



## **Union Budget 2016 – Key Highlights**

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## Preface

The Finance Minister has presented the India Union Budget 2016-17 in the backdrop of an Economic Survey which projected GDP growth of between 8%-8.5% for the ensuing year and which set the stage for achieving double-digit growth.



The finance Minister said *"I am presenting this Budget when the global economy is in serious crisis. Global growth has slowed down from 3.4% in 2014 to 3.1% in 2015. Financial markets have been battered and global trade has contracted. Amidst all these global headwinds, the Indian economy has held its ground firmly. Thanks to our inherent strengths and the*

*policies of this Government, a lot of confidence and hope continues to be built around India."*

The International Monetary Fund has hailed India as a 'bright spot' amidst a slowing global economy. The World Economic Forum has said that India's growth is 'extraordinarily high'.

India remained a relatively bright spot with its growth story continuing to bloom, thanks in part to the benefit that it derived from a sharp reduction in crude oil prices, of which India is a major importer, as well as from the resilient domestic consumption.

We have tried to summarise the key budget proposals which are directly or indirectly relevant for our international clients and associates. In case you wish to have detailed information on any subject below please feel free to write us @ [info@hcoqa.com](mailto:info@hcoqa.com)

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**CORPORATE TAX**

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- Tax rate on newly setup domestic companies engaged solely in manufacture or production of any article or thing proposed to be reduced to 25%, at the option of the company, subject to not claiming certain specified deductions/claims.
- Tax rate proposed to be reduced to 29% for domestic companies whose total turnover or gross receipts in the previous year 2014-15 does not exceed INR 5 crores.
- Income of a foreign company engaged in the business of mining of diamonds is not to be considered as income deemed to accrue or arise in India for the activities confined to display of uncut or unasserted diamond in a special zone notified by the central government.
- The provision dealing with certain activities not to constitute business connection in India has been relaxed to benefit fund established/ incorporated/registered in a country or specified territory notified by the central government. Further, the condition that the offshore fund shall not carry on or control and manage, directly or indirectly, any business from India is restricted only in the context of activities in India.
- Long Term Capital Gain arising to a non-resident (not being a company) or a foreign company, from transfer of capital assets being shares of unlisted companies and shares in a company not being a company in which the public is substantially interested, to be chargeable to tax at the rate of 10 per cent without indexation.
- Any income, accruing or arising to a foreign company on account of storage of crude oil in a facility in India, or on account of its sale there from to any person resident in India, shall be exempt from taxation if such storage or sale is in pursuance of an agreement or arrangement with Central Government that is notified. The amendment will take effect from assessment year 2016-17.

**Place of Effective management (POEM)**

Implementation of POEM based on the residence test has been deferred by one year and shall apply from Financial Year 2016-17. The Government shall meanwhile provide a transition mechanism for foreign companies who have not earlier been assessed to tax in India under such POEM based residency rule.

### Exemptions from requirement of furnishing PAN under section 206AA to certain non-resident

- The existing section 206AA, inter alia, provides that any person who is entitled to receive any sum on which tax is deductible under the Act shall be liable to furnish PAN. Non-furnishing of PAN will attract TDS @ 20% (minimum).
- The provisions of section 206AA also apply to non-residents (with an exception in respect of payment of interest on long-term bonds as referred to in section 194LC). In order to reduce compliance burden, section 206AA is proposed to be amended to provide that the same shall not be applicable to a non-resident (other than a company) or a foreign company in respect of any payments, other than interest on bonds, subject to such conditions as may be prescribed. This amendment shall be applicable from 1 June 2016.
- It is proposed to make Minimum Alternate Tax not applicable to a foreign company with effect from 1 April 2001 in the following case:
  - a) foreign company is a resident of a country with which India has entered into a DTAA and the foreign company does not have a PE in India
  - b) foreign company is a resident of a country with which India has not entered into a DTAA and the foreign company is not required to seek registration under any law for the time being in force relating to foreign companies

### Equalisation Levy

In order to tax e-commerce transactions of non-residents, an "Equalisation Levy" is to apply in line with the recommendation of the OECD BEPS project.

The Equalisation levy is to be 6% of the amount of consideration for specified services received or receivable by a non-resident payee not having a PE in India, and it is to be levied and recovered from the payer being a person resident in India engaged in carrying on business/profession or a non-resident having a PE in India.

Correspondingly, such income would be exempt from income tax in the hands of a non-resident recipient.

Further, Central Government shall notify the date from which Chapter of 'Equalization Levy' shall come into force.

## Transfer pricing is now Country-by-Country Report and Master File

In order to implement the international consensus on Action 13 of the Organisation for Economic Cooperation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) project, the Finance Bill 2016 proposes to introduce the Country by Country (CbC) reporting requirement and the concept of master file in the Indian Income Tax Act, 1961.

The provisions relating to CbC reporting requirement as proposed by the Bill are as follows:

- The provisions will be effective 1 April 2017 and will apply from Financial Year 2016-2017.
- The reporting provisions shall apply to an international group (a group that operates in two or more jurisdictions) having consolidated revenues exceeding the prescribed threshold. The current OECD mandated threshold is € 750 million.
- If the parent entity of an international group is resident in India, it is required to furnish the CbC report in respect of the group by the due date of furnishing of return of income for the relevant Financial Year. Accordingly, an Indian parent company will need to furnish the first CbC report by 30 November 2017 for the Financial Year 2016-17.
- An entity in India of an international group having an overseas resident parent is required to provide the details of the country of residence of the parent by the prescribed date to the prescribed Indian tax authority.
- An Indian entity belonging to an international group with an overseas parent shall be required to furnish the CbC report to the prescribed authority if the parent entity of the group is resident:
  - a. in a country with which India does not have an arrangement for exchange of the CbC report; or
  - b. there is a systematic failure of the country in exchanging the said information with India even though there is an agreement; and



- c. this fact has been intimated to the entity by the prescribed authority
- The CbC report would be furnished in the prescribed manner and form and will contain (in line with the OECD template) aggregate information in respect of revenue, profit & loss before Income-tax, amount of Income-tax paid and accrued, details of capital, accumulated earnings, number of employees, tangible assets (other than cash or cash equivalent) in respect of each country or territory; along with details of each constituent's residential status, nature and details of main business activity as well as any other information as may be prescribed.
  - In cases where more than one entity of an overseas parent group are present in India, the group can nominate (in writing to the prescribed authority) the entity that shall furnish the report on behalf of all the Indian entities.
  - The prescribed authority may call for necessary documents and information from the entity furnishing the report for the purpose of verifying the accuracy of the same
  - For non-furnishing of the CbC report by an entity which is obligated to do so, a graded penalty structure applies that ranges from INR 5,000 to INR 50,000 per day.
  - For non-furnishing of the information and documents on the prescribed due date penalty of INR 500,000 is prescribed.
  - Pursuant to the transfer pricing adjustment, following specific penalty provisions proposed in situations where in the tax payer has failed to maintain appropriate documentation or failed to disclose international transaction:
    - Penalty at 50 percent of the tax payable on under-reported transaction
    - Penalty at 200 percent of the tax payable on misreporting of transaction

#### **Extension of limitation period for Transfer pricing audits**

- The time limit for Transfer Price (TP) assessment is proposed to be extended beyond the limitation period to allow the Transfer Price Officer (TPO) at least 60 days for passing the Transfer Price order after excluding the period for which:
  - a) The assessment proceedings before the TPO are stayed by any court; or
  - b) The information is sought from any other country under the exchange of information provisions
- The provision is applicable from 1 June 2016.

The core elements of the concept have been proposed by the Bill and the remaining provisions will be detailed in the Income Tax Rules later on.

**EASE OF DOING BUSINESS IN INDIA**

- Introduction of the concept of place of effective management for the determination of residential status of foreign companies has been deferred for one year i.e. it is to be applicable from FY 2017-18 along with the introduction of transitional provisions
- Double Taxation Avoidance Agreement (DTAA) benefit has been allowed for withholding tax purposes on the distribution by alternate investment funds to non-resident investors
- Changes in customs and excise duty rates on certain inputs to reduce costs and improve competitiveness of domestic industry in sectors like Information technology hardware, capital goods, defence production, textiles, mineral fuels & mineral oils, chemicals & petrochemicals, paper, paperboard & newsprint, Maintenance repair and overhauling [MRO] of aircrafts and ship repair
- 100% FDI under the approval route is to be allowed in the marketing of food products produced and manufactured in India.
- To promote investments in the manufacturing sector, there is a proposal to accord residency status to foreign investors subject to certain conditions. Currently, these investors are granted a business visa only up to five years at a time
- A bill will be introduced to amend the Companies Act, 2013, in the current Budget Session of the Parliament for further simplification, including creating an enabling framework for start-ups and speeding the incorporation of company (as fast as one day).
- Foreign Investment Promotion Board (FIPB) approval shall not be required for foreign investment in the insurance and pension sectors. Concerned regulator to verify Indian management and control
- 100% FDI in asset reconstruction companies (ARCs) to be permitted through the automatic route. Foreign portfolio investors (FPIs) to be allowed up to 100% of each tranche in securities receipts issued by ARCs subject to sectoral caps
- Investment limit for foreign entities in Indian stock exchanges to be enhanced from 5 % to 15% on par with domestic institutions
- All financial services activities (except banking) regulated by the financial services regulator shall be under the automatic route

## Habibullah & Co. Chartered Accountants

### ABOUT US

**Habibullah & Co. (HCO)** is a professional services firm providing audit, assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies, guided by core values including competence, honesty and integrity, professionalism, dedication, responsibility and accountability.

At HCO, the interests of our clients are paramount. Our focus on the mid-market means we have a real understanding of the environment in which our clients operate and are ideally placed to help them grow and prosper.

In our continued efforts to provide Tax, Audit & Compliance updated to our clients and international associates we have compiled this guide focusing on Investment opportunities in India with light on establishing business in India. Indian Tax Law has not been discussed in this issue as the same has been separately published.

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