2020 Mobility Budget Alert update

Introduction

The Finance Minister ('FM') had presented the 2020 Finance bill before the Parliament on February 1, 2020. Our 2020 Mobility Budget Alert on the proposals is enclosed as **Annexure** to this update.

Subsequently, on March 23, 2020, the FM proposed amendments to the Finance Bill. The amended Finance Bill has been passed by the Parliament and also received Presidential assent on March 27, 2020. This update summarises the amendments that impact the global mobility space.

Key amendments

- Citizenship based residency

  Finance bill proposals

  The FM had proposed that an Indian citizen who is not liable to tax in any other country by reason of their domicile or residence in that country or any other such criteria would be deemed as a resident of India.

  This meant that Indian citizens who qualified as non-resident in India based on physical presence tests would have needed to look into their foreign residency and taxability provisions to re-evaluate their taxability in India.

  This proposal had a far-reaching impact on Indian citizens working abroad, especially those who have moved mid-year as they could be deemed as resident in India under the new proposals.

  Amendments passed by the Lok Sabha

  As expected, the Finance bill has been amended to provide the following:

  - That an Indian citizen would qualify as a deemed resident only if their income, excluding income from foreign sources but including income derived from a business controlled in or a profession set up in India, exceeds Rs 1.5 million in the relevant tax year.
  - Such deemed residents would qualify as Not Ordinarily Resident in India.

  This means that not only is there a de-minimus income test for an Indian citizen to qualify as a deemed resident but also that they would not be liable to tax on their global income in India.

  These are welcome amendments and have put to ease a lot of unrest caused by the Finance bill proposals.

- Residency limitation for Indian citizens and PIOs

  Finance bill proposals

  The FM had proposed to reduce the India visit duration for Indian citizens/PIOs to qualify as non-resident from an annual aggregate period of 182 days to 120 days.

Amendments passed by the Lok Sabha

The Finance bill proposals have been amended to provide the following:

- That the reduced stay limit of 120 days would only apply to Indian citizens/PIOs if their income, excluding income from foreign sources but including income derived from a business controlled in or a profession set up in India, exceeds Rs 1.5 million in the relevant tax year.
- That such Indian citizens/PIOs would still qualify as NOR in India if their aggregate stay in India is less than 182 days.

Again, these are welcome amendments for Indian citizens/PIOs coming for visits to India.

- Not Ordinarily Resident ('NOR') residency conditions

The Finance bill has been amended to remove the FM's proposal to change the condition of 'non-resident in India in 7 out of 10 tax years' for an individual to qualify as NOR.

Therefore, other than for deemed residents and visiting Indian citizens/PIOs, the 'non-resident in India in 9 out of 10 tax years' and '729 days or less during the 7 tax years' would still apply.

- Other proposals

All other proposals captured in our 2020 Mobility Budget Alert have been passed.

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.

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Introduction

The Finance Minister ('FM') presented the 2020 Union budget proposals before the Parliament on February 1, 2020. In her Budget speech, the FM cited that the 2020 Budget is woven around three themes of Aspirational India (health, education and employment), Economic Development (productivity and efficiency) and A Caring Society (social welfare and environment).

Budget summary

The proposals primarily focused on development of agricultural, infrastructure, healthcare and education sectors. It is also proposed that the government will divest part of its ownership in Life Insurance Corporation of India, India's largest insurance company, under an Initial Public Offering route.

With a target of fiscal deficit at 3.5 percent and GDP growth, with inflation, at 10 percent, this appears to be a limited incentive growth budget.

In the following paragraphs, we have summarised the key proposals that impact the global mobility space. The amendments are proposed effective tax year 2020-21 onwards, unless specified otherwise.

Key budget proposals

- Citizenship based residency

  Presently, individuals trigger residency in India based only on their physical presence in India, ie, number of days spent in India over the tax year in question as well as the preceding 10 tax years. There are a couple of exceptions for Indian citizens and Persons of Indian Origin ('PIO') but even these exceptions are physical presence based.

The FM has proposed that an Indian citizen who is not liable to tax in any other country by reason of their domicile or residence in that country or any other such criteria would be deemed as a resident of India.

This means that Indian citizens who qualify as non-resident in India based on physical presence tests would now need to look into their foreign residency and taxability provisions to re-evaluate their taxability in India.

This has a far-reaching impact on Indian citizens working abroad, especially those who have moved mid-year as they could now be deemed as resident in India.

It would be interesting to see whether this proposal would bring about changes in filing requirements for Indian citizens and minimum income tax return filing criteria.

The FM in post budget clarification has mentioned that in case of such deemed residents, income earned outside India would not be treated as taxable in India unless it is derived from an Indian business or profession. She also mentioned that the necessary amendment may be included.

If the FM's clarification is to be believed, there would likely be an amendment to the scope of income regulations where the Government may seek to limit the scope of taxability of such deemed residents.

- Not Ordinarily Resident ('NOR') residency conditions

  Presently, an individual is considered to be NOR in India if either of the following conditions are satisfied:

  - The individual has been non-resident in India in 9 out of 10 tax years immediately preceding the tax year in question; or
  - The individual is present in India for an aggregate period of 729 days or less during the 7 tax years immediately preceding the tax year in question.

  The FM has proposed to replace the above conditions by a single condition that an individuals would qualify as NOR only if they have been non-resident in India in 7 out of 10 tax years immediately preceding the tax year in question.

  This would mean that an individual can now qualify as NOR in India for a maximum of 3 tax years within a 10 year period. The earlier conditions allowed situations where individuals could also qualify as NOR for 4 years.

  This proposal would largely impact the inbound assignee population as such individuals could now trigger global residency in India in a shorter time period. Employers would also need to make a more careful decision in determining the timing of assignments to India.

- Residency limitation for Indian citizens and PIOs

  Presently, Indian citizens or PIOs who are employed overseas can qualify as non-resident in India if they visit India for an aggregate period of 182 days in a tax year.

  The FM has proposed to reduce this duration from 182 days to 120 days, thereby tightening the exception rule that was available to visitors.

- New tax regime – gross basis of taxation

  Presently, tax is levied on a net taxable income basis, after consideration of various deductions, exemptions and losses (relief claims) that may be available to a taxpayer. Most such relief claims are investment/expenditure based, ie, the taxpayer makes eligible investments or expenditure in order to claim these against income.

  The FM has proposed to introduce a new tax regime where a taxpayer **would have an option** to apply a lower tax rate but on a gross income basis, ie, by giving up eligible relief claims. The option to elect a particular tax regime does not appear to be one-time but on-going.

  A comparison of the existing and proposed tax slab rates is provided in the table below:

Income level	Existing net income rates	Proposed gross income rates
Upto Rs 250,000	0%	0%
Rs 250,000 to Rs 500,000	5%	5%
Rs 500,000 to Rs 750,000	20%	10%
Rs 750,000 to Rs 1,000,000	20%	15%
Rs 1,000,001 to Rs 1,250,000	30%	20%
Rs 1,250,001 to Rs 1,500,000	30%	25%
Above Rs 1,500,000	30%	30%

With this new tax regime, the FM proposes to streamline the various tax relief claims available to a taxpayer, presently upward of 100 provisions. As an example, for salaried class taxpayers, few key relief claims that they would forego to avail the new tax rates are:

- House Rent Allowance
- Loss from house property
- Section 80C deductions
- Standard deduction against salary income

Therefore, the new tax regime would not be beneficial to all taxpayers. As a broad guide, based on the income level of a taxpayer, we have highlighted where the current tax regime would still be more beneficial:

Gross income of the taxpayer	**Tax relief claim available**
Rs 1 million	Rs 187,501 and above
Rs 1.25 million	Rs 208,334 and above
Rs 1.5 million and above	Rs 250,001 and above

Based on the above, it is apparent that this proposal is focused on reducing the tax burden for lower to lower-middle class taxpayers who generally do not have substantial relief claims. These proposals are also a step towards the long-awaited Direct Tax Code that recommends simplified tax laws.

- <u>Abolishment of Dividend Distribution Tax (‘DDT’)</u>

Presently, dividend from Indian companies and Indian mutual funds is liable to DDT in India. Such dividend is exempt from tax in the hands of the recipient.

The FM has proposed to abolish DDT and tax dividends directly in the hands of the recipient. Correspondingly, it would now also be subject to India withholding tax.

This is a welcome change as taxability of income would be aligned to the recipient’s income and related taxability level. This would also allow taxpayers to easily claim tax credit outside India as it would form part of their India tax filings.

- <u>Miscellaneous</u>

Introduction of electronic appeals and taxpayers’ charter

With the success of the electronic assessment scheme, the FM has proposed to introduce electronic appeals at the Commissioner (Appeals) level. This will assist taxpayers, especially those outside the country, to manage their appeal proceedings more easily and with increased transparency.

The FM has also proposed to introduce a taxpayers’ charter that would aim to enhance the efficiency of tax administration, build trust between the taxpayers and the administration and take measures to reduce harassment. This is a welcome step.

Ceiling limit for employer’s contribution to specific funds

The FM has proposed to limit the aggregate tax exemption towards an employer’s contribution National Pension Scheme, Recognised Provident Fund and Superannuation to Rs 750,000 per year. While this is not a welcome change, it is likely to impact only high income taxpayers as the overall monetary limit is quite high.

Extension towards affordable housing projects

The FM has proposed to extend the existing time limit for the additional interest claim of Rs 150,000 against loans towards affordable housing by one year to March 31, 2021. This will encourage first-time home buyers to invest in affordable housing projects.

Deferred taxation of employee stock benefits for start-ups

The FM has proposed to defer the point of taxation of employee stock benefits in case of eligible start-ups to the earliest of the following:

- 5 years from the end of the tax year in which the stock is allotted
- Sale of stock by the employee
- Cessation of employment

This will bring relief to the start-up space as they often suffer from tax on non-materialised income.

Annual tax statement

The FM has proposed to introduce an annual financial statement, w.e.f. June 1, 2020, that would replace the existing Form 26AS. This would contain comprehensive annual tax information of taxpayers including prescribed financial transactions and tax data. This is a welcome step as it would encourage transparency and reporting.

Instant tax registration

The FM has proposed to introduce a new administrative system where a Permanent Account Number would be issued against the Aadhaar card without needing to fill detailed application forms. This will ease some of the administrative burden in the tax registration process.

About us

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