



# Important Issues on Finance Bill, 2021: Gist of the Views of Experts

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The Finance Bill, 2021 (**2021**) 430 ITR 74 (St) has proposed several technical amendments, for the benefit of the readers the views of the experts are summarized on the basis of lectures delivered by the learned speakers at various forums, they are as under:

**Dr. Girish Ahuja:** Dr. Ahuja while delivering a lecture at the Tax Law Educare Society, on February 03, 2021<sup>1</sup> has dealt with some of the amendments in great detail and provided a much-required clarity on the same, they are as under:

1. **Depreciation of Goodwill [Clauses 7, 18 and 20] [Retrospective]:** Goodwill of a business or profession has been proposed to be removed from the definition of block of assets as defined under section 2(11) of the Income-tax Act, 1961(Act). The decision of the Hon'ble Supreme Court in the case of Smiff Securities Limited (2012) 348 ITR 302 (SC) is no longer good law. Consequential amendment has been brought under section 32, section 50 of the Act, inter alia.
2. **Unit Linked Insurance Policy (ULIP) [Clauses 3, 5, 14, 29, and Clauses 154 to 158] [Retrospective]:** A ULIP has two components, viz. insurance and investment. Clause (10D) of section 10

of the Act provides for the exemption for the sum received under a life insurance policy in respect of which the premium payable for any of the years during the terms of the policy does not exceed ten percent of the actual capital sum assured. Exemption is not provided with respect to any ULIP (one or more) issued on or after the 1st February, 2021, if the amount of premium payable for any of the previous year during the term of the policy exceeds two lakh and fifty thousand rupees.

Consequentially, a ULIP is now considered as a capital in such cases. Capital gain will be computed in the year of receipt of monies and will be taxable under section 112A of the Act at a concessional rate of 10 per cent without indexation.

3. **Public Sector disinvestment [Clauses 3 and 22] [Retrospective]:** Section 2(19AA) of the Act has been suitably amended to facilitate disinvestment of public sector companies. Further, section 72A of the Act has been amended to provide for the carry forward and set off of such accumulated loss and unabsorbed depreciation.
4. **Definition of the term – “Liable to tax” [Clause 3] [Retrospective]:** The term - liable to tax in relation to a person

1. Source: [https://www.youtube.com/watch?v=9ZSJrDI\\_7-w&t=4528s](https://www.youtube.com/watch?v=9ZSJrDI_7-w&t=4528s)

means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.

5. **Slump Sale [Clause 3] [Retrospective]:** The definition of the term - slump sale by amending the provision of clause (42C) of section 2 of the Act so that all types of transfer as defined in clause (47) of section 2 of the Act are included within its scope. Decisions of the Hon'ble Supreme Court in the case of *CIT v. R.R. Ramakrishna Pillai* [(1967) 66 ITR 725 SC], *Artex Manufacturing Company* [(1997), 227 ITR 260], and *Dhampur Sugar Mills* [(2006) 147 STC 57] upheld.
6. **Taxability of Interest on various funds where income is exempt [Clause 5] [Prospective]:** Exemption under section 10 shall not be applicable to the interest income accrued during the previous year in the account of the person to the extent it relates to the amount or the aggregate of amounts of contribution made by the person exceeding two lakh and fifty thousand rupees in a previous year in that fund
7. **Raising of prescribed limit for exemption [Clause 5] [Prospective]:** it has been proposed that the exemption criterion for audit shall be increased to ₹ 5 crore and such limit shall be applicable for an assessee with respect to the aggregate receipts from university or universities or educational institution.
8. **Corpus Donation [Clauses 5 and 6] [Prospective]:** Application out of corpus shall not be considered as application for charitable or religious purposes. Further, Application from loans and borrowings shall not be considered as application for charitable or religious purposes. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment. Further, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed. The decision of the Hon'ble Supreme Court in the case of *CIT(E) v. Subros Educational Society* [2018] 96 taxmann.com 652 303 CTR 1 (SC) is no longer good law.
9. **Payment by employer of employee contribution to a fund on or before due date [Clauses 8 and 9] [Retrospective]:** This issue has faced contradictory decisions from various Hon'ble High Courts and a hurdle for the CPC while processing returns. It has been expressly clarified that the payment will have to be made in accordance with section 36 (1)(va) of the Act and not section 43B of the Act. However, no old cases will be reopened, and for pending cases the High Courts will take its independent view.
10. **Increase in safe harbour limit [Clauses 10 and 21]:** Where the transfer of residential unit takes place during the period from 12th November, 2020 to 30th June, 2021 and the transfer is by way of first-time allotment of the residential unit to any person, and the consideration received or accruing as a result of such transfer does not exceed two crore rupees. For these transactions, circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20 per cent.
11. **Tax audit in certain cases [Clause 11] [Retrospective]:** It is proposed to increase the threshold from five crore rupees to ten crore rupees in cases where-

- (i) aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; and
- (ii) aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

**12. Tax neutral conversion of Urban Cooperative Bank into Banking Company [Clauses 13 and 15] [Retrospective]:** It is proposed to expand the scope of business reorganization to include conversion of a primary co-operative bank to a banking company and the deductions available under section 44DB of the Act shall also be made applicable in relation to such conversion of primary co-operative bank to the banking company.

**13. Transfer of capital asset to partner on dissolution or reconstitution [Clauses 14 and 16] [Retrospective]:** New proposed section 45 (4) of the Act applies in a case where a specified person who receives during the previous year any capital asset at the time of dissolution or reconstitution of the specified entity. The capital asset represents the balance in the capital account of such specified person in the books of the specified entity at the time of its dissolution or reconstitution. In this situation, the profit and gains arising from the receipt of such capital asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "capital gains" and shall be deemed to be the income of such specified entity of the previous year in which the capital asset was received by the specified person.

Further, section 45(4A) of the Act applies in a case where a specified person receives during the previous year any money or other asset at the time of dissolution or

reconstitution of the specified entity. The money or other asset is required to be in excess of the balance in the capital account of such specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution. In this situation, the profits or gains arising from the receipt of such money or other asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which the money or other asset was received by the specified person.

**14. Extension of date of sanction of loan for affordable residential house property [Clause 24] [Prospective]:** In order to help such first-time home buyers further, it is proposed to amend the provision of section 80EEA of the Act to extend the outer date for sanction of loan from 31st March 2021 to 31st March 2022.

On the other hand, the Government is trying to simplify the tax slab regime by ending deductions under chapter VIA. Therefore, this provision appears to contradict the government policy.

**15. Incentives for affordable rental housing [Clause 26] [Prospective]:** In light of the pandemic and halt in construction and sales, the Government proposed that the outer time limit for 31st March 2021 in this section for getting the affordable housing project approved be extended to 31st March 2022.

**16. Filing of return [Clause 32] [Retrospective]:** It is proposed that the last date for filing of belated or revised returns of income, as the case may be, be reduced by three months. Further, the Board has been given powers to resolve the grievances of the tax payers on account of a defective return.

17. **Assessment:** Provisions of section 143 to reduce the time limit for sending intimation under section 143(1) of the Act from one year to nine months from the end of the financial year in which the return was furnished.

It is also proposed to reduce the time limit for issue of notice under section 143(2) of the Act from six months to three months from the end of the financial year in which the return is furnished.

18. **Income escapement assessment & Abolishing section 153 A/153B/153C of the Act [Clauses 35 to 40 and 42 to 43]:** For regular cases it is proposed, that the AO will flag information pursuant to a risk management strategy suggesting that income has escaped assessment, or on objections raised by the C&AG that assessment is not in accordance with the Act. Basis the said information/objection the AO will conduct an enquiry, if required, with the prior approval of the PCIT/PCCIT. Subsequently, the AO will provide opportunity of hearing (SCN) to the assessee with prior approval and along with the information. After the receipt of information. The AO to pass an order deciding whether or not the case is fit for section 148, with appropriate approval.

Further, the time limit for issuance of Notice is made 3 years and 10 years if the income chargeable to tax represented in the form of an asset is more than ₹ 50 lakhs.

For search cases, the AO shall be deemed to have information for 3 years immediately preceding the year of search. Inquiry and issuance of SCN and passing of order under section 148 is not required. The concept of "reasons to believe" appears to be absent.

19. **Relaxation for certain category of senior citizen from filing return of income-tax [Clause 47]:** It is proposed to insert a new

section to provide a relaxation from filing the return of income, if the senior citizen is resident in India and of the age of 75 or more, He has pension income and no other income (interest income from same bank is allowed). He shall be required to furnish a declaration to the specified bank. Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A of the Act.

20. **Section 194Q of the Act [Clauses 48 and 50]:** It is proposed to provide for TDS by person responsible for paying any sum to any resident for purchase of goods. The rate of TDS is kept very low at 0.1%. To ensure that compliance burden is only on those who can comply with it, it is proposed that the tax is only required to be deducted by those persons whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year.

Further clarified that, if on a transaction TCS is required section 206C (1H) as well as TDS under this section, then on that transaction only TDS under this section shall be carried out.

21. **Rationalisation of the provision concerning withholding on payment made to Foreign Institutional Investors (FIIs) [Clause 49]:** It is proposed to provide that in case of a payee to whom an agreement applies and such payee has furnished the tax residency certificate, then the tax shall be deducted at the rate of twenty per cent. or rate or rates of income-tax provided in such agreement for such income, whichever is lower. This principle of tax deduction has also been upheld by Hon'ble Supreme Court in the case of *PILCOM v. CIT West Bengal (2020) 425 ITR 312 (SC)*

**CA P. D. Desai:** Mr. Desai delivered a lecture for the prestigious Bombay Chartered Accountant Society, on February 06, 2021<sup>2</sup> and has deep dived into to some of the important amendments in the Finance Bill, 2021. He believes the purpose of a Finance Bill is to improve simplicity with reasonableness. At the outset, the amendments pertaining to Faceless Tribunal seem to be in violation of principles of Natural Justice. The said amendment seems challengeable; it is advisable to approach the Hon'ble Court as it was done in the Aadhaar case.

His views on the amendments are as under:

1. **Goodwill [Retrospective amendment]:** As per popular international literature, if a transaction is not taxable at the time of making the transaction and subsequently made taxable via an amendment, the same can be construed to be a retrospective amendment. There will be issues arising on account of bifurcation of goodwill in a block of assets and allowance of unabsorbed goodwill of prior years, among others.
2. **Slump Sale [Retrospective amendment]:** The scope of slump sale has been widened to include slump exchange, as the same is a controversial issue and pending before the Hon'ble Supreme Court. Further, the retrospective amendments will have an impact on the computation of advance tax and in case of any shortfall, the department should ideally not raise an issue. The Hon'ble High Court of Gujarat in the case of *CIT v. National Dairy Development Board [2017] 83 taxmann.com 109 (Gujarat)* held that where there was no shortfall in advance tax payment when such liability arose, and advance tax liability arose later on only due to retrospective amendment in statute, no interest could be charged on advance tax.
3. **Equalisation Levy:** The scope of Equalisation levy has been widened to include selling of goods of third parties. The amendment is in the nature of widening of the tax net for the said levy.
4. **"Liable to pay tax":** This has come subsequently to the amendments brought in the Finance Bill, 2020. It has now been clarified that, the meaning of the said phrase would include an event where there is a tax incidence in the other state and the same is exempted from tax. Exemptions and benefits under the DTAA would still be available to the taxpayers.
5. **Reassessment Law:** The reassessment law is a settled law which has been in existence for around a hundred years. It would be safe to assume some principles will still apply moving forward. Although new precedents will be created in due course. Further, as per the amendments, the department is required to take approval of their senior at various stages; this would be the future of litigation in reassessment proceedings. The increase in the limit up to 10 years will call for higher indemnity in agreements.
6. **Partnership Firm:** The amendments to section 45(4) and section 45(4A) of the Act are controversial and clarity is required for the same. Allotment of Stock in trade would possibly attract section 45(4A) of the Act. Further queries such as computation of capital account, as to whether the same includes loans, current accounts etc is still not known. Would it be possible to attract both section 45(4) and 45(4A) of the Act? Will mere change in profit sharing ratio amount to reconstitution of the Firm? Are some of the questions that require clarifications and are litigative in nature.

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2. Source: <https://www.youtube.com/watch?v=iJT9GurvkQ8>

**CA Gautam Doshi:** Mr. Doshi delivered his lecture at WIRC of ICAI on February 06, 2021<sup>3</sup>. He believes that the Government should consider having amendments every year; the amendments should come via an amendment Act rather than the Finance Bill as the same would be subjected to further discussion and debate.

Further, he has pointed out the retrospective amendments in laws pertaining to viz. Goodwill, Slump exchange and Partnership firm inter alia, which may have the right intention but being implemented in a hurried manner. He has requested a reconsideration on these provisions. Further the interest on advance tax will raise litigations as the CPC will not consider the fact that the law is retrospective. His discussion on specific amendments are as under:

1. **Depreciation on goodwill:** The same has come as a legislative amendment negative the decision of the Hon'ble Supreme Court. The same is a policy decision and cannot be challenged. The goodwill now being considered as a long-term capital asset will raise another round of litigation.
2. **Slump Sale:** The definition of slump sale has been widened to include slump exchange. A slump exchange is a camouflaged slump sale. Principles laid down by the Hon'ble Supreme Court in the case of *CIT v. R.R. Ramakrishna Pillai* [(1967) 66 ITR 725 SC] and *Artex Manufacturing Company* [(1997), 227 ITR 260] have been upheld.
3. **Partnership Firm:** The amendments to section 45(4) and section 45(4A) of the Act will unsettle all the workings of the Firm. The word "reconstitution" has not been defined under the Act. Further, the manner of apportionment is yet to be prescribed. The new law doesn't envisage several possibilities, where a partner retires and his capital contribution is over time and implication of GAAR inter alia. It appears that these provisions have been introduced for early collection. It would be appropriate to re-write these provisions.
4. **Provident Fund Contributions:** The issue of "due date" for the purpose of deduction of employee's contribution to a PF Fund has been an issue of litigation. The High Courts are in the ratio 9:2:2, 9 High Courts in favour of the tax payer, 2 against and 2 High Courts have taken contradictory views.
5. **Presumptive taxation for LLPs:** LLPs have been excluded from presumptive based taxation under section 44ADA of the Act, because they cannot be exempted from preparing books of accounts and availing this section.
6. **Liable to pay tax:** This is an amendment specially for individuals, the same is clarificatory in nature. Treaty benefits would continue to apply.
7. **Interest earned from Provident Fund:** The Provident Fund used to be an E-E-E scheme i.e., exempt during deposit, exempt while earning interest and exempt when the fund matures. Now, this will no longer be the norm. Interest will now be taxable if it attracts the newly introduced provisions to section 10(11) and 10(12) of the Act. Further, this amendment has to be moved from section 10 to the charging section so as to facilitate a year-on-year taxation.
8. **Reassessment:** The law pertaining to reassessment has undergone a major change. The triggers and time lines have changed.

3. Source: <https://www.youtube.com/watch?v=QcggzOWaJpl>

9. **DRC:** There is a new committee formed for small tax payers where they can avail immunity from penalty and prosecution. Small tax payers were never under the lens for penalty or prosecution.
10. **Faceless ITAT:** Whether this amendment will survive or not, will be decided by the Courts. There will definitely be challenges made by the tax practitioners once the scheme is made.
11. **Charitable Trusts:** Several judgements are undone with this amendment. Charitable trusts will face difficulty in computing their return of income. Several changes in application of loan, corpus fund and carry forward of excess expenditure will now have to be relooked.
12. **Assessments:** The timelines for assessments have considerably reduced. The same is a welcoming change.

**Mr. Saurabh Soparkar, Senior Advocate:** Mr. Soparkar delivered a speech at the Ahmedabad Branch of the WIRC on the Union Budget 2021<sup>4</sup>. According to him the Financial year ended March 31, 2021 has been the worst economic year since independence. Growth and credibility were expected from the Budget 2021. 79 amendments were proposed in the Finance Bill, 2021. There has been no change in the rate of tax; a levy of COVID-cess or estate duty or wealth tax was anticipated by the tax practitioners. Some of the amendments discussed are as under:

1. **Goodwill:** The Hon'ble Supreme Court had allowed depreciation on goodwill as a result of amalgamation. However, the amendment has gone in excess, to the extent, it is proposed to disallow all forms of goodwill from depreciation. Classification of what constitutes as

goodwill and what remains as an intangible will be a matter of litigation. Where a goodwill is a part of a block of asset and loses its individual character, the assessee could take shelter of 43(6) of the Act and continue to claim depreciation.

2. **Charitable Trust:** Corpus donation will now have to be necessarily invested. Application out of corpus is not "application" as per section 11 of the Act. Loan will not be considered as application of funds. Further, excess application will not be allowed to be carried forward. The decision of the Hon'ble Supreme Court in *CIT(E) v. Subros Educational Society [2018] 96 taxmann.com 652 (SC)* and Hon'ble Gujrat High Court in the case *CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293 (Gujarat)* is no longer good law.
3. **Provident Fund:** The Hon'ble Gujrat High Court in the case of *CIT v. Gujarat State Road Transport Corporation 366 ITR 170 (Guj) (HC)* held that where assessee did not deposit employees' contribution to employees' account in relevant fund before due date prescribed in Explanation to section 36(1)(va), no deduction would be admissible even though he deposits same before due date under section 43B of the Act. However, other High Courts have held the issue in favour of the assessee. The issue is subjudice before the Hon'ble Supreme Court. Further, the amendment has come in the nature of a clarification, therefore, it would be deemed to be construed as it has always existed as per the clarification now rendered.

4. Source: <https://www.youtube.com/watch?v=n1TZ3COLGts>

4. **Relief for new home buyers:** The amendments seem arbitrary; the policy is aimed to help real estate developers. Several queries such as why only residential property and why up to ₹ 2 crores only are not addressed.
5. **Partnership Firm:** Certain tax planning strategies like converting a company to an LLP and subsequently retiring a partner, the same so as to avoid DDT, will no longer have any benefits.
6. **Slump Sale:** There has been a misuse of the previous provision. This has been plugged. Decision in the case of *CIT v. Bharat Bijlee Ltd.* [2014] 365 ITR 258 (Bom.) (HC), and *Areva T & D India Ltd. v. CIT* [2020] 428 ITR 1 (Mad)(HC) where it was held that Transfer of assessee's non-transmission and distribution business in exchange of issuance and allotment of equity shares under a scheme of arrangement approved by High Court is not a slump sale exigible to capital gains tax under section 50 of the Act. Is no longer good law.
7. **Extension of sunset clause:** Section 54GB, section 80EEA, section 80 IAC, section 80IBA have all been extended up to March 31, 2021.
8. **Filing of Return:** The last date for filing of revised return or belated return has been reduced by 3 months.
9. **Reassessment:** Well-settled supreme court cases viz. *Asst. CIT v. Rajesh Zaveri Stock Brokers (P.) Ltd.* [2007] 291 ITR 500 (SC), *CIT v. Kelvinator of India Ltd.* [2010] 320 ITR 561 (SC), and *CIT v. Calcutta Discount Co. Ltd* [1973] 91 ITR 8 (SC) are no longer good law. New law is in place with respect to information, although more clarity is required in understanding the risk management strategy of CBDT.

Further section 153 A and 153C of the Act will no longer exist. Whether pending proceedings will abate or not is an issue.

10. **Faceless ITAT:** It has been proposed to implement a faceless ITAT so as to ensure efficiency, transparency and accountability. Firstly, the Tribunals are not within the purview of the Finance Ministry rather the Ministry of Law & Justice. Secondly, with the first personal hearing being only at the High Court, that too only where a substantial question of law arises, would be an expensive affair for any tax payer.

#### Dénouement

A lot was expected from the 2021 Budget and a lot of amendments have also been provided. Several amendments are retrospective and others are awaiting schemes or further guidelines. A lot of the amendments are challengeable on various grounds. Some of the amendments, improving timelines for assessment inter alia are welcoming.

The Finance Bill, 2021 reminds every tax professional of the famous article authored by Dr. Nani Palkhivala, Senior Advocate, titled **"The Maddening Instability of Income-tax Law"**, where he expressed his distaste to the mindless & numerous amendments being made by the Hon'ble Finance Minister. We hope some clarity is provided before the proposals are accepted.

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