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cutting through complexity

30 April 2015

Proposed amendments to the Finance Bill, 2015

The Finance Bill, 2015 (the Bill) was introduced by the Finance Minister in the Lok Sabha on 28 February 2015. On 30 April 2015, the amendments to the Bill have been tabled in the Lok Sabha by notice of amendments. The key amendments are summarised as follows:

Tax residency provision for non-Indian companies

The Bill had proposed that apart from an Indian company, any company whose Place of Effective Management (POEM) at any time during the year is in India, it shall be considered to be resident of India.

The words 'at any time' are now omitted thereby relaxing the stringency in this test / rule.

Applicability of Minimum Alternate Tax to Foreign Company

The Bill had proposed that the income from transaction in securities [other than Short Term Capital Gain (STCG) arising on which Securities Tax Transaction (STT) is not chargeable] arising to Foreign Institutional Investors (FII) excluded from the ambit of Minimum Alternate Tax (MAT) by excluding both the income and corresponding expenses, in the computation.

It is now proposed that any income accruing or arising to any foreign company by way of capital gains from transactions in securities, interest, royalty or fees for technical services shall be excluded from the ambit of MAT i.e. by excluding both the income and corresponding expenses in the computation.

Applicability of MAT to Sponsor Indian Company of Real Estate Investment Trust / Infrastructure Investment Trust (Business Trust)

The notional gain or notional loss on transfer of capital asset being shares of a special purpose vehicle to a Real Estate Investment Trust (REIT)/ Infrastructure Investment Trust (Invit) (i.e. Business Trust) in exchange of its units or any notional gain or notional loss resulting from any change in the carrying value of such units to be excluded for the purpose of computing MAT.

The gain or loss on transfer of units as aforesaid based on cost of shares exchanged with units or carrying amount of such shares at the time of such exchange where shares are carried at a value other than costs through profit or loss account be taken into account for the purpose of computing MAT.

Definition of 'income' expanded to include subsidy, grant, cash incentive or duty drawback and such other items.

The definition of 'income' is expanded to include any assistance received by the taxpayer in cash or kind in the form of any subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement from the Central Government or a State Government or any authority or body or agency and which is not reduced from or taken into consideration for determination of the actual cost of capital asset for tax depreciation purposes.

Safe harbour for offshore funds with an Indian fund manager

To facilitate the location of fund managers in India of offshore funds, it was proposed in the Bill that fund management activity undertaken in India by an eligible fund manager on behalf of an eligible offshore fund will not constitute a business connection in India for the offshore fund. The following eligibility criteria have now been relaxed for an investment fund set-up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other fund(s) as may be notified by the Central Government:

- The fund must have at least 25 investors who are not connected persons (as defined)
- No individual investor (including connected person) can hold 10 per cent or more in the fund
- The aggregate participation interest of 10 or less members along with their connected persons shall be less than 50 per cent of the fund

Further, it is proposed that the benefits under the safe harbour provisions shall be applied in accordance with guidelines to be prescribed by the Central Board of Direct Taxes.

Investment for new plant and machinery and additional tax depreciation benefits extended to the state of Bihar and West Bengal

The Bill had proposed that the manufacturing units set up in the notified backward area in the state of Andhra Pradesh or Telangana on or after 1 April 2015 would be eligible for additional depreciation at the rate of 35 per cent instead of 20 per cent in respect of actual cost of new machinery or plant (other than ship and aircraft) acquired and installed on or after 1 April 2015 but before 1 April 2020. During this eligible period, such manufacturing unit will also be eligible for additional investment allowance at 15 per cent on eligible plant and machinery/ assets. These benefits are proposed to be extended to the States of Bihar and West Bengal as well.

Deduction of interest on capital borrowed for acquisition of an asset

The deduction of interest paid on capital borrowed for acquisition of an asset for any period beginning from the date on which capital was borrowed till the date on which such asset was first put to use will not be allowed as deduction irrespective of such acquisition being for extension of any existing business or profession.

Provisions relating to holding period and cost of shares received on conversion of Global Depository Receipts

The period of holding of any capital asset, being a share or shares of an Indian company, which are acquired by the non-resident taxpayer on redemption of Global Depository Receipts (GDRs) held by such non-resident taxpayer in accordance with prescribed guidelines shall be reckoned from the date on which the request for such redemption was made. Further, the cost of acquisition of such share or shares shall be their price prevailing on any recognised stock exchange on the date on which the request for such redemption was made.

Deduction of Bad debts

Currently, the deduction of bad debts is allowed in the year in which such debt has been written off as irrecoverable in the accounts of the taxpayer. It is now proposed that where the amount of debt has been taken into account in computing the income of any previous year in which the debt has become irrecoverable or any earlier previous year on the basis of income computation and disclosure standard (ICDS) without recording the same in the accounts, such debt shall be allowed in the year in which it becomes irrecoverable and it shall be deemed that such debt is written off in the accounts of the taxpayer for this purpose.

Obligation for filing India return of income by an Individual who is Resident but Not Ordinarily Resident expanded

Any individual, being a resident other than not ordinarily resident in India who is, otherwise, not required to furnish an Indian income-tax return is now obliged to do so if at any time during the previous year:

(a) He holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(b) He is a beneficiary of any asset (including any financial interest in any entity) located outside India.

The beneficiary of any assets shall not be required to file such tax return if the income, if any, arising from any such asset (including any financial interest in any entity) is includible in the income of the person referred in (a) above.

The term 'Beneficial Owner' in respect of an asset means an individual who had provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person. The term 'Beneficiary' in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

Note: The proposed amendments to the Bill will become law only after it receives assent of the President of India.

www.kpmg.com/in

Ahmedabad
Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru
Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh
SCO 22-23 (Ist Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai
No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi
Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad
8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi
Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata
Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai
Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida
6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune
703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010