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India Budget - Amendments to the Finance Bill, 2015

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Synopsis

The Government on 30 April 2015 tabled the amendment to the Finance Bill, 2015 (“Bill”) proposals in the lower house of Parliament for approval. Amendments are proposed with respect to residence of a foreign company, relaxation on applicability of Minimum Alternate Tax (“MAT”) provisions, extension of additional investment allowance and additional depreciation benefit, fund managers, etc. The Finance Bill, 2015 would be enacted into law after it is passed by the Upper House of the Parliament and receives assent of the President of India.

Amendment to Finance Bill, 2015 tabled in Parliament on April 30, 2015

Residence of a Foreign Company

- The Bill had proposed to amend the test of residence for company (other than Indian company) to provide that such company would be treated as resident in India if its place of effective management (“POEM”) is in India at any time in that year. POEM has been defined 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.
- It is now proposed to omit the requirement of POEM “at any time”. Pursuant to the said amendment, the concept of POEM as per the Bill is now in line with the OECD Commentary.
- A set of guiding principles to determine POEM is also proposed to be issued. The said principles should provide better clarity on the likely interpretation of POEM.

Applicability of MAT to Foreign Company

- The Bill had proposed to exempt specified capital gains earned by Foreign Institutional Investors (FIIs) from MAT effective April 1, 2015.

- In view of concerns raised on applicability of MAT and representations made by various stakeholders (including foreign companies), it is now proposed that income of a foreign company in the form of capital gains on sale of securities, interest, royalty and fee for technical services would not be subject to MAT provided the tax rate on such income under the specific provision is less than the MAT rate.

Applicability of MAT to REITs/ INVITs

- It is now proposed to provide relaxation to the applicability of MAT provisions to REITs/ INVITs. The following are proposed to be excluded from the ambit of MAT:
- notional gain/ loss resulting from transfer of shares of a Special Purpose Vehicle (SPV) to a business trust in exchange of units allotted by that trust,
- notional gain/ loss resulting from any change in carrying amount of said units; and
- Gain/loss from transfer of said units.
- It is also proposed that gain or loss arising on transfer of units of Business Trust computed by taking into account the cost of the shares exchanged with such units or the carrying amount of the shares at the time of exchange, where such shares are carried at a value other than the cost through profit or loss account shall, be considered for MAT purposes.

Fund managers

- The Bill had proposed to introduce a special regime providing that the fund management activity of an ‘eligible investment fund’ carried out by an ‘eligible fund manager’ will not constitute business connection in India of the said fund. Moreover, it was proposed that an eligible investment fund will not be said to be resident in India merely because the eligible fund manager is situated in India.
- In order to qualify as an eligible investment fund, there are certain restrictive conditions prescribed.
- It is now proposed to relax the following conditions for investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other funds as the Central Government may notify:
- Minimum of twenty five members who are directly or indirectly not connected persons;
- Participation interest in the fund, directly or indirectly, of any member of the fund alongwith connected persons not to exceed 10 percent

- Aggregate participation interest in the fund, directly or indirectly of ten or less members their connected members in the fund to be less than 10 percent.
- Further, it is proposed that the CBDT shall prescribe the guidelines and the manner in which the aforesaid special regime shall be applied.

Additional investment allowance and additional tax depreciation benefits extended to the States of Bihar and West Bengal

- The Bill had proposed to provide an additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee, if an undertaking or enterprise, for manufacture or production of any article or thing is set up in any notified backward area of the State of Andhra Pradesh or the State of Telangana during the period beginning from 1 April 2015 and ending on 31 March 2020. It is now proposed to extend the additional investment allowance benefit to the undertaking or enterprise, for manufacture or production of any article or thing, set up in the notified backward areas of the States of Bihar and West Bengal.
- The Bill had also proposed that an additional depreciation of 35% (instead of 20%) will be allowed where an assessee acquires and installs new plant or machinery (other than a ship and aircraft) in a manufacturing undertaking or enterprise set up in the notified backward area of the State of Andhra Pradesh or the State of Telangana on or after 1 April 2015 and ending before 1 April 2020. It is now proposed to extend the additional depreciation benefit of 35% to the undertaking or enterprise, for manufacture or production of any article or thing set up in the notified backward areas in the States of Bihar and West Bengal.

Interest on capital borrowed for acquisition of an asset

- As per the current provisions of the Income-tax Act, 1961 (“the Act”), interest paid on capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, was not allowed as deduction.
- It is now proposed to remove the condition relating to extension of existing business or profession. As a result it is now proposed that interest on capital borrowed for acquisition of an asset shall not be allowed as deduction in any case till the asset is put to use.

Subsidy / grant / cash incentive / duty drawback / waiver / concession /reimbursement included in definition of income

- The definition of 'income’ is now proposed to be amended to include assistance in the form of subsidy / grant / cash incentive / duty drawback / waiver / concession / reimbursement, by whatever name called, [other than that taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to section 43(1) of the Act] by the Central Government or a State Government or any authority or body or agency in cash or kind.

Period of holding and cost of acquisition of share(s) on conversion of Global Depository receipts (GDR)

- It is now proposed to provide that the period of holding of share(s) of a company acquired by a non-resident taxpayer on redemption of GDR shall be reckoned from the date on which a request for redemption is made. Further, it is also proposed to provide that the cost of acquisition of such share(s) acquired shall be the price of such shares as prevailing on any recognized stock exchange on the date on which a request for redemption is made.

Deemed allowability of bad debts not recorded in the accounts

- It is possible that as per the Income Computation and Disclosure standards (ICDS) notified under section 145(2) of the Act and in force from 1 April 2015, certain income are considered for tax though not recorded in the accounts of one or more previous years. As per the existing provisions of the Act, bad debts are allowable as deduction only when the same are actually wriiten off in the books of account. It is now proposed that where such debts or part thereof (which is not recorded in the accounts) becomes irrecoverable, it shall be deemed to be written off as irrecoverable in the accounts and shall be eligible for deduction under section 36(1)(vii) of the Act in such previous year.

Mandatory filing of return if tax payer has foreign assets

- Currently, a resident and ordinarily resident, is mandatorily required to file the tax return even if total income does not exceed the maximum amount not chargeable to tax if he has any asset (including any financial interest in any entity) located outside India or signing authority in an account outside India
- It is now proposed that a resident and ordinarily resident, is mandatorily required to file the tax return if he:

a. holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or
b. is a beneficiary of any asset (including any financial interest in any entity) located outside India.

- The terms 'beneficial owner'[1] and 'beneficiary'[2] are defined in the Bill. While these definitions are similar to those mentioned in the instructions to recently notified Income tax return forms (applicable to Financial Year 2014-15), this amendment will be effective from 1 April 2016 i.e. Financial Year 2015-16.
- Filing of return will not be mandatory for a beneficiary of any asset (including any financial interest in any entity) located outside India, if income arising from such an asset is includible in the income of the beneficial owner of such an asset.

Deduction for contribution to notified pension scheme[3]

- Currently, deduction is allowed for contribution to notified pension scheme of Central Government upto 10% of Salary or 10% of Gross total income, which was limited to INR 100,000.
- The Finance Bill, 2015 proposed to enhance limits for annual deduction in respect of the notified pension scheme from INR 100,000 to INR 150,000. Further, an additional deduction of INR 50,000 for contribution to notified pension scheme was proposed.
- There was ambiguity on whether the additional deduction proposed in the bill would be applicable only if entire investment of INR 200,000 is made in the notified pension scheme.
- It is now proposed that the taxpayer is eligible for additional deduction of INR 50,000 even if INR 150,000 is not invested in notified pension scheme but in other prescribed avenues.

Deduction for Health Insurance Premium

- Currently, deduction upto INR 15,000 is allowed for health insurance premium paid for self and family and an additional INR 15,000 is allowed for health insurance premium for parents.

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[1] "Beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

[2] "Beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

[3] Currently the only notified pension scheme is National Pension Scheme (NPS)

- As per Finance Minister's speech, it was proposed to increase the limit of INR 15,000 to INR 25,000. It was further proposed to increase the limit of such deduction for senior citizens from INR 20,000 to INR 30,000.
- The Finance Bill, 2015 (as presented originally) omitted reference to the enhanced deduction in the relevant section of the Act.
- To address the above, an amendment in this regard is now proposed increasing the existing deduction limits in line with the Finance Minister's speech.

  The above amendments are proposed to be applicable from the assessment year 2016-17 onwards.

Comments

The relaxation on the applicability of MAT provisions to foreign companies (including FIIs) and the omission of the requirement of POEM at any time in India is a welcome move. Further, the Government has sought to realign certain key provisions of the ITA with the notified Income Computation and Disclosure Standards, thus seeking to avoid future litigations. As the Bill has been passed by Lok Sabha, the same would be enacted once it is passed by the Upper House of the Parliament and receives assent of the President of India

Source: Notice of Amendments to Finance Bill, 2015

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