Budget 2014: Summary of important Direct Tax Amendments

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The much awaited budget of the much awaited new Government was presented on 10th July 2014. With huge expectations and whims of miracles and fancies of business friendly announcements was awaited. The Government readied itself to such expectation by stating that the economy needs a bitter pill to correct itself. A very long budget speech with a recess in between was one of the many firsts of this majority Government. While there was no change in the tax rates, applicable Surcharge and Education Cess, there were many far reaching and long term visions in this budget. The highlights are tabulated in various buckets as below.

Proposals in the budget speech:

Conducive tax regime prescribed for Infrastructure Investment Trusts and Real Estate Investment Trusts to be set up in accordance with regulations of the Securities and Exchange Board of India.

Advance Authority Ruling (AAR) scope to be expanded with resident taxpayers being allowed to approach AAR with some threshold. More AAR benches proposed. Also, it is proposed to expand scope of settlement commission.

Investment linked deduction extended to 2 new sectors, namely, slurry pipelines for the transportation of iron ore, and semiconductor wafer fabrication manufacturing units as notified by CBDT.

The powers of survey are extended to verify the TDS or TCS aspects also.

A new chapter has been introduced for the constitution of business trusts. The introduction of such trust is new to the economy, as it provides for a larger population to deploy resources for business. Beneficiaries of these trusts, which essentially are private trusts, are not taxed. This assumes that these taxes are all domestic trusts. This basic principle is sought to be retained, where the constitution of business trusts are concerned.

The Tax settlement commission to be expanded.

Personal tax:

Personal income tax exemption limit increased by Rs. 50,000, from Rs. 2,00,000 to Rs. 2,50,000 in the case of individual taxpayers below the age of 60 years. Similarly, the exemption limit in case of senior citizens increased from Rs. 2,50,000 to Rs. 3,00,000.

Increase in investment limit for claiming deduction under section 80C of the Income-tax Act (the IT Act) from Rs. 1,00,000 to Rs. 1,50,000.

In view of the same, consequential amendments are proposed in sections 80CCE and 80CCD

Income from House property:

Increase in deduction limit on account of interest on loan in respect of self-occupied house property from Rs. 1,50,000 to Rs. 2,00,000.

Business incentives:

The additional Incentive for acquisition and installation of new plant & machinery by manufacturing company an investment allowance of 15% on capital investment of over Rs 100 crore or 25 crore. Manufacturing companies investing more than Rs. 25 crore in any year in new assets (plant and machinery) to be entitled to a deduction of an investment allowance @15% of actual cost of the assets. This benefit will be available for 3 years i.e. for investments upto 31 March 2017. The catch is that the investment has to be 25 crores or more in each of the three years.

Similarly on investment of over 100 Crores the benefit is for two years, however in this scheme the investment of 1oo crores or more may be spread over the two years.

The sunset date for setting up power sector undertakings (in order to claim 100% deduction of profits for 10 years) to be extended upto 31 March 2017.

Concessional rate of 15% on foreign dividends to be continued without specifying any sunset date.

The benefit of concessional withholding tax rate of 5% on interest payments in respect of borrowing in foreign currency is extended to all types of bonds instead of only infrastructure bonds. Further, the benefit to be extended for the bonds issued upto 30 June 2017 as against 30 June 2015.

Presumptive income u/s 44AE at Rs 7500 per month per vehicles, whether HGV or other than HGV (Heavy Goods Vehicle)

Capital Gains:

Income arising to foreign institutional investors from transactions in securities to be treated as capital gains only and not as business income.

Transaction in respect of trading in Commodity derivatives carried out in recognized association and chargeable to CTT is not speculative transaction.

REITs and Infrastructure Investment Trusts, to be formed as per regulations to be notified by SEBI, shall enjoy tax pass through status (except in respect of capital gains on disposal of assets)

Benefit of exemption under section 54 and 54F of the IT Act to be available if the investment is made in 1 residential house only, which is to be situated in India. Thus, A' residential house is 'One' residential house.

In a capital gains arising from transfer of an asset by way of compulsory acquisition, the amount received in pursuance of an interim order of the authority shall be income of the previous year in which final order is made

It is here by clarified that the exemption u/s 54ED is restricted to Rs.50 Lakhs, even though, the time limit to invest is spread over two financial years.

LTCG from transfer of units of mutual funds, other than equity oriented funds, to be tax at 20 per cent as against the present levy of 10 per cent

It is proposed to provide that unlisted security and units of Mutual Funds (other than equity oriented funds) be treated as short term capital assets if it is held for not more than 36 months as against existing holding period of 12 months, u/s. 2 (42A)

Transfer of government security by one non-resident to another non-resident, w.e.f. 01.04.2015 under section 47 (vii)(b) shall not be considered as transfer for the purpose of charging capital gains.

Transfer of Government Security (carrying a periodic payment of interest) by one non-resident to other non-resident shall be exempt from capital gains tax

Change in the treatment of expenses and other items in income in business or profession:

Expenditure on Corporate Social Responsibility (CSR) as referred to in section 135 of the Companies Act, 2013 not to be allowed as deduction under section 37 of the IT Act. However, the CSR expenditure which is in the nature as prescribed under section 30 to 36 of the IT Act shall be allowed as deduction subject to fulfillment of conditions as specified in such sections.

Dividend Distribution Tax (DDT) to be levied on gross amount of dividends as against the existing provisions of computing DDT on net dividends resulting in increase in effective DDT rate from present 16.995% to 20.47%.

Disallowance of expenses under section 40 (a) (ia) of the IT Act for failure to deduct and pay tax on specified payments to residents restricted to 30% of such payments instead of 100% disallowance.

However, the scope of disallowance under section 40 (a) (ia) of the IT Act has been extended to all expenditure on which tax is deductible.

The new provisions introduced to treat the money received as an advance or otherwise in the course of negotiations for transfer of a capital asset as income chargeable to tax if such sum is forfeited and the negotiations do not result in transfer of capital asset.

Earlier, the tax u/s. Section 115-O/115R was calculated @ 15% on the net income/ distributed. Now, the tax shall be paid on the gross income distributed. For the sake of example, if a dividend of Rs. 100 is distributed, earlier it was 15% of dividend paid i.e. Rs. 15/-. But now the dividend has to be grossed up by dividing the dividend amount by (1-tax rate). Accordingly, the tax would be Rs. 17.65.

Income from other sources:

Advance received and forfeited in relation to a transfer of capital asset now taxable immediately under the head 'income from other sources' and not to be reduced from the cost or written down value or the fair market value, as the case may be, in computing the cost of acquisition of such asset u/s.56(2)(ix).

Charitable Trusts and Educational Institutions:

Where a trust or an institution has been granted registration for purposes of availing exemption under section 11, and the registration is in force for a previous year, then such trust or institution cannot claim any exemption under any provision of section 10 [other than that relating to exemption of agricultural income and income exempt under section 10(23C)] and vice versa.

Under section 11 and section 10(23C), income, for the purposes of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under these sections in the same or any other previous year.

The term "Substantially Financed by the Government" used in Sec 23AC, explained.

Exemption from income also granted for period before registration. Powers of Commissioner to cancel the registrations of such trusts/ institutions widened:

it is proposed to amend the Act to provide that under section 11 and section 10(23C), income for the purposes of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under these sections in the same or any other previous year. These amendments will take effect from 1st April, 2015.

In order to rationalize the provisions relating to cancellation of registration of a trust, it is proposed to amend section 12AA of the Act to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that its activities are being carried out in such a manner that,—

(i) Its income does not ensure for the benefit of general public;

(ii) It is for benefit of any particular religious community or caste (in case it is established after commencement of the Act);

(iii) Any income or property of the trust is applied for benefit of specified persons like author of trust, trustees etc.; or

(iv) Its funds are invested in prohibited modes,

Then the Principal Commissioner or the Commissioner may cancel the registration if such trust or institution does not prove that there was a reasonable cause for the activities to be carried out in the above manner. This amendment will take effect from 1st October, 2014.

Clause (iii) and (iv) have been included in this year's budget.

Tax Deduction at Source (TDS)

To claim the expenditure, TDS on payment made to non-residents can be deposited before filing of return [Sec 40(a)(i)]

In case of non-deduction or non-payment of TDS from certain payments made to residents, only 30% of the expenditure shall be disallowed. [Sec 40(a)(ia)]

Time limit for 2 years to treat payer as assessee in default has been dispensed with.

Time limit of 6 years for TDS Statements not filed, extended to 7 years.

An income tax authority may for the purpose of checking of compliance of TDS may survey any premises and enquire about books of accounts u/s 133A

Withholding tax of 5% on interest paid towards foreign borrowings extended to all long term bonds and not only to infra bonds.

TDS @ 2% from payments (Not covered u/s 10(10D)) made by the Insurance Companies under a life insurance policy if it exceeds Rs. 100000/- in a year

Transfer Pricing:

One of the most highly litigious issues is transfer pricing (TP). Introduction of Advance Pricing Agreements (APA) last year has yielded a very positive response. Specific measures to reduce these disputes have been introduced:

introduction of a 'roll-back' provision in the Advance Pricing Agreement (APA) scheme so that an APA entered into for future transactions is also applicable to international transactions undertaken in the previous 4 years in the specified circumstances.

The range concept to be introduced for determination of arm's length price under the transfer pricing regulations. It is proposed to allow use of multiple year data for comparability analysis under the transfer pricing regulations.

International transaction for the purpose of transfer pricing is only between two associated enterprises (AE). Section 92B(2) in order to extend the meaning of AE has mentioned that even if an unrelated third party is interposed between two AEs, then any transaction even with such interposed third party will be treated as an international transaction provided that there exists an agreement between such third party and the foreign AE. The consequence of this amendment is that, if such third party is an Indian resident then even when there would be no cross border transaction between (the Indian AE and such third party), it will still be deemed to be an international transaction.

Procedural and administrative:

The important announcement in the budget is the dispensing of the retro amendments. No new retro amendments have been introduced as promised, however many a judgments of the courts have been overturned.

A committee to go into the Vodafone amendment to review the same.

Failure to produce books of accounts and documents as required in any notice issued u/s 142(1) or failure to comply with a direction issued u/s 142(2A) mandatorily requires rigorous imprisonment upto 1 year and fine.

Sec 285BA includes more transactions and reportable accounts to be furnished by specified persons to the income tax authority.

It is proposed to amend section 35AD so as to provide that total income shall be increased by the deduction claimed under section 35AD for purpose of computation of adjusted total income. The amount of depreciation allowable under section 32 shall, however, be reduced in computing the adjusted total income

Assessment of income of a person other than the searched person u/s 153C only if the Assessing officer of such other person is satisfied that books etc. seized or requisitioned have a bearing on the determination of the total income of such other person.

Credit of Alternate Minimum Tax (AMT) u/s 115C shall be allowed.

New Section 133C inserted to empower the prescribed income tax authority to issue notice to person, whose information is in possession of such authority, requiring him to furnish information or documents.

Conclusion:

The super senior citizens have complained that they have been left out. The share market tanked on the sentiment that the budget has increased the cost due to DDT, MAT etc. The general business community sought clarity on sections 14A, 10B, etc.

Never has any finance minister in any budget, in any part of the globe, satisfied all sections of their people. Similarly, this budget too has its share of disappointments. However, given the fact that the new budget is due in the next eight odd months, it would be worth a wait to see that the next budget will give more relief.

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