# Summary of amendments made in Finance Bill, 2015 passed by the Lok Sabha

The Lok Sabha passed the Finance Bill 2015 on 30th April 2015. Various changes have been made in the Bill, which was presented in the Lok Sabha on February 28, 2015. New amendments are proposed, some proposed amendments are removed, so on and so forth. A gist of all changes made in the Finance Bill, 2015 as passed by the Lok Sabha *viz-a-viz* the Finance Bill, 2015 as presented in the Lok Sabha are as under:-

## I. MAT exemption extended to foreign companies

The Finance Bill, 2015 presented originally proposed that long-term capital gains and short-term capital gains (on which STT is paid) arising to FIIs would be excluded from the chargeability of MAT. Further, expenditures, if any, debited to the profit and loss account, corresponding to such income would also be added back to the book profit for the purpose of computation of MAT.

Thus, the Finance Bill, 2015 proposed to provide relief from MAT only to FIIs without extending such relief to foreign companies. The foreign company would be liable to pay MAT on capital gains arising from transfer of securities and income arising from royalty, interest or FTS even if such income would not be chargeable to tax or taxable at lower rate in India by virtue of applicable double taxation avoidance agreements ('DTAA')or any provision of the Income-Tax Act.
The impact of such proposal would be that foreign companies would be liable to pay MAT even on that income which was exempt from tax by virtue of DTAAs or Income-tax Act.

**Therefore, the Finance Bill, 2015 as passed by Lok Sabha proposes to provide relief from MAT to foreign companies as well.** Capital gains from transfer of securities, interest, royalty and FTS accruing or arising to foreign company has been proposed to be excluded from chargeability of MAT if tax payable on such income is less than 18.5%. Further, expenditures, if any, debited to the profit loss account, corresponding to such income shall also be added back to the book profit for the purpose of computation of MAT.

## II. MAT exemption on notional gain arising on transfer of share of SPV

The Finance (No. 2) Act, 2014 inserted clause (xvii) in Section 47 to provide that transfer of share of special purposes vehicle ('SPV') to a business trust in exchange of units allotted by that trust to the transferor shall not be regarded as transfer, thus, no capital gain would arise on such transaction.

**The Finance Bill, 2015 as passed by Lok Sabha proposes to exclude the following from the chargeability of MAT:**
(*a*) notional gain resulting from transfer of shares of SPV to a business trust in exchange of units allotted by that trust;
(*b*) notional gain resulting from any change in carrying amount of said units; and
(*c*) actual gains from transfer of said units.

A new clause is proposed to be inserted to re-compute the gains from transfer of said units (as referred to in point (c) above) which shall be added back for computation of MAT. It is proposed that the amount of gain from transfer of said units shall be computed by taking into account the cost of shares exchanged with units or the carrying amount of the shares at time of exchange where such shares are carried at a value other than the cost through profit & loss account.
Accordingly, notional loss arising from transfer of asset or notional loss arising from change in carrying amount of said units and actual loss from transfer of said units shall be added back to the book profit for the purpose of computation of MAT.

A new clause is proposed to be inserted to re-compute the loss from transfer of said units which shall be reduced from the book profit. It is proposed that the amount of loss from transfer of said units shall be computed by taking into account the cost of shares exchanged with units or the carrying amount of the shares at time of exchange where such shares are carried at a value other than the cost through profit & loss account.

### III. Deduction under Section 80D in case of individual

The Finance Bill, 2015 as presented originally omitted to propose amendment to clause (a) and clause (b) of sub-section (2) of Section 80D to enable assessee to claim deduction of Rs. 25,000 instead of Rs. 15,000. However, sub-section (4) of Section 80D was amended to allow deduction of Rs. 30,000 instead of Rs. 25,000 if individual or his family member or any of his parent is a senior citizen or very senior citizen.

Accordingly, it is proposed in the Finance Bill, 2015 as passed by the Lok Sabha that the existing deduction of Rs. 15,000 shall be substituted with Rs. 25,000. The following table highlights the deduction available to an Individual under Section 80D:

| *Deduction in respect of* | *Individual and his family (none of them is a senior citizen)* | *Parents of Individual (none of them is a senior citizen)* | *Individual and his family (if senior citizen or very senior citizen)* | *Parents of Individual (if senior citizen or very senior citizen)* |
|---|---|---|---|---|
| | (a) | (b) | (c) | (d) |
| ▪ Health Insurance | 25,000 | 25,000 | 30,000 | 30,000 |
| ▪ Contribution to CGHS | 25,000 | - | 25,000 | - |
| ▪ Preventive health check-up | 5,000 | 5,000 | 5,000 | 5,000 |
| ▪ Medical expenditure if no amount is paid in respect of health insurance | - | - | 30,000 (only in case of very senior citizen) | 30,000 (only in case of very senior citizen) |
| **Maximum Deduction** | **25,000** | **25,000** | **30,000** | **30,000** |

***Note:*** **Deduction for preventive health check-up of assessee, spouse, dependent children and parents shall not exceed in aggregate Rs 5,000.**


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(*a*) Maximum deduction, if individual or any member of his family or any of his parent is not senior or very senior citizen: Rs. 50,000 [(a) + (b)]
(*b*) Maximum deduction if individual or any member of his family is not senior citizen but any of his parent is a senior citizen or very senior citizen: Rs. 55,000 [(a) + (d)]
(*c*) Maximum deduction if individual or any member of his family and any of his parent is senior citizen or very senior citizen: Rs. 60,000 [ (c) + (d)]

### IV. Residential Status of a Company

The Finance Bill, 2015 as presented earlier proposed to amend Section 6 to provide that a company shall be said to be resident in India if its place of effective management, at any time in that year, is in India. In other words, the concept of Control or Management (wholly in India) is replaced with Place of Effective Management (at any time in India).
The amendment proposed in the original Finance Bill, 2015 might have caused difficulty in establishing the place of effective management as a company might have place of effective management in more than one country at any point of time during the year.
Thus, the Finance Bill, 2015 as passed by the Lok Sabha has proposed to omit the words 'at any time' which shall have effect that a company shall be deemed to be resident in India if its place of effective management is in India.

### V. Filing of return is mandatory if assessee has foreign assets

The Finance Bill, 2015 as passed by the Lok Sabha has proposed mandatory filing of return by a person, being a resident other than not ordinarily resident in India, who at any time during the previous year:
(*a*) holds, as a beneficial owner or otherwise, any asset (including financial interest in any entity) located outside India or has signing authority in any account located outside India; or
(*b*) is a beneficiary of any asset (including any financial interest in any entity) located outside India.
However, filing of return shall not be mandatory under this proviso for an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India, if income arising from such an asset is includible in the income of the person who is beneficial owner of such an asset.
The meaning of the 'beneficial owner' and 'beneficiary' has been proposed as under:
(*a*) '*Beneficial owner*' in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person;
(*b*) '*Beneficiary*' in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

### VI. Subsidies are no longer capital receipts

There had been dispute between the revenue and the taxpayers about the treatment of the subsidy received from Government or any other authority. The issue whether subsidy shall be treated as capital receipt or revenue receipt became a debatable issue.
To end the dispute, it is proposed to amend the definition of 'Income' under Section 2(24) in the Finance Bill, 2015 as passed by the Lok Sabha.
A new sub-clause (xviii) is proposed to be inserted in Section 2(24) to provide that assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by


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whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assesse [other than one considered under *Explanation* 10 to Section 43(1)] would be included in assessee's income.
Thus, any subsidy which is not reduced from the actual cost of the asset in view of provisions of *Explanation* 10 to Section 43(1) shall be taxable as revenue receipts of the assessee.

### VII. Bad debts could be claimed without writing off debt in books of account

Bad Debts of a business are allowed as deductions under Section 36(1)(vii). The deduction is available in respect of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.

However, deduction is allowed subject to conditions laid down under section 36(2), *inter-alia*, debt should have been taken into account in computing the income of the previous year in which the amount of bad debt is written off or of an earlier previous year.

Till Assessment Year 1988-89, there was no requirement of writing off of the bad debt in the books of account. From Assessment Year 1989-90, the law was amended to provide for deduction in the year of write-off of the bad debt. So, the amendment made writing-off of bad-debts in books of account mandatory to claim deduction thereof.
In view of current provisions, no deduction is allowed to an assessee if any income, not recorded in books of accounts but offered to tax as per Income Computation and Disclosure Standards, turns into bad-debts. In other words, assessee cannot write-off a debt which was not recorded in the books of account but was actually offered to tax. In this case, no deduction is allowable to assessee as debts are not written-off from books of accounts.

**In order to remove this anomaly, it is proposed in the Finance Bill, 2015 as passed by the Lok Sabha that bad-debts could be claimed without writing off in books of account if the amount of debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standard notified under section 145(2) without recording the same in the accounts.**
Thus, Section 36(vii), once again, proposed to be amended to get back to original position (i.e., the position that stood till Assessment Year 1988-89) but to a limited extent.

### VIII. Interest on loan taken for acquisition of an asset could only be capitalized till the asset is first put to use

Currently, Section 36(1)(iii) allows deduction for interest paid in respect of capital borrowed for the purposes of the business or profession while computing the income from business or profession.

However, any interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, was not allowed as deduction.

The Finance Bill, 2015 as passed by Lok Sabha proposes to remove this distinction in allowability of interest in case of existing business and in case of extension of existing business. It proposes to remove the words "for extension of existing business or profession" from proviso to Section 36(1)(iii). Thus, it is proposed that interest on borrowings used for acquisition of asset till the asset is put to use shall not be allowed as deduction in any case.

## IX. Determination of period of holding and cost of acquisition in case of shares acquired on redemption of GDRs

Section 2(42A) of the Act is silent on the computation of period of holding in case of shares which are acquired on redemption of GDRs as referred to in Section 115AC(1)(b). Accordingly, the Finance Bill, 2015 as passed by the Lok Sabha proposes that the period of holding in this case shall be reckoned from the date on which a request for redemption is made by the assessee.

In this case, the cost of acquisition shall be computed in accordance with sub-section (2ABB) proposed to be inserted in Section 49 by the Finance Bill, 2015 as passed by the Lok Sabha.

It is proposed that cost of acquisition of shares acquired by a non-resident on redemption of GDRs shall be the price of such shares as prevailing on any recognized stock exchange on the date on which a request for redemption is made by the assessee.

## X. Easing some conditions if investment fund is owned by Foreign Govt. or Central Bank

An amendment was made in Finance Act (No. 2) 2014 to provide that income arising to Foreign Portfolio Investors ('FPIs') from transaction in securities will be treated as capital gains. However, the provisions of the Act have not been adequately amended to address the apprehension of the fund managers that their location in India would constitute business connection of offshore funds in India, resulting in a large number of offshore funds choosing to locate their investment manager outside India.

In order to facilitate location of fund managers of off-shore funds in India Section 9A has been proposed in the Act in line with international best practices, to provided that location of funds manager shall not constitute business connection subject to certain conditions.

The Finance Bill, 2015 as passed by the Lok Sabha proposes to withdraw following conditions in case of an investment fund set-up by the Government or Central Bank of a foreign State or a sovereign fund or any other notified fund:

(*a*) The fund has a minimum of 25 members who are, directly or indirectly, not connected persons;

(*b*) Any member of the fund along with the connected persons shall not have participation interest, directly or indirectly, in the fund exceeding 10%; and

(*c*) The aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%.

## XI. Rules shall be prescribed for the purpose of Section 9A

It is proposed to insert sub-section (7A) in Section 9A that the provisions of this section shall be applied in accordance with such guidelines and in such manner as the Board may prescribe in this behalf



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### XII. Amount paid for purchase of sugarcane allowed as deduction to the extent price fixed by the Government

A new clause (xvii) is proposed to be inserted in Section 36(1) to provide that the amount of expenditure incurred by a co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane could be allowed as deduction, however, the deduction couldn't exceed the price fixed or approved by the Government for sugarcane.
In other words, a co-operative society engaged in the manufacture of sugar would be allowed as deduction towards purchase of sugarcane to the extent of lower of following:
(*a*) Actual purchase price of sugarcane, or
(*b*) Price of sugarcane fixed or approved by the Government

### XIII. Meaning of 'Specified person' enlarged for purpose of Section 10(23EE)

Under the provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 notified by SEBI, the Clearing Corporations are mandated to establish a fund, called Core Settlement Guarantee Fund for each segment of each recognized stock exchange to guarantee the settlement of trades executed in respective segments of the exchange.

Under the existing provisions, income by way of contributions to the Investor Protection Fund set- up by recognized stock exchanges in India, or by commodity exchanges in India or by a depository shall be exempt from taxation.

On similar lines, it is proposed to exempt the income of the Core Settlement Guarantee Fund arising from contribution received and investment made by the fund and from the penalties imposed by the Clearing Corporation subject to similar conditions as provided in case of Investor Protection Fund set-up by a recognized stock exchange or a commodity exchange or a depository.

However, where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is shared.
It is proposed in the Finance Bill, 2015 as passed by the Lok Sabha to change the meaning of the 'specified person' which shall mean following:
(*a*) Any recognized clearing corporation which establishes and maintains the Core Settlement Guarantee Fund;
(*b*) Any recognized stock exchange being a shareholder in such recognized clearing corporation or a contribution to the Core Settlement Guarantee Fund; and
(*c*) Any clearing member contributing to the Core Settlement Guarantee Fund.

**The Securities Contracts (Regulation) (Stock Exchanges And Clearing Corporations) Regulations, 2012 defines the following terms as under-**

- **Clearing Corporations**

Clearing corporations, also known as 'Clearing houses', are entities that are established to undertake the activity of clearing and settlement of trades in securities/other instruments/products that are dealt with or traded on a recognized stock exchange. It is obligatory for stock exchanges to use the services of recognised clearing corporation(s) for clearing and settlement of its trades. However, clearing houses are


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required to take prior approval from SEBI before associating with stock exchanges to handle the confirmation, settlement and delivery of transactions.

- **Core Settlement Guarantee Fund:**

Clearing Corporations are required to establish a fund, called Core Settlement Guarantee Fund (Core SGF) for each segment of each recognized stock exchange to guarantee the settlement of trades executed in respective segments of the exchange. The fund shall be utilized to complete the settlement in the event of clearing member(s) failing to honour settlement obligation. Clearing Corporations must ensure that the corpus of the fund should be adequate to meet the settlement obligations arising on account of failure of clearing member(s). The stock exchanges shall have to contribute 25 % of their total assets towards the core fund, while 50% is required to be contributed by the Clearing Corporation. Clearing members cannot contribute more than 25 % of the total fund size. Clearing Corporations must also periodically conduct stress test to ascertain the sufficiency of the corpus of the fund.

## XIV. Additional Depreciation and Investment Allowance allowed to industries set-up in Bihar and West Bengal

The Finance Bill, 2015 as presented on February 28, 2015 proposed to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant acquired and installed by a manufacturing undertaking or enterprise set-up in the notified backward area of the State of Andhra Pradesh and the State of Telangana.

This higher additional depreciation shall be available in respect of acquisition and installation of any new machinery or plant during the period between 01-04-2015 and 31-03-2020.

Similarly, it is proposed to insert a new section 32AD to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if:

(*a*) it sets-up an undertaking or enterprise in any notified backward areas in the State of Andhra Pradesh and the State of Telangana; and

(*b*) the new assets are acquired and installed during the period between 01-04-2015 and 31-03-2020.

The Finance Bill, 2015 as passed by the Lok Sabha proposes to extend the benefit of additional depreciation and investment allowance to the manufacturing undertaking or enterprise set-up in the notified backward area of State of Bihar and State of West Bengal as well.

[Source: Taxmann.com]



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