

Modi 2.0 - Budget 2019

Analysis of International Tax Provisions

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1. Tax Rates

Enhanced surcharge (25%/37%) applies to non-residents being individual, AOP, BOI, AJP

Enhanced surcharge also applies in respect of TDS on payments to such non-residents

No change in the tax rates as applicable to foreign companies

2. Gift - Deemed Accrual

Section 56(2)(x) (applicable from 1 April 2017) taxes money or property received without adequate consideration in the hands of the recipient

Exceptions provided in the section – e.g. gift from relatives, gift on the occasion of marriage or under a will etc

Budget 2019 Memorandum: “It has been reported that gifts are made by persons being residents in India to persons outside India and are claimed to be non-taxable in India as the income does not accrue or arise in India”

Section 9 of the Act relates to “Income deemed to accrue or arise in India”

2. Gift - Deemed Accrual

Proposed Amendment - Section 9(1)(viii)

Income of the nature referred to in sub-clause (xvii) of clause (24) of section 2, arising from any sum of money paid, or any property situate in India transferred, on or after 5 July, 2019 by a person resident in India to a person outside India shall be deemed to accrue or arise in India

Gift - Deemed Accrual

Condition	Analysis
1) Income of the nature referred to in sub-clause (xviiia) of clause (24) of section 2	<ul style="list-style-type: none">• Sub-clause (xviiia) of clause (24) of section 2 refers to income u/s 56(2)(x)• If the receipt is covered by exceptions to Sec 56(2)(x), then the clause does not apply
2) arising from any sum of money paid, or any property situate in India	<ul style="list-style-type: none">• Any sum of money• Definition of Property• Property situate in India• Applicability to movable and immovable property?
3) on or after 5 July, 2019	<ul style="list-style-type: none">• Note the Cut-off date !
4) by a person resident in India	<ul style="list-style-type: none">• Donor should be resident in India• A non-resident donor is not covered
5) to a person outside India	<ul style="list-style-type: none">• Person should be outside India• The test of 'residency' is not provided for

2. Gift - Deemed Accrual

Transfer from a non-resident company to another non-resident company of shares of Indian company for inadequate consideration?

Is situs of property in India relevant? Gift executed and accepted outside India

Accrual u/s 9 versus 'receipt' u/s 56(2)(x)

Taxability under treaty if favourable would prevail ;
Relevance of Article 3(2)

- Treaties with USA, UK provide a wide other income clause – income arising in source country is taxable
- Treaties with UAE, Germany – other income clause – residence country taxation

3. Relaxation of TDS default on NR payments

Currently, payers making payments to residents where no TDS has been made are not regarded as assessee in default u/s 201 if:

- such resident has furnished his return of income u/s 139,
- disclosed such payment for computing his income in his return of income,
- paid the tax due on the income declared by him in his return of income and
- payer has furnished an accountant's certificate to this effect.

Payments to non-residents were not covered

Payer regarded as assessee in default u/s 201 and expenditure would be disallowed u/s 40(a)(i)

3. Relaxation of TDS default on NR payments

Relief extended to payments to non-residents with effect from 1 September 2019

If the conditions are satisfied, payer shall not be regarded as an 'assessee in default'

Expense disallowance u/s 40(a)(i) shall not apply in the hands of the payer

Would this provision apply retrospectively?

Application of non-discrimination article under tax treaties?

4. Sec 195 lower TDS determination to become online



Lower or NIL TDS determination u/s 195(2) or Sec 195(7) shall be made online



New process to be effective from 1 November 2019



Use of technology to streamline the process

Reduce the time for processing of such applications

Help tax administration in monitoring such payments

Primary & secondary adjustment

BEFORE 2017

Indian Subsidiary	Amount
Value of international transactions (e.g. exports)	100
Arm's length price determined by TPO	130
Primary TP Adjustment	30

No deemed dividend on primary adjustment until now

AFTER BUDGET 2017

Ind Co to carry out secondary adjustment

Indi Co must record 30 as receivable & bring money into India

Else, 30 treated as deemed advance by Ind Co to AE

Ind Co to compute notional interest & pay tax on it

5. Secondary Adjustment – One-time Tax Payment

One-time tax payment option - secondary adjustment - where excess money or part thereof has not been repatriated in time

Option to assessee to pay one-time tax @ 18% plus 12% surcharge

Existing requirement of interest till the date of payment of one-time tax to continue

Interest is not required to be paid after payment of one-time tax

One-time tax shall be final and no credit shall be allowed

Deduction in respect of the amount on which one-time tax has been paid, shall not be allowed

Amendment to Section 92CE from 1 September 2019

5. Secondary Adjustment - Other Clarifications

Clarification - The condition of threshold of Rs 1 crore and of the primary adjustment made upto AY 2016-17 are alternate conditions

Assessee shall be required to calculate interest on the excess money or part thereof

Provision of Section 92CE shall apply to the agreements which have been signed on or after 1st April, 2017; however, no refund of the taxes already paid till date under the pre amended section would be allowed

Excess money may be repatriated from any of the associated enterprises of the assessee which is not resident in India

Amendments to Section 92CE from AY 2018-2019

6. APA Clarification

Cases where assessment or reassessment has already been completed and taxpayer files modified return of income post APA, the AO shall pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, having regard to and in accordance with the APA.

No intention to allow AO to start fresh assessment or reassessment in respect of completed assessments or reassessments of the assessee who have modified their returns of income in accordance with the APA

7. Master File, CBCR

Master file to be filed by every constituent entity of an international group even when there is no international transaction undertaken by such constituent entity (Part A of the Master File) – Section 92D

Clarification regarding 'accounting year' definition u/s 286 – accounting year of ARE whose parent entity is a non-resident in India, the reporting accounting year shall be the one applicable to such entity

AO or CIT(A) precluded from seeking master file from the assessee - Section 92D

8. Other Changes



Relaxation in conditions of special taxation regime for offshore funds [Section 9A]

Time limit for corpus of Rs 100 cr rationalised

Govt to prescribe Fund manager's remuneration instead of ALP



Exemption of interest income of a non-resident arising from borrowings by way of issue of Offshore Rupee Denominated Bonds referred to under section 194LC issued during 17 September 2018 to 31 March 2019 [Section 10]



Rationalisation of provision relating recovery of tax in pursuance of agreements with foreign countries – Section 228A



Thank you

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International Financial Services Center



Deduction for IFSC units enhanced from 50% to 100%



Currently, profit-linked deduction is available to units of an IFSC of (i) 100 percent of income for first five years, and (ii) 50 percent of income for the next five years



Restriction for no deduction under Chapter VI-A not to apply to IFSC units



Interest and specified income of non-residents is taxed on gross basis under section 115A, and no Chapter VI-A deduction is available – including IFSC deduction u/s 80LA



Restriction u/s 115A will not apply to deduction allowed under section 80LA to a unit of an IFSC.

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Exemption on interest payable by IFSC to non-resident in respect of monies borrowed by it on or after 1 September 2019



Exemption u/s 47 for transfer of a capital asset on a recognised stock exchange located in IFSC to be extended to category III AIF subject to conditions.



Extension of DDT relief for dividends paid out of accumulated income derived from operations in IFSC after 1 April 2017



No tax on mutual fund on its income derived from transactions made on a recognised stock exchange located in any IFSC subject to conditions