

Amendments Proposed in the Finance Bill, 2016 Relating to International Taxation



A number of proposals influenced by the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting (BEPS) initiative have been introduced by the Finance Bill 2016. Implementation of Master File and Country-by-Country (CbC) reporting, introduction of a withholding tax on certain specified digital services are some of these proposals. Other significant proposals include deferment of applicability of place of effective management (POEM) test in determining corporate residency status by one year, retrospective amendment in provisions on applicability of MAT on foreign companies, rationalisation of TDS provisions relating to payments by business trust, reduction in corporate tax rates, etc. This article highlights some key international taxation proposals in the Finance Budget 2016. Read on...

1. Equalisation Levy

- An equalisation levy is proposed to be levied at a rate of 6% of the amount of consideration for specified services received or receivable by a non-resident from –
 - a person resident in India and carrying on business or profession; or
 - a non-resident having a permanent establishment in India, if, the aggregate amount of consideration exceeds ₹1 lakh.
- “Specified service” means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf.
- It is proposed to exempt under Section 10 of the Income-tax Act, 1961 (“the Act”) any income arising from providing specified services on which equalisation levy is chargeable.
- Further, expenses incurred towards specified services shall be disallowed if a person does not



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It is clarified that the shares held by a non-resident of a private company shall be treated as "securities" and any long term capital gains arising on transfer of such shares shall be taxable at a concessional rate of 10%.

deduct and deposit the equalisation levy to the credit of the Central Government. Further, such person shall be liable to pay interest as well as penalty on such failure.

2. Residential Status of the Foreign Company – POEM (Newly inserted Chapter XII-BC)

- It is proposed to defer the provisions of the place of effective management (POEM) by one year and it will be applicable from the assessment year 2017-18.
- Further, in case where the foreign company is said to be resident of India in any previous year for the first time, it is proposed to empower the Central Government (CG) to notify exception, modification and adaptation subject to which, the provisions of the Act relating to computation of income, treatment of unabsorbed depreciation, setoff or carry forward and setoff of losses, special provision relating to the avoidance of tax and the collection and recovery of taxes shall apply.
- If the foreign company is treated as domestic company at the time of assessment proceedings relevant to any previous year, then the transitional provisions (which would be notified by CG) shall apply to all the subsequent years till the date of completion of assessment.
- Further, every notification issued in exercise of this power by the CG shall be laid before each house of the Parliament.

3. Withholding Tax Rate in case where PAN is not available – Section 206AA

- As per Section 206AA of the Act, in case where PAN of the assessee is not available, tax is deducted at the higher of the following three rates -
 - i) Rate specified in the relevant provisions of the Income-tax Act, 1961,
 - ii) At the rates in force; or
 - iii) 20%.
- It is proposed that the above provision shall not apply to the non-resident assessee who provide an alternative document, as may be prescribed.

4. Applicability of MAT on Foreign Companies – Section 115JB

- It is proposed, with retrospective effect from the assessment year 2001-02, that the provisions of MAT would not apply

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to a foreign company if the following conditions are satisfied:

- i) If such foreign company is a resident of a country or of a specified territory with which India has DTAA and such foreign company does not have any permanent establishment (PE) in India; or
- ii) Such foreign company is a resident of a country with which India does not have DTAA and is not required to seek registration under any law for the time being in force relating to companies.

5. Clarification regarding Definition of the term Unlisted Securities - Section 112(1)(c)

- It is clarified that the shares held by a non-resident of a private company shall be treated as "securities" and any long term capital gains arising on transfer of such shares shall be taxable at a concessional rate of 10%.

6. Exemption of Income of Foreign Company from Storage and Sale of Crude Oil stored as part of Strategic Reserves – Section 5

- It is proposed that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil, therefrom, to any person resident in India shall be exempt subject to certain conditions which need to be satisfied.

7. Exemption in Respect of Certain Activity Related to Diamond Trading in Special Notified Zone- Section 9

- It is proposed that no income shall be deemed to accrue or arise in India to a foreign company from activities confined to display of uncut and un-assorted diamond in any special zone notified by the Central Government.

8. Exemption to Non-resident for investing in Rupee Denominated Bond – Section 48

- Any foreign exchange gain on redemptions of rupee denominated bond of an Indian company

In a case where the business trust distributes any income to the non-resident unit holders, TDS is to be deducted at the rates in force i.e. as per the normal tax provisions or DTAA, whichever is more beneficial.



shall be ignored for the purposes of computation of full value of consideration.

9. Amendment in the Conditions for Taxability of Offshore Funds – Section 9A

- It is proposed that the investment fund will also be treated as an eligible investment fund if such fund is *established or incorporated or registered* in a country or a specified territory notified by the Central Government in this regard.

10. Rationalisation of Tax Deduction at Source Provisions Relating to Payments by Business Trust – Section 194LBB

- In a case where the business trust distributes any income to the non-resident unit holders, TDS is to be deducted at the rates in force i.e. as per the normal tax provisions or DTAA, whichever is more beneficial.

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

- OECD report on Action 13 of BEPS action plan provides for revised standards for transfer pricing documentation and a template for country by country reporting of income, earnings, taxes paid and certain measures of economic activity.
- It mandated a three-tier structure consisting of:
 - Master file containing standardised information relevant for all multinational enterprises (MNE) group members;
 - Local file referring specifically to material transactions of local taxpayer; and
 - Country by country report containing certain information relating to the global allocation of MNE income, taxes paid together with certain other indicators of the location of economic activity within any group. ■