BUDGET 2024

HOW DOES THE CHANGE IN CAPITAL GAINS TAX AFFECT THE SALE OF YOUR PROPERTY?

The Finance No.2 Bill 2024 has as many as 99 clauses relating to the Income Tax Act. As always, many of these are justified as being rationalisations and simplifications, and as always, several are retrospective or have a retroactive impact in that plans that assessees have made, and which are set at naught by amendments, which come into effect immediately from today ie. 23.07.2024, itself

The most striking of these are a set of povisions relating to capital gains tax. Upto now, the capital gain on the sale of a property which is a long-term capital, asset was calculated after deducting “the indexed cost”. This system was in force for many years, and now has peremptorily been removed with effect from today itself.

An index figure was announced each year with reference to the year 2001 and the index already announced for FY 2024-25 is 3.63 times the value as of 01.04.2001 in respect of long-term capital assets. Now the indexation benefit is being taken away. This is being done by way of an amendment to the second proviso to section 48, and the amendment proposed is that only transfers before 23.07.2024 will be eligible for indexation.

Fortunately, section 55(2)(b)(i), which provides for the step up to the value as on 01.04.2001, in the case of a capital asset, which was acquired before 2001, has not been removed or amended.

There are many transactions in process just now where an assessee proposed to sell the properties and has computed tax liability based on the indexation from 2001 or from the date of acquisition, whichever is later. These calculations will now no longer be applicable.

The rate of tax on a long term capital gain will now be 12.5% plus surcharge plus cess. The effect on each transaction will vary, and this needs to be looked into. Some illustrations have been provided below:

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Illustration 1:
Property acquired before 2001:
Value as of 1.4.2001 – ₹1,00,00,000/-
Indexed Cost as of 2024 – ₹3,63,00,000/-
Selling Price – ₹5,00,00,000/-
Capital Gains Tax Before 23.07.2024 i.e. 20% of the Gain of Rs.1,37,00,000/-
= ₹27,40,000/- plus cess plus surcharge

Capital Gains Tax From 23.07.2024 i.e. 12.5% of the Gain
= ₹50,00,000/- plus cess plus surcharge

Illustration 2:
Property acquired on 1.4.2018:
Cost – ₹1,00,00,000/-
Indexed Cost as of 2024 – ₹1,29,64,285/-
Selling Price – ₹5,00,00,000/-
Capital Gains Tax Before 23.07.2024 i.e. 20% of the gain of Rs.3,70,35,715/-
= ₹74,07,143/- plus cess plus surcharge

Capital Gains Tax From 23rd July 2024 i.e. 12.5% of the Gain
= ₹50,00,000/- plus cess plus surcharge

There are several other situations which arise which need to be considered. One situation is when a non-resident has proposed to sell a property and has applied to the assessing officer under section 197 of the Income Tax Act for a certificate for deduction of tax at a lower rate and has been granted such a certificate on the basis of the indexation. Now the certificates may have to be reviewed, or the seller may have to pay more tax.

There are several other amendments in relation to immovable property of which one has to be mindful. One is section 194-IA of the Income Tax Act. This provides for a TDS of 1% on the consideration paid for purchase of immovable property if the property is worth ₹50 lakhs or more. Now this is being clarified to state that if - for example, the property is worth ₹60 lakhs and there are two sellers and each is to receive ₹30 lakhs, a buyer, upto now, may not have deducted TDS on the basis that the amount payable to each seller was less than ₹50 lakhs. Now the provision will be that TDS will be deducted if the total value of the property is ₹50 lakhs or more and not every transaction or payment.

One feature of the Income Tax Act was that there were different periods applicable for different kinds of assets for determining whether the asset was a short-term capital asset or a long-term capital asset. This the period of holding in some cases was one year in others was two years and yet others was three years. Section 2(42A) is now proposed to be amended to provide that listed securities will be treated as long-term capital assets if they've been held for more than 12 months and all other assets will be long term capital assets , if they've been held for more than 24 months. The category of assets which were required to be held for three years has now been removed.

The Finance Minister herself announced that the Income Tax Act has become complex and a review of the entire Act is to be carried out in the next 6 months to simplify it. The 99 amendments which have now been proposed could surely have waited for a few months, if the object is truly simplification!