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Global Tax Alert

India releases 2019-20 Union Budget: Update on corporate tax proposals

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Executive summary

The Finance Minister of India presented the Union Budget for tax year 2019-20 (the Budget 2019) on 5 July 2019. The Budget 2019 includes proposals to reduce the 30% corporate tax rate to 25% for almost all Indian companies, rationalize several provisions to provide relief to taxpayers, introduce a share buyback tax for listed companies, and amend the secondary transfer pricing adjustment provisions in favor of taxpayers.

This Alert summarizes the key corporate tax and related proposals.

Detailed discussion

Initiatives promoting economic growth

- The Government proposes issuing sovereign bonds denominated in foreign currency to global investors to ease pressure on domestic savings and interest rates.
- Global investors will be offered to set up large manufacturing plants in India to bring in advanced technology in the solar cell, electric vehicle and electronic sector and other related areas.

Building a better working world

- The Government plans to reinvigorate public-private partnership projects in its ambitious infrastructure expansion plans and will consider methods to raise long-term financing for these projects.
- Relief will be provided for the banking sector of the burden of non-performing assets with a capital infusion of INR700 billion (US$10 billion).

Reduction in the corporate tax rate

- A reduced 25% corporate tax rate[1] will apply for the Indian Financial Year (FY) 2019-20[2] to Indian companies with total turnover or gross receipts not exceeding INR4 billion (US$57 million) in FY 2017-18; the 30% corporate tax rate[3] will continue apply for all other Indian companies.

Key corporate tax proposals

- The Budget 2019 proposes to exempt the requirement to transfer assets and liabilities at book value to claim nontaxable treatment for demergers by companies subject to Indian accounting standards, allowing these companies to qualify for a tax-free demerger transaction.
- The Budget 2019 extends the 23.30% share buyback tax to listed Indian companies for share buyback transactions occurring on or after 5 July 2019. The Indian share redeeming company is subject to the share buyback tax and shareholders are exempt from taxation on the buyback.
- Under the Budget 2019, Indian companies will be allowed to carry forward tax losses despite a change in shareholding beyond a specified percentage, if such change in shareholding is pursuant to an order passed by the National Company Law Tribunal for providing relief to the distress companies, subject to satisfaction of certain conditions.
- The Budget 2019 proposes a potential exemption from adverse tax consequences for the seller and buyer of unquoted shares of an Indian company, even if the consideration is less than fair market value (FMV), provided the share transfer consideration is approved by regulatory authorities and taxpayers have no control over the determination of consideration.
- The Budget 2019 proposes to eliminate certain tax and interest as a result of a withholding agent's failure to withhold tax on a payment made to a nonresident, if the nonresident files an income tax return and pays the taxes.
- The Budget 2019 proposes measures to promote a cashless economy (i.e., a digital payment economy), including a 2% withholding tax on cash withdrawals exceeding INR10 million (US$0.14 million) in a FY (subject to certain exceptions).
- The Budget 2019 proposes to exempt Indian companies from tax on the issue of shares at a price exceeding FMV, if the shares are issued to Category-II Alternative Investment Funds approved by the Securities and Exchange Board of India.

Key international tax proposals

- Nonresidents receiving money or assets situated in India on or after 5 July 2019 will be subject to tax on the difference between the consideration and FMV. However, nonresidents may claim relief under the relevant income tax treaties.
- The Budget 2019 relaxes certain conditions for eligible investment funds to claim exemption from the application of the business connection rule under *Income Tax Act* and the permanent establishment rule under the treaty.
- The Budget 2019 proposes to introduce an online filing process for applications to the Indian tax authorities to confirm the applicable withholding tax rate on payments made to nonresidents prior to remittance.

Key transfer pricing (TP) proposals

- The Indian tax law contains secondary TP adjustment (SA) provisions, requiring taxpayers to repatriate excess funds held outside India that resulted from the difference between the transaction price and the TP adjustment to that transaction. Failure to remit the funds within the required timeframe results in imputed interest income.
  - The 2019 Budget clarifies that the SA provisions will not apply to cases in which the TP adjustments made during the year do not exceed INR10 million (US$0.14m) or it relates to FY 2015–16 or earlier years.
  - An SA may be triggered when a TP adjustment results from an Advance Pricing Agreement (APA) between taxpayers and tax authorities. The Budget 2019 intends to grandfather APAs signed on or before 31 March 2017 from the application of SA rules. However, refunds for taxes already paid for TP adjustments from the grandfathered APAs are not permitted.

- The excess funds held outside India may be repatriated from any nonresident related party of the Indian taxpayer.
- Taxpayers are offered an option to pay a one-time 18% additional tax[4] in lieu of the transfer of the excess funds, subject to complying with certain conditions.

- The Budget 2019 plans to extend Indian master file compliance requirements for constituent entities of an international group that do not need to maintain TP documentation with respect to their international transactions.

Endnotes

1. Additional surcharge and cess is applicable.
2. Taxable year beginning on 1 April 2019 and ending on 31 March 2020. Indian corporate tax rates are announced on an annual basis and the revised rate applies only to this particular fiscal year.
3. Additional surcharge and cess is applicable.
4. Additional surcharge and cess is applicable.

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