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DECODING FINANCE BUDGET 2017

KEY ANALYSIS &

PRACTICAL ILLUSTRAIONS – SERIES 1

CA/ CS/ CMA-DT Final Batch / Sessions in LAXMINAGAR & PITAMPURA

COMPLETE COVERAGE OF STUDY MATERIAL, PRACTICE MANUAL & PREVIOUS YEAR EXAM

REGISTRATION AND ENQUIRY
DT FINAL - CA/ CS / CMA

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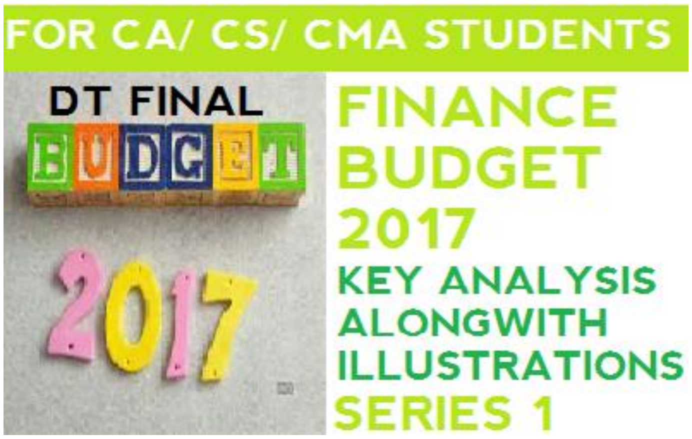
INDIA FINANCE BUDGET 2017 **ANALYSIS** ALONGWITH **PRACTICAL ILLUSTRAIONS –** SERIES 1



Tax rate for companies with total turnover or gross receipts upto INR 50 crore reduced to 25% from 30%

Latest Amendment →

- The rate of corporate tax is proposed to be 25% for companies whose total turnover or gross receipts is equal to or less than INR 50 crores.
- For the purpose of considering as to whether the assesse is eligible for reduced tax rate → the total turnover or gross receipts of FY 2015-16 will be considered.

Key Analysis →

- *The FY 2015-16 is considered because the financial statements for that particular year are finalized/ filed with relevant authorities and there would be no scope for taxpayers to change / manipulate the figures of turnover or gross receipts to bring it down to less than INR 50 crores.*
- *Had the FY 2016-17 would have been provided to determine the eligibility of taxpayer, it might be possible that taxpayers might have tried to lower their turnover below INR 50 crores for availing benefit of reduced rate of corporate tax.*
- As of now, the reduced rate of tax is proposed only for DOMESTIC COMPANIES i.e. companies incorporated in India. This reduced rate of tax is not available for any other resident taxpayers, for example, partnership firms, limited liability partnerships (LLPs), etc.

Date from which amendment is applicable →

- W.e.f. 1st April, 2018 and will apply in relation to the assessment year 2018-19 and subsequent years.

Taxability of Dividend Income Received in excess of INR 10 lakhs → Section 115BBDA

Latest Amendment →

- It is proposed that dividend income in excess of INR 10 lakh is chargeable to tax at the rate of 10% on gross basis in case of all categories of resident taxpayers except domestic company and certain funds, trusts, institutions, etc.

- The aforesaid institutions are the those which are provided in Section 10(23C)(iv), (v), (vi) & (via).
- The trusts or institutions are those which are registered under section 12AA.
- The dividend means the dividend provided in section 2(22) excluding the dividend covered under 2(22)(e).

Key Analysis →

- First of all, it means that the dividend provided under 2(22)(a), (b), (c) and (d) are covered for the purpose levy of additional tax of 10% on gross basis. Therefore, dividend referred to in Section 2(22)((e) is not subject to additional tax @ 10%.
- Secondly, it is to be noted that the limit of INR 10 lakhs is to be seen on aggregate basis.
- **ILLUSTRATION,** let us consider a situation where an specified resident taxpayer (say an individual X) receives the following dividends:

Dividend under Section 2(22)	Situation 1	Situation 2	Situation 3	Situation 4
	Amount in INR lakhs			
Clause (a)	11	3	3	-
Clause (b)	-	4	4	-
Clause (c)	-	-	5	-
Clause (d)	-	2	-	-
Clause (e)	-	5	11	11
Total dividend	**11**	**14**	**23**	**11**
Whether tax under section 115BBDA is applicable	Yes	No	Yes	No
Rationale for applicability of provision of Section 115BBDA	Because after excluding dividend under clause (e), threshold limit of INR 10 lakhs is crossed	Because dividend under clause (e) to be excluded for computing limit of INR 10 lakhs. The aggregate of dividend under other clauses is less than INR 10 lakhs	Because even after excluding dividend under clause (e), threshold limit of INR 10 lakhs is crossed	Because after excluding dividend under clause (e), threshold limit of INR 10 lakhs is not crossed

- Earlier, dividend income in excess of INR 10 lakh is chargeable to tax only in case of three types of resident taxpayers (i) individual, (ii) Hindu undivided family or (iii) firm.
- Now, the specified dividend in excess of INR 10 lakhs received by other taxpayers such as LLP, AOP, BOI, etc. would be subject to tax @ 10%.
- It is to be noted that section 2(22)(e) provides that a loan/ advanced by a company to a shareholder who owns 10% or more voting power in company would be considered as deemed dividend. Few other cases are also covered under this definition.
- The deemed dividend under section 2(22)(e) is taxable as income from other sources is the hands of recipient shareholder. Therefore, dividend under section 2(22)(e) has been kept out of purview of Section 115BBDA.
- Also note that, in relation to deemed dividend under section 2(22)(e), there is a provision in section 194 which provides that TDS to be deducted @ 10% from dividend covered under section 2(22)(e).

Date from which amendment is applicable →

- W.e.f. 1st April, 2018 and will apply in relation to the assessment year 2018-19 and subsequent years.

Deduction of tax at source on RENT by certain Individuals and Hindu undivided family – Section-194-IB

Latest Amendment →

- This section requires the deduction of tax at source (TDS) by individual and HUF → on whom tax audit was not applicable in immediately preceding financial year.
- This section is applicable only on rent payments where such payment of rent exceeds INR 50,000 for one month or part of the month.
- The rate of TDS provided is 5%. The rent means any payment for use of (i) land or (ii) building or (iii) both land and building.
- It is proposed that the deductor shall not be required to obtain tax deduction account number (TAN) as per section 203A of the Act.
- It is also proposed that the deductor shall be liable to deduct tax only once in a previous year.
- In case, where the landlord / payee does not have PAN, the tenant/ deductor would be required to deduct tax at the rate of 20%. However, the amount of such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

Key Analysis →

- In simple words, if any individual or HUF (who were excluded from tax audit under section 44AB in immediately preceding financial year) has made any payment of rent during the financial year for which the amount exceeds INR 50,000 per month or part of month, then such individual or HUF would be required to deduct TDS.
- TDS under section 194-IB is applicable in case of lease of land & building. It is not applicable on rent payments for hire of plant & machinery, furniture & fixture, etc.
- Therefore, even now an individual & HUF is not required to deduct TDS on hire of plant & machinery, furniture & fixture, etc. → if tax audit is not applicable in previous financial year.
- It is to be noted that if tax audit is applicable on individual or HUF in immediately preceding financial year, → in that case TDS to be deducted under section 194-I of Income Tax Act for hire of land/ building or plant and machinery, etc.
- It is further proposed that tax shall be deducted at the time of credit or payment whichever is earlier.
- If the payment is not made, and only credit is made to the account of landlord/ payee, in that TDS to be deducted as follows:

At the time of credit of rent to the account of landlord	*<u>If property remains occupied by tenant as on March 31</u>* → TDS to be deducted at the time of credit of rent to the account of landlord during the month of March OR
	<u>If tenant vacates the property during the previous year i.e. property IS NOT occupied by tenant as on March 31</u> → TDS to be deducted at the time of credit of rent to the account of landlord during the last month of tenancy **ILLUSTRATION** ➢ X an individual (on whom tax

	audit is not applicable during FY 2015-16) obtains a building on rent of INR 60,000 from June 1, 2017. ➢ The building is occupied during December 2017 and till that time, no payment is made to landlord. ➢ *In the above case, TDS to be deducted at the time of credit in the month of December 2017.* ➢ *The TDS to be deducted for all the 7 months (June to Dec 2017) in December 2017.*

- **ILLUSTRATION →** If the payee does not have PAN and deductor is required to deduct TDS @ 20% as per Section 206A:
  - ➢ Continuing with above example, assuming that the landlord does not have PAN.
  - ➢ Therefore, X is required to deduct TDS @ 20%.
  - ➢ The total amount due to landlord would be INR 60,000 * 7 = INR 4,20,000.
  - ➢ As per Section 206AA, the TDS @ 20% would be INR 84,000 (4,20,000 * 20%).
  - ➢ However, as per Section 194-IB, the total TDS should not exceed INR 60,000 i.e. the payment made/ due in last month.
- As of now, it is not clear as to how the deductor would issue TDS certificate, whether the deductor would be required to furnish TDS return, etc.
- For deposit of TDS, a separate challan cum return form may be introduced like Form 26QB. (Form 26QB is a return cum challan for TDS payment in case of purchase of property.)
- Whether a salaried class person (who is paying rent in excess of INR 50,000 per month but not subject to tax audit) would be required to deduct tax under this section – Seems yes !

Date from which amendment is applicable →

- This amendment will take effect from 1st June, 2017.

Holding period for determining the nature of capital gains in case of immovable property → Section 2(42A)

Latest Amendment →

- In case of immovable property, being land or building or both → It is proposed to reduce the period of holding from the existing 36 months to 24 months, to qualify as long term capital asset.

Date from which amendment is applicable →

- W.e.f. 1st April, 2018 and will apply in relation to the assessment year 2018-19 and subsequent years.

Relaxation in Provisions of Section 80-IBA to promote Affordable Housing

Latest Amendment →

- The section 80-IBA provides for 100% deduction in respect of the profits and gains derived from developing and building certain housing projects subject to specified conditions. Following relaxations are proposed in specified conditions:

I. The size of residential unit shall be measured by taking into account the "carpet area" as defined in Real Estate (Regulation and Development) Act, 2016 and not the "built-up area".

II. The restriction of 30 square meters on the size of residential units shall not apply to the place located within a distance of 25 kms from the municipal limits of the Chennai, Delhi, Kolkata or Mumbai.

III. The condition of period of completion of project for claiming deduction under this section shall be increased from existing three years to five years.

Date from which amendment is applicable →

- W.e.f. 1st April, 2018 and will apply in relation to the assessment year 2018-19 and subsequent years.

Provisions for computation of capital gains in case of joint development agreement – in real estate sector

Background →

- In real estate sector, it is a general practice that the developer and owner of the land enter into a joint development agreement (JDA) for development/ construction and sale of residential units.
- As per existing provisions of capital gains in Income Tax Act, execution of Joint Development Agreement between the owner of immovable property and the developer triggers the capital gains tax liability in the hands of the owner.
- *The tax liability is triggered because execution of JDA results in part performance of contract since owner has transferred right in property to the developer for development of project.*
- This part performance is covered under the definition of transfer → even though the legal title to the property has not been transferred to developer and the owner retains the title with him.
- Accordingly, the capital gain becomes taxable in the year in which the possession of immovable property is handed over to the developer for development of a project.
- If no / part compensation is received by the owner at the time of execution of JDA, the same generally results in hardship for owner to pay capital gains tax since no consideration is received by him as of now.
- The amendment is proposed in order to reduce the above hardship for the taxpayer.

Latest Amendment →

- For this purpose, it is proposed to insert a new sub-section (5A) in section 45 which provides as under:
  - If owner is an individual or Hindu undivided family who enters into a specified agreement for development of a project,
  - the capital gains shall be chargeable to income-tax in the year in which the certificate of completion for the *whole or part of the project* is issued by the competent authority.

Key Analysis →

- *The relief is available only to land owners who are individuals or HUF.*
- *This relief is not provided to other taxpayers such as company, LLP, etc. as of now.*
- *Therefore, if the asset (i.e. land) is in the name of company and such company enters into JDA with developer for development of land, the capital gains tax would be triggered on execution of JDA and landowner will be liable to pay capital gains tax in the year in which the possession of*

land is transferred to developer for development of project.

- For computing capital gains, full value of sales consideration would be computed as under:

	Particulars	Amount
	The **stamp duty value** of owner's share in the project (i.e. land & building) on the date of issuing of said certificate of completion	XXXXX
Add:	Any monetary consideration received	XXXXX
Equals to	**Full value of sale consideration**	**XXXXX**
	The above value is deemed amount of full value of the consideration received or accruing as a result of the transfer of the capital asset.	

- It is proposed that the proposed benefit (of taxing capital gains at a later stage) shall not apply to a taxpayer who transfers his share in the project to any other person on or before the date of issue of said certificate of completion.
- *With this amendment, it is in interest of owner to complete the project.*
- *Even if developer would want to exit from project, then also owner may contemplate to continue construction of the project by engaging any other developer. It may also be necessary that owner does not offer any further share to new developer because if he does so, the same may result in transfer of his part share to any other person and proposed benefit under section 45(5A) may not be available.*

- **Taxability in the hands of owner who transfers his share in the project to any other person on or before the date of issue of said certificate of completion**
  - In such a situation, the capital gains shall be determined / computed under general provisions of the Income Tax Act.
  - Capital gains shall be considered to be the income of the previous year in which such transfer took place.
- **Computation of capital gains at the time of sale of project**
  - Consequential amendment is proposed in section 49 so as to provide that in the hands of land owner → the cost of acquisition of the share in the project (being land or building or both) is equal to the amount which is deemed as full value of consideration under the said proposed provision.

Computation of capital gains on sale of project in the hands of land owner

	Particulars	Remarks	Amount
	Full value of sale consideration	Consideration received / stamp duty value on sale of project	XXXXX
Less:	Cost of acquisition	Amount which is deemed as full value of consideration under the said proposed provision	(XXXXX)
Equals to	**Capital Gains**	Taxable in the year in which transfer takes place i.e. sale agreement is signed or conveyance deed is registered – in case of registered properties	**XXXXX**

Date from which amendment is applicable →

- W.e.f. 1st April, 2018 and will apply in relation to the assessment year 2018-19 and subsequent years.

Deduction of tax at source on payment monetary consideration by developer to land owner → Section-194-IC

Latest Amendment →

- In case any monetary consideration is payable under the specified agreement, TDS shall be deducted at the rate of 10% from such payment.

Key Analysis →

- There would be inconsistency on TDS deduction and TDS claimed by the assessee.
- TDS is required to be deducted in the year in which consideration is paid to the landowner.
- However, credit of TDS can be claimed in the year in which income would be offered to tax by landowner.
- Therefore, if at the time of JDA → some advance payment is made to landowner, in that case, developer need to deduct TDS on the same.
- However according to section 45(5A) it will be the income of the owner after one or two years – whenever the project would be completed and a completion certificate would be obtained for the same.
- The above would lead to mismatch of TDS deduction and claim of TDS credit.
- In such case, department can initiate action against 143(1)(a) and prepare intimation on the basis of entry in our 26AS.

Date from which amendment is applicable →

- This amendment will take effect from 1st April, 2017.

Shifting base year from 1981 to 2001 for computation of capital gains → Section 55

Latest Amendment →

- In case capital asset is acquired before 1.4.2001, then for computing capital gains, it is proposed that the cost of acquisition shall be allowed to be taken as fair market value as on 1st April, 2001.
- The cost of improvement incurred prior to 1.4.2001 shall be ignored and the capital expenses incurred after 01.04.2001 shall be considered as cost of acquisition.

Key Analysis →

- It is to be noted that there is no change in holding period for computing capital gains.
- ILLUSTRATION
  - If the assesse purchased jewellery on 1.4.1980 and sold on 31.12.217, the capital asset being jewellery would be classified as long term capital asset since the holding period exceeds 36 months.
  - However, since the jewellery was purchased before 1.4.2001, therefore, fair market value of jewellery as on 1.4.2001 would be considered as cost of acquisition.
  - It is optional to taxpayer to consider the fair market value as on 1.4.2001 or the cost of acquisition

whichever results in favourable result to taxpayer.

Date from which amendment is applicable →

- W.e.f. 1st April, 2018 and will apply in relation to the assessment year 2018-19 and subsequent years.

Expansion in the scope of long term bonds under 54EC → Section 54EC

Latest Amendment →

- Exemption under section 54EC would be available if investment in any Central Government specified bonds redeemable after three years.
- Currently, the exemption is available on investment in bonds issued by NHAI or REC.

Key Analysis →

- *Analysis: It is to be noted that the maximum amount of exemption under Section 54EC is INR 50 lakhs. This limit is not amended/ increased in Finance Budget 2017.*
- Therefore, going forward, now the taxpayer has option to invest in bonds other than NHAI and REC, however, the maximum amount of exemption allowed will be INR 50 lakhs provided that investment is made within 6 months from the date of transfer of long term capital asset.
- The long term capital asset can be any capital asset including land and building.
- *Therefore, now, if land and building is hold for more than 24 months, in that case capital gain arising on transfer of such land/ building can be invested in bonds covered under section 54EC.*

Date from which amendment is applicable →

- W.e.f. 1st April, 2018 and will apply in relation to the assessment year 2018-19 and subsequent years.

No notional income for house property held as stock-in-trade → Section 23

Background →

- In case of real estate developers or builders, notional income on any unsold housing units held as stock in trade was taxable without having any income from it.
- In simple words, irrespective that the unsold unit is not let out, the income from the said unit was taxable on notional basis under Section 23.

Latest Amendment →

- In order to provide relief to real estate developers or builder, exemption is provided to them if following condition is satisfied i.e. notional income would be considered as nil:-
  - Property or part of it is not let out during the whole or any part of the year, and
- Time period of exemption: The notional income would be considered as NIL for a period of one year from the end of year in which completion certificate is received.

Key Analysis →

- It is to be noted that this exemption is provided where completion certificate is recently obtained, therefore, this relief can be said to be applicable primarily in respect of newly constructed apartments.
- The relaxation is provided only to person where house property is held as stock-in-

trade. Accordingly, this relaxation is not provided to persons where house property is held as capital asset – though still loss due to vacancy can be claimed on satisfaction of certain conditions as specified in the relevant section.

- **ILLUSTRATION:**
  - X Ltd. is real estate developer. During FY 2017-18, a property was developed and it constructed 100 flats for which completion certificate is also obtained during FY 2017-18.
  - However, out of 100 flats
    - 20 were sold out,
    - 50 were let out and
    - balance 30 flats are vacant.
  - It is clear that 20 flats which are sold, the profit arising therefrom would be chargeable to tax as income from PGBP.
  - For 50 flats, the rental income would be taxed in FY 2017-18.
  - With regard to balance 30 flats, the relief is provided in Finance Budget 2017 pursuant to which no notional income would be chargeable to tax till 31.3.2019 i.e. till one year from the end of the year in which completion certificate is obtained by the taxpayer.
  - Let's assume that out of 30 vacant flats → 25 are let out during FY 2018-19 and still 5 flats are vacant.
  - In that case, income from 75 flats (50 let out during FY 2017-18 and 25 let out during FY 2018-19) would be chargeable to tax in FY 2018-19. And the notional income for 5 flats would be considered as NIL.
  - From FY 2019-20, income from all the 80 flats would be chargeable to tax irrespective that any flat is let out or not.
  - If 5 flats are still vacant, income with regard to these flats would be chargeable on notional basis.

Date from which amendment is applicable →

- W.e.f. 1st April, 2018 and will apply in relation to the assessment year 2018-19 and subsequent years.

Disclaimer

For detailed discussion/ observations of the Finance Budget, please refer the Finance Bill, Memorandum alongwith other relevant documents.

Note: The above discussion is subject to detailed disclaimer policy as mentioned on website. Refer www.fealtyadvisors.com

Further, it is to be noted that the analysis represents personal views of the author and it is not binding on any authority or person in or outside India. Before reaching / concluding any matter, please refer / consult to your tax advisor.

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11 YEARS OF WORK EXPERIENCE

- He has more than eleven years of rich professional experience in advisory, structuring, compliance and litigation projects in Direct Tax, including Corporate Tax, Transfer Pricing, International Tax and Regulatory.
- He had worked with Deloitte and PwC in their Transfer Pricing and Tax & Regulatory Practice for seven years approx. He was also associated with Reliance Industries Group for two and half years in their Compliance and Taxation cell.
- Also, he has been coaching the CPA candidates (CPA from US AICPA) and other students for last two years approx.
- His has extensively worked on planning studies, determining appropriate pricing models, profit attributable to permanent establishments, TP studies for compliance requirements, audit defense and litigation. He has worked on TP documentation for MNCs with respect to their overseas operations as well.
- He also has substantial exposure in advising diversified clients on various issues relating to constitution of Permanent Establishment (PE), Attribution of profits to PE, Service arrangement vis-à-vis manpower arrangement, withholding tax obligations on various international / domestic payments etc. He has worked on Expat Taxation, Association of Persons, Real Estate Fund transactions including their PE Review, Funding/Exit Options.
- He has extensively served a broad range of International and Indian clients across industries including automobile, industrial goods, IT, ITES, education, telecommunication, food and beverages, EPC contractors, event management, etc. on various aspects of tax and transfer pricing including tax planning, compliances, audits, dispute resolution, etc.
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