



Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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India Budget 2016 – Highlights

The Indian Finance Minister presented the union budget 2016 (the Budget 2016/ the Budget) for the fiscal year 2016-17 on 29 February 2016. We have summarized a few key tax proposals of the Budget 2016 in this newsletter.

1. Corporate tax rates

No change in basic tax rate for companies which is 30%¹ for domestic companies and 40%¹ for foreign companies. It may be noted that a subsidiary or joint venture company incorporated in India by a foreign company is regarded as a domestic company. Three new proposals have been made this year:

- (1) Tax rate for newly setup domestic companies engaged solely in manufacture or production of any article or thing has been proposed to be reduced to 25%¹ subject to not claiming certain specified tax deductions/benefits. The Company has to opt for lower tax regime on or before filing of tax return.
- (2) Tax rate has been proposed to be reduced to 29%¹ for domestic companies whose total turnover or gross receipts in the financial year 2014-15 did not exceed INR 50 million.
- (3) Effective tax rates for Dividend Distribution Tax (“DDT”) and Minimum Alternate Tax (“MAT”) have not changed and have been summarized as under:

DDT	15% (effective maximum rate of 20.36%*)
MAT	For domestic companies – 18.5% (effective maximum rate of 21.34 %*) and for foreign companies – 18.5% (effective maximum rate of 20.01 %*).

* including surcharge and education cess

2. Implementation of Base Erosion Profit Sharing (“BEPS”) Action Plans

As part of the Budget 2016, the Indian Government made four BEPS announcements. The tax proposals have been summarized below:

¹ Plus applicable surcharge and cess

(1) New 6% Equalization Levy on digital transactions – BEPS Action Plan 1

India has introduced a 6% Equalization Levy on consideration for specified services provided by a non-resident and received by a resident or a non-resident having a permanent establishment (PE) in India. 'Specified services' have been defined to mean online advertising or any provision for digital advertising space or any other facility or service for the purpose of online advertisement, or any other service as may be notified by the Central Government. Central Government is yet to notify the date from which 'Equalization Levy' shall come into force.

(2) Concessional tax regime for income from patents – BEPS Action Plan 5

It has been proposed to introduce a concessional taxation regime for royalty income from patents developed and registered in India. To be eligible, the taxpayer needs to be a tax resident of India and should be a true and first inventor and his name is required to be entered on the patent register as the patentee in accordance with the Patents Act, 1970.

Royalty income of a patent developed and registered in India is proposed to be taxed at the rate of 10% (plus applicable surcharge and education cess) on gross basis under this regime. Such income and corresponding expenses are also proposed to be excluded for computing MAT .

(3) Applicability of General Anti Avoidance Rules (“GAAR”) – BEPS Action Plan 6

GAAR provisions were introduced in the tax laws in the year 2013 to give extensive powers to the tax authorities to invalidate business transactions which lack substance and the main motive behind of which is avoidance of tax. In the Budget 2016, it has been clarified that GAAR provisions shall be applicable from 1 April 2017

(4) Introduction of Country-by-Country (“CbC”) reporting requirements – BEPS Action Plan 13

Summary of key CbC reporting proposals introduced in India is as under:

- A three-tiered structure has been proposed consisting of:-
 - Master file containing information of all members of the multinational enterprises group;
 - Local file referring specifically to material transactions of the local taxpayer; and
 - CbC report
- Contents of CbC report:
 - Revenue, profit/loss before income-tax, income-tax paid and income-tax accrued, stated capital, accumulated earnings, number of employees and tangible asset other than cash/cash equivalents – with regard to each country or territory in which the group operates;
 - Details of each entity including the country / territory of incorporation and country of residence;
 - Nature and details of the main business activities of each constituent entity, etc.
- CbC reporting requirements proposed to apply to an international group having consolidated revenue exceeding EUR 750 million.
- Indian parent of the group is required to file CbC report on or before due date of filing return of income. Indian entity of a non-resident parent entity is required to only provide details of the country of residence of its parent – manner, form and date to be prescribed.
- For non-furnishing of the CbC report by an entity which is obligated to do so, a graded penalty

structure applies that ranges from INR 5,000 to INR 50,000 per day. In case of inaccurate furnishing of information or furnishing of inaccurate information in response to notice by the prescribed authority, a penalty of INR 500,000 may also be levied. For non-furnishing of the information and documents on the prescribed due date penalty of INR 500,000 is prescribed

3. Measures to increase ease of doing business

(1) Deferral of Place of Effective Management (“PoEM”) provisions

Finance Act, 2015 amended the provisions pertaining to residential status according to which a foreign company is treated as resident in India if its PoEM in that year is in India. Considering the various issues relating to implementation of PoEM, it is proposed to defer the applicability of PoEM based residency test by 1 year, i.e. from 1 April 2016. A transition mechanism is proposed for a company which is incorporated outside India and has not earlier been assessed to tax in India.

(2) Exemption from requirement of furnishing Permanent Account Number (“PAN”) for non-residents

Under the existing provisions, failure by a non-resident to furnish PAN triggers withholding tax at a higher rate of 20%. To reduce compliance burden, it is proposed to provide that the above provisions shall not apply to non-residents if they provide certain other documents, a list of which will be prescribed later.

(3) Non-applicability of MAT on foreign companies

Based on recommendations received by A. P. Shah Committee and Supreme Court ruling, the MAT provisions are now proposed not to be applicable to foreign companies unless they have a PE in India. These provisions are retroactively applicable from 1 April 2001.

(4) Clarification regarding availability of 10% capital gains tax rate

Under the current provisions, a concessional capital gains tax rate of 10% is available to a non-resident on long term capital gains arising on sale of unlisted securities. However, based on certain court rulings, uncertainty had arisen on the availability of such concessional tax rate on gains arising on sale of shares of private limited companies. Appropriate amendments have now been proposed to clarify that such benefits are now available for long term capital gains arising on sale of shares of private limited companies.

(5) Phasing out of weighted deductions

The Finance Minister in his Budget Speech of 2015 had indicated that the rate of corporate tax will be reduced from 30% to 25% over the next 4 years along with corresponding phasing out of income-tax exemptions and deductions currently available. In pursuance thereof, several incentives are proposed to be phased out as per schedule mentioned below:

Sl. No.	Provision and Tax Holiday/ Exemption described in brief	Tax break available under existing provisions	Phasing out proposal
1.	Section 35(2AB) - Scientific research carried in an approved in-house research and development facility	Weighted deduction of 200%	To be restricted to 150% from 1 April 2017 to 31 March 2020; and

			100% from 1 April 2020 and onwards
2.	Section 10AA - Profit linked deductions available for units in SEZ for profit derived from export of articles or things		No such deduction to be available to SEZ units commencing activities on or after 1 April 2020
3.	Section 80IA, 80IB, 80IAB – Tax holiday benefits for: <ul style="list-style-type: none"> ➤ Enterprise carrying on business of developing or operation and maintaining an infrastructure facility ➤ Development of special economic zone ➤ Production of mineral oil and natural gas 	100% profit linked deductions for specified period available	No deduction if specified activity commences on or after 1 April 2017
4.	Section 32 - Accelerated depreciation		Maximum accelerated depreciation of 40% allowed w.e.f. FY 2017-18 Applicable for both old and new assets

(6) Tax on distributed income to shareholder pursuant to buy back

Per Finance Act, 2013, any income distributed by the company on buy-back of its own shares from the shareholders would be subject to Buy Back Tax (“BBT”) at the rate of 23.072%. Distributed income would mean the consideration on buyback of shares as reduced by amount which was received on issue of such shares.

Currently, provisions cover buy back undertaken by company pursuant to Section 68 of the Companies Act, 2013. Indian company in other forms can undertake buy-back of its shares pursuant to other provisions of the Companies Act. To bring such buy-backs within the ambit, it is proposed to provide that these provisions will be applicable to any buyback of unlisted share undertaken by the company.

There was lack of clarity with respect to computation of distributable income in cases involving buy back of shares issued by company pursuant to amalgamation, demerger, etc. It is proposed that appropriate rules will be framed by the Government for determination of distributable income. Proposed amendment will be effective from 1 June 2016.

(7) Dispute Resolution Panel (DRP) orders binding on tax authorities

The tax authorities would not be able to appeal against the order of the DRP to the Income Tax Appellate Tribunal (ITAT). The proposed amendment will be effective from 1 June 2016.

(8) Reduction of time for filing of belated tax return

The time line for a belated tax return is proposed to be reduced from 1 year from the end of the assessment year to the end of relevant assessment year or before the completion of assessment, whichever is earlier. A provision for revising a belated tax return is proposed. This is proposed to be

effective for financial year 2016-17 onwards.

(9) Tax holiday for affordable housing, power sector

A profit linked tax holiday from the activities of developing and building housing projects is proposed, subject to certain conditions such as:

- 1) The project is completed within a period of 3 years from the date of approval;
- 2) The other conditions with respect to area of the plot of land, area of the residential units comprised in the housing project and conditions with respect to floor area ratio are met;
- 3) Where residential unit is allotted to an individual, no other residential unit shall be allotted to the individual or the spouse or the minor children of such individual;
- 4) The taxpayer has to maintain separate books of account in respect of the housing project.
- 5) The housing project should be duly approved by the competent authority on or before 31 March 2019.

(10) Tax incentive for employment generation

The existing provisions provide for a deduction of 30% of additional wages paid to new regular workmen in a factory for three years. The provisions apply to the business of manufacture of goods in a factory where 'workmen' are employed for not less than 300 days in a financial year. However, such benefits are allowed only if there is an increase of at least 10% in total number of workmen employed on the last day of the preceding year.

It is proposed to extend this employment generation incentive to all sectors with respect to any employee whose total emoluments are less than or equal to INR 25,000 per month. Also, the condition of 10% increase in number of employees every year is proposed to be done away with and minimum number of days of employment in a year is proposed to be relaxed from 300 days to 240 days.

(11) Penalty for failure to report transactions covered under Transfer Pricing

In case of under-reporting of income as a consequence of failure to report international transactions/deemed international transactions or specified domestic transactions, a penalty of 200% of amount of tax payable will be applicable.

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