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Operational Tax News

India Budget 2018 - Key Highlights for Non Residents

6 February 2018

The Indian Budget for FY 2018-19 was presented in parliament on 1 February 2018. The key highlights of the tax proposals that are relevant to non-residents are outlined below.

Tax rates

- Corporate tax rate has been reduced from 30% (plus surcharge) to 25% (plus surcharge) for Indian companies whose total turnover during FY 2016-17 did not exceed approximately US$40 million. This makes the corporate structure somewhat more attractive than LLPs.
- The rate of cess on tax has increased from 3% to 4%. This will result in a marginal increase in the effective tax rates. For instance, the maximum tax rate on royalties or technical service fees earned by foreign companies would increase from 10.815% to 10.92%.

Key tax proposals

Long-term capital gains tax introduced

- The tax exemption for long-term capital gains on the sale of listed shares (and equity-oriented mutual funds and unit of business trusts) has been removed, and a tax of 10% (plus surcharge) will be levied on such gains. However, there is a grandfathering provision in terms of which gains accrued until 31 January 2018 will be exempt. This amendment will apply to any sale of such assets from 1 April 2018.

Dividend distribution tax on equity-oriented fund

- Corresponding to the above change, an equity-oriented mutual fund will be liable to pay a distribution tax of 10% on profits distributed to unit holders.

Capital gains tax exemption for trading in GIFT City

- In order to promote trading in the international financial center (GIFT city), the budget provides for a complete tax exemption for capital gains derived by foreign investors from the sale of derivatives, rupee-denominated bonds and GDRs. This has been done to encourage the relocation of trading in offshore markets such as Singapore and comes in the backdrop of a recent announcement by the Singapore stock exchange permitting trading in futures of 50 Indian stocks.

Requirement to obtain tax registration (PAN)

- Every entity, including a foreign entity and its principal officer (such as managing director, director, partner, trustee, founder, CEO, or other person competent to act on behalf of such entity), will be required to obtain a Permanent Account Number (PAN), if such entity enters into a financial transaction for an amount exceeding INR 250,000 in a financial year.

Minimum alternate tax (MAT)

- It has been clarified that MAT provisions were never deemed to be applicable to a foreign company earning income under special provisions viz. section 44B (shipping business), section 44BB (exploration, etc. of mineral oils), section 44BBA (operation of aircrafts), or section 44BBB (business of civil construction, etc. in certain turnkey power projects).

Others

- An amendment has been made in the prosecution provisions that prosecution proceedings can be initiated against companies (including foreign companies) for non-filing of tax returns even though there is no tax payable (although the intent seems to be to bring shell companies and conduit companies within the ambit of this provision).
- It is proposed that the conversion of stock-in-trade into capital assets will be subject to tax as business income on conversion. Fair market value of the inventory on the date of conversion should be the full value consideration.
- Various amendments have been proposed to the domestic tax law to make it compliant with the tax standards (ICDS) notified last year. This has been primarily done to overcome the High Court order in which the court had struck down some of the standards.
- Key changes in indirect tax law relates to the increase in customs duty on certain products, more notably telephone and telephone accessories and LCD and LED televisions

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