2017 Mobility Budget Alert

Introduction

The Finance Minister ('FM') presented the 2017 budget proposals before the Parliament on February 1, 2017. While the proposals will be ratified only after both the Houses of Parliament and the President give their ascent, these do give us an insight to the continued drive of the Finance Ministry towards plugging revenue leakage and money laundering practices, encouraging tax compliance and promoting the small and medium sector.

In the wake of recent Government initiatives like demonitisation and black money regulations, there was apprehension that the budget may throw up some unpleasant surprises. However, the budget was well accepted by the public, *as such*, and the Indian markets have shown a good recovery post placement of the finance bill before the Parliament.

Budget summary

Majority of the budget proposals were driven towards the FM's key agenda points towards promoting economic growth by providing tax relief measures for small and mid-size companies, protecting lower and middle-class interests, simplifying tax administration and widening the tax collection base.

In the following paragraphs, we have summarised the key proposals that would impact the global mobility space that primarily includes employers that have cross-border movement of employees and expatriate individuals.

The amendments are proposed effective tax year 2017-18 onwards, unless specified otherwise.

Key budget proposals

- Changes to the individual taxpayer slab rates

  The FM has proposed to bring down the tax rate applicable at the lowest income threshold from 10 percent to 5 percent.

  A tabular comparison of the existing and proposed tax rates is provided below –

Income	Existing Tax rate	Proposed Tax rate
Upto Rs 250,000	Nil	Nil
Rs 250,001 to Rs 500,000	10 percent	5 percent
Rs 500,001 to Rs 1,000,000	20 percent	20 percent
Rs 1,000,000 and above	30 percent	30 percent

  Further, the existing rebate of Rs 5,000 or 100 percent of tax, whichever is lower, for resident individuals with total taxable income upto Rs 500,000 is proposed to be removed and in its place a rebate of Rs 2,500 or 100 percent of the tax, whichever is lower, is proposed for a resident individual whose total taxable income is upto Rs 350,000.

- Surcharge on individual taxpayers

  Presently, a surcharge of 15 percent is applicable to an individual whose annual total taxable income exceeds Rs 10 Million.

  The FM has proposed to levy a surcharge of 10 percent for individuals earning taxable income between Rs 5 million and Rs 10 million.

Income earners above Rs 10 million will still be required to pay 15 percent surcharge on the tax liability on their entire income.

This proposal will result in an increased tax outflow for income earners between Rs 5 million to Rs 10 million.

- Cap on loss from house property

Presently, loss from house property is permitted to be fully offset against income from other heads during the same tax year. If there is a loss that remains unadjusted after such inter-head offset, the taxpayer can carry forward the loss for set off against future income from house property upto eight subsequent years.

The FM has proposed to limit the offset inter-head limit to Rs 200,000 per tax year. The remaining unadjusted loss will have to be carried forward for set off against future income from house property upto eight subsequent years.

This has a major impact for taxpayers as offsetting loss from house property was not only relied upon as an effective tax-planning tool but also promoted investment in the housing sector.

- Capital gains measures

Base valuation date moved to April 1, 2001 for long-term capital assets

Presently, if a capital asset is acquired prior to April 1, 1981, the taxpayer is permitted to replace the actual cost of acquisition with fair market value of the asset as on April 1, 1981.

Since getting a valuation for April 1, 1981 has become cumbersome, the FM has proposed to shift the base year for computation of capital gains from April 1, 1981 to April 1, 2001. This would mean that the taxpayer would be permitted to replace the actual cost of acquisition with fair market value of the asset as on April 1, 2001.

This would bring relief to taxpayers in ease of computing the capital gains as well as, in most cases, likely to bring down their taxable income as a higher cost fair market value would be available as cost of acquisition. However, since the indexation benefit would not be available for periods prior to April 1, 2001, taxpayers would need to undertake a valuation exercise of their asset as of April 1, 2001.

Holding period for the immovable property

Presentlly, the minimum holidng period for land or building to qualify as a long-term capital asset is 36 months.

With a view to promote the real-estate sector, the FM has proposed to reduce the holding period of land or building from 36 months to 24 months.

This will help taxpayers in not only enjoying the benefit of indexation on the cost of acquisition upon 2 years of ownership but also, in most cases, reduce the tax rate at which the capital gains would be chargeable.

Limitation of exemption on certain long-term capital gains

Presently, an exemption is available towards long-term capital gains arising from a sale of equity shares or a unit of equity oriented fund if

Securities Transaction Tax ('STT') is paid at the time of sale of the shares or the units, respectively.

The FM has proposed to limit the exemption on such long-term capital gains only if STT was also paid at the time the shares or the units, as the case be, were acquired. The FM has also proposed that an exception to this limitation would be available for genuine transactions where STT was not payable at the time of purchase.

This has been done with a view to discourage taxpayers from declaring their unaccounted income and black money as exempt long-term capital gains.

- <u>Expanding tax withholding base</u>

  Presently, an individual is not required to withhold taxes on rental payments made to resident lessors.

  The FM has proposed to insert a new section to mandate individuals to withhold taxes at the rate of 5 percent where the rent exceeds Rs 50,000 per month.

  It is also proposed that instead of withholding taxes each month, the individuals can withhold taxes from the last rent payment of the year or last month of tenancy, as the case may be, and that the individuals would also be exempt from obtaining a tax withholding registration as well as filing quarterly or annual withholding tax returns.

  These amendments are proposed effective June 1, 2017 and applicable only for rental payments after June 1, 2017.

  With these proposal, the FM seeks to not only increase tax collection but also include more persons within the tax compliance database.

- <u>Interest on refunds to tax deductors</u>

  Presently, there is no provision of payment of interest by the Government when a person that withholds and pays excess taxes claims a refund of such excess taxes from the Government.

  The FM has proposed that such refunds should also carry compensatory interest for the delay in refund settlement by the Government. The interest rate proposed is 0.5 percent per month or part thereof.

  This is a welcome proposal as it rationalizes the provisions of interest that earlier only stipulated chargeability of interest for delay in deduction or remittances of taxes by the deductor.

- <u>Reduced timelines for completion of regular assessment/audit</u>

  Presently, the time limit for completion of a regular assessment/audit is 33 months from the end of the tax year in question.

  The FM has proposed that, with increased digitisation of the tax administrative systems, the timelines for completion of regular assessment/audit should be gradually reduced. The FM has proposed to reduce the timeline from 33 months to 30 months for tax year 2017-18 and to 24 months from tax year 2018-19 onwards.

This is a welcome proposal as this would reduce litigation and pending cases with the tax department, and hopefully, with the Appellate authorities.

- Reduced timelines for tax return amendment

  Presently, a taxpayer is permitted to amend or revise the tax return within 2 years from the end of the tax year in question.

  The FM has proposed that, in line with the proposal to reduce the timeline for tax department audits, the time limit for revision of the tax return also be reduced to 1 year from the end of the tax year.

  This proposal is of particular importance in the global mobility space as expatriates generally need to revise their tax returns after their foreign country tax return is finalised to correct the tax credit claims.

  This proposal would mean that a taxpayer has only 8 months to revise a return, and thus, will create administrative difficulty for expatriate tax credit situations.

- Foreign Tax Credit allowance in case of dispute

  Presently, foreign tax credit is not permitted when there is a dispute of taxes in the foreign country. More often, taxpayers lose out on claims as the assessment is completed before the foreign country tax dispute is settled.

  With a view to provide relief to taxpayers, the FM has proposed that, in such cases, once the dispute is settled with the foreign country, the taxpayer will be permitted to claim tax credit relief so long as the proof of dispute settlement is furnished within 6 months from the end of the month of such settlement.

  This is a welcome proposal and will bring relief to taxpayers with cross-border transactions.

- Fee for delay in filing of tax returns

  Presently, delay in filing of tax returns attracts a penalty only if it is filed one year after the end of the relevant tax year. The penalty is not mandatory and is descretionary in the hands of the tax officer.

  The FM has proposed to insert a new section for levy of a fee for delay in filing tax returns. It is proposed that a fee of Rs 5,000 would be payable if the delayed tax return is filed on or before December 31 following the end of the tax year and Rs 10,000 if the delay is beyond such date.

  Where the taxpayer's total income is below Rs 500,000, it is proposed that the fee would not exceed Rs 1,000.

  It has been simultaneouly proposed that the penalty provisions for filing delayed tax returns would become not applicable.

  These proposals would now make it mandatory for taxpayers to pay a late filing fee for delayed tax return filings and this would be payable before or at the time of filing the delayed tax return.

- <u>Miscellaneous</u>

Power to withhold refund

The FM has proposed that where a tax officer is concerned that the grant of refund may adversely affect the recovery of revenue, ie taxes or other sums due from the taxpayer, he/she may withhold the refund upto a specified date and under specific conditions.

This amendment is proposed from tax year 2016-17 onwards.

While this proposal is aimed at withholding refunds for tax evaders, and *as such*, not have an impact in the global mobility space, we would need to see if tax officers take an undue advantage of this, secially in case of returning expatriates or outbound emoployees.

Transfer with inadequate consideration

Presently, if an individual or Hindu Undivided Family receives cash or specified property exceeding a value of Rs 50,000 for inadequate consideration, the receipt is treated as income in their hands.

The FM has proposed that these provisions be extended to all category of taxpayers.

Simple tax return form for low income earners

The FM has proposed that he would introduce a simple one page tax return form for income earners below Rs 500,000. The form is yet to be prescribed.

About us

Broadening Horizons is a specialty services company providing expatriate tax, social security, immigration and exchange control advisory and compliance services.

It has specially designed service packages for employers with cross-border employee population as well as individuals.

Broadening Horizons partners with international expatriate tax firms for delivering mobility services and therefore, can provide cross-border services and solutions.

For more details, please contact the following personnel:

Vikas Garg - Head of Services
vikasgarg@bhspl.com

Jignesh Parekh - Manager Compliance
jigneshparekh@bhspl.com