

HIGHLIGHTS – DIRECT TAX PROPOSALS OF UNION BUDGET 2015-16

Tax Rates

- No change in the basic exemption limit and the tax rates of individuals
- Corporate tax rates proposed to be reduced from 30% to 25% over the next four years, starting from next financial year.
- The existing rate of tax on Income by way of Royalty and Fees for technical services in case of non-residents @25% proposed to be reduced to 10%.
- Additional surcharge @ 2% being levied on income exceeding Rs. 1 crore. This surcharge would be levied in place of Wealth-tax which is proposed to be abolished.

Deductions from Gross Total Income

- Exempt-Exempt-Exempt (EEE) tax benefit proposed for assessee having a girl child and investing under the Sukanya Samriddhi Account Scheme. The investments made in the Scheme will be eligible for deduction under section 80C of the Act, the interest accruing on deposits in such account will be exempt from income tax and the withdrawal from the said scheme in accordance with the rules of the said scheme will be exempt from tax.
- In view of continuous rise in the cost of medical expenditure, section 80D is proposed to be amended to raise the limit of deduction from Rs. 15,000 to Rs. 25,000. Further, the limit of deduction for senior citizens is also proposed to be increased from Rs. 20,000 to Rs. 30,000.
- As a welfare measure towards very senior citizens, a deduction under section 80D is proposed for any payment made on account of medical expenditure in respect of a very senior citizen, subject to a limit Rs. 30,000.
- The limit for deduction under section 80DDB is proposed to be increased to Rs. 80,000 in respect of amount paid for medical treatment of very senior citizen.
- Section 80DD and section 80U is proposed to be amended to increase the limit from Rs. 50,000 to Rs. 75,000 and from Rs. 1 lakh to Rs. 1.25 lakh, as the case may be.

- In order to promote social security, deduction section 80CCC(1) which provides for deduction of amount paid or deposited to effect or keep in force a contract for any annuity plan of LIC or any other insurer for receiving pension from a fund set up under a pension scheme is proposed to be amended to raise the limit of deduction from Rs. 1 lakh to Rs. 1.5 lakh, within the overall limit provided in section 80CCE.
- Section 80G is proposed to be amended to provide for 100% deduction in respect of donations made to the National Fund for Control of Drug Abuse.
- With a view to encourage and enhance people's participation in the national effort to improve sanitation facilities and rejuvenation of river Ganga, section 80G is proposed to be amended so as to provide 100% deduction for donations made by any donor to the Swachh Bharat Kosh and to Clean Ganga Fund.

Measures to curb black money

- In order to curb generation of black money by way of dealings in cash in immovable property transactions, section 269SS is proposed to be amended so as to provide that no person shall accept from any person, any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.
- Similarly, section 269T also is proposed to be amended so as to provide that no person shall repay any loan or deposit made with it or any specified advance received by it in relation to transfer of an immovable property whether or not the transfer takes place, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more.

General Anti Avoidance Rule (GAAR)

- The implementation of General Anti Avoidance Rule (GAAR) is proposed to be deferred by two years. Accordingly, it would be applicable for the financial year 2017-18 (A.Y. 2018-19) and subsequent years. Further, it is also proposed that the investments made upto 31.03.2017 shall not be subject to GAAR.

Additional Investment Allowance and provisions in respect of additional depreciation

- A new section 32AD is proposed to be inserted to provide for an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if—
 - (a) he sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any notified backward areas in the State of Andhra Pradesh and the State of Telangana; and
 - (b) the new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period beginning from the 1st April, 2015 to 31st March, 2020.

This deduction shall be available over and above the existing deduction available under section 32AC of the Act.

- Further, in order to incentivise acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward area in the State of Andhra Pradesh or the State of Telangana, it is proposed to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed by a manufacturing undertaking or enterprise which is set up in the notified backward area of the State of Andhra Pradesh or the State of Telangana on or after the 1st day of April, 2015.
- To remove the discrimination in the matter of allowing additional depreciation under section 32(1)(ia) on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year.

Definition of charitable purpose

- The definition for charitable purpose provided under section 2(15) is proposed to be amended to include the activity of Yoga as a special category of activity to be considered as charitable purpose on the lines of education.
- The definition is proposed to be further amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade,

commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,-

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- (ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year .

Cost of acquisition in the hands of resulting company

- There is no express provision under the Income-tax Act, with regard to value to be considered as cost of acquisition of a capital asset in the hands of resulting company on transfer of capital assets acquired on demerger. Accordingly, section 49 is proposed to be amended to provide that the cost of acquisition of an asset acquired by resulting company shall be the cost for which the demerged company acquired the capital asset as increased by the cost of improvement incurred by the demerged company.

Direct Taxes Code

- Since the jurisprudence under the Income-tax Act is well evolved and a large number of provisions of the proposed DTC have already been included in the Income-tax Act, 1961 and the remaining are proposed to be included through the Finance Bill, 2015, the Government has expressed its resolve of not going ahead with the DTC.

SYNOPSIS- INTERNATIONAL TAXATION PROVISIONS

Fund Managers in India not to constitute business connection of offshore funds

- It is proposed that mere presence of a fund manager in India would not constitute PE of the offshore funds, as this is resulting in adverse tax consequences currently.
- In order to facilitate location of fund managers of off-shore funds in India a specific regime has been proposed in the Act in line with international best practices with the objective that, subject to fulfilment of certain conditions by the fund and the fund manager,-
 - (i) the tax liability in respect of income arising to the Fund from investment in India would be neutral to the fact as to whether the investment is made directly by the fund or through engagement of Fund manager located in India; and
 - (ii) that income of the fund from the investments outside India would not be taxable in India solely on the basis that the Fund management activity in respect of such investments have been undertaken through a fund manager located in India.
- In the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund.

Reduction in rate of tax on Income by way of Royalty and Fees for technical services in case of non-residents - Proposed Reduction in Royalty / FTS rate to 10% from 25%

- It is proposed to reduce the rate of tax provided under section 115A on royalty and FTS payments made to non-residents from 25% to 10%.

Clarity relating to Indirect transfer provisions - Further clarification to Explanation 5 in section 9(1)(i)

Currently The Explanation 5 in section 9(1)(i) clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

The share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets, -

- a) exceeds the amount of ten Crore rupees ; and
- b) Represents at least fifty per cent. of the value of all the assets owned by the company or entity.

Value of an asset shall mean the fair market value of such asset without reduction of liabilities, if any, in respect of the asset.

The specified date of valuation shall be the date on which the accounting period of the company or entity, as the case may be, ends preceding the date of transfer.

Raising the threshold for specified domestic transaction- Increase in limit of specified domestic transaction from 5 Crores to 20 Crores rupees

- It is proposed to amend section 92BA by increasing the limit of specified domestic transactions entered into by the assessee from 5 Crores to 20 Crores rupees.

Enabling the Board to notify rules for giving foreign tax credit - Rules will be prescribed to claim foreign tax credit u/s 90, 90A and 91

- CBDT may make rules to provide the procedure for granting relief or deduction, as the case may be, of any income-tax paid in any country or specified territory outside India, under section 90, or under section 90A, or under section 91, against the income-tax payable under the Act. This amendment will take effect from 1st day of June, 2015.

Clarity regarding source rule in respect of interest received by the non-resident in certain cases

- In the case of a non-resident, being a person engaged in the business of banking, the PE in India of such non-resident shall be obligated to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India. Further, non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

Amendment to the conditions for determining residency status in respect of Companies

- POEM is proposed to be introduced for determining the residential status of company which is in line with DTAA
- It is proposed to amend the provisions of section 6 to provide that a person being a company shall be said to be resident in India in any previous year, if-
 - (i) it is an Indian company; or
 - (ii) Its place of effective management, at any time in that year, is in India. (Earlier the provision was - during that year, the control and management of its affairs is situated wholly in India)
- Further, it is proposed to define the place of effective management to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

Rationalisation of provisions relating to Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) - Penalty of 1 lakh proposed for providing incorrect information or non-providing of information as per 195(6)

- It is proposed to amend the provisions of section 195 of the Act to provide that the person responsible for paying any sum, whether chargeable to tax or not, to a non-resident individual or foreign company, shall be required to furnish the information of the prescribed sum in such form and manner as may be prescribed.

- It is further proposed to insert a new provision in the Act to provide that in case of non-furnishing of information or furnishing of incorrect information under sub-section (6) of section 195(6) of the Act, a penalty of one lakh rupees shall be levied.
- It is also proposed to amend the provisions of section 273B of the Act to provide that no penalty shall be imposable under this new provision if it is proved that there was reasonable cause for non-furnishing or incorrect furnishing of information under sub-section (6) of section 195 of the Act. These amendments will take effect from 1st June, 2015.

Power of the Central Board of Direct Taxes to prescribe the manner and procedure for computing period of stay in India

- It is proposed to amend the Act to provide that in the case of an Individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed. This amendment will take effect retrospectively from 1st April, 2015.