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AMEDMENTS RELATING TO NRIS/ FOREIGN CO IN UNION BUDGET 2012-2013

FIRST CUT

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I. INCOME TAX RATES:

Income Tax Rates for Individuals for F.Y. 2012-2013

The tax rates for Income from the period 1st April 2012 to 31st March 2013 are given below. These rates are applicable to NRIs (irrespective of whether their gender and age). No additional exemption is provided to NRIs being Females and Senior Citizens as contrary to Resident Females and Resident Senior Citizens.

Individual Income	Rate
Upto Rs.2,00,000/-	Nil*
Rs. 2,00,001/- to Rs. 5,00,000/-	10% of the amount by which the income exceeds Rs. 2,00,000 /-
Rs. 5,00,001/- to Rs. 10,00,000/-	30,000/- plus 20% of the amount by which the income exceeds Rs.5,00,000\-
Above Rs.10,00,000/-	1,30,000/- plus 30 % of the amount by which income exceeds Rs./-

*If NRI is having only Short Term Capital Gain in Equity shares (on which STT is paid), there is no benefit of basic exemption available. In such case flat rate of Tax @ 15.45% is applicable.

Income Tax Rates for Foreign Companies for F.Y. 2012-2013

Tax Rates for Foreign Company	Rate of Income Tax (IT)	Surchage on IT*	CESS & SHEC on IT	Effective Tax Rate
Normal Rate	40%	2%	3%	42.024%
Rate as per MAT**	18.5%	2%	3%	19.44%

***** A addition of surcharge is levied for Foreign Companies having income above INR 10 million.

* *Foreign Companies in India whose tax liability is less than 18.5% of the book profits" pay a 18.5% minimum alternative tax (MAT) on the "book profits" with a surcharge and CESS. , bringing the effective tax rate of 20.01% for domestic companies and 19.44% for foreign companies.

II. ADVANCE PRICING AGREEMENT

Moving forward to DTC, the APA is introduced in this Bill. Advance Pricing Agreement is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricingmethodology for a set of transactions over a fixed period of time in future. The APAs offer better assurance on transfer pricingmethods and are conducive in providing certainty and unanimity of approach. This will reduce the Transfer Pricing Litigations and will have certainty for foreign investors. New sections 92CC and 92CD are inserted in the Act to provide a framework for advance pricing agreement underthe Act.

Income Tax Rates for Individuals:

Exemption Limit raised to Rs.2,00,000/-

30% tax on Income above Rs. 10,00,000/-

Income Tax Rates for Foreign Companies:

There is no change in the rate of taxes.

APA:

Advance Pricing Agreement introduced in the Bill w.e.f. 01/07/2012

III. GAAR – General Anti Avoidance Rules

The question of substance over form has consistently arisen in the implementation of taxation laws. In the Indian context,judicial decisions have varied.In an environment of moderate rates of tax, it is necessary that the correct tax base be subject to tax in the face of aggressive tax planning and use of opaque low tax jurisdictions for residence as well as for sourcing capital. Most countries have codified the "substance over form" doctrine in the form of General Anti Avoidance Rule (GAAR).

General Anti-Avoidance Rules (GAAR) are introduced in the current budget. The implication of this is that the Income-tax department will have powers to deny tax benefit if a transaction was carried out exclusively for the purpose of avoiding tax. A very liberal view on such transactions taken by the Supreme Court in its recent order in the Vodafone tax case, put further restraint on the tax department from taking action against transactions suspected to have been devised for the purpose of avoiding tax.

Incorporation of GAAR in the Income-tax Act now provides more freedom to the tax authorities to deal with sham transactions.

IV. TRANSFER PRICING:

Section 92CA of the Act is amended retrospectively w.e.f. 01/06/2002 to empower Transfer Pricing Officer (TPO) to determine Arm's Length Price of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer, provided that such international transaction was not reported by the taxpayer as per the requirement cast upon him under section 92E of the Act. However no cases would be reopened.

Transfer Pricing regulations (including procedural and penalty provisions) applicable to transactions between related resident parties for the purposes of computation of income, disallowance of expenses etc. as required under provisions of sections 40A, 80-IA, 10AA, 80A, sections where reference is made to section 80-IA, or to transactions as may be prescribed by the Board, if aggregate amount of all such domestic transactions exceeds Rupees 5 crore in a year. The meaning of related persons as provided in section 40A to include companies having the same holding company.

No adjustments was required to be made to transaction value ensure that in case variation of transaction price if the variation of transaction price from the arithmetic mean is within the tolerance range of 5%. This provision has lead tomany controversies. Now in order to bring more clarity and resolving the controversy with retrospective effect in respect of first provisoto section 92C(2) as it stood before its substitution by Finance Act (No.2), 2009 so that the tolerance band of 5% is not taken tobe a standard deduction while computing Arm's Length Price.

In case of all assessees, who have undertaken international transactions and are required to obtain and file Transfer Pricing report as per Section 92E of the Act, the due date of filing of return of income is extended to 30th November of the assessment year.

GAAR:

Incorporation of GAAR in the Income-tax Act now provides more freedom to the tax authorities to deal with sham transactions

Transfer Pricing:

Examination by the Transfer Pricing Officer of international transactions not reported by the Assessee

Transfer Pricing Regulations to apply to certain domestic transactions w.e.f 01/04/2013

ALP:

Tolerance Band of 5% not to be taken as standard deduction from ALP.

Filing Return:

Assessee to whom TP Provisions apply, can file return till 30th November

V. INCOME DEEMED TO ACCRUE OR ARISE IN INDIA

An asset or a capital asset being any share or interest in a company or entity registeredor incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India if theshare or interest derives, directly or indirectly, its value substantially from the assets located in India

Further any gains / income generated on account of transfer of above mentioned assets whether directly or indirectly, voluntarily or involuntarily by way of an agreement (whether entered into in India or outside India) would be taxable in India.

VI. TDS OBLIGATION FOR NRIS / FOREIGN CO

NRIs / Foreign Companies are obliged to deduct TDS u/s 195 on payments made to other Non-residents irrespective of whether or not the non-resident / Foreign Co has:-
(a) a residence or place of business or business connection in India; or
(b) any other presence in any manner whatsoever in India.

VII. ROYALTY PAYMENTS:

Royalty definition to include use or right to use of computer software (including granting ofa license) irrespective of the medium through which such right is transferred and whether or not
(a) the possession or control of such right, property or information is with the payer;
(b) such right, property or information is used directly by the payer;
(c) the location of such right, property or information is in India.

The term "process" in the definition of royalty includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fiber or by any other similar technology, whether or not such process is secret.

VIII. DOUBLE TAXATION AVOIDANCE AGREEMENTS:

Any Meaning assigned through notification to a term used in agreement but not defined in the Act or Agreement, shall be effective from the date of coming into force of the Agreement

It is noticed that in many instances the taxpayers who are not tax resident of a contracting country do claim benefit under the DTAA entered into by the Government with that country. Thereby, even third party residents claim unintended treaty benefits. Therefore, Section 90 and Section 90A of the Act are amended to make submission of Tax Residency Certificate containing prescribed particulars, as a necessary but not sufficient condition for availing benefits of the agreements referred to in these Sections.

<u>Deemed Income:</u>

Amendment of Section 2(14), 2(27) and 9(1)(1) gives Taxation right on the gains derived of offshore transactions where the value is attributable to the underlying asset

<u>TDS:</u>
NRI to deduct tax while paying to other NRI

<u>Royalty</u>

To include use of computer software and transmission by satellite

<u>Double Taxation Avoidance Agreements:</u>

Explanation of any term in DTAA would be valid from the date of such DTAA

Tax Residency Cerficate not to be considered as conclusive and sufficient evidence

IX. TDS ON INTEREST ON EXTERNAL COMMERCIAL BORROWINGS:

The rate of withholding tax on interest payments on external commercial borrowings is from 20 per cent to 5 per cent for three years. These sectors are:

- power;
- airlines;
- roads and bridges;
- ports and shipyards;
- affordable housing;
- fertilizer; and
- dams

X. ALTERNATE MINIMUM TAX

In order to moderate the outgo on profit linked deductions,the levy of Alternate Minimum Tax (AMT) is extended on all persons other than companies, claiming profit linked deductions.

XI. STT:

In order to reduce transaction costs in the capital markets, Securities Transaction Tax (STT) (which was payable on sale price / purchase price) is reduced by 20 per cent (from 0.125 per cent to 0.1 per cent) on cash delivery transactions.

XII. DIVIDED FROM FOREIGN SUBSIDARIES:

Repatriation of dividends from foreign subsidiaries of Indian companies to India is allowed at a lower tax rate of 15 per cent as against the tax rate of 30 per cent for one more year i.e. upto March 31, 2013.

XIII. TAX AUDIT:

For Small and Medium Enterprises, the turnover limit for Business for compulsory tax audit of accounts as well as for presumptive taxation is raised from Rs.60 lakh to Rs.1 crore.

Similarly the gross receipts limit for profession is raised from Rs.15 lakh to Rs. 25 lakh.

TDS on Int on ECB – 5%

AMT to apply to all persons other than company

STT – 0.1%

Dividend from Foreign Subsidiary taxes @ 15%

Tax Audit for Turnover exceeding 1 crore and gross receipts exceeding 25 lakhs

XIV. CAPITAL GAINS EXEMPTION:

Capital gains exemption for reinvestment in SME.

In order to augment funds for Small and Medium Enterprises, capital gains tax on sale of aresidential property is exempted, if the sale consideration is used for subscription in equity of a manufacturing SME company for purchase of new plant and machinery. Certain conditions need to be met with in order to avail such exemption.

XV. UNACCOUNTED MONEY:

Government has made following amendments which are measures to deter the generation and use of unaccounted money.

Compulsory Filing of ROI for residents having assets outside India

- Provisions of section 139 are amended so that furnishing of return of income under section 139 may be made mandatory for every resident having any asset (including financial interest in any entity) located outside India or signing authority in any account located outside India. Furnishing of return by such a resident would be mandatory irrespective of the fact whether the resident taxpayer has taxable income or not.

Reopening of Case of assets outside India upto 16 years

- The time limit for issue of notice for reopening an assessment is increased to 16 years, where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

TCS on cash purchase of jewellery

- From 01/07/2012 the seller of bullion and jewellery shall collecttax at the rate of 1% of sale consideration from every buyer of bullion and jewellery if sale consideration exceeds two lakh rupeesand the sale is in cash. This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personaluse.

TDS on sale of Immovable property by Residents

- In order to collect tax at the earliest point of time and also to have a reporting mechanism of transactions in the real estate sector, it is now provided that every transferee, at the time of making payment or crediting any sale consideration for transfer of immovable property (other than e consideration paid or payable for the transfer of such property exceeds –
  a. fifty lakh rupees in case such property is situated in urban areas like metros
  b. twenty lakh rupees in case such property is situated in any other area.

- Section 68 of the Act is amended to provide that the nature and source of any sum credited, as share capital, share premium etc., in the books of a closely held company shall be treated as explained only if the source of funds is also explained by the assessee company in the hands of the resident shareholder.

Taxation of unexplained money- 30 % irrespective of the slab rate.

- In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, tax on the unexplained credits, money, investment, expenditure, etc., which has been deemed as income is levied at the rate of 30% (plus surcharge and cess as applicable).

XVI. DONATION:

Currently, there is no provision in either of the aforesaid sections specifying the mode of payment of money. Therefore, sections 80G and 80GGA so as specify therein that any payment exceeding a sum of ten thousand rupeesshall only be allowed as a deduction if such sum is paid by any mode other than cash.These amendments will take effect from 1st April, 2013

Prohibition of cash donations in excess of ten thousand rupees

XVII. DEDCUTION FOR LIFE INSURANCE POLICY

The deduction for life insurance premium as regards insurance policies issued on or after 1st April, 2012 shall be allowed for only so much of the premium payable as does not exceed 10% of the actualcapital sum assured as against the earlier limit of 20%.

LIC deduction only if premium is 10% of Sum Assured

XVIII. HEALTH CHECK UP

Within the existing limit for deduction allowed for health insurance, a deduction of upto Rs.5,000 is allowed for preventive health check-up.

XIX. WEIGHTED DEDUCTION FOR BUSINESS EXPENDITURE

The limit for weighted deduction for various business expenditures has been revised.

Weighted Deduction for In-house Research, Skill Development, Agriculture Extension, Capital Expenditure

Type of Expenditure	Revised Deduction
in-house research and development facilities	200%, the benefit of such deduction is extended to 5 more years i.e. upto 31/03/2017.
Expenditure for Skill Development	150%
Agricultural Extension Project	150 %
Capital Expenditure of Specifed Business	150%

XX. EXEMPTION IN RESPECT OF INCOME RECEIVED BY CERTAIN CRUDE OIL COMPANIES

In the national interest, a mechanism has been devised to make payment to certain foreign companies in India in Indian currency for import of crude oil. The current provisions of the Income-tax Act would render such payment taxable in India because payment is being received by these foreign companies in India in Indian currency. This would not be justified when such payment is based on national interest and particularly when no other activity is being carried out in India by these foreign companies except receipt of payment in Indian currency.

Exemption in respect of income received by certain crude oil companies

It is therefore provided for exemption in respect of any income of a foreign company received in India in Indian currency on account of sale of crude oil to any person in India subject to certain conditions.

XXI. AUTHORITY FOR ADVANCE RULINGS (AAR)

It is provided that an increase in the fee for filing an application for advance ruling be made from Rs.2500 to Rs.10,000 or such fee as may be prescribed, whichever is higher.

XXII. LIBRELISING INVESTMENT OPPURTUNITIES IN INDIA

Following librelistion for ECBs are propoerI proposed

- Power Projects:ECB to part finance Rupee debt of existing power projects.
- Road Construction Project - allow ECB for capital expenditure on the maintenance and operations of toll systems for roads and highways so long as they are a part of the original project.
- Civil Aviation - ECB for working capital requirements of the airline industry for a period of one year, subject to a total ceiling of US Dollar 1 billion.

Few proposals which government is considering from FDI perspective:

- Civil Aviation: a proposal to allow foreign airlines to participate up to 49 per cent in the equity of an air transport undertaking engaged in operation of scheduled and non-scheduled air transport services is under active consideration of the Government.

- Multi Brand Retail: The decision in respect of allowing FDI in multi-brand retail trade up to 51 per cent, subject to compliance with specified conditions, has been held in abeyance. Efforts are on to arrive at a broad based consensus in consultation with the State Governments.

The above are proposed by the Honable Finance Minister, However it would be effective after the necessary amendments in Fema, 1999 which may take few weeks/months.

ECB for

Power Projects

Road Construction Civil Aviation

FDI in

Civil Aviation, Multi-Brand Retail still in consideration

NOTE:

Technically, the above tax proposals are effective only after The Finance Bill, 2012 is passed by the Indian Parliament and assented by the President of India and then the proposals shall be effective w.e.f.1st April 2012 (except otherwise stated) i.e. for Financial Year: 2012-2013 and Assessment Year: 2013-2014).

DISCLAIMER: