

Union Budget 2018-19

Proposed Amendments in International Tax- Synopsis

1.	Taxation of long-term capital gains in the case of Foreign Institutional Investor[Section 115AD]
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Consequent to the proposal for withdrawal of exemption under section 10(38) of the Act, the FIIs will be liable to tax on long term capital gains arising from transfer of long term capital asset being equity shares of a company or a unit of equity oriented fund or a unit of business trusts only in respect of amount of such **gains exceeding one lakh rupees**.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

2.	Aligning the scope of “business connection” with modified PE Rule as per Multilateral Instrument (MLI) [Section 9(1)(i)]
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a. Amendment to Explanation 2 to section 9(1)(i)

“Business connection” shall 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 and**
- the contracts are
 - i. in the name of the non-resident; or
 - ii. 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
 - iii. for the provision of services by that non-resident.

This amendment is to give effect to BEPS Action Plan 7, which suggests that an agent would include not only a person who habitually concludes contracts on behalf of the non-resident, but also a person who habitually plays a principal role leading to the conclusion of contracts.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

b. Insertion of Explanation 2A to section 9(1)(i)

“Business connection” to include “Significant Economic presence”.

Significant Economic presence shall mean (*mutually exclusive definition*)

- 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.

The threshold of “revenue” and the “users” in India will be decided after consultation with the stakeholders.

Further, it is proposed as under:

- only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.
- the transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India.

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.

The above amendment is in accordance with OECD’s BEPS Action Plan 1, as per which, a non-resident enterprise would create a taxable presence in a country if it has significance economic presence in that country on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools.

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years

3.	Rationalisation of provisions relating to Country-by-Country Report[Section 286]
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- The time allowed for furnishing the Country-by-Country Report (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(*For FY 2017-18 the time limit shall be March 31, 2019*)
- In case its parent entity outside India has no obligation to file the report in its country or territory then constituent entity resident in India, shall also furnish CbCR within the aforesaid due date i.e. twelve months from the end of reporting accounting year

These amendments will take effect retrospectively from the 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

4.	Measures to promote International Financial Services Centre (IFSC)[Section 47]
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- Transactions in the following assets, by a non-resident on a recognized stock exchange located in any IFSC shall not be regarded as transfer, if the consideration is paid or payable in foreign currency:—
 - ✓ bond or Global Depository Receipt, as referred to in section 115AC(1); or
 - ✓ rupee denominated bond of an Indian company; or
 - ✓ derivative
- It is further proposed to amend the section 115JC so as to provide that in case of a unit located in an IFSC, the alternate minimum tax under section 115JC shall be charged at the rate of 9% (earlier it was 18.5%).

This amendment will apply in relation to the assessment year 2019-20 and subsequent assessment years.

5.	Exemption of income of Foreign Company from sale of leftover stock of crude oil on termination of agreement or arrangement[Section 10(48B)]
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- The benefit of exemption is presently not available on any income accruing or arising to a foreign company on account of sale out of the leftover stock of crude in case of termination of the said agreement or the arrangement.
- It is now proposed to amend Section 10(48B) 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 apply in relation to the assessment year 2019-20 and subsequent assessment years.

6.	Royalty and FTS payment by NTRO to a non-resident to be tax-exempt[Section 10]
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- Section 195 requires a person to deduct tax at the time of payment or credit to a non-resident.
- Given the business exigencies of the National Technical Research Organisation (NTRO), 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 from, or fees for technical services rendered in or outside India to, the NTRO will be exempt from income tax.
- Consequently, NTRO will not be required to deduct tax at source on such payments.

This amendment will apply in relation to the assessment year 2018-19 and subsequent assessment years.

7.	Clarification regarding non applicability of section 115JB [Section 115JB]
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An explanation is proposed to be incorporated in the Section 115JB to clarify that the provisions of section 115JB shall not be applicable and shall be deemed never to have been applicable to an assessee being a foreign company, if its total income comprises solely of profits and gains from business referred to in section 44B or section 44BB or section 44BBB and such income has been offered to tax at the rates specified in the said sections.

This amendment will apply retrospectively from 1st April, 2001 ie in relation to the assessment year 2001-02 and subsequent assessment years.