

Budget 2017-18

Highlights for Non-Residents

As proposed in The Finance Bill, 2017 introduced by Finance Minister of India on 1st February, 2017.

The Indian Budget has provisions affecting the taxability of income of 'Non-Residents' in India. It also gives thrust to agriculture, infrastructure, social sector, ease of doing business and banking sector. This shall have far reaching impact on one and all in India and many outside India.

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A] TAXATION AND BENEFICIAL PROVISIONS

I. Holding Period for Immovable Property re-defined

At present, an immovable property being a land or building or both is considered as long term if the same is held for more than 36 months.

However, with a view to promote the real-estate sector, it is proposed to reduce the aforesaid period to 24 months. As a result of the said amendment, benefit of Indexation would be available for one more year.

II. Base year shifted from 1981 to 2001

As per the existing provisions, for computing capital gains in respect of an asset acquired before 01.04.1981, the assessee was having an option to take Fair Market Value of an asset as on 01.04.1981 or the actual cost of asset as cost of acquisition.

It is proposed to amend the above provision so as to provide that the cost of acquisition of an asset acquired before 01.04.2001 shall be allowed to be taken as fair market value as on 01.04.2001. Further, the cost of improvement shall include only those capital expenses which are incurred after 01.04.2001.

Further, it is proposed to amend the provisions in relation to Cost Inflation Index to the proposed base year (i.e. 01.04.2001).

III. Insertion of specific provisions for Computation of Capital Gains in case of Joint Development Agreement

In case of transfer of Immovable property being land or building or both by an individual or HUF to a developer by way of execution of Joint Development Agreement, it is proposed to charge capital gains as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. Further, the manner of computing the said Capital Gains is also provided.

Further, it is proposed that tax at the rate of 10 percent shall be deductible from the monetary consideration payable by the developer.

IV. Expanding the scope of exemption of Long Term Capital Gains by way of Investment in Bonds

At present, capital gain to the extent of Rs. 50 lakhs arising from the transfer of a long-term capital asset is exempt if the assessee invests the whole or any part of capital gains in bond issued by the National Highways Authority of India or by the Rural Electrification Corporation Limited.

In order to widen the scope of this exemption, it is proposed to amend the existing provision so as to provide that investment in any bond redeemable after three years which has been notified by the Central Government in this behalf shall also be eligible for exemption.

V. Deduction of Tax at Source (TDS) on Payment of Rent

In order to widen the scope of TDS, it is proposed that Individuals or a HUF (other than those covered under tax audit), responsible for paying to a resident, any income by way of rent exceeding Rs.50,000/- for a month or part of month during the previous year, shall deduct an amount equal to 5% from the rent payable as income-tax thereon at the time of credit of rent or payment whichever is earlier.

In order to reduce the compliance burden, it is further proposed that the deductor shall not be required to obtain tax deduction account number (TAN). Further, that the deductor would be liable to deduct tax only once in a previous year.

The said amendment will take effect from 01.06.2017.

VI. Restricting cash donations

As per the existing provisions, deduction is allowed for donation paid in cash to a charitable trust upto Rs.10,000/-. It is proposed to amend the said provisions to reduce the allowable cash donations upto Rs. 2,000/-.

VII. Disallowance of depreciation under Section 32 and capital expenditure under Section 35AD on cash payment

To discourage cash transactions for capital expenditure, it is proposed that where an assessee incurs any expenditure for acquisition of any asset in respect of which a payment or aggregate of payments is made to a person in a day by cash in excess of ten thousand rupees, then such expenditure shall be ignored for the purposes of determination of actual cost of such asset.

VIII. Measures to discourage cash transactions

In order to disincentivise cash transactions, it is proposed that any payment made in cash above ten thousand rupees to a person in a day shall not be allowed as deduction in computation of Income from "Profits and gains of business or profession."

IX. Measures for promoting digital payments in case of small unorganized businesses

In order to encourage small unorganized business to accept digital payments, it is proposed to reduce the existing rate of deemed total income of 8% to 6% of such total turnover or gross receipts received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

X. Restriction on cash transactions

In order to achieve the mission of cashless economy to reduce generation and circulation of black money, it is proposed that no person shall receive an amount of Rs. 3 lakhs or more from a person in a day in respect of a single transaction or in respect of transactions relating to one event or occasion from a person otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account (i.e., in cash) and a penalty is proposed equal to the amount of such cash receipt.

XI. Conversion of Preference Shares to Equity shares not considered as transfer

To provide tax exemption to the conversion of preference share of a company into equity share of that company, it is proposed to amend section 47 to provide that such conversion shall not be regarded as transfer.

XII. Clarity relating to Indirect transfer provisions

Where an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India which derives its value substantially from the assets located in India and is held by non-resident as a Foreign Institutional Investor and registered as Category-I or Category-II Foreign Portfolio Investor, then the capital gains on transfer of such shares or interest shall not be taxable in India.

XIII. Extension of capital gain exemption to Rupee Denominated Bonds

With a view to provide relief to non-resident investor, the gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company (popularly known as Masala Bonds) shall be ignored for the purpose of computation of full value of consideration. Further, it is proposed that any transfer of capital asset, being rupee denominated bond of Indian company issued outside India, by a non-resident to another non-resident shall not be regarded as transfer and thus not liable to capital gains tax.

XIV. Benefit of Concessional rate of withholding tax on specified interest income of non-residents and/or foreign companies extended for further period:

Presently, the interest payable by Indian companies on External Commercial Borrowings ('ECBs') or on Long term bonds (including Long Term Infrastructure Bonds) to non-residents and/or foreign companies are eligible for concessional rate of withholding tax of 5%. Similarly, the interest payable to FIIs and QFIs on their investments in Government

securities and Rupee Denominated Corporate Bonds are subject to concessional rate of withholding tax of 5%;

However, the said concessional rate of withholding tax is available only with respect to ECBs, long term bonds (including long term infrastructure bonds), Government securities and Rupee Denominated Corporate Bonds issued and /or paid before 01.07.2017;

Considering the representation received and in order to stimulate growth, it is proposed to extend the benefit of lower rate of withholding tax on aforesaid interest income until 01.07.2020; and

Further, simultaneously it is also retrospectively proposed from 01.04.2016 to extend the aforesaid benefit of lower rate of withholding tax on interest income arising to non-residents and/or foreign companies from Rupee Denominated Masala Bonds issued before 01.07.2020.

XV. Adoption of Action Plan 4 of BEPS issued by OECD:

India, as part of the G-20 countries and supportive of the BEPS project of OECD has proposed for introduction of Action Plan 4 of the aforesaid project on 'Limiting Base Erosion involving Interest deductions and other Financial Payments' seeking to curb the menace of multinational groups undertaking financing arrangements of high level of debt among associated enterprises and maximising tax benefits by claiming interest deduction on debts in tax legislative countries;

The Action Plan 4 recommends that the interest expenses paid among associated enterprises of multinational groups in different tax legislations should be rationed and excess interest deduction should be disallowed;

Accepting the aforesaid suggestions, India has proposed for allowance of interest expenses restricting to either 30% of EBIDTA of the assessee entity or interest paid or payable to associated enterprises, whichever is less. The aforesaid proposed provisions shall be applicable to an Indian Company or Permanent establishment of foreign Company;

In addition to above, the aforesaid provisions also allow for carry forward of said disallowed interest expenses for 8 Assessment Years and its deduction thereof against the business income to the extent of maximum allowable interest expenditure; and

Lastly, in order to avoid inconvenience and support ease of doing business, the aforesaid proposed provisions are applicable only with respect to large interest payments viz. exceeding Rs. 1 crore and excluding banks and insurance companies from the applicability of the provision.

XVI. India recognises the internationally best practices on Transfer pricing:

India recognising the internationally best practices on transfer pricing has proposed to introduce the concept of secondary adjustment in certain cases. The said concept is also a part of OECD Transfer pricing guidelines;

"Secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. As per OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, secondary adjustment may take the form of constructive dividends, constructive equity contributions or constructive loans; and

Lastly, in order to avoid inconvenience and support ease of doing business, the aforesaid proposed provisions are applicable only if, the amount of primary adjustment made in the case of an assessee in any previous year does not exceed Rs. 1 crore and the primary adjustment is made in respect of an assessment year commencing on or before 01.04.2016.

XVII. Enabling claim of credit for foreign tax paid in cases of dispute

It is proposed to provide that where credit for foreign taxes paid which is in dispute is not given for the relevant assessment year, the Assessing Officer shall rectify the assessment order or an intimation, if the assessee, within six months from the end of the month in which the dispute is settled, furnishes proof of settlement of such dispute, submits evidence before the Assessing Officer that the foreign tax liability has been discharged and furnishes an undertaking that credit of such amount of foreign tax paid has not been directly or indirectly claimed or shall not be claimed for any other assessment year.

XVIII. Definition of person responsible for paying for furnishing of information mentioned under section 195(6) of the Income-tax Act, 1961

The existing provisions did not provide for the meaning of person responsible for furnishing of the prescribed information as mentioned under section 195(6). In order to bring clarity, it is proposed to amend the existing provisions to provide that in the case of furnishing of information relating to payment to non-resident individuals or foreign company, the payer himself shall be the person responsible for furnishing the information and when the payer is the company, the principal officer of the company is the person responsible.

XIX. Restriction on set-off of Loss from House Property

At present, the loss under the head 'Income from House Property' in a particular year is allowed to be set off against the income under any other head without any limit in the said year. In order to be in line with the international best practices, it is proposed that set off of house property loss against the income under other heads should be allowed only to the extent of Rs.2,00,000 per year. However, balance unabsorbed loss would be allowed to be carried forward for set-off in subsequent years.

B] PROCEDURAL PROVISIONS

I. Time limit for filing revised return of income

Earlier the assessee could revise the return if any omission or any wrong statement is discovered therein at any time before expiry of 2 years from end of relevant financial year or completion of the assessment, whichever is earlier.

The said time limit is proposed to be reduced to 1 year from end of relevant financial year or completion of assessment, whichever is earlier.

II. Withholding of Refund by the Tax officer

The Tax officer is empowered to withhold the refund due to the assessee determined in summary assessment (intimation) in appropriate cases until the final assessment is concluded.

III. Fee for delayed filing of return

In order to ensure that the return is filed within the specified due date, it is proposed that, in a case where the return is not filed within the specified due date, a fee as provided below would be levied with effect from Assessment Year 2018-19;

(i) a fee of Rs.5,000/- : if the return is furnished after the due date but on or before the 31st day of December of the assessment year;

(ii) a fee of Rs.10,000/- : in any other case.

However, in a case where the total income does not Rs.5 lakhs, it is proposed that the fee amount shall not exceed Rs.1,000/-.

IV. Strengthening of PAN quoting mechanism in the TCS regime

PAN acts as a common thread for linking the information in the departmental data base. In order to strengthen the PAN mechanism, it is proposed as under;

- a. any person paying any sum or amount, on which tax is collectable at source, shall furnish his PAN to the person responsible for collecting such tax, failing which, tax shall be collected at twice the rate mentioned in the relevant section or at the rate of 5%, whichever is higher.
- b. Mandatory quoting of the correct PAN in all correspondence, bills and vouchers exchanged between them.

Further, it is proposed to exempt the non-resident who does not have permanent establishment in India from above requirements.

C] Rates of Tax

I. For Non Resident Individuals

The tax rate in respect of income in 1st slab is reduced from 10% to 5%. Further, surcharge is levied at the rate of 10% in case the total income exceeds Rs.50 Lakhs but does not exceed Rs.1 Crore.

Financial Year (April-2017 to March-2018)

<u>Individual's Total Income</u>	<u>Rate</u>
Up to Rs.2,50,000/-	Nil**
Rs. 2,50,001/- to Rs.5,00,000/-	5% of the amount by which the total income exceeds Rs. 2,50,000/-
Rs. 5,00,001/- to Rs.10,00,000/-	Rs.12,500/- plus 20% of the amount by which the total income exceeds Rs.5,00,000/-
Exceeds Rs.10,00,000/-	Rs.1,12,500/- plus 30% of the amount by which income exceeds Rs.10,00,000/- (Refer Note 1)

Note 1:- The amount shall be increased by a surcharge at the rate of 10% in case total income exceeds Rs.50 Lakhs but not exceeding Rs.1 Crore and @ 15% in case total income exceeds Rs.1 Crore. Hence, the highest effective rate of tax in case of individual shall be "35.535%" (after including the Education cess and Secondary and Higher Education cess @ 3%). Marginal Tax Rate relief is available.

**If NRI is having only Short Term Capital Gain in Equity shares or Equity Oriented Mutual Fund (on which STT is paid), there is no benefit of basic exemption available.

II. For Foreign Companies

- Foreign companies are taxable at 40%
- 2% surcharge is applicable if the total income exceeds Rs.1 Crore but does not exceed Rs.10 Crores

- 5% surcharge is applicable if the total income exceeds Rs.10 Crores
- 3% Education Cess and Secondary and Higher Secondary Education cess is applicable on income tax (inclusive of surcharge, if any)

D] Rates of Tax Deducted at Source (TDS)

A] The basic TDS Rates as applicable in case of non-resident and / or foreign company, subject to the DTAA relief, if any are as follows:-

Particulars	Rate of TDS	Education Cess on TDS including Surcharge, if any	Effective Tax Rate
1) Capital Gains on Equity Oriented Mutual Fund Units and Equity Shares sold on Recognized Stock Exchange and STT paid thereon:			
i)Short Term	15%	3%	15.45%*
ii)Long Term	NIL	NIL	NIL
2) Capital Gain on Debt Mutual Fund & listed securities other than (1)			
i)Short Term	30%	3%	30.90%*
ii)Long Term	20%	3%	20.60%*
3. Capital gain on Other Assets			
i)Short Term	30%	3%	30.90%*
ii)Long Term	20%	3%	20.60%*
4) Interest on Bank Deposits(NRO A/c)	30%	3%	30.90%*
5) Income From Rent	30%	3%	30.90%*
6) Royalty & Fees for Technical Service (FTS)	10%	3%	10.30%*

*Rate of TDS shall be increased by applicable rate of surcharge.