

INDIA BUDGET 2016

A. International tax

I. Equalisation levy – stems out of OECD's BEPS Action Plan 1 on Digital Economy

- New Chapter titled "Equalisation Levy" introduced in Finance Bill, considering it is essential to address the challenges in terms of taxation of digital transactions in view of the potential of new digital economy and rapidly evolving business operations
- Equalisation levy of 6% of the amount of consideration for specified services received or receivable by a non-resident (not having a PE in India) from a resident in India (who carries out business or profession) or from a non-resident (having a PE in India) proposed to be introduced
- No such levy will be made if the aggregate amount of consideration for specified services received or receivable by a non-resident does not exceed Rs 1 lakh in any previous year
- In order to avoid double taxation, it is proposed to provide exemption u/s 10 of the Act for any income arising from providing specified services on which equalisation levy is chargeable.
- It is proposed to define certain terms and expressions to provide certainty and avoid interpretational issues. Procedure for collection and recovery of equalization levy to also be provided
- In order to provide for the administrative mechanism of the equalisation levy, it is proposed to provide for statutory authorities and also prescribe the duties and powers of the authorities to administer the equalisation levy.

II. Exemption for income from storage and sale of crude oil

It is proposed to exempt income of foreign company from storage and sale of crude oil stored as part of strategic reserves if such storage and sale is pursuant to a notified agreement entered into by Central Govt. / approved by Central Govt. Amendment proposed to take effect retrospectively from AY 2016-17 onwards.

III. Mining of Diamonds

It is proposed to provide that no income shall be deemed to accrue / arise in India to a foreign company engaged in the business of mining of diamonds through or from the activities which are confined to display of uncut and unassorted diamonds in a Special Zone notified by the Central Government in the Official Gazette in this behalf. Amendment proposed to take effect retrospectively from AY 2016-17 onwards.

IV. Taxation of Income from 'Patents'

- In order to encourage indigenous R&D activities and to make India a global R & D hub, puts in place a concessional taxation regime for income from patents. This is in line with OECD BEPS project - Action Plan 5 which propagates the nexus approach.
- Inserts new Sec 115BBF to provide that where the total income of the "eligible assessee" includes any income by way of royalty in respect of a patent developed and registered in

India, then such royalty shall be taxable at the rate of 10% (plus applicable surcharge and cess) on gross basis

- No expenditure or allowance in respect of such royalty income shall be allowed under the Act
- Eligible assessee to mean a person resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent.

V. Deferment of Place of Effective Management ('POEM')

- a) In order to provide clarity in respect of implementation of POEM based rule of residence and also to address concerns of the stakeholders, -
- applicability of POEM based residence test is deferred by one year and the determination of residence based on POEM shall be applicable from April 1, 2017
 - provide a transition mechanism for a company which is incorporated outside India and has not earlier been assessed to tax in India. Government empowered to notify rules for implementation of POEM.

VI. Applicability of MAT provisions to foreign companies for the period prior to April 1, 2015

- In view of the recommendations of the committee headed by Justice A.P. Shah and with a view to provide certainty in taxation of foreign companies, Sec 115JB shall not be applicable to a foreign company w.e.f April 1, 2001 if - (i) assessee is a resident of a country or a specified territory with which India has an agreement referred to in Sec 90(1) or the Government has adopted any agreement u/s 90A(1) and the assessee does not have a PE in India in accordance with the provisions of such Agreement; or(ii) assessee is a resident of a country with which India does not have a DTAA and assessee is not required to seek registration under any law for the time being in force relating to companies.
- Amendment made effective retrospectively from the April 1, 2001

VII. Tax Incentives to International Financial Services Centre ('IFSC')

- With a view to incentivize the growth of IFSC into a world class financial services hub, amends Sec 10(38) to provide for exemption from tax on capital gains to the income arising from transaction undertaken in foreign currency on a recognized stock exchange located in an IFSC even when STT is not paid in respect of such transactions.
- Amends Sec 115JB to provide that in case of a company, being a unit located in IFSC and deriving its income solely in convertible foreign exchange, MAT shall be chargeable at the rate of 9%.
- Also amends Sec 115O so as to provide that no tax on distributed profits shall be chargeable in respect of total income of a company being a unit located in IFSC, deriving income solely in convertible foreign exchange, for any AY on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after April 1, 2017 out of its current income, either in the hands of the company or the person receiving such dividend.

- Amends Sec 113A so that STT shall not apply to taxable securities transactions entered into by any person on a recognized stock exchange located in IFSC where the consideration for such transaction is paid or payable in foreign currency w.e.f. June 1, 2016.
- Inserts Sec 132A so as to provide that the provisions of chapter VII shall also not apply to taxable commodities transactions entered into by any person on a recognized association located in unit of IFSC where the consideration for such transaction is paid or payable in foreign currency, thereby exempting such transaction from CTT w.e.f. June 1, 2016.

Transfer Pricing

I. BEPS Action Plan - Country-By-Country Report and Master file

BEPS Action 13 provides a framework for a 3 tier approach to transfer pricing documentation in the form of a Master file, Local file and CbC report. In order to implement the international consensus, it is proposed to provide a specific reporting regime in respect of CbC reporting and also the master file. India's proposed OECD framework is largely in line with OECD's BEPS proposals.

II. Master file scheme

- Entities being constituent of an international group shall, in addition to the information related to the international transactions, also maintain such information and document as is prescribed in the rules. The rules shall thereafter prescribe the information and document as mandated for master file under OECD BEPS Action 13 report;
- The information and document shall also be furnished to the prescribed authority within such period as may be prescribed and the manner of furnishing may also be provided for in the rules;
- Non-furnishing of the information and document to the prescribed authority would attract a penalty of Rs. 5 lakh. However, reasonable cause defence against levy of penalty shall be available to the entity.

III. CbC reporting scheme

- Reporting provision shall apply in respect of an international group having consolidated revenue above a threshold to be prescribed.
- the parent entity of an international group, if it is resident in India, shall be required to furnish the report in respect of the group to the prescribed authority on or before the due date of furnishing of return of income for the Assessment Year relevant to the Financial Year (previous year) for which the report is being furnished;
- the parent entity shall be an entity which is required to prepare consolidated financial statement under the applicable laws or would have been required to prepare such a statement, had equity share of any entity of the group been listed on a recognized stock exchange in India;
- every constituent entity in India, of an international group having parent entity that is not resident in India, shall provide information regarding the country or territory of residence of the parent of the international group to which it belongs. This information shall be furnished to the prescribed authority on or before the prescribed date;

- v. the report shall be furnished in prescribed manner and in the prescribed form and would contain aggregate information in respect of revenue, profit & loss before Income-tax, amount of Income-tax paid and accrued, details of capital, accumulated earnings, number of employees, tangible assets other than cash or cash equivalent in respect of each country or territory along with details of each constituent's residential status, nature and detail of main business activity and any other information as may be prescribed. This shall be based on the template provided in the OECD BEPS report on Action Plan 13;
- vi. an entity in India belonging to an international group shall be required to furnish CbC report to the prescribed authority if the parent entity of the group is resident ;-
- in a country with which India does not have an arrangement for exchange of the CbC report or
 - such country is not exchanging information with India even though there is an agreement; and
 - This fact has been intimated to the entity by the prescribed authority
- vii. If there is more than one entity of the same group in India, then the group can nominate (under intimation in writing to the prescribed authority) the entity that shall furnish the report on behalf of the group. This entity would then furnish the report;
- viii. If an international group, having parent entity which is not resident in India, had designated an alternate entity for filing its report with the tax jurisdiction in which the alternate entity is resident, then the entities of such group operating in India would not be obliged to furnish report if the report can be obtained under the agreement of exchange of such reports by Indian tax authorities;
- ix. The prescribed authority may call for such document and information from the entity furnishing the report for the purpose of verifying the accuracy as it may specify in notice. The entity shall be required to make submission within thirty days of receipt of notice or further period if extended by the prescribed authority, but extension shall not be beyond 30 days;
- x. For non-furnishing of the report by an entity which is obligated to furnish it, a graded penalty structure would apply:-
- if default is not more than a month, penalty of Rs. 5000/- per day applies
 - if default is beyond one month, penalty of Rs 15000/- per day for the period exceeding one month applies;
 - for any default that continues even after service of order levying penalty either under (a) or under (b), then the penalty for any continuing default beyond the date of service of order shall be @ Rs 50,000/- per day;
- xi. In case of timely non-submission of information before prescribed authority when called for, a penalty of Rs5000/- per day applies. Similar to the above, if default continues even after service of penalty order, then penalty of Rs.50,000/- per day applies for default beyond date of service of penalty order
- xii. If the entity has provided any inaccurate information in the report and,-
- the entity knows of the inaccuracy at the time of furnishing the report but does not inform the prescribed authority; or
 - the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or
 - the entity furnishes inaccurate information or document in response to notice of the prescribed authority, then penalty of Rs.500,000/- applies;

- xiii. The entity can offer reasonable cause defence for non-levy of penalties mentioned above.

CbC reporting requirement not applicable unless the consolidated revenues of the preceding year of the group does not exceed threshold to be prescribed. CbC reporting for an international group having Indian parent, for the previous year 2016-17, shall apply only if the consolidated revenue of the international group in previous year 2015-16 exceeds € 750 million (the international consensus threshold) or INR 5,395 crore (the equivalent would be determinable based on exchange rate as on the last day of previous year 2015-16).

IV. Time limit for passing order by TPO and completion of assessment when a reference made to TPO

Under Sec 92CA(3A) TPO is required to pass an order 60 days prior to date on which limitation for completing assessment expires. It is proposed to amend Sec. 92CCA(3A) to provide that if assessment proceedings are stayed by a court order or where a reference for exchange of information has been made by the competent authority the time limit and time available to TPO is less than 60 days after excluding the time for which assessment was stayed or time taken for receipt of information, then such remaining period shall be extended to 60 days. Further, consequential amendment made in Se. 153.