

Direct Taxes

Analysis of Budget Proposal 2025 – Non Resident Taxation

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1. Introduction

This article discusses the amendments proposed by Finance Bill, 2025 of the Income Tax Act, 1961 (the 'Act' or 'ITA') pertaining to the Taxation of Non Residents. The same are as follows:

- i. Section 2 – Definitions, Clause 3 of the Finance Bill, 2025
- ii. Section 9 – Income Deemed to accrue or arise in India, Clause 4 of the Finance Bill, 2025
- iii. Section 44BBD – New Insertion for Scheme of presumptive taxation extended for non-resident providing services for electronics manufacturing facility Clause 11 of the Finance Bill, 2025
- iv. Section 115AD - Tax on income of Foreign Institutional Investors from securities or capital gains arising from their transfer, Clause 23 of the Finance Bill, 2025

2. Definition

2.1. Section 2(14) – Definition of Capital Asset

2.1.1. Existing Position

Section 2(14) of the Act defines 'capital asset' to include property of any kind held by a taxpayer, whether or not connected with his business or profession excluding any stock-in-trade of his business or profession and personal effects. Securities held by a Foreign Institutional Investor (FII), which has invested in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) are also defined as 'capital asset'

2.1.2. Proposed amendment

It is proposed that with effect from 1st April, 2026, to amend Section 2(14) of the Act to include any security held by investment funds referred to in Section 115UB (i.e. AIF Cat I & Cat II) which has invested in such security in accordance with the regulations made under the SEBI Act, 1992 within the scope of definition of 'capital asset'.

Section 2(14)(b) will be read as any securities held by a Foreign Institutional Investor or held by an investment fund specified in clause (a) of Explanation 1 to section 115UB" which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992)

2.1.3. Special Comments and Implications

With a view of providing certainty in respect of characterization of income arising from transaction in securities as to whether it is capital gain or business income for investment funds (specified in clause (a) of Explanation 1 to section 115UB in the Act), it is proposed to amend the Act to provide that any security held by investment funds referred to in Section 115UB which has invested in such security in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 would be treated as capital asset only so that any income arising from transfer of such security would be in the nature of capital gains.

2.2. Section 2(22) – Deemed Dividend

2.2.1. Existing Position

As per Section 2(22), clause (ii), dividend does not include any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company

2.2.2. Proposed Amendment

With effect from 1st April, 2025, It is proposed to amend clause (22) of section 2 and insert new clause (iia) to provide that any advance or loan between two group entities, where one of the group entity is a “Finance company” or a “Finance unit” in IFSC set up as a global or regional corporate treasury centre for undertaking treasury activities or treasury services and the ‘parent entity’ or ‘principal entity’ of such ‘group entity’ is listed on stock exchange in a country or territory outside India, other than the country or territory outside India as may be specified by the Board in this behalf, shall not be treated as ‘dividend’. The conditions for a ‘group entity’, ‘principle entity’ and the ‘parent entity’ shall be prescribed.

In Explanation 3, after clause (b), the following clauses shall be inserted, namely:—

(c) “Finance Company” and “Finance Unit shall have the same meaning as assigned respectively to them in clauses (e) and (f) of sub-regulation (1) of regulation 2 of the International Financial Services Centres Authority (Finance Company) Regulations, 2021 made under the International Financial Services Centres Authority Act, 2019:

Provided that such Finance Company or Finance Unit, is set up as a global or regional corporate treasury centre for undertaking treasury activities or treasury services as per the relevant regulations made by the International Financial Services Centres Authority established under section 4 of the said Act;

(d) “Group entity”, “parent entity” and “principal entity” shall be such entities which satisfy such conditions as prescribed in this behalf.’;

2.2.3. Special Comments and Implications

The new clause (iia) is proposed to be introduced to exclude such transaction from the definition of Dividend. So that borrowings by the corporate treasury centre in IFSC from any group entity will not trigger deemed dividend provisions.

2.3. Section 47A – Definition of Virtual Digital Asset

2.3.1. Proposed Amendment – New Insertion

With effect from 01st April, 2026, in clause (47A), after sub-clause (c) and before the proviso, the following sub-clause shall be inserted, namely:—

“(d) any crypto-asset being a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions, whether or not such asset is included in sub-clause (a) or sub-clause (b) or sub-clause (c)

3. Section 9 – Income Deemed to accrue or arise in India

3.1. Existing Position

i. Section 9 of the Act provides for income which shall be deemed to accrue or arise in India. Clause (i) of section 9, inter alia, provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India shall be deemed to accrue or arise in India.

ii. Clause (b) of Explanation 1 to clause (i) of sub-section (1) of section 9 provides that in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.

iii. Explanation 2A to clause (i) of sub-section (1) of section 9, inter alia, provides that the significant economic presence of a non-resident in India shall constitute “business connection” in India and “significant economic presence” for this purpose shall inter alia mean transaction in respect of any goods carried out by a non-resident with any person in India.

3.2. Proposed Amendment

With effect from 1st April, 2026, it is proposed to amend the Explanation 2A of section 9 so that the transactions or activities of a non-resident in India which are confined to the purchase of goods in India for the purpose of export shall not constitute significant economic presence of such non-resident in India.

In clause (i), in Explanation 2A, after the first proviso, the following proviso shall be inserted, namely:—

“Provided further that the transactions or activities which are confined to the purchase of goods in India for the purpose of export shall not constitute significant economic presence in India:”

In the second Proviso of clause (i), Explanation 2A, the words “Provided further”, shall be substituted with the words “Provided also”.

3.3. Special Comments and Implications

The above proposed amendment will bring Explanation 2A in coherence with the Explanation 1 to clause (i) of sub-section (1) of section 9 for business connection, i.e. the specific exclusion provided in the case of a non-resident, for income arising through or from operations which are confined to the purchase of goods in India for the purpose of export will not be considered as income deemed to accrue or arise in India due to significant economic presence.

4. Section 44BBD – Special provision for computing profits and gains of nonresidents engaged in business of providing services or technology for setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India

4.1. Proposed Amendment - Insertion of New Section

With effect from 01st April, 2026, after section 44BBC of the Income-tax Act, the following section 44BBD shall be inserted:—

(1) Notwithstanding anything to the contrary contained in sections 28 to 43A, where an assessee, being a non-resident, engaged in the business of providing services or technology in India, for the purposes of setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India—

(a) to a resident company which is establishing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronic goods, article or thing in India, under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology; and

(b) the resident company satisfies the conditions prescribed in this behalf,

a sum equal to twenty-five per cent. of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business of the non-resident assessee chargeable to tax under the head “Profits and gains of business or profession”.

(2) The amounts referred to in sub-section (1) shall be the following: —

(a) the amount paid or payable to the non-resident assessee or to any person on his behalf on account of providing services or technology; and

(b) the amount received or deemed to be received by the non-resident assessee or on behalf of non-resident assessee on account of providing services or technology.

(3) Notwithstanding anything in sub-section (2) of section 32 and sub-section (1) of section 72, where a nonresident assessee declares profits and gains of business for any previous year under sub-section (1), no set off of unabsorbed depreciation and brought forward loss shall be allowed to the assessee for such previous year.’.

4.2. Special Comments and Implications

- i. In order to position India as the global hub for Electronics System Design and Manufacturing, a comprehensive program for the development of semiconductors and display manufacturing ecosystem in India was approved by Government of India. Ministry of Electronics and Information Technology has notified Schemes for setting up of such facilities in India.
- ii. In order to ensure certainty and promotion of this industry, it is proposed to provide a presumptive taxation regime for non-residents engaged in the business of providing services or technology, to a resident company which are establishing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronic goods, article or thing in India, under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology and satisfies such conditions as prescribed in the rules.
- iii. New insertion of the proposed Section will result in an effective tax payable of less than 10% on gross receipts, by a non-resident company.

5. Tax on income of Foreign Institutional Investors from securities or capital gains arising from their transfer – Section 115AD

5.1. Existing Position

Long term capital gains on transfer of securities held by a specified fund or Foreign Institutional Investor is taxed at the rate of 10%

5.2. Proposed Amendment

With effect from 1st April, 2026, Long term capital gains on transfer of securities held by a specified fund or Foreign Institutional Investor is proposed to be taxed at the rate of 12.5%

5.3. Special Comments and Implications

The rates of taxation in the case of specified fund or FIIs in case of long-term gains referred to in section 112A have been brought to parity with the rates applicable for residents, the rate of income-tax calculated on the income by way of long-term capital gains not referred to in section 112A were retained at 10%.

In order to bring parity with the rates applicable to residents, the rate of taxation on long-term gains arising from the transfer of capital assets is proposed to be amended to 12.5%

[Source : AIFTP Journal-February, 2025]