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India Union Budget 2020

Point of view

Family Office

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Key announcements for Private Clients and Family Offices

- **Residential status**

  The condition for determining tax residency for individuals/ HUF is proposed to be modified as follows:

  – An Indian citizen would be deemed to be a Resident in India if such individual is not liable to tax in any other country or territory on account of his residency or domicile (or any other prescribed criteria) in that country.

    The Government issued a subsequent clarification stating that the above is an anti abuse provision and an Indian citizen who becomes a deemed resident of India under this provision, income earned outside India shall not be taxed in India unless it is derived from an Indian business or profession.

  – The period of stay in India triggering residency for an Indian citizen or a Person of Indian Origin ('PIO') who being outside India comes on a visit to India reduced from 182 days to 120 days.

  – Currently, an individual qualifies to be a "not ordinarily resident" in India in a previous year if he is a non-resident in nine out ten previous years or if he has stayed in India for 729 days or less in the previous seven years. It is now proposed that an individual would qualify as "not ordinarily resident" if he is non-resident in India in seven out of the ten previous years. The condition of 729 days stay or less in India in the preceding seven years has been deleted.

  – Likewise, an HUF will be "not ordinarily resident" in India in a previous year whose manager has been non-resident in seven out ten previous years.

  Indians citizens or PIO residing overseas need to carefully analyse the impact of the above radical changes on their residential status and consequent taxability in India.

- **Dividend Distribution Tax ('DDT') abolished**

  – Dividend is proposed to be taxed in the hands of shareholders at rates applicable to them and subject to withholding tax;

  – To prevent cascading effect of tax on dividend, a deduction is proposed to be allowed in case of inter-corporate dividends received by a domestic company from another domestic company subject to conditions;

  – Only interest expense (and no other expenses) shall be allowed as a deduction against dividend income and the same shall be restricted to 20% of the dividend income;

- Since the above new provision comes into effect from 1 April 2020, 115BBDA which taxes dividends above INR 10 lakhs in the hands of resident non corporate entities has been made redundant from 31 March 2020.

The above changes revamp the mode of dividend taxation prevalent since many years and could adversely impact taxpayers receiving dividend income including individuals, HUFs, Firms, Trusts which are taxable at the higher effective rate than DDT. Non residents could evaluate relief as available in applicable tax treaties.

- **Real Estate Investment Trust ('REIT') / Infrastructure Investment Trust ('InvIT')**

  - Under existing regime, dividend paid by SPVs (held 100% directly by REIT / InvIT) which is in-turn distributed by REIT / InvIT is exempt from tax for unitholders and no DDT is payable by SPVs. It is now proposed that such dividend income will be taxable for the unitholders (DDT is anyway abolished), at rates applicable to them.

It is critical to evaluate the impact of the above proposal on the budgeted rate of return from investment in units of REIT / InvIT.

- **New optional regime for personal taxes**

  - A new optional tax regime introduced for individuals and HUF with modified tax slabs and rates without considering prescribed exemptions/ deduction. An individual or HUF may opt to compute tax in respect of his total income as per the optional tax regime instead of the existing tax regime.

  - The choice of the new tax regime comes with a few pre-requisite conditions such as:

    - Foregoing prescribed exemptions and deductions such as leave travel concession, house rent allowance, standard deduction, professional tax, home loan interest in respect of self-occupied property, etc.
    - Denial of specified deductions for investments, expenditure and donations
    - Restriction on other specified exemptions/ deductions, set-off, etc depending upon certain specific cases.

  - The option of new tax regime can be exercised every year, if the individual or HUF does not have business income. In case of individual or HUF having business income, option once exercised would be applicable for all subsequent years (with a one time option to change), except where such person ceases to have any business income.

Tax Collected on Source ('TCS') on remittances under Liberalized Remittance Scheme ('LRS')

  - It is now proposed that if an individual is remitting outside India an amount or an aggregate of amount of INR 7 lakhs or more in a financial year under the LRS scheme of the Reserve Bank of India ('RBI'), the Authorized Dealer shall be liable to collect TCS @ 5% / 10% (if PAN / Aadhar not provided) plus additional surcharge and cess.

- **Relaxation for tax exemption for Start-up and taxability of Employee Stock Options ('ESOP') issued by Start-ups**

  - Tax exemption for 100% profits of eligible start-ups proposed for 3 consecutive years out of 10 years (under existent provisions exemption available for 3 consecutive years out of 7 years). Further, the turnover threshold for availing the tax exemption is proposed to be increase to INR 100 crores as against the existent INR 25 crores.

- Taxation of ESOPs for employees of eligible start-ups deferred from exercise date of ESOP to the date of sale of shares post exercise or 5 years from the end of relevant financial year of exercise or cessation of employment, whichever is earlier.

- **Tax treaty**
  - Section 90 and 90A of the Income-tax Act, 1961 ('Act') amended to give effect to language of Treaty preamble as prescribed in the Multi-Lateral Instrument ('MLI').

- **Procedural provisions**
  - Emphasis on simplification of compliances and assessment and appellate process.
  - With an aim to reduce on-going litigations, an amnesty scheme 'Vivad se Vishwas' is proposed to be introduced to settle pending litigations.
  - Taxpayer's Charter proposed to be introduced enumerating rights of a taxpayer.
  - Introduction of faceless appeal
  - Minimum payment of 20% of tax demand for granting stay by Income Tax Appellate Tribunal

- **Others**
  - If turnover of a seller exceeds INR 10 crores during the preceding year, he shall be liable to collect TCS @ 0.1% (plus applicable surcharge and cess) on consideration received from Buyer in excess of INR 50 lakhs (1% if PAN / Aadhaar not provided).
  - Safe harbour limit has been increased from 5% to 10% for Sections 43CA, 50C & 56 of the Act in relation to transactions in land or building.
  - Concessional tax rate of 15% for manufacturing companies extended to electricity generation companies.

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