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UNION BUDGET 2024-25

Implications of Indian Budget 2024 for Non-Resident and Foreign Businesses

The Union Budget presents a roadmap to India's burgeoning future, including major economic reforms and incentives. We have summarized a few key amendments that may have an impact on foreign businesses or subsidiaries of Foreign Companies operating in India.

Rationalization of Corporate Tax Rate

- With effect from 1 April 2024, it is proposed to reduce the corporate income tax rate of Foreign Companies from 43.68% to 38.22%. This would result in a reduction of the effective tax rate of 38.22% after considering the maximum surcharge and education cess.
- This would mean a reduction in the tax rate for foreign companies operating in India through a Branch or a Permanent Establishment or executing EPC projects in India. With this change, Foreign Companies can also explore setting up in India through a branch structure, especially in cases where the dividend received from an Indian subsidiary is taxable in the home country and the tax credit on such dividends is not available in the home country.

Abolition of 2% Equalization Levy

- With effect from 1 August 2024, it is proposed to abolish the 2% Equalization Levy on e-commerce transactions by non-resident e-commerce operators supplying goods or services to Indian residents.
- The said amendment is a welcome move in the steps leading to the implementation of Pillar One and Pillar Two recommendations with respect to the global agreement on minimum taxation. The unilateral levy by India was one of the major concerns for non-resident digital companies with a customer base in India, which required registration, quarterly payments and annual filing by non-residents. Given that this was introduced as a levy (i.e., not a direct or indirect tax), credit for the same was not available in the home country and hence directly impacted the company's bottom line.
- While the Equalization Levy on e-commerce operators has been abolished, a 6% equalization levy on online advertising continues. However, this levy has to be collected and paid by Indian companies when making payments to overseas online advertisers, etc.

Special Tax regime for International Cruise Ship Operators

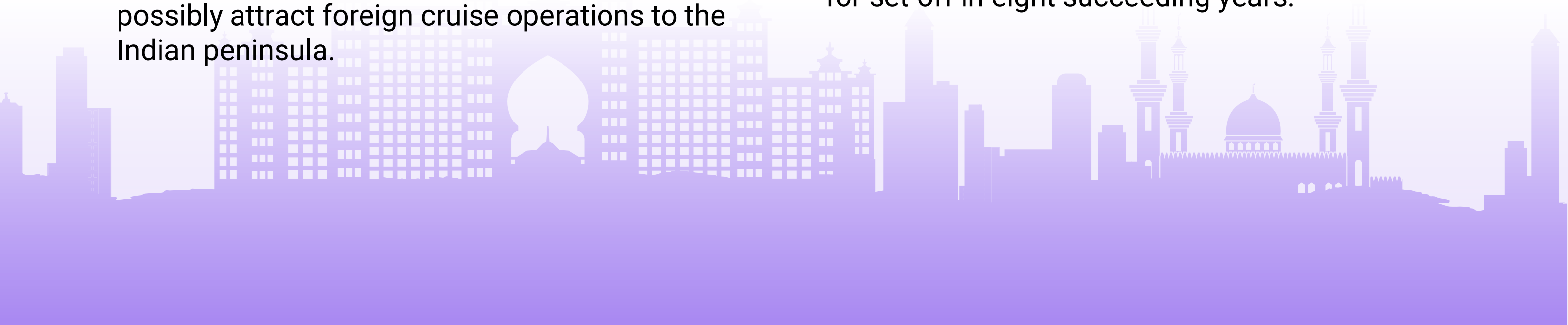
- With effect from 1 April 2024, a specific tax regime is proposed to be introduced for non-residents engaged in domestic cruise ships wherein 20% of the total receipts are proposed to be considered as income of the cruise line subject to fulfillment of prescribed conditions (i.e., the effective tax rate of 7% plus applicable surcharge and cess). Furthermore, lease rentals received by non-residents are also proposed to be exempted from tax up to 31 March 2030, subject to condition.
- Cruise tourism in recent years has shown a lot of growth potential and created employment opportunities. Seeing the trend, a proposal of a simplified tax regime will remove uncertainty and possibly attract foreign cruise operations to the Indian peninsula.

Abolition of Angel Tax

- Indian tax laws provided that a tax would be charged when a closely held company issues shares to a resident person at a price that is more than its fair market value. When this provision is triggered, the aggregate consideration received from the issue of shares that exceeds its fair market value is charged to tax. This was fondly called the Angel Tax, as this impacted angel investors investing in start-ups in India.
- In the Union Budget 2023, the government extended the applicability of these provisions to even non-resident investors investing in Indian closely held companies. There was a huge uproar in the international community on the introduction of these provisions.
- The Angel Tax has finally been abolished, effective 1 April 2024.
- The amendment was a much-needed and awaited move and will certainly attract foreign investment by way of FDI, relieve investee companies from tax and compliance burden and positively affect India’s start-up ecosystem and ease of doing business.

Buy-back of shares now taxable in the hands of shareholder

- Erstwhile consideration received on the buy-back of shares was exempt in the hands of the shareholder. However, the company involved in the buy-back of shares had to pay additional tax at the effective tax rate of 20% plus applicable surcharge and cess.
- However, it is now proposed that buy-back proceeds will now be taxable in the hands of the shareholder akin to dividend receipt at applicable rates with effect from 1 October 2024 without any deduction of the cost of purchase of asset. Furthermore, such cost shall be treated as a capital loss, which would be eligible to be set off against any other capital gains income in the year of buy-back or the same can be carried forward for set-off in eight succeeding years.



- Given that the buy-back of shares is treated as a deemed dividend, non-resident investors can explore availing beneficial tax rates provided under the Tax Treaty for Dividend Income subject to definition of dividend under the respective tax treaties. Furthermore, such taxes should also be available as a tax credit in the home country.

In addition to the same, the cost of the acquisition of shares would be available as capital loss, which could be used to set off against capital gains income.

Changes in Capital Gains Taxation

- The Union Budget has overhauled the capital gain structure to simply the same. The summary of the relevant items is as follows:

Sr No.	Type of Asset	Long-term Capital Gains Tax Rate	Short-term Capital Gains Tax Rate	Remarks
1	Listed securities	12.5%*	20%**	12 months holding period to be considered as LTCG
2	Unlisted securities	12.5%*	Applicable Rates	24 months holding period to be considered as LTCG

** Increased from 10% earlier*

*** Increased from 15% earlier*

****please note that all rates would have to be increased by applicable surcharge and education cess*

Penalty prescribed for delay in submission of an annual statement by Liaison office

- A non-resident having a liaison office in India must submit a statement detailing its activities for each financial year within 60 days from the end of its financial year. Earlier, no penalty was prescribed for delay in the statement's submission. Now it is proposed to levy a penalty of INR 1000 per day for delays up to three months or INR 1,00,000 in any other case.

Tax Administration

Introduction of Amnesty Scheme for pending litigations (Vivad se Vishwas Scheme 2.0)

Under the proposed Scheme, a taxpayer would be required to pay only the amount of the disputed taxes and will get a complete waiver of interest and penalty provided he pays the disputed tax or foregoes the tax credit by 31 December 2024.

Those who avail of this Scheme after 31 December 2024 will have to pay an additional tax over and above the disputed tax, subject to conditions.

The taxpayers whose cases are being litigated in various forums in India can benefit from this Scheme.

Reduction in timelines for initiating a tax audit by Indian revenue authorities

Indian Tax Authorities are allowed to conduct a detailed revenue audit by going back up to 3 years; in certain specified cases, they can go back up to 10 years.

These time limits have now been rationalized, wherein the maximum look-back period has been reduced to five years three months.

Other Measures

Certain measures were announced in the Budget, but the details regarding the same would be released in due course

- The government aims to make safe harbor provisions more attractive to MNCs. Detailed rules are expected to be announced, focusing on expanding transaction coverage, reducing mark-ups, and simplifying administration.
- Simplification of existing Indian Tax Laws – Indian Tax Law is to be completely revamped in the next six months. Endeavor to bring a simplified and concise Indian tax law.
- Increase in monetary limits for filing tax appeals by the Indian Tax Authorities – This will help reduce litigation.
- Simplification of Foreign Direct Investment Regime in India to encourage investments into India.

Our Comments

Overall, the Indian Government has continued to maintain its tight fiscal policy and increased its allocation towards capital expenditure in India to boost infrastructure and generate employment. India continues to be world’s fastest-growing economy and a bright spot in the global economy.

With measures such as abolishing the Equalization Levy and Angel Tax, overhauling the capital gains tax, and streamlining tax administration would continue to garner foreign investment and see continued M&A activity.

Foreign businesses looking to establish themselves in India or those already present in India should evaluate the recent changes and see how they can benefit from them.

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We provide integrated, digitally driven solutions encompassing Business and Professional Services, that help companies navigate challenges across all stages of their life-cycle. Through our direct operations in the USA, Poland, UAE, and India, we serve a diverse range of clients, spanning multinationals, listed companies, privately-owned companies, and family-owned businesses from over 50 countries.

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Nexdigm resonates with our plunge into a new paradigm of business; it is our commitment to ***Think Next***.

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