	Existing	Proposed
In all cases, except few specific cases	3 years from end of relevant assessment year (AY)	3 years and 3 months from end of relevant AY
In cases where the income chargeable to tax which has escaped assessment exceeds INR5 million	Beyond a period of 3 years but cannot exceed 10 years from the end of the relevant AY	Beyond a period of 3 years but cannot exceed 5 years and 3 months from the end of the relevant AY

Tax exemption extended to retail scheme and Exchange Traded Fund in International Financial Services Centre (IFSC)

Currently, special tax regime has been accorded to a specified fund in IFSC. A specified fund means an investment division of a banking unit of a foreign bank and an Alternative Investment Fund – Category III, where all the investors are non-resident (except resident sponsor/manager).

These funds enjoy certain tax exemptions on transfer of various securities (except shares of an Indian company), concessional rate of tax on interest/dividend income. Further, income of unitholders from such funds or income on transfer of the units of these funds is exempt.

These concessions have now been extended to retail fund and Exchange Traded Fund set-up in IFSC by expanding the definition of specified fund.

Vivad se Vishwas scheme

It is proposed to introduce the Direct Tax Vivad se Vishwas Scheme, 2024 (VSV) to provide a mechanism for settlement of pending litigation.

The VSV Scheme proposes to cover appeals pending as on 22 July 2024 before Supreme Court, High Court, Income-tax Appellate Tribunal (ITAT), Commissioner (Appeals) and objections filed before Dispute Resolution Panel.

The Central Government to notify the effective date and last date of the VSV scheme.

Time limit for filing appeal to ITAT (w.e.f. 1 October 2024)

Current	Proposed
within 60 days from the date of communication of the order sought to be appealed against.	within two months from the end of the month in which the order sought to be appealed against is communicated.

The proposed amendments are subject to the enactment of Finance (No.2) Bill, 2024.

Other announcements

- Comprehensive review of the Income-tax Act, 1961 to be completed in next 6 months for introduction of a new simplified income tax code
- The rules and regulations for Foreign Direct Investment to be simplified.

Source: Budget Speech and The Finance (No.2) Bill, 2024 dated 23 July 2024

STCL on which STT was paid, can be set of against STCG which was not subject to STT

The taxpayer had earned STCG(STT) and STCG (Non-STT) which is taxable at the rate of 15 per cent and 30 per cent respectively, and incurred STCL(STT). The taxpayer had set-off STCL(STT) with STCG(Non-STT). The AO denied the set-off of losses having lower taxability with gains of higher taxability.

On appeal, ITAT held that there is no bar under the provisions of section 70 of the Income-tax Act, 1961 with respect to the inter-head adjustment of STCG against STCL irrespective of the bracket of tax rate and allowed the set-off.

Source: ITA No. 4564 TO 4570 (Mum.) OF 2023, [2024] 164 taxmann.com 56 (Mumbai Tribunal) dated 31 May 2024

Benefit of India-Mauritius tax treaty provided to Mauritius based investment fund

During AY 2018-19, the taxpayer, a resident of Mauritius, had sold shares of unlisted Indian companies, which were acquired prior to 1 April 2017. On the sale, it earned capital gains which was claimed exempt under Article 13(4) of the India-Mauritius tax treaty.

The AO denied the exemption on the grounds that majority of the directors where outside Mauritius, the company neither has property in Mauritius nor pays rent. Further, the directors based in Mauritius do not have effective control and thus the company is a conduit entity.

On appeal, the ITAT held that the taxpayer cannot be presumed to be conduit entity merely on the basis of transfer of the consideration immediately after divestments as ultimately the funds under investments were to be returned to the investor company. The period of investments and commercial expediencies relating to the investments should be considered.

The ITAT relied on the judgement of Supreme Court in the case of UOI v. Azadi Bachao Andolan (2003) 263 ITR 706 where TRC was sufficient to provide tax treaty benefits and allowed the claim of the taxpayer.

Source: ITA No.1020/DEL/2023, Delhi ITAT, dated 18 July 2024

Regulatory updates – SEBI, RBI

Proposal to improve ease of doing business with respect to the additional disclosure framework for large Foreign Portfolio Investors (FPI)

As per SEBI circular dated 24 August 2023, FPIs who fulfil prescribed criteria[4] are mandated to provide details of all entities holding any ownership, economic interest, or exercising control in the FPI, on a full look through basis, up to the level of all natural persons, without any threshold. This was to, inter alia, to ascertain whether the FPI is effectively domiciled in a Land Bordering Country (LBC) or not

Considering the difficulties faced by large FPIs to disclose the granular details, SEBI released consultation paper seeking comments by 20 August 2024.

As per the consultation paper, FPIs who hold more than INR25,000 crore of equity AUM in the Indian markets, and make additional disclosures to the extent that the identification and categorisation as LBC or non-LBC can be done, such FPIs would not be required to make further disclosures.

In the consultation paper, SEBI has proposed the following risk-based threshold for identification and categorisation of an FPI as an LBC or non-LBC entity.

Sr. No	Situation	Categorisation of FPI and disclosure requirements
1.	If the entities owning/controlling/holding economic interest is more than 50 per cent of the AUM of the FPI are from LBC	FPI categorised as LBC Disclosures are not required
2.	If the entities owning/controlling/holding economic interest is more than 67 per cent of the AUM of the FPI are from non-LBC	FPI categorised as Non-LBC Disclosures are not required
3.	If the above-mentioned thresholds (at Sr. No 1 and 2) are not met.	Disclosures are required. Categorisation to be made basis disclosures made considering the country/nationality of entities owning/controlling/holding economic interest in majority (i.e., > 50 per cent) of AUM of the FPI.

4. Criteria For additional disclosure
   - FPIs holding more than 50 per cent of their Indian equity Assets Under Management (AUM) in a single Indian corporate group (concentration criteria); or
   - FPIs that individually, or along with their investor group holds more than INR25,000 crore of equity AUM in the Indian markets (size criteria

Further, as per SEBI circular dated 24 August 2023, in case of entities meeting any exemption criteria specified above, granular disclosures are not required. Therefore, for the purpose of identification and categorisation as LBC or non-LBC, the holdings of the exempted intermediate entities to be taken as per the country/nationality of the intermediate entity.

Source: Consultation Paper dated 30 July 2024

Exclusion of new issuance in 14-year and 30-year tenor securities from Fully Accessible Route (FAR)

Under FAR specified categories of Government securities (G-sec) were opened fully for non-resident investors without any restrictions (such as minimum residual maturity, concertation limits, security wise limits).

RBI has decided to exclude all new securities of 14-year and 30-year tenors from FAR with effect from 29 July 2024. Consequently, future issuances of G-sec in these tenors not to be available for investment under FAR.

Existing stocks already included as 'specified securities' under FAR to continue to be available under FAR for investments by non-residents. Investments by FPI in new G-secs in 14-year and 30-year tenors issued to be either under Medium Term Framework or under Voluntary Retention Route.

Source: RBI circular RBI/2024-25/56 FMRD.FMID.No.03/14.01. 006/202425, 29 July 2024

Financial Action Task Force (FATF) high risk and other monitored jurisdictions – June 2024

As per the 28 June 2024 FATF public statement, Monaco and Venezuela have been added to the list of jurisdictions under increased monitoring while Jamaica and Turkey have been removed from this list based on review by the FATF.

Source: Reserve Bank of India, Press Release, 16 July 2024

Market watch- press articles- select extracts

GIFT City IFSC emerging as dominant gateway for global capital inflows: economic survey

"As of March 2024, the total asset size of IFSC Banking Units (IBUs) crossed USD60 billion, and the cumulative value of transactions undertaken by IBUs crossed USD795 billion.

The survey also showed that the robust funds industry in GIFT IFSC has a transformative impact in catalysing global capital inflows into India, including the start-up ecosystem.

"In the last three years, there has been rapid growth in Fund Management Entities (FMEs) and AIFs registered with IFSCA. The cumulative FMEs and funds registered rose from 39 and 33 as of September 2022 to 114 and 120, respectively, as of March 2024," the survey showed."

Source: Moneycontrol, Jitin Parmar, 22 July 2024

Ireland pips Mauritius to 4th spot on preferred FPI destinations list

"Mauritius, once among the leading destinations for foreign portfolio investors (FPIs) routing funds into India, has now slipped to the fifth position, behind Ireland, in terms of assets under custody (AUC) as of June 30."

Source: Business-Standard, Khusbhoo Tiwari, 11 July 2024

FPI statistics – FPI portal, NSDL

Parameters	Current month	Earlier month	Changes
Net Equity inflows during July 2024 (in USD mPillion)	3,899	3,201	
Net Debt inflows during July 2024 (in USD million)	1,949	1,685	
Total FPIs registered as on 31 July 2024	11,479	11,449	30
AUC of FPIs at end of June 2024 (in USD million)	928,777	865,958	62,818

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