



**BUDGET 2021 NEWS FLASH**  
**KEY PROPOSALS CONCERNING FOREIGN INVESTMENTS IN INDIA**

Smt. Nirmala Sitharaman, India's Finance Minister, presented the India Budget 2021 before the House of Parliament on Monday 1<sup>st</sup> February 2021. The budget has been presented in one of the most challenging years where the world is struggling to revive from the effects of the unprecedented pandemic. The Finance Minister has during the current fiscal year announced numerous welfare and relief packages as well as several relaxation and extension measures to mitigate with the hardships faced by the taxpayers on account of COVID-19. In spite of the prevailing challenges, the Fiscal Deficit for the year 2021-22 is estimated to be around 6.8%, with a target of reducing it to 4.5% by FY 2025-26 and India aims to achieve the size of \$ 5 Trillion economy by 2025.

There are 6 pillars on which this budget rests:

1. Health and Wellbeing
2. Physical and Financial Capital and Infrastructure
3. Inclusive Development for Aspirational India
4. Reinvigorating Human Capital
5. Innovation and R&D
6. Minimum Government, Maximum Governance

The Economic Survey, tabled prior to the Budget 2021, largely revolves around fiscal prudence and indigenous production and consumption in India to revive growth in the Indian economy. Considering the health crisis arising in view of COVID-19, the main theme of the Budget 2021 revolves around recovery, improvement, cure and saving resources. Further, the Budget 2021 aims to achieve a fine balance by allocating resources without raising tax, managing fiscal deficit with alternate resource mobilization and creating a robust investment climate.

Some of the announcements concerning foreign investments are summarized below:

## **1. Amendments to Direct Tax.**

- ❖ Rationalization of the provision concerning withholding on payment made to Foreign Institutional Investors (FIIs)
  - It has been proposed to insert a proviso to sub section (1) of section 196D of the Income Tax Act (the Act) to provide that in case of a payee to whom Double Taxation Avoidance Agreement (DTAA) applies and such payee has furnished the



tax residency certificate, then the tax shall be deducted at the rate of twenty per cent or rate or rates of income-tax provided in such DTAA for such income, whichever is lower.

❖ Rationalization of the provisions of equalization levy vis-a-vis. Fees for technical Services/FTS

- It is proposed to insert an explanation to Section 163 of the Finance Act 2016 clarifying that consideration received or receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which are taxable as royalty or fees for technical services in India under the Act read with DTAA
- It is proposed to insert an explanation to Section 164(cb) of the Finance Act 2016 providing that for the purposes of defining e-commerce supply or service, online sale of goods and online provision of services shall include one or more of the following activities taking place online:
  - (a) Acceptance of offer for sale;
  - (b) Placing the purchase order;
  - (c) Acceptance of the Purchase order;
  - (d) Payment of consideration; or
  - (e) Supply of goods or provision of services, partly or wholly
- It is proposed to amend Section 165 of the Finance Act 2016 to provide that consideration received or receivable from e-commerce supply or services shall include:
  - i. Consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and
  - ii. Consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

These amendments will take effect retrospectively from 1st April, 2020.

- It is proposed to amend Section 10(50) of the Act to provide for the following:
  - i. Provisions of Section 10(50) to apply for the e-commerce supply or services made or provided or facilitated on or after 1st April, 2020.
  - ii. Clarify that exemption under section 10(50) will not apply for royalty or fees for technical services which is taxable under the Act read with DTAA
  - iii. Define e-commerce supply or services under section 10(50) as the meaning assigned to it in Section 164(cb) of Chapter VIII of the Finance Act,2016

These amendments will take effect from 1<sup>st</sup> April, 2021.



- ❖ Relaxation in conditions for exemption to Sovereign Wealth Fund & Pension Fund (SWF/PF)
  - To incentivize a greater number of SWF/PF to invest in Indian Infrastructure, it is proposed to relax some of the conditions for availing 100% tax exemption introduced in the Budget 2020. The conditions which are proposed to be relaxed include allowing Alternate Investment Fund to make specified investments, investment through holding companies, Investment in NBFC, allowing loans or borrowings, allowing commercial activities, etc..
  
- ❖ Definition of 'Liable to Tax'
  - It is proposed to insert clause (29A) to section 2 of the Act to include the meaning of the term 'liable to tax'. The term 'liable to tax' in relation to a person means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.
  
- ❖ Relaxation to NRI for Income of Retirement Benefit Account
  - It is proposed to remove the genuine hardship faced by the NRIs in respect of their income, accrued on foreign retirement benefit account due to mismatch in taxation. It is proposed to notify rules for aligning the taxation of income arising on foreign retirement benefit account such that the income of a specified person from specified account shall be taxed in the manner and in the year as prescribed.
  
- ❖ Alignment of Minimum Alternate Tax (MAT) for Advanced Pricing Agreement (APA) and secondary adjustment
  - Since dividend income is taxable in the hand of shareholders from FY 2020-21, dividend received by a foreign company on its investment in India is required to be excluded for the purposes of calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided in the DTAA. Hence, it is proposed to provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, re-compute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner.
  - It is proposed to provide similar treatment to dividend, as already made available for capital gains on transfer of securities, interest, royalty and Fee for Technical



Services (FTS) in calculating book profit for the purposes of section 115JB of the Act, so that both specified dividend income and the expense claimed in respect thereof are reduced and added back, respectively, while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA

❖ Amendments to provisions dealing with incentives for International Financial Services Centre (IFSC)

- It has been proposed to amend Sub Section (3) and Sub Section (4) of Section 9A of the Act to relax certain conditions laid down therein if the eligible investment fund or its eligible fund manager (located in an IFSC).
- It has been proposed to amend Sub Section (4D) of Section 10 to provide for exemption under this clause in case of any income accrued or arisen to, or received to the investment division of offshore banking unit to the extent attributable to it and computed in the prescribed manner.
- It has been proposed to insert new clause (4E) of section 10 of the Act so as to exempt any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC
- It has been proposed to insert new clause (4F) in of section 10 of the Act so as to exempt any income of a non-resident by way of royalty on account of lease of an aircraft in a previous year paid by a unit of an IFSC, if the unit is eligible for deduction under section 80LA
- It has been proposed to insert new clause (23FF) in of section 10 of the Act so as to exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of transfer of share of a company resident in India by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place
- It has been proposed to amend section 47 of the Act to insert new clauses in the said section so as to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gain tax purpose. It is also proposed to provide another clause to provide that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains.



- It is also proposed to amend the section 80LA of the Act to provide for:
  - deduction under said section to a unit of IFSC if it is registered under the IFSC Authority Act, 2019 and thereby removing the earlier requirement of obtaining permission under any other relevant law.
  - provide that the income arising from transfer of an asset, being an aircraft or aircraft engine, which was leased by a unit referred to in clause (c) of sub-section (2) of said section to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction
  - That in case the unit is registered under the IFSC Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the IFSC Authority Act, 2019.
- It has been proposed to amend section 115AD to make the provisions of this section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund. However, the provisions of this section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the Securities and exchange Board of India (Foreign Portfolio investors) Regulations, 2019

## 2. Rates of Taxation for Non-Resident

- ❖ Rate of Income Tax for individual Non-residents investors remains unchanged, as tabulated below:

Total Income	Rates of Tax (%)		
	Tax Rate (%)	Cess @ 4 %(% )	(%)
Upto Rs. 2,50,000	0.00%	0.00%	0.00%
Rs. 2,50,001 to Rs. 5,00,000	5.00%	0.20%	5.20%
Rs. 5,00,001 to Rs. 7,50,000	10.00%	0.40%	10.40%
Rs. 7,50,001 to Rs. 10,00,000	15.00%	0.60%	15.60%
Rs. 10,00,001 to Rs. 12,50,000	20.00%	0.80%	20.80%
Rs. 12,50,001 to Rs. 15,00,000	25.00%	1.00%	26.00%
Above Rs. 15,00,000	30.00%	1.20%	31.20%

- There is no change to the rate of Income tax for foreign companies



### 3. Other Policy proposals

- It has been proposed to consolidate the provisions of SEBI Act, Depositories Act, Securities Contracts (Regulation) Act, and Government Securities Act, 2007 into a Securities Markets Code
- Asset Reconstruction/Management Company to be set up to consolidate and take over stressed debt to manage and dispose of the assets to Alternate Investment Funds or other investors
- It has been proposed to set up Investor Charter as a right of all investors across financial instruments
- It has been proposed to allow NRIs to operate One Person Company in India
- It has been proposed to amend the Insurance Act to allow FDI in insurance companies from the existing 49% to 74%.



**DISCLAIMER**

For private circulation and for internal use. This document summarizes key provisions applicable to non-resident investors contained in the Finance Minister Speech and Finance Bill presented on 01<sup>st</sup> February 2021. Certain policy announcement and changes to the statute carried out by the Finance Minister in the recent past is not brought out in this document. Information is being made available at this document purely for the benefit of the readers. Whilst every care has been taken in the preparation of this document, it may contain errors for which we should not be held responsible. It must be stressed that the Finance Bill may contain proposals which have not been referred to in the budget speech and additionally, the detailed proposal are liable to amendment during the passage of the Finance Bill through Parliament. The information given in this document provides a bird's - eye view on the changes proposed and should not be relied for the purpose of economic or financial decisions. Each such decision would call for specific reference of the relevant statutes and consultation of an expert.

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