

Budget 2022: Key Tax Proposals on Litigation Management and Effective Tax Administration

11 February 2022

This update covers:

1	Option to file updated income tax return on payment of additional tax	1
2	Measures to reduce income tax litigation	2
3	Modification of the procedure governing Dispute Resolution Committees	3
4	Refund application for tax withheld from payments made to non-residents	3
5	Revision of transfer pricing orders	3
6	Deferment of certain faceless schemes	4
7	Streamlining of the faceless assessment scheme	4
8	Rationalisation of reassessment provisions	4
9	Liability of directors of private company	5

In the backdrop of the prolonged Covid-19 pandemic, the Government has been working towards minimising tax litigation and easing compliance for taxpayers. In line with this objective, the Finance Bill, 2022 (Bill) has proposed several amendments, some of which are discussed below.

The Finance Bill, 2022 introduces amendments to reduce litigation and encourage voluntary compliance.

1 Option to file updated income tax return on payment of additional tax

The (Indian) Income Tax Act, 1961 (ITA) requires taxpayers to file income tax returns up to the prescribed due date. Taxpayers are also permitted to file belated and revised tax returns, which may be filed up to 3 months prior to the end of the assessment year or before the completion of assessment, whichever is earlier. At times, the additional time provided to file belated / revised returns proves inadequate, given the voluminous nature of the tax filings.

The Bill proposes to provide taxpayers with additional time of 24 months from the end of the assessment year for filing of updated tax returns. An updated tax return may be filed by taxpayers irrespective of whether a tax return was previously filed for the relevant assessment year. The taxpayer would be required to pay additional tax (in addition to the regular tax due on the additional income) before filing an updated tax return.

Period for furnishing updated return	Additional tax
After expiry of time prescribed for filing belated/ revised return, but within 12 months from the end of the relevant assessment year	25% of the regular tax due on the additional income

Period for furnishing updated return	Additional tax
After 12 months from the end of the relevant assessment year, but before expiry of 24 months from the end of the relevant assessment year	50% of the regular tax due on the additional income

For computing the additional tax liability, the regular tax amount would also include applicable interest, surcharge, and cess payable.

An updated tax return cannot be filed in certain circumstances including when:

- an updated return has already been filed for the relevant assessment year;
- any proceeding for assessment/ reassessment/ re-computation/ revision of income under the ITA is pending or has been completed for the relevant assessment year;
- for the relevant assessment year, the tax officer has information pertaining to the taxpayer under specified laws¹ or under the tax treaties, and such information has been communicated to the taxpayer prior to filing of the updated return;
- prosecution proceedings under the ITA have been initiated against the taxpayer for the relevant assessment year prior to filing of the updated return;
- the updated return reflects loss, or results in a decrease in the tax liability of the taxpayer;
- search/ survey proceedings have been undertaken for the relevant assessment year or two years preceding the relevant assessment year.

This amendment will take effect from 1 April 2022. This is a welcome move that is likely to facilitate and encourage voluntary compliance.

2 Measures to reduce income tax litigation

Under the ITA, the Revenue currently has an option to defer the filing of an appeal before the Income Tax Appellate Tribunal (ITAT) against an order of the Commissioner of Income Tax (Appeals), in a case where an identical question of law is pending adjudication before the Supreme Court in the taxpayer's own case for another assessment year.

In a bid to further reduce litigation, the Bill proposes to expand the scope of this deferral. It is proposed that the assessing officer (AO) may defer the filing of an appeal before the ITAT in a taxpayer's case if a collegium of high-ranking officers is of the opinion that an identical question of law is pending adjudication before the Supreme Court or the jurisdictional High Court. Further, such an appeal may be deferred even if the identical question of law has arisen in the case of another taxpayer provided certain conditions are fulfilled.

This amendment will take effect from 1 April 2022, and should substantially reduce tax litigation and repetitive appeals.

1 The specified laws are: (i) Prevention of Money Laundering Act, 2002; (ii) Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015; (iii) the Prohibition of Benami Property Transactions Act, 1988; and (iv) The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

3 Modification of the procedure governing Dispute Resolution Committees

The Finance Act, 2021 introduced an alternate dispute resolution mechanism, i.e. Dispute Resolution Committees (DRCs), for resolving income tax disputes of small and medium taxpayers (i.e., taxpayers with income less than INR 50,00,000 and the proposed variation to their income is less than INR 10,00,000). However, the AO was not granted the power to pass an order giving effect to the directions of the DRCs. To rectify this procedural lacuna, the Bill proposes to grant the AO the power to pass an order giving effect to the directions of the DRCs in relevant cases.

This amendment will take effect from 1 April 2022.

4 Refund application for tax withheld from payments made to non-residents

In transactions with non-residents, domestic taxpayers (**Payers**) often agree to bear the income tax liability of the non-resident (**Recipient**), such that payments are made to the Recipient free of income tax. The withholding tax component is borne entirely by the Payer, and is deposited with the Government treasury. In certain cases, withholding tax is deposited by the Payer as a measure of abundant caution, even when no tax is otherwise payable. In such cases, Payers are required to invoke the appellate process and file an appeal before the Commissioner of Income Tax (Appeals) to seek a refund of the withholding tax amount. However, there is no mechanism available to the Payer to approach the AO.

The Bill proposes to insert a provision to enable the Payer to file a refund application before the AO instead of approaching the Commissioner of Income Tax (Appeals). This will also give an opportunity to the assessing officer to examine the nature of payment and its taxability. The assessing officer will be required to pass an order allowing or rejecting the refund application within 6 months from the end of the month in which the application is received.

The Bill also proposes to amend the ITA to allow the Payer to file an appeal against the order passed by the AO.

This amendment will take effect from 1 April 2022 and is expected to significantly ease the process of seeking refunds of withheld tax.

5 Revision of transfer pricing orders

The ITA empowers specified tax officers to revise an order passed by the AO, if such order is erroneous and prejudicial to the interest of the tax department. However, the provision does not specifically mention orders passed by Transfer Pricing Officers (**TPO**), and if such orders can be revised. Accordingly, the Bill proposes that specified officers would have the power to rectify an order passed by the TPO, if such order is erroneous and prejudicial to the interests of the Revenue.

This amendment will take effect from 1 April 2022 and is expected to provide certainty regarding the revision of transfer pricing orders.

6 Deferment of certain faceless schemes

To streamline processes and procedures under the ITA, faceless schemes have been notified for assessments and appeals before the Commissioner of Income Tax (Appeals) in the last few years. Similar faceless schemes were to be notified for other proceedings as well, including proceedings before the Dispute Resolution Panel, proceedings pertaining to the determination of arm's length price, and appeals to the ITAT. These schemes were to be notified in a graded manner up to 31 March 2023. The Bill proposes to defer the notification of these schemes to 31 March 2024, since these schemes would require changes in the information technology structure and consultation with the Ministry of Law & Justice.

7 Streamlining of the faceless assessment scheme

The faceless assessment scheme (**Scheme**) was introduced to fasten the pace of assessments by reducing human interface. The ITA sets out a detailed procedure that must be followed by tax officers and taxpayers for the conduct of faceless assessments. It also provides that assessments that are not made in accordance with the procedure would be void (**Nullification Provision**). However, the tax department as well as taxpayers have been facing procedural and legal difficulties with respect to the scheme. As a result of this, several assessments were made that did not strictly conform to the procedure prescribed under the ITA. These assessments were nullified due to the operation of the Nullification Provision.

To address these difficulties, the Bill proposes to overhaul and simplify the procedure set out in the ITA. The simplified procedure will apply from 1 April 2022.

Interestingly, the Bill also proposes to omit the Nullification Provision retrospectively, with effect from 1 April 2021, which is likely to give rise to questions regarding the validity of the assessments nullified so far. Given this, it remains to be seen if the proposed amendments would achieve the intended objective of reducing and simplifying tax litigation.

8 Rationalisation of reassessment provisions

The provisions relating to reassessment are constantly being streamlined and simplified by the Government. The Bill proposes to make additional amendments in this regard. Certain key proposals have been discussed below.

a. Extended reassessment limitation to apply to more cases

Currently, under the ITA, a reassessment notice can generally be issued only up to three years from the end of the relevant assessment year. An extended timeline of ten years is applicable when income escaping assessment exceeds INR 5 million and is represented in the form of an asset. The applicability of the extended timeline is proposed to be extended to income exceeding INR 5 million and represented in the form of: (i) expenditure in respect of a transaction or in relation to an event or occasion, or (ii) an entry or entries in the books of account.

b. Widening the scope of information that can lead the AO to believe that income chargeable to tax has escaped assessment

The Bill proposes to enhance the scope of information that can lead the AO to believe that income chargeable to tax has escaped assessment. Reassessment proceedings may now be initiated based on:

- i. an audit objection to the effect that the assessment has not been made in accordance with the ITA;

- ii. information received from a foreign country with which India has a tax treaty;
- iii. information collected by the AO under the faceless scheme for collection of information; and
- iv. information requiring action in consequence of an order of a tribunal or court.

c. *Eliminating the need for onerous approvals*

Under the current reassessment provisions, the AO first needs to pass an order substantiating that the case is fit for the issuance of a reassessment notice. Thereafter, the AO is required to issue a reassessment notice. Both these steps require the approval of a specified authority. To simplify the procedure, it is now proposed that the AO would only require prior approval before passing the order substantiating that the case is fit for the issuance of a reassessment notice. Approval would not be required before issuing the reassessment notice itself.

Relatedly, under the existing provisions, before issuing a reassessment notice, the AO is required to provide the taxpayer with an opportunity of being heard. This step also requires approval of the specified authority. The Bill proposes to do away with the requirement of seeking such an approval.

d. *Reassessment in consequence of search or survey*

For assessments carried out in consequence of a search, survey or requisition, it is proposed that the order of assessment, reassessment or re-computation will not be passed by an AO below the rank of the Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.

These amendments will take effect from 1 April 2022. While these amendments have been introduced to simplify the reassessment provisions and ease compliance, their impact would have to be assessed based on practical experience, particularly since some of the proposed amendments would widen the scope and ambit of the reassessment provisions.

9 Liability of directors of private company

The ITA contains a provision that enables the income-tax authorities to recover tax dues of a private company from its directors in circumstances where such tax dues cannot be recovered from the company itself. The relevant provision of the ITA is titled '*Liability of directors of private company in liquidation*'. However, it is not intended to restrict the applicability of this provision only to companies in liquidation. The provision itself also does not make any reference to '*liquidation*'. To remove ambiguity regarding the applicability of the provision, the title of the provision is proposed to be amended to '*Liability of directors of private company*'.

Further, currently, the expression 'tax due' in the provision is defined to include penalty, interest, or any other sum payable under the ITA. To avoid litigation, the Bill proposes to include the word 'fees' in the scope of the expression 'tax due'.

These amendments will take effect from 1 April 2022.

These amendments signal the Government's intent to simplify and rationalise the tax framework and reduce tax litigation. They provide clarity and aim to reduce onerous compliances for taxpayers as well as the tax authorities. However, the interpretation and practical implementation of some of the proposals will have to be closely watched.

If you require any further information about the material contained in this newsletter, please get in touch with your Trilegal relationship partner or send an email to alerts@trilegal.com. The contents of this newsletter are intended for informational purposes only and are not in the nature of a legal opinion. Readers are encouraged to seek legal counsel prior to acting upon any of the information provided herein.