

INDIA BUDGET 2018

THE ROAD AHEAD

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The logo for JP Chawla & Co. Chartered Accountants, featuring a stylized 'JP' monogram in a blue circle, followed by the text 'JP CHAWLA & Co.' in a bold serif font and 'Chartered Accountants' in a smaller serif font below it.The logo for Ashok Maheshwary & Associates LLP Chartered Accountants, featuring the text 'Ashok Maheshwary & Associates LLP' in a bold sans-serif font, with 'CHARTERED ACCOUNTANTS' in a smaller, spaced-out sans-serif font below it.

Presenters



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- BEPS Impact on domestic law provisions
- Business connection concept expanded to include Significant Economic Presence (SEP) (sec. 9(1)(i) of the Act).
- SEP means:
 - transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed;
 - systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means:
- Transactions or activities to constitute SEP in India, whether or not:
 - the agreement for such transactions or activities is entered in India
 - the non-resident has a residence or place of business in India
 - the non-resident renders services in India
- Effective from 1 April 2019 i.e. AY 2019-20

Rationalization of provisions relating to Country-by-Country Report(CbCR)

Changes based on Action Plan 13 of Base Erosion and Profit Shifting (BEPS) of the Organisation for Economic Co-operation and Development (OECD) (sec 286 of the Act)

Condition: Consolidated International group revenue of INR 55,000 millions(843 million USD) in the accounting year preceding the reporting accounting year for filing CbCR. Entities satisfying the mentioned threshold can fall into three categories as mentioned in below table:

Eligible Entity	Form No.	Due date of furnishing
Every Constituent entity(CE) resident in India, of an international group, whose parent is a non-resident (Section 286(1))	Form No. 3CEAC. Vide this form the Constituent entity will intimate: <ul style="list-style-type: none">• whether it is the alternate reporting entity of the international group; or• The details of the parent entity or the alternate reporting entity as the case may be	January 31 following the relevant fiscal year

Rationalization of provisions relating to Country-by-Country Report(CbCR) contd..

Eligible Entity	Form No.	Due date of furnishing
Parent entity, or alternate reporting entity, which is resident in India (Section 286(2))	Form 3CEAD	12 months from the end of the reporting accounting year – March 31 following the relevant fiscal year
Constituent entity resident in India, of an international group, whose parent entity is not resident in India – Specified cases [Section 286 (4) i.e. no agreement for exchange of CbCR or systematic failure	<ul style="list-style-type: none"> • Form No. 3CEAD • In case there are more than one CEs resident in India, the international group may opt to designate a CE, wherein the Form 3CEAD has to be filed only by the designated CE. • Intimation of the designated entity needs to be filed by the designated CE in Form 3CEAE 	<p>12 months from the end of the reporting accounting year – March 31 following the relevant fiscal year</p> <p>For filing of intimation of designated CE in Form 3CEAE - the due date of filing this form has not been prescribed.</p>

Rationalization of provisions relating to Country-by-Country Report(CbCR) contd..



- Time allowed for furnishing the (CbCR), in all the cases, to be extended to 12 months from the end of reporting accounting year as against the due date of return. (Parent entity, Alternate reporting entity(ARE) or Constituent entity as the case may be)
- Group's constituent entity resident in India, having a non-resident parent, shall furnish CbCR, in case its parent entity outside India has no obligation to file the report in its country
- Constituent entity in India not required to furnish CbCR in India, if ARE of the group has furnished CbCR with its Tax Authorities, within the due date specified by that country of which ARE is resident.

Rationalization of provisions relating to Country-by-Country Report(CbCR) contd..

- Currently Constituent entities resident in India, are required to file only a notification and not the report in India provided there existed either an agreement such as the Double Tax Avoidance Agreement (DTAA) or a notified agreement for exchange of the CbCR (i.e. “Multilateral Competent Authority Agreement”/ “MCAA”).
- Definition of agreement has been amended to include a combination of both, an agreement such as the DTAA and an agreement for exchange of CbCR (e.g. MCAA) notified by the Central Government.
- Reporting accounting year is amended to mean the accounting year in respect of which the financial and operational results are required to be reflected in the CbCR filed.

- Tax rates for Small and Medium sized domestic companies reduced to 25%
- Condition – Applicable in cases where Annual Turnover or Gross receipts does not exceed INR 2500 million (38 USD Million) in Financial Year (FY) 2016-17
- Companies other than above – 30%
- “Health and Education cess” of 4% introduced, replacing existing Education cess of 2% and Secondary and Higher education cess of 1%
- Applicable from FY 2018-19 i.e. Assessment year (AY) 2019-20

Permanent Account number(PAN) mandatory in certain cases

- Non-individual entity will have to obtain a PAN as its Unique Entity Number (UEN)
- Condition – entering into a Financial transaction of an amount aggregating to INR 0.25 million (USD 3849) or more in a financial year.
- Financial transaction scope not clarified yet.
- Scope of this provision restricted to non-individual resident persons.
- Amendment will take effect from 1st April, 2018 i.e. applicable from AY 2018-19.

- Transfer of capital asset by a company to its subsidiary and vice versa made tax neutral
- Earlier though exempt from capital gains (u/s. 47 (iv)/(v) of the Act) could be taxed as income from other sources in certain cases where there was no consideration or inadequate consideration (sec 56 of the Act)
- Applicable in relation to the transactions made on or after 1st April, 2018

Taxability of compensation in connection to business or employment

- Any compensation received or receivable, whether revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to its business shall be taxable as business income (sec. 28 of Income tax Act, 1961(Act))
- Any compensation received or receivable, whether in the nature of revenue or capital, in connection with the termination or the modification of the terms and conditions of any contract relating to his employment shall be taxable (sec. 56 of the Act)
- Applicable from AY 2019-20

New Scheme for Scrutiny Assessment

- Introduction of E-Assessment from April 1,2018
- Aim
 - eliminate interface between Assessing Officer and assessee
 - greater transparency, accountability and eliminate corruption
 - optimum utilisation of resources through economies of scale and functional specialisation
- E-mail based communication for Paperless scrutiny proceedings
- Team based assessment with dynamic jurisdiction

Measures to Promote Start ups (sec 80-IAC)

Particulars	Existing provisions	New provisions
Eligibility criteria (Date of incorporation)	On or after April 1, 2016-before April 1, 2019	On or after April 1, 2016 – before April 1, 2021
Turnover Criteria	Not exceeding INR 250 millions (3.83 USD million) in any previous year beginning on or after April 1, 2016 and ending on March 31, 2021	Criterion of turnover not exceeding INR 250 millions (3.83 USD million) to be seen for year in which deduction is claimed
Scope of Eligible business expanded	Business which involves innovation, development, deployment or commercialization of NEW products, processes, or services driven by technology or Intellectual property	Business engaged in innovation, development or improvement of products, processes, or services, or a scalable business model with a high potential of employment generation or wealth creation. The word “new “has been dropped and no definition of “scalable business model” provided.
Applicability	Effective from AY 2018-19	

Rationalisation of section 276CC relating to prosecution for failure to furnish return

- Currently, willful failure to furnish the return of income by the due date punishable with imprisonment and fine. (sec. 276CC of the Act)
- Carve out - No proceedings, if the tax payable on the total income determined on regular assessment, reduced by the advance tax and tax deducted at source, does not exceed INR 0.003 million (USD 47)
- As an anti-abuse measure benefit of the carve out withdrawn for companies
- Applicable from April 1, 2018

Aligning the scope of “business connection” (“BC”) with modified PE Rule as per Multilateral Instrument (MLI)



- The Union Budget 2018 has provided for the substitution of Explanation 2 inscribed under clause (i) of sub section (1) of section 9 of the Income Tax Act, 1961 (“the Act”) so as to **align the scope of "business connection"** provided in the Act with modified Permanent Establishment (PE) rule as per Multilateral Instrument (MLI) signed by India.
- Under the existing provisions of Explanation 2 to clause (i) of sub-Section (1) of Section 9 of the Act, “business connection” includes business activities carried on by non-resident through **dependent agents only**.
- The scope of Dependent Agent has been widened under the DTAAAs post modifications by the MLI which, inter alia, includes “*where a person is acting in a Contracting Jurisdiction to a Covered Tax Agreement on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise*” subject to certain specified conditions.

Aligning the scope of “business connection” with modified PE Rule as per Multilateral Instrument (MLI) (contd.)



- Furthermore the same also addresses the prevention of artificial avoidance of PE by way of exploiting the term "preparatory and auxiliary activity" through fragmentation of business activities which are otherwise cohesive operating business.
- As per Section 90 of the Act, the provision regarding taxability of any particular transaction provided under the Act are applicable to the tax payers to the extent the same are more beneficial as compared to relevant DTAA entered by Central Government with the Government of any country outside India.
- Considering the provision of section 90 of the Act, the entity may opt to choose the narrower definition of Business Connection of the Act as compared to MLI and hence, tax payers shall be again able to circumvent provision of DTAA and avoid the status of PE in India.

Aligning the scope of “business connection” with modified PE Rule as per Multilateral Instrument (MLI) (contd.)



- With the inclusion of word "or habitually plays the principle role leading to conclusion of contract by that non-resident" in Explanation 2 provided under section 9(1)(i), the scope of provision regarding BC provided under the Act, will become wider which will in turn lead to prevention of profit shifting.
- The amendment will take effect from 01 April, 2019 and will accordingly apply from AY 2019-20 onwards.

- As per the existing provision, the dividend distributed by a domestic company is subject to Dividend Distribution Tax (“DDT”) payable by the company. However, advances or loans to specified persons are considered as deemed dividend under section 2(22)(e) the Act (i.e. loans and advances given to shareholders) and taxed in the hands of the recipient at the applicable marginal rate.
- Considering the challenges with regards to collection of tax from the recipient and to avoid extensive litigations, the Explanation to Chapter XII-D occurring after section 115Q of the Act has been omitted so as to bring deemed dividends also under the scope of DDT under section 115-O.
- Such deemed dividend will be taxed at the rate of 30 per cent (without grossing up) in order to prevent camouflaging dividend in various ways such as loans and advances.
- This amendment relating to imposition of dividend distribution tax on deemed dividend will apply to transactions referred to in sub-clause (e) of clause (22) of section 2 of the Act undertaken on or after 1st April, 2018.

Widening of scope of Accumulated profits for the purposes of Dividend



- Explanation 2 to clause (22) of Section 2 defines accumulated profits for the purpose of dividend taxability. However, to plug the anomaly in case of an amalgamation, where the amalgamating companies have accumulated profits, it has been provided that in case of amalgamation, the profits of amalgamating companies (whether capitalized or not) shall also be considered while applying this provision to check quantum of taxability of dividend.

New regime for taxation of Long-Term Capital Gains (LTCG) on sale of equity shares etc.



- Under the existing regime, long term capital gains arising from transfer of long term capital assets, being equity shares of a company or an unit of equity oriented fund or an unit of business trusts , was exempt from income-tax under clause (38) of section 10 of the Act.
- In order to minimize economic distortions and curb erosion of tax base, Section 112A has been introduced in the Act to tax LTCG exceeding Rs. 100,000 annually on listed equity shares and mutual funds securities on which Securities Transaction Tax (“STT”) has been paid subject to certain exceptions at the rate 10% without allowing benefit of indexation. All gains on LTCG on sale of listed securities upto 31st January, 2018 to be grandfathered.
- It is also provided that for the securities which were hitherto unlisted as on 31st January, 2018 but listed at the time of sale,, those shall be allowed to be indexed upto FY 2017-18 and shall be considered their Fair Market Value as on 31st January, 2018. Similar provision has been proposed for the situation where an unlisted company merges into a listed company and if the shares of listed entity are transferred.
- The amendment will take effect from 01 April, 2019 and will accordingly apply from AY 2019-20 onwards.

Dividend distribution tax on dividend payouts to unit holders in an equity oriented fund



- Section 115R has been amended to provide that where any income is distributed by a Mutual Fund being, an equity oriented fund, the mutual fund shall be liable to pay a distribution tax at the rate of 10% on the income so distributed.
- The amendment will take effect from 01 April, 2019 and will accordingly apply from AY 2019-20 onwards.

Taxation of long-term capital gains in the case of Foreign Institutional Investor



- Consequent to the withdrawal of exemption under clause (38) of Section 10 of the Act for LTCG on listed securities, such gains will become taxable in the hands of Foreign Institutional Investors “(FII)” as well. As in the case of domestic investors, the FIIs will also be liable to tax on such long term capital gains only in respect of amount of such gains exceeding one lakh rupees. The provisions of Section 115AD will be amended accordingly.
- This amendment will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.

Exemption of income of Foreign Company from sale of leftover stock of crude oil on termination of agreement

- The Finance Act, 2017 inserted Clause (48B) under Section 10 which provided exemption to foreign companies having income for storage of crude oil in India under an agreement with Indian Government for sale of leftover stock after the conclusion of agreement. This provision has been further amended to provide that such an exemption shall apply even if the agreement is terminated in accordance with the terms of the said agreement.
- The amendment will take effect from 01 April, 2019 and will accordingly apply from AY 2019-20 onwards.

Relief from liability of Minimum Alternate Tax (MAT)

- Ordinarily, for calculating liability under MAT, the lower of unabsorbed depreciation and brought forward losses is allowed to be deducted from the book profits.
- As a measure of relief to the companies against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority, Section 115JB has been amended to provide that the aggregate amount of both unabsorbed depreciation and brought forward loss is to be reduced for the purpose of computation of book profits. The amendment is applicable w.r.e.f. from AY 2018-19 onwards.
- Further, Explanation 4A has been inserted in section 115JB of the Act to provide that the provisions of section 115JB will not be applicable to a foreign company, if its total income comprises solely of profits and gains from business referred to in section 44B (Shipping Business) or section 44BB (Mineral Oil Exploration) or section 44BBA (Operation of Aircraft) or section 44BBB (Civil Construction) and such income has been offered to tax at the rates specified in the said sections. The relief is applicable from w.r.e.f. AY 2001-02 onwards.

Amendments in relation to notified Income Computation and Disclosure Standards ('ICDS')



- Due to recent judicial rulings casting doubt on sanctity of ICDS, it has been provided that certain sections shall be amended w.r.e.f. AY 2017-18 onwards.
 - Section 36 - Marked to market loss were not allowed as deduction while calculating business profits. ICDS 8 allows marked to market loss but the position varies the position generally adopted under Income-tax. Hence, Section 36 has been amended to the effect that market to market loss or other expected losses computed as per ICDS shall be allowed as deduction
 - Section 40A – This section lists certain expenses which are expressly not allowed to be deducted while calculating business income. It has been amended to the effect that except marked to market losses referred to above (i.e. under Section 36), no other similar losses shall be allowed.

Amendments in relation to notified Income Computation and Disclosure Standards ('ICDS') (Contd.)

- Section 43AA(new) - Forex gain/loss on items other than capital assets were not generally allowed to be considered while calculating business income. However, ICDS 6 has allowed the same which contradicted with the already established position. Hence, this new provision has been inserted to and the position under ICDS has been followed.
- Section 43CB(new) – ICDS 3 has stated the position that profits for construction contracts shall be calculated as per Percentage Completion Method. The section has been inserted to keep the position in line with ICDS.
- Section 145A – ICDS 2 provides method valuation of inventory at cost or market price whichever is lower. However, Section 145A provided use of any method consistently used by taxpayer. This provision has also been amended to keep it in sync with ICDS.

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