Tax Matters

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Key highlights of the Finance Bill, 2021

The last fiscal year has been an unprecedented year shrouded by huge uncertainty in the face of the COVID-19 pandemic and the resulting health, humanitarian and economic crisis. Against this challenging backdrop, the Indian Finance Minister presented Budget 2021-22 in Parliament on 1 February 2021. Overall, Budget 2021-22 contains several welcome policy announcements aimed at revival of the economy.

The team at JMP Advisors is pleased to summarise below the significant direct tax proposals announced in Budget 2021-22. These proposals are subject to enactment of the Finance Bill, 2021.

➢ Equalisation Levy

- It is proposed to be clarified that consideration which is taxable as Royalty or Fees for Technical Services ('FTS') would not be included in the definition of Equalisation Levy.

- Online sale of goods or online provision of services clarified to include one or more of the activities taking place online such as acceptance of offer for sale, placing the purchase order, acceptance of the purchase order, payment of consideration or supply of goods or provision of services.

- It is proposed to be clarified that the tax exemption for income on which Equalisation Levy has been deducted would apply from FY 2020-21, which was erroneously mentioned as FY 2021-22 in the existing section.

➢ Incentivising International Financial Services Centre ('IFSC') units

- An eligible offshore fund or its fund manager do not constitute a business connection in India on fulfilment of various specified conditions. These conditions are proposed to be waived/modified for an eligible investment fund or its fund manager, if the fund manager is located in an IFSC and has commenced operations on or before 31 March 2024.

- Investment divisions of offshore banking units which are located in an IFSC and which have commenced operations on or before 31 March 2024 to be considered as eligible IFSC units.

- Following incomes of a non-resident would be tax exempt if received from an IFSC unit which commences operations on or before 31 March 2024 and fulfils prescribed conditions to be exempt from income tax:

    - Income from transfer of non-deliverable forward contracts
    - Royalty on account of lease of an aircraft

- Capital gains on transfer of an aircraft or aircraft engine by an IFSC unit which was previously leased to a domestic company engaged in the business of operation of aircrafts would be exempt provided the IFSC unit has commenced operations or or before 31 March 2024.

Business income

- It is proposed to be clarified that no depreciation will be allowed on goodwill w.e.f 1 April 2021.
- Deduction to be allowed from the sale proceeds of goodwill for the amount paid towards the acquisition of goodwill.
- The threshold for applicability of tax audit provisions for businesses which carry out at least 95% of their transactions digitally, to be increased from INR 20 million (~ USD 0.3 million) to INR 50 million (~ USD 0.7 million).
- Dividend income not to be included in the computation of book profits in case of foreign companies where such income is taxed at a lower rate than the Minimum Alternate Tax ('MAT') rate due to the applicability of DTAA provisions, similar to the provisions existing for capital gains, royalty, interest and fees for technical services.
- MAT provisions to be aligned with the year of taxability of income arising in the year of repatration on account of Advance Pricing Agreement ('APA') or secondary adjustment.
- Delayed deposits of employees' contributions towards various welfare funds to be considered as a permanent disallowance for the employer.
- It is proposed to increase the safe harbour limit from 10% to 20% for the buyer as well as the developer, in case of specified primary sale of residential units.

Capital gains

- Slump sale to include all types of transfers i.e. slump exchange also to be included.

Withholding tax

- In case of income arising on securities to Foreign Portfolio Investors ('FPIs'), other than capital gains and specified interest, tax to be withheld at the lower of 20% or the rate specified in the relevant Double Taxation Avoidance Agreement ('DTAA').
- Withholding tax not to apply to dividend paid by a Special Purpose Vehicle to a Business Trust.
- Tax at 0.1% to be withheld by a buyer on purchase of goods exceeding INR 5 million (~ USD 70,000) during a FY, if the turnover of the buyer exceeds INR 100 million (~ USD 1.4 million) during the relevant FY.

Dispute resolution and appellate procedures

- Provisions relating to time limit for issuance of notices for reopening of scrutiny proceedings to be amended as under:
    - In specific cases where the tax officer has evidence which reveals that escaped income exceeds INR 5 million (~ USD 70,000) : 11 years from the end of the relevant FY
    - In all other cases: 4 years from the end of the relevant FY

- A scheme to be introduced to conduct appeal proceedings before the Income Tax Appellate Tribunal ('ITAT') i.e. the second level appellate authority in a 'faceless' manner to eliminate physical interface with taxpayers.

- In order to provide certainty to small taxpayers, it is proposed to set up Dispute Resolution Committees ('DRCs') in case of disputes where the returned income is upto INR 5 million (~ USD 70,000) and the aggregate amount of variation between the returned income and the income determined by the tax authorities is upto INR 1 million (~ USD 14,000). Matters involving relief from double taxation or search, survey or requisition cases would not be dealt with by the DRCs.

- It is proposed to replace the Authority for Advance Rulings with a Board for Advance Rulings. It is also proposed to discontinute the Settlement Commission, with one or more Interim Boards for Settlement to settle pending applications.

➢ Others

- No interest to be levied for deferral of advance tax instalments arising due to dividend (except deemed dividend).

- Pre-filled return forms to also include details of income from capital gains on listed securities, dividend and interest to ease the return filing process.

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on jairaj@jmpadvisors.in.

JMP Advisors Private Limited

12, Jolly Maker Chambers II, Nariman Point, Mumbai 400 021, India
T: +91 22 22041666, E: info@jmpadvisors.in, W: www.jmpadvisors.com

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