

## **BUDGET 2018 NEWS FLASH:** **KEY PROPOSALS CONCERNING FOREIGN INVESTMENTS IN INDIA**

Finance Minister Arun Jaitley presented the India Budget 2018 before the House of Parliament on Thursday 01<sup>st</sup> February 2018. This is the present government's fifth and last full Budget amid subdued economic growth, challenging fiscal situation and farm distress.

Economic liberalisation started in India in wake of the 1991 economic crisis and since then FDI has steadily increased in India. India has become the fastest growing investment region for foreign investors because of the Indian government's favourable policy regime and robust business environment. The government of India is taking various measures like opening FDI in various sectors of the economy and improving ease of doing business. Agriculture, Civil Aviation, Courier Service, Defense, Education, Pharma, Railway, Telecom, Tourism, Food products are some sectors under the 'Make in India' initiative. India has become a vibrant market for manufacturers and investors. The country stands committed to have an FDI policy and administration which is investor friendly and also promotes investment leading to increased manufacturing, job creation and overall economic growth of the country. Some of the announcements concerning foreign investors are summarized below:

### **1. Policy Announcements on Foreign Direct Investments**

- **Venture Capital Funds and the angel investors**
  - ❖ Number of policy measures including launching "Start-Up India" program, building very robust alternative investment regime in the country and rolling out a taxation regime designed for the special nature of the VCFs and the angel investors.
  - ❖ Measures to strengthen the environment for their growth and successful operation of alternative investment funds in India are being planned.
- **Separate policy for the hybrid instruments**
  - ❖ Budget recognises that Hybrid instruments are suitable for attracting foreign investments in several niche areas, especially for the start-ups and venture capital firms.
  - ❖ The Government will evolve a separate policy for the hybrid instruments.
- **Liberalizing foreign direct investment**
  - ❖ The Government has opened up private investment in defence production including liberalizing foreign direct investment. Measures will be taken to develop two defence industrial production corridors in the country. The Government will also bring out an



industry friendly Defence Production Policy 2018 to promote domestic production by public sector, private sector and MSMEs.

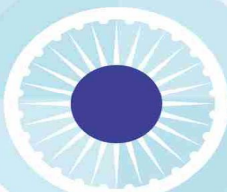
## 2. Direct Tax Proposals

### 2.1. Tax Rates

- ❖ In the case of non-resident assesseees, the rates of tax are the same as those specified for the financial year 2017-18.
- ❖ For financial year 2018-19, additional surcharge called the “Health and Education Cess on income-tax” shall be levied at the rate of four per cent. on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such cess.

### 2.2. Other Proposals

- **Aligning the scope of “business connection” with modified PE Rule as per Multilateral Instrument (MLI).**
    - ❖ Section 9(1)(i) is being proposed to be amended to provide that “business connection” shall also include any business activities carried through a person who, acting on behalf of the non-resident, habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident.
    - ❖ It is further proposed that the contracts should be-
      - in the name of the non-resident; or
      - for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that the non-resident has the right to use; or
      - for the provision of services by that non-resident.
- (This Amendment will take effect from 1st April, 2019, in relation to the A.Y. 2019-20 and subsequent assessment years.)*
- **“Business connection” to include “Significant Economic presence”**
    - ❖ It is proposed to amend section 9(1)(i) of the Act to provide that ‘significant economic presence’ in India shall also constitute ‘business connection’. Further, “significant economic presence” for this purpose, shall mean-
      - any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds the amount as may be prescribed; or



- Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

- ❖ It is also clarified that unless corresponding modifications to PE rules are made in the DTAAs, the cross-border business profits will continue to be taxed as per the existing treaty rules.

*(This Amendment will take effect from 1st April, 2019, in relation to the A.Y. 2019-20 and subsequent assessment years.)*

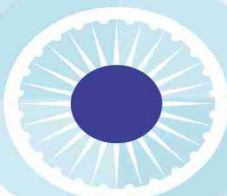
- **Rationalisation of provisions relating to Country-by-Country Report (CbCR)**

- ❖ It is proposed to improve the effectiveness and reduce the compliance burden of such reporting the time allowed for furnishing the CbCR, in the case of parent entity or Alternative Reporting Entity (ARE), resident in India, is proposed to be extended to twelve months from the end of reporting accounting year.
- ❖ Constituent entity resident in India, having a non-resident parent, shall also furnish CbCR in case its parent entity outside India has no obligation to file the report of the nature referred to in sub-section (2) in the latter's country or territory
- ❖ The time allowed for furnishing the CbCR, in the case of constituent entity resident in India, having a non-resident parent, shall be twelve months from the end of reporting accounting year;
- ❖ The due date for furnishing of CbCR by the ARE of an international group, the parent entity of which is outside India, with the tax authority of the country or territory of which it is resident, will be the due date specified by that country or territory.
- ❖ Agreement would mean an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A, and also an agreement for exchange of the report referred to in sub-section (2) and sub-section (4) as may be notified by the Central Government;

*(This Amendment will take effect retrospectively from 1st April, 2017, in relation to the A.Y. 2017-18 and subsequent assessment years.)*

- **New regime for taxation of long-term capital gains (LTCG) on sale of equity shares**

- ❖ It is proposed to withdraw the exemption u/s 10(38) and to introduce a new section 112A in the Act to provide that LTCG arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust shall be taxed at 10 % of such capital gains exceeding one lakh rupees.
- ❖ This concessional rate of 10 per cent. will be applicable to such long term capital gains, if:



- In a case where long term capital asset is in the nature of an equity share in a company, securities transaction tax has been paid on both acquisition and transfer of such capital asset; and
- In a case where long term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, securities transaction tax has been paid on transfer of such capital asset.
- ❖ Further, the new provision of section 112A also proposes to provide the following:
  - No Indexation will be allowed while computing above LTCG
  - The cost of acquisitions in respect of the long term capital asset acquired by the assessee before the 1st day of February, 2018, shall be deemed to be the higher of
    - a) the actual cost of acquisition of such asset; and
    - b) The lower of –
      - (i) the fair market value of such asset; and
      - (ii) The full value of consideration received or accruing as a result of the transfer of the capital asset

*(These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-2020 and subsequent assessment years.)*

- **Taxation of long-term capital gains in the case of Foreign Institutional Investor**

- ❖ The proposed withdrawal of exemption under clause (38) of section 10 of the Act, long term capital gain will become taxable in the hands of FIIs.
- ❖ Long term capital gains shall be taxable only in respect of amount of such gains exceeding 1 lakh rupees.

*(This Amendment will take effect from 1st April, 2019, in relation to the A.Y. 2019-20 and subsequent assessment years.)*

- **Entities to apply for Permanent Account Number in certain cases**

- ❖ In order to use PAN as Unique Entity Number (UEN) for non-individual entities, it is proposed that every person, not being an individual, enters into a financial transaction of an amount aggregating to Rs 2,50,000/- or more in a financial year shall be required to apply to the AO for allotment of PAN
- ❖ To link the financial transactions with the natural persons, it is also proposed that the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities shall also apply to the AO for allotment of PAN

*(This amendment will take effect from 1<sup>st</sup> April, 2018.)*

- **Relief from liability of Minimum Alternate Tax (MAT)**



- ❖ Provisions of MAT shall not apply in respect of foreign companies having income solely from businesses referred to in sections 44B, 44BB, 44BBA and 44BBB of the Act provided such income has been offered to tax at the rates specified in these sections.

*(This amendment will take effect, retrospectively from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent assessment years.)*

- **Exemption of income of Foreign Company from sale of leftover stock of crude oil on termination of agreement or arrangement**

- ❖ It is proposed to amend clause (48B) of section 10 to provide that the benefit of tax exemption in respect of income from left over stock will be available even if the agreement or the arrangement is terminated in accordance with the terms mentioned therein.

*(This Amendment will take effect from 1st April, 2019, in relation to the A.Y. 2019-20 and subsequent assessment years.)*

- **Royalty and FTS payment by National Technical Research Organisation (NTRO) to a non-resident to be tax-exempt**

- ❖ It is proposed to amend section 10 so as to provide that the income arising to non-resident, not being a company, or a foreign company, by way of royalty or fees for technical services rendered in or outside India to, the NTRO will be exempt from Income Tax.
- ❖ NTRO will not be required to deduct tax at source on such payments henceforth.

*(This Amendment will take effect from 1st April, 2018, in relation to the A.Y. 2018-19 and subsequent assessment years.)*

- **Measures to promote International Financial Services Centre (IFSC)**

- ❖ In order to promote trade in stock exchanges located in IFSC, this budget exempt transfer of derivatives and certain securities by non-residents from capital gains tax.
- ❖ Further, non-corporate taxpayers operating in IFSC shall be charged Alternate Minimum Tax (AMT) at concessional rate of 9%

*(These amendments will take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.)*

