

## Union Budget 2024 M&A proposals



- **Taxability of transfer of a capital asset under a gift or will or an irrevocable trust**
  - Transfer of a capital asset under a gift or will or an irrevocable trust by any taxpayer was not regarded as a “transfer” for the purpose of the Income-tax Act. Hence, this is not subject to capital gains tax in the hands of such transferor. From 1 April 2024, this rule is intended to be made applicable to transfer by an individual or Hindu undivided family only. Thus, a gift or transfer to an irrevocable trust of any capital asset by other taxpayers shall come under the purview of capital gains tax.
  - Companies/LLPs that have carried out any such restructuring after 1 April 2024 will have to review their tax position.
- **Abolition of Angel tax**
  - Angel tax is tax payable by a closely held company on the issuance of shares to any person, on the aggregate consideration received in excess of the fair market value of its shares issued. The Finance Bill proposes to abolish Angel tax from 1 April 2024.
  - This is a relief for companies (especially non-qualifying start-ups) that are in the process of raising funds, or have earlier raised funds in the form of convertible instruments where conversion will take place in the future.
- **Cost of acquisition of shares transferred in an Offer For Sale (OFS)**
  - Currently, there is no specific mechanism to derive the fair market value (as of 31 January 2018) of shares transferred in an OFS for computing their acquisition cost, resulting in a possible view that no capital gains tax was payable. It is now proposed to be clarified that from 1 April 2017, fair market value for the purpose of computing acquisition cost in

such scenario shall be the amount that bears the same proportion to the cost of the shares as the Cost Inflation Index (CII) for FY 2017-18 bears to the CII for the year in which shares were first held or the CII of 2001-02, whichever is later.

- Taxpayers who have sold shares (on or after 1 April 2017) under the OFS route and adopted a position of non-taxability under Capital Gains would need to reassess their tax position.

- **Tax treatment of buy-back of shares**

- Payment of consideration by a domestic company to a shareholder on buy-back of shares was taxable in the hands of the company. Now, effective 1 October 2024, the incidence of tax has been moved to the shareholder as follows:
  - o Consideration received shall be taxable in the hands of the shareholder as “dividend”, without any deduction for expenses, at the applicable tax rates.
  - o For calculation of capital gains, the consideration shall be considered as “nil” and actual cost of acquisition shall be available, resulting in a capital loss.
- This amendment has a far-reaching impact as the domestic tax rate for dividend is typically higher compared with the buy-back tax rate. Each shareholder may need to assess whether any tax treaty benefits or deduction for dividend distributed to its shareholders can be availed.

- **Timelines for re-assessment proceedings and TDS proceedings**

- It is proposed to reduce the time limit for initiation of reassessment to six years/six years and three months from the end of relevant FY in certain scenarios. Further, for completion of TDS proceedings, it proposes to provide a uniform limitation period of six years from the end of the relevant FY in case of payments to both residents and non-residents.
- This amendment brings in certainty and should help in M&A negotiations on withholding tax indemnities as there were no specific timelines until now for the completion of TDS proceedings in respect of payments to non-residents, and reassessment timelines could go up to 11 years from the end of relevant FY.

- **Amendment to the capital gains tax rate and the holding period of capital assets**

| Particulars  | Old  |                    | Proposed from 23 July 2024  | Remarks   |
|--|--|--------------------|---|---|
|  | Residents  | Non-residents (NR) | Resident/NR   |   |
| <b>Long-term capital gains tax rate</b>                                |  |                    |   |   |
| Listed shares/ units of business trust/ units of equity-oriented funds | 10%  |                    | 12.5%   |   |
| Unlisted shares of a closely held company                              | 20% (additionally, indexation benefit would have been available) | 10%                | 12.5% (with forex fluctuation benefit for NR wherever applicable)                               | NR investors will need to weigh in the effect of the increased tax rate with the benefits from forex fluctuation benefit to assess the overall effect on IRR.<br><br>Resident investors may welcome the tax rate reduction; however, the indexation benefit has been withdrawn. |
| Listed debentures  | 10%  |                    | 12.5%   |   |
| Unlisted debentures/ bonds   | 20%  | 10%                | <b>Normal tax rates are applicable as the asset is deemed to be a short-term capital asset.</b> | Investors will need to reassess their investment structures in debentures.  |
| Slump sale of undertaking  | 20%  |                    | 12.5%   |   |
| Other capital assets, including immovable property                     | 20% (additionally, indexation benefit would have been available) |                    | 12.5%   |   |
| <b>Short-term capital gains tax rate</b>                               |  |                    |   |   |
| Listed shares/ units of business trust/ units of equity-oriented funds | 15%  |                    | 20%   |   |
| Other capital assets, including immovable property                     | Normal tax rates are applicable                                  |                    | Normal tax rates are applicable   |   |

Note 1: The above rates are exclusive of surcharge and cess.

Note 2: The period of holding for long-term capital gains will be 12 months for listed shares/listed debentures/listed units of business trust/units of equity-oriented funds, 36 months for slump sale of the undertaking and 24 months for all other assets.