



An Overview of Finance Bill, 2022

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The first and apparent feeling which one gathers on a bare look at the Finance Bill - 2022 is overwhelming. More than 150 amendments are sought to be carried out through 84 clauses that are spread over 80 pages. The Explanatory Memorandum accentuates the stupendous feeling when one looks at its 109 pages. The amendments almost cover the entire gamut of the Income Tax Act, 1961. Large scale changes have been made for revising the schemes of Faceless Assessment, Reopening and Re-assessments and taxation of Charitable Trusts and Institutions, including providing for special rates of taxation. Innovative provisions are introduced for taxation of income on transfer of Virtual Digital Assets and also for filing an 'updated return' and an 'modified return' and for denial of set-off of losses against 'undisclosed income'. Far reaching changes have been made in the matters of deduction of business expenditure and in respect of procedure for mergers and acquisitions. Regulatory amendments have been made in Chapter VIA and XVIIIB for TDS / TCS. All of these provisions are discussed in detail by eminent authors and writers in specially devoted articles and write - ups in this volume of 'The AIFTP Journal'. Significantly, no changes in the rates are proposed for taxing the total income for A.Y. 2022- 2023 and 2023-2024, but for a few changes in relation to the levy of surcharge.

The present government prides itself on consciously not introducing any amendment with retrospective effect so as to burden the tax payers. It took pains taking measures to ensure that the perceived damage caused by the retrospectivity of Vodafone amendments was

minimized, if not altogether neutralized. It's therefore highly disturbing to know that there is a sea change in this self - imposed discipline when one reads the Finance Bill, 2022 which contains a good number of amendments that are proposed with retrospective effect for imposing additional burden on the tax payers, some of which dates back to A.Y. 2005-06 and many of which are introduced with a customary prescription of '*for removal of doubts*', giving an impression that the law as is now being proposed was always there in the text. Again no chances are missed to introduce, now regulatory confusion, to increase the scope of litigation by providing, at the same time, that '*the provisions shall come into effect from 1st April, 2022/2023*'. Introducing retrospective provisions is a shot in the arms of those who thrive on litigation; such provisions have a serious destabilizing impact on economy and introduces a trust deficit that takes a reasonably long time to repair.

Most of the other provisions are proposed to be introduced with effect from 1st April, 2022 and are intended to apply for A.Y. 2022-23 and onwards and are therefore partially retroactive as much as they would apply to the affairs, commencing on or after 01.04.2021. These provisions would have impact on determination of total income for the year and also on the interest payable on the unpaid advance tax. Very little time of the ongoing financial year is left available for the tax payer to manage or rearrange his affairs.

A good number of court decisions, most of which are favorable to tax payers delivered by apex courts are sought to be overruled by the

proposed amendments and as noted earlier, with retrospective effect, in some cases. Such amendments, besides being highly disrespectful of the courts of the country and of the tax payers, puts into reverse gear the financial planning of those affected by such destabilizing and mindless action of the Parliament.

Proposing changes or complete reversal of the amendments and the schemes, within a short period of less than a year, clearly conveys the lack of homework by the Minister and her advisor. It's beyond comprehension that how large scale provisions introduced with a lot of fanfare ignoring the apprehensions of the tax payers and their advisors, are sought to be reversed within a short time. Proposed substitution of s. 144B, introduced just the previous year, is a classic case on the point.

The another case on point is the proposed overhaul of the Scheme of Re-opening and Re-assessment, again within a short time of less than one year of its introduction. Far reaching changes are now proposed which makes anyone seriously suspect the wisdom and bonafide of all those connected with unleashing and imposing incessant amendments that destabilize the well settled law and procedure.

The amendments of the Finance Act 2021 has flooded the courts with litigation of unparalleled quantum within a short time of their introduction, prompting the courts to act with alacrity to knockdown the amendments and assessments, at times by bulk disposals of thousands of petitions, all over the country. It is sincerely hoped that the authorities will be able to generate enough manpower to meet the challenges of the set aside orders that would require reframing within a short time provided by the courts.

The proposal to tax an income, on transfer of a digital virtual asset, at a flat rate of tax without allowing any deduction for an expenditure and allowance and without permitting the set-off of losses appears to be a proposal that could have been deferred for deriving a better understanding

of the concept of the Digital Assets and of the responses of the tax fraternity of the world. In its present form, as proposed, it would generate numerous issues that could have been avoided with some patience and discretion. It surely is a tax, the time of which has yet not arrived.

Very interesting provisions have been introduced in the form of the permissions to file the Updated Return of Income and Modified Return of Income. The former opens up a possibility to own up the mistakes and make up for the same within a fairly wide window of time, hither to not available, on payment of additional tax without attracting any penalty of the fear of prosecution. The procedural challenges or deficiencies would surely be addressed to in the times to come. The permission to file the modified return in cases of amalgamation and demerger, is a tacit acceptance of the direction of the Supreme Court to make sense of the procedural difficulties faced in assessments, on succession of companies. In both these cases, it is desirable that the parallel amendments are carried out in the scheme of assessment and reassessment as a logical extension of the new permission to file the return of income.

There is an urgent need to address the issue of generating a hand-some capital expenditure that would be the key driver of the economy in the times to come. The legislature, without wasting this opportunity, should ensure that sufficient tax incentives are provided for an all-round growth, on the lines of s. 32AC and s. 32AD of the Act. Likewise, there is also a need to address the serious malady caused on account of very harsh provisions of s. 115TD of the Act.

The Finance Bill 2022 provides a pleasant surprise where the ministry, in the Explanatory Memorandum on more than two occasions, acknowledges the errors committed in drafting the Finance Act, 2021, confirming the old adage; *to err is human and to admit the error is divine*. It is said that no news is good news and the Finance Minister has in COVID - 19 times, suppressed the need to raise much needed revenue by not raising the rates of taxes.

