



**UNION BUDGET 2022**



**THE FINANCE BILL 2022 ENACTED AFTER  
SIGNIFICANT AMENDMENTS**

## INTRODUCTION

The Finance Bill, 2022 (Finance Bill) was presented in the Indian Parliament on 1 February 2022 as part of the Budget proposals (see our Ergo on direct tax related budget proposals [here](#)). On 29 March 2022, it was passed by the Indian Parliament with certain amendments. After receiving the Presidential assent on 30 March 2022, it has been notified by the Government (Finance Act).

Some of these amendments are significant, including clarifications on setting off losses arising from transfer of one virtual digital asset (VDA) against income from other VDA(s), restricting the scope of taxpayers eligible to file updated tax return etc.

Key amendments and effect thereof are summarized below:

- Taxation of VDAs: Finance Bill had proposed to levy tax on VDAs and introduced a specific taxation regime for the same. However, a lot of clarity was desired as the proposals were ambiguous to some extent.

The Finance Act has clarified certain ambiguities and also provides the following:

- Finance Bill proposed a separate regime for taxation of VDAs. It has been provided that provisions governing taxation of VDAs would apply notwithstanding anything contained in any other provisions of the Income Tax Act 1961 (IT Act);
  - When calculating the gain, it has been provided that only if there is a cost of acquisition of VDA, would a deduction be allowed;
  - *Forever lost!* - Loss from the transfer of VDA cannot be set off against income under any provision of the IT Act including income from other VDA; and
  - The word 'transfer' for the purpose of taxation of VDAs, has been defined to include VDA even if it has not been held as a 'capital asset'.
- Taxpayers who were allowed deduction of surcharge or cess now in jeopardy: Finance Bill had proposed that cess (which is levied on the base tax rate increased by surcharge) shall be treated as akin to 'tax', and hence, shall not be allowed as a deduction

against taxable income of a taxpayer. This clarification was applicable retrospectively from 1 April 2005 and sought to put to rest the ongoing litigations on this issue.

The Finance Act has made following amendments as under:

- Tax authorities have been conferred with a power to treat deduction allowed in respect of any surcharge or cess in earlier year as under-reported income for the purposes of levy of penalty and recompute total income of the taxpayer; and
- A protection has been provided to the taxpayers against levy of penalty if re-computation of income is done at the taxpayers' request and the tax due is paid.

- Changes made in provisions relating to updated tax returns: In order to encourage voluntary compliance and enable the taxpayers to rectify tax returns, Finance Bill introduced the concept of filing updated tax returns. Taxpayers who have been subjected to search actions were disqualified from filing updated tax returns for financial year in which the taxpayers were subjected to search and immediately preceding two financial years. Similarly, if the updated return was a return of loss, the taxpayers were not eligible to exercise this option.

The Finance Act has made following modifications to the aforementioned criteria:

- It has been provided that the taxpayers who have been subjected to search action cannot file updated tax returns for any prior years (as against initial restriction of two financial years preceding the year of search); and
  - Loss returns can also be updated if they were filed within the time-limit provided for filing original tax returns and such updated return is a return of income. However, there is a requirement to file updated returns for all subsequent years where loss/unabsorbed depreciation numbers etc. are impacted as a consequence of updating the loss return for the relevant financial year.
- Extension of deadline for passing assessment order for assessment year (AY) 2020-21: The time limit for completion of assessment proceedings and passing of



assessment order for AY 2020-21 has been extended to 30 September 2022.

- Change in definition of books of accounts under the IT Act: The Finance Act has expanded the definition of 'books of account' so as to include books kept in electronic form or in digital form or as printouts of data stored in such electronic form or in digital form.
- Availability of exemption to specified fund: The availability of exemption to specified fund (located in International Financial Services Centre) would not be available to those funds whose unit holders stop being non-residents and become residents of India. It would apply only if the resident unitholders do not exceed 5% and fulfil such other conditions as may be prescribed.
- Insertion of anti-abuse provisions under section 56(2)(x): Earlier, any sum of money or property received by any person from charitable entities etc. registered under the IT Act was not taxable in the hands of such recipient. The Finance Act has provided that such sum of money or property will be taxable where the benefit is received by person referred to in section 13(3) of the IT Act (i.e., author of the charitable entities, founder, trustee etc.) provided other conditions are also satisfied.
- Consequences of proceedings made or initiated in the hands of predecessor in cases of succession: The Finance Bill had proposed to provide that the assessments, reassessments or other proceedings made on the predecessor during the pendency of a business reorganization shall remain valid and be deemed to have been made on the successor. Further,

the term 'business reorganization' was also defined in the Finance Bill.

The Finance Act has made certain modifications to the provisions whereby the term 'business organization' has been replaced by word 'succession'. Further, the Finance Act also provides that if any proceedings were initiated on the predecessor during the pendency of such succession, it shall be deemed to have been initiated on the successor.

## COMMENTS

*Crypto no longer cryptic?* Most of the above amendments clarify or rationalize the proposals of the Finance Bill. Infrastructure costs incurred in the mining of VDA may not be treated as cost of acquisition in view of the aforesaid amendments. This is in line with the recent written reply by Shri Pankaj Chaudhary (Minister of State in the Ministry of Finance) to the Parliament. Similarly, when the provisions relating to taxability of VDAs were introduced by the Finance Bill, there was an ambiguity as to whether the losses pertaining to VDA could be set off against the income arising from transfer of another VDA. The Finance Act has clarified such ambiguity by making suitable amendment in terms of which losses from transfer of VDA cannot be set off against income arising from transfer of other VDA. This amendment too is in line with the recent written reply by the Government to the Parliament.

*The uncertain past?* Amendments by the Finance Act to provide for retrospective levy of tax and penalty exposure with respect to deductions claimed by the taxpayers on account of cess or surcharge will affect taxpayers who had already been allowed the deductions in the past requiring them to evaluate their tax positions.

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