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DPNC Insight

Finance Bill, 2016 Vs Finance Act, 2016

Snippet of important changes made in the Finance Bill, 2016 as incorporated in Finance Act, 2016

The Finance Bill, 2016 received the presidential assent on May 14, 2016. Thus, it has become the Finance Act, 2016 now.

However, the Bill which was presented originally in the Lok Sabha on February 29, 2016 has not been passed in its original shape. Various changes have been made in the Bill and new amendments have been brought in. A snippet of important changes made in the Finance Bill, 2016 as incorporated in Finance Act, 2016, is contained hereunder:

Amendments proposed in Finance Bill, 2016	Amendment made by Finance Act, 2016
1. Unlisted shares held for 24 months or less would be treated as short-term capital asset	
No amendment was proposed	As per **section 2(42A) of the Income-tax Act, 1961** (the Act) any capital asset held by an assessee for a period of not more than 36 months immediately preceding the date of its transfer is treated as short-term capital asset. The period of holding in case of shares in terms of section 2(42A) of the Act has undergone various changes over past 2-3 years, (including by way of recent amendment made by Finance Act, 2016). The various phases of amendments in case of shares have been summarized hereunder to ensure better appreciation of

amendment by Finance Act, 2016:

<u>Position prior to amendment by Finance Act (No. 2) Act, 2014:</u>

The aforesaid period of 36 months was to be treated as **<u>12 months</u>** in case of ***shares held in any company, whether listed or not.***

<u>Position post amendment by Finance Act (No. 2) Act, 2014, w.e.f. 1.04.2015:</u>

An amendment was brought in by Finance Act (No. 2) Act, 2014 to provide that the aforesaid period of 12 months would not be applicable in respect of shares not listed on a recognized stock exchange. Thus, with effect from 01.04.2015, an ***unlisted share*** is treated as short-term capital asset, if it is held for not more than **<u>36 months</u>** immediately preceding the date of its transfer.

<u>Position post Finance Act (No. 2) Act, 2016:</u>

The Finance Act, 2016 has recently inserted a new clause to provide that the period of 36 months would be substituted with period of 24 months in case of unlisted shares. In other words, ***unlisted shares*** of company would be treated as short-term capital asset

	if it is held for a period of <u>**24 months**</u> or less immediately preceding the date of its transfer.
2. When employer's annual contribution is deemed as income received by employee	
The Finance Bill, 2016 proposed an amendment to Rule 6 to the Fourth Schedule of the Act to provide that <u>***lower***</u> of the following shall be **deemed as income of the employee:** i. Annual contribution made by employer in <u>excess of ***12% of salary***</u> to the recognized provident fund account of the employees; or **ii. INR 1,50,000** The aforesaid limit of contribution in excess of 12% was already in place, the Finance Bill, 2016 made a proposition to put a ceiling limit of INR 1,50,000, on the amount which could be taxed as income in the hands of employee.	The aforesaid proposed amendment regarding ***ceiling limit of INR 1,50,000/- does not find place in the Finance Act, 2016.*** Accordingly, the position under the Act remains intact and any amount of contribution by employer in excess of 12% of salary to the recognized provident fund account of the employees shall be deemed as income of employee regardless of any ceiling limit.
3. Withdrawal of amendments relating to retirement funds	
I. <u>***Withdrawal of employee's contribution from provident fund:***</u> Finance Bill, 2016 proposed an amendment to Section 10(12) of	The Finance Act, 2016 has withdrawn such proposed amendment to the section 10(12) of the Act and thus, *status-quo* for

the Act that any withdrawal from the accumulated balance in the provident fund account, which is attributable to employee's contribution, made on or after April 1, 2016, shall not be chargeable to tax up to 40 % of such accumulated balance.	withdrawal from the provident fund account is maintained.
II. ***<u>Withdrawal from superannuation fund account:</u>*** The Finance Bill, 2016 proposed an amendment to Section 10(13) of the Act that any payment in lieu of or in commutation of an annuity purchased out of contributions made on or after April 1, 2016, where it exceeds 40% of annuity, shall be chargeable to tax.	The Finance Act, 2016 has withdrawn such proposed amendment to the section 10(13) of the Act and thus, *status-quo* for withdrawal from the provident fund account is maintained.

4. TCS collection at the time of receipt only in specific cases

The Finance Bill, 2016 proposed that every seller of a motor vehicle shall collect TCS at the rate of 1% of value of motor car if such value exceeds ten lakh rupees.	There is no change in the Finance Act, 2016 on the aspects of rate of TCS and value of motor car.
Such tax was proposed to be collected from the buyer under section 206C ***at the time of <u>debiting the amount receivable</u> <u>or</u> at the time of <u>receipt, whichever happened earlier.</u>***	However, the Finance Act, 2016 provides that tax shall be collected under Section 206C ***<u>only</u> at the time of <u>receipt</u> of consideration.***

The amendment was sought to be made by way of inserting an ***additional entry in the table to section 206C(1) of the Act.***	The amendment has been given effect to by way of insertion of ***new sub-section (1F) to section 206C of the Act.***

5. Section 270A - Computation of tax on under-reported income

<u>Introduction of new section 270A of the Act :</u>

- *Under the existing provisions, penalty on account of concealment of income or on furnishing of inaccurate particulars of income is levied under Section 271(1)(c).*
- *In order to rationalize and bring objectivity, certainty and clarity in the penalty provisions, new Section 270A was proposed to be inserted in Finance Bill, 2016.*
- *It provides for levy of penalty in cases of under-reporting and misreporting of income.*
- *The rate of penalty shall be 50% of tax in case of under reporting of income and 200% of tax in case of misreporting of income.*

The provision of Section 270A of the Act has been brought into the statute as proposed in Finance Bill, 2016, subject to the following differences on two aspects:

i. What constitutes under-reporting of income: The Finance Bill, 2016 proposed ***<u>six instances</u>*** where a person shall be deemed to have underreported his income. The same are embodied under section 270A(2) of the Act.	**i. What constitutes under-reporting of income**: The Finance Act, 2016 has in addition to six instances as proposed in the Bill, ***<u>included one more instance</u>*** of under reporting of income. A person shall also be deemed to have underreported his income where *<u>the amount of deemed total income reassessed as per the provisions of section 115JB (MAT) or section 115JC</u>*

	<u>(AMT), as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment</u>
ii. Tax payable on under-reporting of income: The tax payable in respect of the under-reported income shall be the amount of tax calculated- a) **<u>on such income as if it were the total income</u>**, ***in the case of a company, firm or local authority; and*** b) at the rate of **<u>thirty per cent,</u>** <u>of the</u> **<u>amount of under-reported income,</u>** ***in any other case.***	**ii. Tax payable on under-reporting of income**: The Finance Act, 2016 provides that the tax payable in respect of the underreported income shall be as under: *a)* ***Return not furnished:*** Where return of income has not been furnished and the income has been assessed for the first time, the ***<u>tax shall be calculated on underreported income as increased by maximum amount not chargeable to tax.</u>*** b) ***In case of loss:*** Where the total income assessed or re-assessed is a loss, ***<u>the tax shall be calculated on under-reported income as if it was the total income.</u>*** c) ***In any other case****: Tax shall be calculated as* ***<u>X-Y</u>*** where, X = Tax on under-reported income as increased by total income assessed or re-

	assessed originally Y = Tax on total income assessed or re-assessed originally

6. Under reporting of income shall be punishable as wilful attempt to evade tax u/s 276C of the Act

The Finance Bill, 2016 proposed insertion of a new Section 270A to levy penalty in case of under-reporting and misreporting of income by assessee. However, the Bill contained no corresponding provision to invoke prosecution in this case.	The Finance Act, 2016 has amended the existing provision of Section 276C to provide that where ***tax on under-reported income as per section 270A exceeds INR 25 lakhs,*** assessee shall be punishable with rigorous imprisonment under section 276C.
The existing provision of Section 276C provides for rigorous imprisonment of **minimum 6 months to 7 years**, with fine, in case an **assessee has made wilful attempt to evade tax.**	The quantum of imprisonment for under-reporting of income is **same as provided in case of wilful attempt to evade tax.**

7. Immunity from penalty and prosecution in certain cases under newly inserted section 270AA of the Act

The Finance Bill, 2016 proposed to insert section 270AA to provide **immunity to the assessee from *penalties under section 270A* and *prosecution under section 276C*,** if the assessee fulfils the following conditions: a) He pays the tax and interest as per order u/s 143(3) of the Act or 147 of the Act, within the	The Finance Act, 2016 also includes ***immunity from prosecution under Section 276CC*** in the new Section 270AA.

time prescribed by the notice of demand; and b) He does not file an appeal against the order referred above	

8. Benefit of 25 percent tax rates on certain domestic companies

Introduction of new section 115BA of the Act :
▪ The Finance Bill, 2016 proposed insertion of new section 115BA ▪ to provide benefit of **concessional tax rate of 25%** ▪ for A.Y. beginning from 1.4.2017 or subsequent A.Y.s ▪ **to certain domestic companies** engaged in specified business ▪ if company has been set-up and registered **on or after 1st March, 2016**
The provision of Section 115BA of the Act has been brought into the statute as proposed in Finance Bill, 2016, subject to the following differences on two aspects:

i. Companies eligible for concessional tax rate: Companies engaged in the business of manufacturing or production of any article or thing	**i. Companies eligible for concessional tax rate** The Finance Act, 2016 provides that benefit of concessional tax rate shall ***also*** *be available* ***to*** *the* ***companies engaged in research in relation to or distribution of article or thing manufactured or produced by it.***
ii. How and when to exercise option: ▪ It was proposed in the Finance Bill, 2016 that to avail of the concessional rate of tax,	**ii. How and when to exercise option:** ▪ Option is required to be exercised by the person in

domestic company shall ***exercise the option in the prescribed manner on or before due date of furnishing the return of income under section 139(1) <u>for the relevant previous year.</u>*** ▪ No such bar regarding non-withdrawal of option was contained in the Finance Bill	the prescribed manner on or before the due date specified under sub-section (1) of section 139 ***<u>for furnishing the first of the returns of income</u>*** which the person is required to furnish under the provisions of this Act ▪ It is also provided that **once the option** to avail of benefit of concessional tax rate has been **exercised** by the company for any previous year, it ***cannot subsequently withdraw <u>for the same or any other previous year.</u>***

9. LLPs can be 'Eligible start-ups' in terms of section 80-IAC

<u>Introduction of new Section 80-IAC of the Act</u>

- The Finance Bill, 2016 proposed a new section 80-IAC to provide **100 percent deduction** for **3 consecutive assessment years** to an ***<u>'eligible start-up'</u>*** engaged in an **eligible business.**
- Such deduction may, at the option of assessee, be claimed for any **three consecutive AYs out of the five years** beginning from the year in which eligible start-up is incorporated.

The purview of the term 'eligible start-up' has been expanded in the Finance Act, 2016 as explained hereunder:

The Finance Bill, 2016 proposed to define ***'eligible start-up' as a 'company'*** engaged in an eligible business which fulfils the	The Finance Act, 2016 extends the definition of 'eligible start-up' to include ***'limited liability partnership'*** also. In other words, LLPs shall also be eligible

prescribed conditions	to claim deductions under Section 80-IAC subject to fulfilment of prescribed conditions.

10. Section 80-IBA - Profit linked deduction on housing projects

Introduction of new Section 80-IBA of the Act
The Finance Bill, 2016 proposed insertion of a new Section 80-IBA which provides for deduction of 100% of profits arising from the business of developing and building housing projects.
Such deduction is available subject to fulfilment of certain conditions prescribed in the aforesaid section. A few of such condition have been further elaborated in the Finance Act, 2016, as explained hereunder:

i. The project is on a plot of land measuring not less than: a) **1000 sq. meters** where such project is located : ▪ within the cities of Chennai, Delhi, Kolkata or Mumbai; or ▪ within the area of 25 kms from the municipal limits of these cities; or b) **2000 sq. meters *within the jurisdiction of any other municipality or cantonment board***	i. The project is on a plot of land measuring not less than: a) **1000 sq. meters** where such project is located : ▪ within the cities of Chennai, Delhi, Kolkata or Mumbai; or ▪ within ***the distance, measured aerially,*** of 25 kms from the municipal limits of these cities; or b) **2000 sq. meters *where the project is located in any other place***
ii. ***The residential units*** comprised in the housing project **does not exceed:** a) **30 sq. meters** where such project is located within	ii. ***The built up area of the residential unit*** comprised in the housing project **does not exceed:** a) **30 sq. meters** where such

locations specified in (i)(a) above; or b) **60 sq. meters** where such project is located within locations specified in (i)(b) above; or	project is located within locations specified in (i)(a) above; or b) **60 sq. meters** where such project is located within locations specified in (i)(b) above; or Thus, it has been provided clearly that the 'built-up area' of the residential unit shall be relevant to check if the size of the residential unit is within threshold limit of 30 sq. meters or 60 sq. meters, as the case may be.
11. Levy of additional tax on dividend u/s 115BDA of the Act	
The Finance Bill, 2016 had proposed an additional tax of 10% on dividend income, if income ***of an assessee (being a resident individual, HUF, or firm)***, by way of dividends declared, distributed or paid **by <u>a domestic company,</u>** ***<u>exceeds INR 10 Lakhs.</u>***	The Finance Act, 2016 has clarified two points in this regards as under: a) Dividend whether paid or declared or distributed by ***one or more domestic companies,*** the **<u>aggregate of dividend</u>** shall be considered for the limit of INR 10 lakhs b) Tax @10% shall be payable ***only on the <u>amount of dividend exceeding INR 10 lakhs</u>.***
12. Tax on income from patent developed and registered in India u/s	

115BBF of the Act

Introduction of new Section 115BBF of the Act

- The Finance Bill, 2016 proposed insertion of new section 115BBF to **tax royalty income** in respect of a patent ***developed and registered in India*** at the rate of **10%.**
- The benefit of section 115BBF is available only to an eligible assessee being a ***person resident in India*** and who is a ***patentee***

The provision of Section 115BA of the Act has been brought into the statute as proposed in Finance Bill, 2016, subject to the following differences:

▪ The provision of Section 115BBF under the Finance Bill, 2016 comprised of only two sub-sections (1) & (2).	▪ The Finance Act, 2016 has **inserted two new sub-sections (3) & (4)** to Section 115BBF to provide as follows:
a) ***No requirement*** contained in the Bill for assessee ***to exercise the option*** of getting taxed under section 115BBF of the Act, before the due date of furnishing return of income.	*a*) Assessee may ***exercise the option*** for taxation of income from patents in accordance with the provisions of section 115BBF, in prescribed manner on or ***before the due date of furnishing of return of income under section 139(1) of the relevant previous year.***
b) No bar contained in the Bill if the assessee does not offer income for tax in subsequent assessment years in terms of section 115BBF	*b*) If assessee opts for taxation of income from patents as per section 115BBF in any previous year and ***fails to offer tax on income from patents as per section 115BBF*** in any of the ***5***

▪ The word *'**developed**'* has been described in the Explanation to mean the ***expenditure incurred*** by the assessee for any invention in respect of which patent is granted under the Patents Act, 1970.	***succeeding assessment years*** then he shall ***not be eligible*** to claim ***benefit of said section for 5 assessment years subsequent*** to the assessment year in which such income has not been offered to tax as per section 115BBF. ▪ The Finance Act, 2016 specifically provides that the meaning of *"**developed**"* shall mean ***at least 75 percent of the expenditure incurred in India*** by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970.

13. Amendment in Section 111A of the Act –Short term capital gains on transfer of shares through a recognized stock exchange located in IFSC

Background of amendment to Section 111A of the Act
▪ In order to mobilise growth of International Financial Services Centres (IFSC), the Finance Bill, 2016 proposed that no Securities Transaction Tax ('STT') and Commodities Transaction Tax ('CTT') shall be levied on transactions of securities carried out through recognized stock exchange located in IFSC where the consideration for such transaction is paid or payable in foreign currency. ▪ Consequently, it was proposed in Finance Bill, 2016 as approved in the Act, to **amend the section 10(38)** of the Income-tax Act to provide that **long-term capital gains**

arising from transfer of equity shares, equity oriented mutual fund or units of business trust shall be **exempt** from tax ***if the transaction is undertaken in foreign currency through a recognised stock exchange located in an IFSC, even if STT is not paid in respect of such transactions.***

However, no corresponding amendment was proposed in the Finance Bill, 2016 to section 111A of the Act [i.e., short-term capital gains arising from transfer of listed securities.]	Therefore, the Finance Act, 2016 makes ***similar amendment to section 111A*** to provide that *short-term capital gains arising from transfer of underlying securities shall be* ***taxable at 15%, if the transaction is undertaken in foreign currency through a recognised stock exchange located in an IFSC, even if STT is not paid in respect of such transactions.***

14. Rate of MAT for unit located in IFSC under section 115JB of the Act

Background of amendment to Section 111A of the Act

Another important measure which has been taken in order to mobilise growth of International Financial Services Centres (IFSC), is that the Finance Bill, 2016 had proposed to reduce the MAT rate from existing 18.5% to 9% in case of unit located in International Financial Services Centre ('IFSC')

The Finance Bill, 2016 provided for the certain conditions which were required to be satisfied in order to enjoy the aforesaid lower MAT rate of 9%, as under: • The taxpayer is a unit established in IFSC • The unit must be ***a new unit established on or***	The Finance Act, 2016 has ***withdrawn the condition of establishment of new IFSC unit after April 1, 2016.*** Consequently, the **benefit of reduced rate of MAT shall *also be given to those units*** which have been ***set up before April 1, 2016.***

after April 1, 2016 • It should derive its income solely in convertible foreign exchange	

15. Amortization of spectrum fee for telecommunication services under section 35ABA of the Act

The Finance Bill, 2016 proposed to insert a new section 35ABA to provide that the spectrum fee paid for auction of airwaves shall be allowed to be deducted over the useful life of the spectrum.	The Finance Act, 2016 also ***provides for consequences if specified conditions*** under section 35ABA of the Act are ***not fulfilled.*** If subsequently there is a failure to comply with any of the conditions, then: a) the **deduction** shall be treated as ***wrongly allowed;*** b) the **Assessing Officer may *re-compute the total income*** of the assessee for the respective previous years; and c) the provisions of **Section 154** of the Act shall apply for ***four years from the end of the year in which the default is made***

16. Relief to specific Non-Residents from the tax deduction under section 194LBB

Background of amendment to Section 194LBB of the Act
▪ The Finance Act, 2015 had inserted a special taxation regime

in respect of Category I and II Alternative Investment Funds (investment fund) registered with the SEBI.

- The special taxation regime is intended to ensure tax pass through status in respect of these investment funds which are collective investment vehicles. The special regime is contained in sections 10(23FBA), 10 (23FBB), 115UB and 194LBB of the Act.
- The taxation in the hands of investors is in the same manner and in the same proportion as it would have been, had the investor received such income directly and not through the investment fund.
- Under this regime the income of the investment fund (not being in the nature of business income) is exempt in the hands of investment fund. However, income received by the investor from the investment fund (other than the income which is taxed at the level of investment fund) is taxable in their hands.
- Accordingly, Section 194LBB was inserted for deduction of tax in respect of payment made to such investors.
- The existing provisions of section 194LBB provide that in respect of any income credited or paid by the investment fund to its investor (resident or non-resident), a tax deduction at source (TDS) shall be made by the investment fund at the rate of 10% of the income. This TDS regime had created certain difficulties that non-resident investors, whose income was not taxable as per the relevant DTAA, were not able to claim benefit of lower or nil rate of taxation. Even section 197 does not provide for any facility to the deductee to approach the Assessing Officer for seeking certificate for TDS at a lower or nil rate in respect of deductions made under section 194LBB.

The Finance Bill, 2016 proposed to amend the section 194LBB to	The Finance Act, 2016 has additionally **inserted a proviso**

provide that **tax shall be deducted as follows:** i. where payee is ***resident- at the rate of 10%*** ii. Where the payee ***is non-resident or foreign company- at the rates in force.***	to the effect that where payee is a ***non-resident or a foreign company***, ***no tax shall be deducted*** in respect of any ***income which is not chargeable to tax.***

17. Tax on Accretion Income of Trusts

Introduction of new chapter XII-EB (containing Section 115TD, 115TE and 115TF of the Act)

- The Finance Bill, 2016 proposed to insert a new Chapter XII-EB, containing sections 115TD, 115TE and 115TF, under the Act to provide that 'Accreted income' of a trust or institution registered under section 12AA shall be chargeable to tax at the maximum marginal rates in following circumstances listed under section 115TD(1) of the Act:

(*a*) If the trust or institution gets converted into any form which is not eligible for grant of registration under section 12AA; or

(b) If the trust or institution gets merged into any entity which is a trust or institution having objects similar to and registered under section 12AA; or

(c) If the trust or institution, in case of dissolution, fails to transfer its assets to exempt entities under section 12AA and section 10(23C) (iv), (v), (vi) & (via), within a period of 12 months from end of month in which dissolution takes place

- The **difference between the *fair market value of the assets* and *liabilities* of the trust or institution** would be treated as **'accreted income'** and tax thereon shall be paid in addition to the income-tax chargeable in respect of the total income of such trust or institution.

- As per section 115TD, a trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AA in a previous year on occurrence of following events:

a) when registration granted to it under Section 12AA has been cancelled; or

b) It has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it:

i. has not applied for fresh registration under Section 12AA in the said previous year; or
ii. has filed application for fresh registration under Section 12AA but the said application has been rejected.

The Finance Act, 2016 has brought it the following changes in relation the Finance Bill, 2016 as discussed hereunder:

A. Assets which don't form part of Accretion income While computing the accreted income in respect of a case referred to in section 115TD(1)(c), assets and liabilities, if any, related to such asset, which have been transferred to any of the entities other than entities exempt under section 12AA and section 10(23C) (iv), (v), (vi) & (via), within the period specified in the said clause, shall be ignored.	**A. Assets which don't form part of Accretion income** In the Finance Act, 2016 additional, proviso has been inserted to Section 115TD(2) to provide that the value of the following assets shall also not be taken into consideration while computing the 'Accreted income': (a) Any asset acquired by a trust or institution out of its agricultural income. b) Any asset acquired by the trust before getting registered under

B. Time-limit to pay tax on Accreted income

It was proposed under Finance Bill, 2016 that the tax on Accretion income shall be payable **within 14 days** from ***date of receipt of order cancelling registration*** or ***date of order rejecting application for fresh registration.***

section 12AA provided that no exemption under section 11 or 12 is provided to trust or institution during that period.

B. Time-limit to pay tax on Accreted income

The Finance Act, 2016 has proposed new time-limit for payment of tax on Accretion income. It has been prescribed that tax on Accretion income shall be paid **within 14 days from**:

(*a*) the **date on which the period for filing appeal before ITAT against the order cancelling the registration (or order rejecting the application) expires**, if no appeal has been filed by the trust or the institution; or

(b) the **date on which the order in any appeal, confirming the cancellation** of the registration (or order **rejecting** the application), is **received** by the trust or institution.

C. Validity of registration obtained under section 12A

The Finance Act, 2016 has made a clarificatory amendment to

	provide that registration under section 12AA shall include any registration obtained under section 12A.
18. Limit on deduction in respect of expenditure on agricultural extension project	
The Finance Bill, 2016 had proposed to limit the deduction allowed under section 35CCC from existing 150% to 100% w.e.f. April 1, 2018 (Assessment year 2018-19).	The Finance Act, 2016 defers the applicability of this provision of reduced deduction of 100% from April 1, 2018 to April 1, 2021 (Assessment Year 2021-22)

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