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India Budget 2015 – Amendments to MAT proposals

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In this issue:

Synopsis

The Government on 30 April 2015 tabled the budget proposals for financial year 2015-16 in the lower house of the Parliament for approval. In a welcome development, interest income earned by Foreign Institutional Investors (FIIs) subjected to special tax rate lower than the Minimum Alternate Tax (MAT) rate prescribed, has also been proposed to be exempt from Minimum Alternate Tax (MAT). Further, MAT exemption has been extended to all foreign companies in respect of income by way of capital gains from sale of securities, interest, royalty and fee for technical services which are subjected to special tax rate lower than MAT rate.

Budget 2015 proposals on MAT

- In the Budget 2015, presented on February 28, 2015, the Government had proposed to exempt specified capital gains earned by FIIs from MAT effective April 1, 2015
- While the budget proposal did provide tax certainty on capital gains earned by FIIs, concerns were raised on applicability of MAT in the following situations:
  - Interest income of FIIs which otherwise enjoys a concessional tax rate of 5%
  - Capital gains and interest income earned by other foreign investors (such as private equity investors)
  - Royalty and fees for technical services where the tax rate was reduced from 25% to 10% in the Budget 2015
  - Applicability of MAT on income upto March 31, 2015

Final budget proposals tabled in Parliament on April 30, 2015

- Acceding to the some of the representations made by various stakeholders, the Government has proposed that all income in the form of capital gains on sale of securities, interest, royalty and fee for technical services would be exempt from MAT provided the tax rate on these income under the specific provisions is less than the MAT rate
- Consequent to said amendment, the following income earned by foreign companies should be exempt from MAT prospectively from April 1, 2015:
  - Capital gains and interest income earned by FIIs effectively meaning that FIIs would be outside the ambit of MAT
  - Capital gains earned by foreign investors from sale of securities under the Foreign Direct Investment (FDI) route
  - Royalty and fee for technical services earned by a foreign company

It may be noted that business income has not been exempted from MAT which means that foreign companies (other than FIIs) which have a permanent establishment / business connection in India would still be liable to MAT

The Finance Bill, 2015 has been passed by the lower house and would be enacted into law after the same receives assent of the President of India which is expected shortly

Comments

Since the Budget proposals are prospective in nature, FIIs would continue to be exposed to the risk of MAT in relation to income earned upto March 31, 2015. Tax officers have started issuing notices to certain FIIs for recovery of MAT in relation to earlier financial years . This uncertainty could possibly be settled once the Supreme Court pronounces its ruling in the case of Castleton Investments Ltd. which is expected later this calendar year. It may be noted that the Government has directed that in case of foreign companies which have invested from a treaty jurisdiction such as Mauritius, Singapore etc. (which exempts capital gains from tax in India), the issue involved is limited and therefore the claim of treaty benefit should be decided expeditiously.

Source: Notice of Amendments to Finance Bill, 2015

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