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LEGISLATIVE NOTE

For the use of Members of Parliament

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THE TAXATION LAWS (AMENDMENT) BILL, 2021

I. The Taxation Laws (Amendment) Bill, 2021 proposes to amend the Income Tax Act, 1961 and the Finance Act, 2012.

Supreme Court in 2012 had given a verdict that gains arising from indirect transfer of Indian assets are not taxable under the extant provisions of the Income Tax Act 1961. The verdict was inconsistent with the legislative intent, so provisions of the Income-tax Act, 1961 were amended by the Finance Act, 2012 with retrospective effect, to clarify that gains arising from sale of share of a foreign company is taxable in India if such share, directly or indirectly, derives its value substantially from the assets located in India. The Finance Act, 2012 also provided for validation of demand, etc., under the Income-tax Act, 1961 for cases relating to indirect transfer of Indian assets.

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II. Need of the Taxation Laws (Amendment) Bill, 2021

The Taxation Laws (Amendment) Bill, 2021 has been introduced to nullify retrospective tax demand provision brought by the Finance Act 2012.

Retrospective tax demand provision -

- invited criticism from stakeholders as this militate against the principle of tax certainty;
- has not been complementing the reforms that were introduced in the financial and infrastructure sector to create a positive environment for investment in the country;
- damaging India's reputation as an attractive destination;
- were proving to be a “sore point” with potential investors; and
- needs to be nullified to attract foreign investments as these investments play an important role in promoting faster post pandemic economic recovery, growth and employment.

Salient Features of the Bill

[I] Clause 2 of the Bill seeks to amend section 9 of the Income-tax Act, 1961 relating to income deemed to accrue or arise in India so as so as to provide that -

- no tax demand shall be raised in future on the basis of the said retrospective amendment for any indirect transfer of Indian assets if the transaction was undertaken before 28th May, 2012;
- the demand raised for indirect transfer of Indian assets made before 28th May, 2012 shall be nullified on fulfilment of specified conditions such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, etc., shall be filed; and
- refund the amount paid in these cases without any interest thereon.

[II] Clause 3 of the Bill seeks to amend section 119 of the Finance Act, 2012 so as to provide that -

- validation of demand, etc., under section 119 of the Finance Act, 2012 shall cease to apply on fulfilment of specified conditions such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking that no claim for cost, damages, interest, etc., shall be filed.

III. Benefits/Effects of the Bill

The Bill promises the following benefits -

- to address the concerns of many foreign investors;
- to put to an end many of the pending arbitration cases which have created large discomfiture for India in international circles;
- by recognizing the importance of certainty in tax laws, the Bill projects India as an attractive investment destination;
- to restore India's reputation as a country facilitating a fair and predictable investment regime;
- to instill confidence among foreign investors and attract investments; and
- to support swift post pandemic economic recovery.

For select clauses of the Bill please see Annexure.

For the full text of the Bill please click on the link-
http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/120_2021_LS_E.pdf

References

- *Website of Indiacode.nic.in; Income Tax Act 1961*
- *Website of Loksabhaph.nic.in; English/Hindi version of The Taxation Laws (Amendment) Bill 2021*
- *The Business Today dated 06 August 2021
Lok Sabha passes Taxation Laws (Amendment) Bill 2021 to end retro tax*
- *News on Air dated 06 August 2021
Government introduces bill in Lok Sabha to scrap retrospective tax law*
- *<https://timesofindia.indiatimes.com/business/india-business/centre-introduces-bill-to-scrap-retrospective-tax-law/articleshow/85069433.cms>*
- *<https://www.livemint.com/economy/govt-to-amend-income-tax-act-nullify-retro-tax-demands-11628164822039.html>*

Annexure

**Tabular Presentation of Amendments made by the Taxation Laws (Amendment)
Bill, 2021 in the Section/clauses of the Principal Act**

Sl. No.	Section/Clause	Amendments of Sections/ insertion of new Sections in the Bill
1.	Amendment of section 9 of the Income-tax Act, 1961.	<p>In section 9 of the Income-tax Act, 1961, in sub-section (1), in clause (i), in <i>Explanation</i> 5, after the third proviso, the following provisos shall be inserted, namely:—</p> <p>"Provided also that nothing contained in this Explanation shall apply to—</p> <p>(i) an assessment or reassessment to be made under section 143, section 144, section 147 or section 153A or section 153C; or</p> <p>(ii) an order to be passed enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154; or</p> <p>(iii) an order to be passed deeming a person to be an assessee in default under sub-section (1) of section 201, in respect of income accruing or arising through or from the transfer of an asset or a capital asset situate in India in consequence of the transfer of a share or interest in a company or entity registered or incorporated outside India made before the 28th day of May, 2012:</p> <p>Provided also that where—</p> <p>(i) an assessment or reassessment has been made under section 143, section 144, section 147 or section 153A or section 153C; or</p> <p>(ii) an order has been passed enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154; or</p> <p>(iii) an order has been passed deeming a person to be an assessee in default under sub-section (1) of section 201; or</p> <p>(iv) an order has been passed imposing a penalty under Chapter XXI or under section 221,</p> <p>in respect of income accruing or arising through or from the transfer of an asset or a capital asset situate in India in consequence of the transfer of a share or interest in a company or entity registered or incorporated outside India made before the 28th day of May, 2012 and the person in whose case such assessment or reassessment or order has been passed or made, as the case may be, fulfils the specified conditions, then, such assessment or reassessment or order, to the extent it relates to the said income, shall be deemed never to have been passed or made, as the case may be:</p> <p>Provided also that where any amount becomes refundable to the person referred to in fifth proviso as a consequence of him</p>

		<p>fulfilling the specified conditions, then, such amount shall be refunded to him, but no interest under section 244A shall be paid on that amount.</p> <p><i>Explanation.</i>—For the purposes of fifth and sixth provisos, the specified conditions shall be as provided hereunder:—</p> <p>(i) where the said person has filed any appeal before an appellate forum or any writ petition before the High Court or the Supreme Court against any order in respect of said income, he shall either withdraw or submit an undertaking to withdraw such appeal or writ petition, in such form and manner as may be prescribed;</p> <p>(ii) where the said person has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India, whether for protection of investment or otherwise, he shall either withdraw or shall submit an undertaking to withdraw the claim, if any, in such proceedings or notice, in such form and manner as may be prescribed;</p> <p>(iii) the said person shall furnish an undertaking, in such form and manner as may be prescribed, waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the said income which may otherwise be available to him under any law for the time being in force, in equity, under any statute or under any agreement entered into by India with any country or territory outside India, whether for protection of investment or otherwise; and</p> <p>(iv) such other conditions as may be prescribed.</p>
<p>2.</p>	<p>Amendment of section 119 of the Finance Act, 2012</p>	<p>In the Finance Act, 2012, in section 119, the following provisos shall be inserted, namely:—</p> <p>"Provided that this section shall cease to apply to the person who fulfils the following conditions, namely:—</p> <p>(i) where such person has filed any appeal before an appellate forum or a writ petition before the High Court or the Supreme Court against any order in respect of said income, he shall, either withdraw or submit an undertaking to withdraw such appeal or writ petition, in such form and manner as may be prescribed;</p> <p>(ii) where such person has initiated any proceeding for arbitration, conciliation or mediation, or has given any notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India, whether for protection of investment or otherwise, he shall either withdraw or submit an undertaking to withdraw the claim, if any, in such proceedings or notice, in such form and manner as may be prescribed;</p> <p>(iii) such person shall furnish an undertaking, in such form and manner as may be prescribed, waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the said income which may otherwise be available to him under any law for the time being in force, in equity, under any statute or under any agreement entered into by India with any country or</p>

		<p>territory outside India, whether for protection of investment or otherwise; and</p> <p>(iv) such other conditions as may be prescribed:</p> <p>Provided further that if any amount becomes refundable under the Income-tax Act, 1961 to the person referred to in first proviso as a consequence of him fulfilling said conditions, such amount shall be refunded to him, but no interest under section 244A of the Income-tax Act, 1961 shall be paid on that amount."</p>
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