

## SKA TAX FLASH

26<sup>th</sup> March 2021



The Lok Sabha has passed the Finance Bill 2021 on 23-03-2021 after some amendments. The Bill was not passed originally as presented on the Budget day. Some amendment to the finance bill 2021 was placed and incorporated in the Finance Bill 2021 before passing the same in the Lok Sabha. Insights on the same issue is discussed hereunder –

### **1) Goodwill will not form part of the block of the assets:**

Finance Bill 2021 has already come up with the amendment that depreciation on goodwill shall not be available. However, there were an ambiguity with respect to the treatment in block of the assets. In order to provide a clarity, section 43(6)(c) has been amended so as to provide that –

WDV of block of assets shall be reduced by the actual cost of goodwill falling within such block of assets. However, the actual cost of goodwill shall be first decreased by the depreciation allowed or would have been allowable.

This amendment is applicable from Assessment Year 2021-22 and subsequent assessment year.

### **2) Fair Market Value shall be taken as Full Value of consideration in case of Slump Sale:**

In slump sale provision, there were no mechanism to compute the full value of consideration. Now it has been provided that the full value of consideration shall be fair market value of the transferred undertaking.

This amendment is applicable from Assessment Year 2021-22 and subsequent assessment year.

**3) Interest on Provident Fund on Employee contribution:**

The Finance Act 2021 has proposed an amendment that interest on provident fund shall be taxable to the extent where employee contribution exceeds 2.5 Lacs.

Now, it has been proposed to increase the threshold limit of 2.5 Lacs to 5 Lacs in a situation where employer is not contributing any amount to such fund.

**4) Payment through non-account payee cheque and draft shall be treated as cash payment:**

It is here to be noted that assessee may face difficulty where record is not being maintained so as to identify that whether the payment is being made by A/c payee cheque or Non-A/c payee cheque. Thereby assessee may end up getting audit.

This amendment is applicable from Assessment Year 2021-22 and subsequent assessment year.

**5) HUF is not eligible to claim the benefit of presumptive tax scheme under section 44ADA i.e., Income deemed to be 50% of gross receipt in case of professional.**

This amendment is applicable from Assessment Year 2021-22 and subsequent assessment year.

**6) Tax on transfer of money or property by a firm/AOP/BOI to its partners or members: -**

The Finance Bill 2021 has substituted section 45(4) and inserted a new section 45(4A) in the Income Tax, 1961. A consequential amendment was also made in section 48 of the Income Tax Act. These amendments made vide Finance bill 2021 has created lots of confusion and views among the Professional and Taxpayers. To overcome this confusion and uncertainty, the amendment to finance bill 2021 was moved by the Finance Minister. In the amendment to finance bill 2021, the entire section is proposed to be redrafted and a new section 9B is proposed to be inserted.

### **Section 9B of the Income Tax Act:**

Section 9B provides that where a partner **receives** during the previous year any **capital asset or stock-in-trade or both** from a firm in connection with the dissolution or reconstitution of such firm, then the firm shall be **deemed to have transferred such capital asset or stock-in-trade** or both, as the case may be, to the partner in the year in which such **capital asset or stock in trade or both are received by that partner.**

Further, it provides that any profits and gains arising from such deemed transfer of capital asset or stock in trade or both, as the case may be, by the firm shall be –

- **deemed to be the income of the firm** of the previous year in which stock or capital asset were received by the partner and
- chargeable to income-tax under the head ‘business or profession’ or ‘capital gain’ in accordance with the provisions of the Act.

Furthermore, the **fair market value** of the capital asset or stock in trade or both on the date of its receipt by the partner shall be **deemed to be the full value of consideration** while computing profit and gains arising from deemed transfer of such stock or capital asset by the firm.

Section 9B also defines the expressions “reconstitution of specified entity”. It means where:

- (a) One or more of its partners ceases to be partners; or
- (b) One or more new partners are admitted. However, at least one existing partner should continue to be partner of the firm after admission of the new partner(s); or
- (c) All the partners continue with change in their respective share or in share of some of them.

Further, the CBDT is empowered to issue guidelines, with prior approval of the Central Government, for removing difficulties arising in giving effect to the provisions of this section.

**Section 45(4) of the Income Tax Act:**

where a partner receives during the previous year any capital asset or money or both from a firm in connection with the reconstitution then any profit and gains arising from such receipt of money by partner shall be deemed to be the income of the firm under the head "Capital Gains" of the previous year in which such capital asset or money or both were received by the specified person. Further, it also prescribes the formula to compute the profit and gains arising to the partner from such receipt of money or capital asset from the firm.

The profit and gains shall be computed in accordance with the following formulae:

$$A = B + C - D$$

A = Income chargeable to income-tax under this provision as income of the firm under the head capital gains;

B = Value of money received by partner on the date of such receipt;

C = Fair market value of the capital asset received by the partner on the date of such receipt; and

D = Balance in the capital account (represented in any manner) of the partner in the books of accounts of the firm at the time of reconstitution.

Where the value of A is negative, it shall be deemed to be nil.

While computing the balance in the capital account of partner in the books of accounts of firm, increase in capital account due to the following shall not be taken into account:

- (a) Revaluation of any asset;
- (b) Self-generated goodwill (goodwill acquired without incurring any cost for purchase or which has been generated during the course of business or profession);
- (c) Other self-generated assets.

Explanation 2 to Section 45(4) clarifies that when a capital asset is received by the partner from a firm in connection with the reconstitution, the provisions of the said section shall operate in

addition to the provisions of section 9B and the taxation under both the provisions shall be worked out independently.

**Section 48 of the Income Tax Act:**

Section 48 has also been amended by the Finance Bill (Lok Sabha) to mitigate the double taxation arising due to introduction of Section 9B and substitution of section 45(4). A new clause (iii) is inserted to provide that profit and gains chargeable to tax under section 45(4) which is attributable to capital asset being transferred by the firm shall be reduced while computing capital gain in the hands of the firm in respect of such capital asset. In other words, the amount of capital gain computed under section 45(4) which is attributable to capital asset being transferred by the firm shall be deducted while computing capital gain in the hands of the firm in respect of such capital asset.

The computation of capital gain under section 9B read with section 48(iii) shall be as

follows:

<b>Particular</b>	<b>Amount</b>
Full value of consideration received or accrued (FMV of capital asset)	XXX
Less:	
(a) Cost of Acquisition/Indexed cost of acquisition;	XXX
(b) Cost of improvement/ Indexed cost of improvement; or	XXX
(c) The amount chargeable to tax as income of firm under Section 45(4) which is attributable to capital asset being transferred by the firm	XXX
Income Taxable under the head Capital Gains	XXX

**Interplay of section 45(4) and section 9(B) of the Income Tax Act:**

Section 45(4) provides for the computation of capital gain which arises to a partner on extinguishment or relinquishment of his right in the firm in connection with reconstitution of the firm. Though the income arises to the partner but it is deemed as income of the firm. Thus, **the firm would be assessed under section 9B for its own income and under section 45(4) for income arising to partner thereof.**

Section 9B provides for taxability arising at the time of dissolution or reconstitution. Whereas Section 45(4) deals with the taxability at the time of reconstitution only. Where any asset or money is transferred to partner or member at the time of dissolution, same amounts to extinguishment or relinquishment of rights. Term “transfer” as defined under section 2(47) covers extinguishment or relinquishment of rights. However, since such rights are not extinguished or relinquished in favor of another person in case of dissolution, no one derives any benefit from the same. Thus, section 45(4) does not apply at the time of dissolution.

This amendment is applicable from Assessment Year 2021-22 and subsequent assessment year.

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