

Budget 2015-16

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Note: The amendments are generally effective from 1st April 2016 (i.e. FY 2015-16 / AY 2016-17), except as provided otherwise

INCOME TAX

Individuals and HUFs

Deductions [Chapter VI-A]

Deduction of medical premium [Section 80D]	Medical premium threshold limit increased <ul style="list-style-type: none">- For individuals; from 15,000 to 25,000- For senior citizens; from 20,000 to 30,000 Payment made on account of medical expenditure in respect of a very senior citizen (exceeding 80 years of age), upto 30,000 shall be allowed as deduction
Deduction in respect for additional wages [Section 80JJAA]	Benefit extended to all assesseees having manufacturing units rather than restricting it to corporate assesseees only. Further, in order to enable the smaller units to claim this incentive, it is proposed to extend the benefit under the section to units employing even 50 instead of 100 regular workmen

Corporates

Alternative Investment Funds proposed by SEBI

[Chapter XII-FB; Section 115UB, Section 194LBB, Section 139(4F), Section 10(23FBA), Section 10(23FBB), etc.]

Alternative Investment Funds	<p>It is proposed to facilitate taxation in case of pooled investment vehicles i.e. Alternative Investment Funds (AIF)</p> <p>Tax implications from the perspective of the alternative investment fund</p> <ul style="list-style-type: none">• Income from profits and gains from business shall be taxable in the hands of the AIF• Income, other than income from profits and gains from business, shall be exempt from tax• Withholding tax in case of distribution of component of income (other than income which is taxable in the hands of the AIF) at 10 per cent to unit holders• If in any year there is a loss (either current loss or the loss which remained to be set off) at the AIF level, it shall not be allowed to be passed through to the unit holders but would be carried forward at fund level to be set off against income of the next year in accordance with the provisions of Chapter VI of the Act• The total income of the investment fund shall be charged to tax;<ul style="list-style-type: none">- at the rate or rates as specified in the Finance Act of the relevant year, where such fund is a company or a firm; or- at maximum marginal rate in any other case• The provisions of Chapter XII-D (Dividend Distribution Tax) or Chapter XII-E (Tax on distributed income) shall not apply to the income paid by an investment fund to its unit holders• The AIF is required to furnish its return of income• The AIF shall also provide the details of various components of income, etc. to the prescribed income-tax authority and the unit holders
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Alternative Investment Funds (Contd.)	Tax implications from the perspective of unit holders of AIF <ul style="list-style-type: none"> • Any income of a unit holder of an AIF, out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person as if the investments made by the AIF have been made directly by him • Any income in the hands of investor (which is of the same nature as income by way of profits and gain of business at AIF level) shall be exempt from income-tax • The income paid or credited by the AIF shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as if it had been received by, or had accrued or arisen to the AIF
VTPA Comment	<p>Alternative Investment Funds are basically funds established, or incorporated in India, for the purpose of pooling in capital from Indian and foreign investors for investing as per a pre-decided policy.</p> <p>This amendment brings certainty and ease of taxation for different types of pooled investment vehicles. A reference can be made to the decision of the Bangalore Tribunal in case of DCIT v. India Advantage Fund – VII (ITA No.178/Bang/2012) on this issue.</p>

Domestic Transfer Pricing [Section 92BA]

Raising of threshold of Specified Domestic Transactions	<p>For a transaction to be treated as ‘specified domestic transaction’, the aggregate of specified transactions entered into by the assessee in the previous year should exceed a sum of INR 200 million instead of 50 million, previously.</p>
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Taxation of Real Estate Investment Trusts (REIT)

[Section 115UA, Section 2(13A), Section 194-I, Section 194LBA, Section 111A, Section 10(38), Section 10(23FCA), etc.]

Real Estate Investment Trusts	<p>Finance Act 2014 introduced a new category of investment vehicle i.e. Real Estate Investment Trusts (REIT)</p> <p>Tax implications for REIT of rental income, etc.</p> <ul style="list-style-type: none">• Any income of a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust shall be exempt;• Withholding tax in case of payment of rent component of income distributed;<ul style="list-style-type: none">- at 10 per cent to resident unit holders- at rates in force for non-resident unit holders• No tax shall be deducted at source under section 194-I of the Act where the income by way of rent is credited or paid to a real estate investment trust, in respect of any real estate asset held directly by such REIT
	<p>Tax implications for unit holders of business trust</p> <ul style="list-style-type: none">• The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT, shall be deemed to be income of such unit holder and shall be charged to tax, in like manner
	<p>Tax implications for sponsors (from whom the business trust acquires the controlling interest in the SPV)</p> <ul style="list-style-type: none">• The benefit of concessional tax regime @ 15% on short-term capital gains and exemption on long-term capital gains under section 10(38) of the Act shall be available to the sponsor on sale of units received in lieu of shares of SPV (subject to levy of STT)• Consequently, the Finance (No. 2) Act, 2004 is amended to provide that STT shall be levied on sale of such units of business trust which are acquired in lieu of shares of SPV, under an Initial offer at the time of listing of units of business trust on similar lines as in the case of sale of unlisted equity shares under an IPO
VTPA Comment	<p>The transfer of real estate and infrastructure assets which are taxable under the provisions of the Act have now been afforded a tax-free status by the amendments.</p>

Residency status of companies [Section 6]

Place of Effective Management	<p>Under the existing provisions a company is said to be resident in India in any previous year, if-</p> <ol style="list-style-type: none">it is an Indian company; orduring that year, the control and management of its affairs is situated wholly in India. <p>The amended provisions provide that a company shall be said to be resident in India in any previous year, if-</p> <ol style="list-style-type: none">it is an Indian company; orits place of effective management, at any time in that year, is in India <p>Place of effective management means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made</p>
VTPA Comment	<p>The amendment would place an onerous responsibility, as the words ‘any time in that year’ could mean that even effective management exercised for a part of the year, can expose the company to Indian taxes.</p>

Special provision for payment of tax by certain companies (Minimum Alternate Tax) [Section 115JB]

Minimum Alternate Tax (MAT)	<p>The share of a member of an AOP, in the income of the AOP, on which no income-tax is payable in accordance with the provisions of section 86 of the Act, should be excluded while computing the MAT liability of the member under 115JB of the Act</p> <p>The expenditure, if any, debited to the profit & loss account, corresponding to such income (which is being proposed to be excluded from the MAT liability) are also to be added back to the book profit for the purpose of computation of MAT</p> <p>The income from transactions in securities (other than short term capital gains arising on transactions on which STT is not chargeable) arising to a Foreign Institutional Investor (FII), shall be excluded from the chargeability of MAT and the profit corresponding to such income shall be reduced from the book profit</p> <p>The expenditure, if any, debited to the profit loss account, corresponding to such income (which is being proposed to be excluded from the MAT liability) are also to be added back to the book profit for the purpose of computation of MAT</p>
VTPA Comment	<p>The above provision presumes that FII’s are liable for MAT, however, it is debatable whether FII’s would have book profit liable for MAT</p>

Non-Residents

Foreign tax credit [Section 295(2)(ha)]

Foreign tax credit (w.e.f. 1 June 2015)	CBDT has been empowered to prescribe rules to provide the procedure for granting relief or deduction of any income-tax paid in any country or specified territory outside India, against the income-tax payable under the Act
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Income by way of Royalty and Fees for Technical Services [Section 115A]

Rate for royalty and fees for technical services	Any sum received by a non-resident by way of Royalty and Fees for technical services shall be taxable @ 10% instead of 25%
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Fund Managers in India not to constitute business connection [Section 9A]

No business connection for Fund Managers in India	<p>In order to facilitate location of fund managers of off-shore funds in India a specific regime has been proposed in the Act in line with international best practices with the objective that, subject to fulfillment of certain conditions by the fund and the fund manager,-</p> <ul style="list-style-type: none">- the tax liability in respect of income arising to the Fund from investment in India would be neutral to the fact as to whether the investment is made directly by the fund or through engagement of Fund manager located in India; and- that income of the fund from the investments outside India would not be taxable in India solely on the basis that the Fund management activity in respect of such investments have been undertaken through a fund manager located in India
Levy of penalty under Section 271FAB for non-furnishing or prescribed information	<ul style="list-style-type: none">- Every eligible investment fund shall furnish within ninety days from the end of the financial year, a statement in the prescribed form to the prescribed income-tax authority containing information relating to the fulfillment of the above conditions or any information or document which may be prescribed- In case of non-furnishing of the prescribed information or document or statement, a penalty of INR 5 lakh shall be leviable on the fund

Withholding tax obligation on payment made to a Non-Resident

[Section 195(6), Section 271-I, Section 273B]

<p>Withholding Tax Obligation on Payment Made to a Non-Resident</p> <p>[Section 195 (6)]</p> <p>Penalty for failure to furnish information or furnishing inaccurate information under section 195</p> <p>[Section 271 – I]</p> <p>Penalty not to be imposed in certain cases</p> <p>[Section 273B]</p> <p>[w.e.f. 1 June 2015]</p>	<ul style="list-style-type: none">• The existing provisions provide that the person referred to in section 195 (1) shall furnish the information relating to payment of any sum to a non-resident, in such form and manner as may be prescribed by the Board• It is proposed to substitute the existing provisions to provide that the person responsible for paying any sum to a non-resident, not being a company, or to a foreign company, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed• Currently there is no provision for levying of penalty for non-submission/inaccurate submission of the prescribed information in respect of remittance to non-resident• For ensuring submission of accurate information in respect of remittance to non-resident, Section 271-I has been newly inserted so as to provide that if a person, who is required to furnish information under section 195(6), fails to furnish such information; or furnishes inaccurate information, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of one lakh rupees• It is also proposed to amend the provisions of section 273B of the Act to provide that no penalty shall be imposed under section 271-I if it is proved that there was reasonable cause for non-furnishing or incorrect furnishing of information under section 195(6) of the Act
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Clarification relating to Indirect Transfer
[Section 9(1), Section 271GA]

<p>Indirect Transfer [Section 9(1)]</p>	<p>Explanation 5 to section 9(1)(i) inserted by Finance Act, 2012 w.r.e.f. 1.04.1962 clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India</p> <p>The following amendments are proposed in the provisions of section 9 relating to indirect transfer:</p> <ul style="list-style-type: none">- the share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets,-<ul style="list-style-type: none">a. exceeds the amount of ten crore rupees; andb. represents at least fifty per cent of the value of all the assets owned by the company or entity- any income on transfer of a share or interest deriving, directly or indirectly, its value substantially from assets located in India will be on proportional basis, when all of the underlying assets of such company or entity are not located in India <p>However, the aforesaid provision will not apply and no income shall be deemed to accrue or arise to the non-resident if the transferor neither holds the right to management or control in relation to such company or entity, nor holds voting power or share capital or interest exceeding 5 percent of the total voting power or total share capital or total interest of such company or entity, directly or indirectly.</p> <p>Any capital gain arising from a transfer of share of a foreign company in a scheme of amalgamation or demerger, subject to compliance of certain conditions, shall also not be deemed to accrue or arise in India under the said Explanation</p>
<p>Penalty [Section 271GA]</p>	<p>The Indian entity is obligated to furnish information relating to the off-shore transaction having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity. In case of any failure on the part of Indian concern in this regard a penalty shall be leviable.</p> <p>The proposed penalty shall be-</p> <ul style="list-style-type: none">a. a sum equal to two percent of the value of the transaction; orb. a sum of five hundred thousand rupees; <p>as the case may be</p>

Taxability of interest received by the non-resident in case of a banking corporation
[Section 9(1)(v)]

<p>Interest received by a non-resident bank [Section 9(1)(v)]</p>	<ul style="list-style-type: none">• In the case of a non-resident, being a person engaged in the business of banking, any interest payable by the permanent establishment (PE) in India of such non-resident to the head office or any PE or any other part of such non-resident outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the PE in India• The PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply
<p>VTPA Comment</p>	<p>The provision tends to streamline the dichotomy between the Income-tax Act, 1961 and the Double Taxation Avoidance Agreement.</p>

Other Amendments

Allowance of balance 50% additional depreciation [Section 32]

Additional depreciation	As a form of rationalization, the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year
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Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue [Section 263]

Revision of order under Section 263	<ul style="list-style-type: none">- The existing provisions contained in Section 263(1) of the Act provides that if the Principal Commissioner or Commissioner considers that any order passed by the assessing officer ('AO') is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the AO or cancelling the assessment and directing fresh assessment- The interpretation of expression "erroneous in so far as it is prejudicial to the interests of the revenue" has been a debatable one- It is proposed to provide that an order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner:<ul style="list-style-type: none">a) order is passed without making inquiries or verification which, should have been made;b) order is passed allowing any relief without inquiring into the claim;c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; ord) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person
VTPA Comment	<p>The amendment tends to widen the power of revision, which may be contrary to settled position of law. The insertion of the words 'in the opinion of' would also be debatable, as the question can arise whether the opinion of the AO can be substituted at a later date.</p> <p>Further, the question of substituting the methodology of inquiry by the AO, cannot be subject to review at a later date by the Commissioner, as long as such methodology is reasonable. It has been judicially laid down that the power of revision is not akin to review of the order. The amendment may thus lead to litigation.</p>

Amount of tax sought to be evaded for the purposes of penalty for concealment of income
[Section 271(1)(c)]

Penalty for concealment of income	The amendment intends to levy penalty even in cases where tax was payable under Sections 115JB and 115JC after assessment; though the assessed income exceeded returned income.
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Abolition of levy of wealth-tax under Wealth-tax Act, 1957

Wealth Tax	Wealth Tax would not be levied from AY 2016-17
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Measures to curb black money

Black Money	The Finance Minister has highlighted various provisions to be inserted for the same
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Rates of tax

1.1. For Individuals, Hindu Undivided Families, Association of Persons and Body of Individuals.

Existing		Proposed	
Income (INR)	Rate (%)[@]	Income (INR)	Rate (%)[@]
0 – 2,50,000 [#]	Nil	0 – 2,50,000 [#]	Nil
2,50,001 - 5,00,000	10	2,50,001 - 5,00,000	10
5,00,001 - 10,00,000	20	5,00,001 - 10,00,000	20
10,00,001 and above	30	10,00,001 and above	30

@ Education cess of 3% is leviable on the amount of income-tax.

The basic exemption limit is INR 250,000 in case of every individual below the age of 60 years, INR 300,000 in case of resident individuals of the age of 60 years or more and INR 500,000 for ‘Very Senior Citizen’ in case of resident individuals of age 80 years and above.

*** An Assessee, whose total income does not exceed INR 500,000, shall be entitled to a credit on the Income-tax payable, of an amount equal to hundred percent of the Income-tax payable or INR 2,000, whichever is less.**

*** An assessee having taxable income of more than INR 10 million is liable to pay his tax along with 12% surcharge, provided the surcharge does not exceed the amount equivalent to the income over INR 10 million.**

1.2. For Others

Description	Existing Rate (%)		Proposed Rate (%)	
	Having Income from INR 10 million to 100 million	Having Income more than INR 100 million	Having Income from INR 10 million to 100 million	Having Income more than INR 100 million
A) Domestic company				
Regular tax	32.445	33.99	33.063*	34.608**
MAT	20.008 (of book profits)	20.96 (of book profits)	20.389 (of book profits)*	21.34 (of book profits)**
DDT	16.995	16.995	17.304**	17.304**
Dividend Received from Foreign subsidiary company	16.995	16.995	17.304**	17.304**
B) Foreign company				
Regular tax	42.024	43.26	42.024 \$	43.26 #
C) Firm and LLP				
Regular tax	33.99		34.608**	
Alternate Minimum Tax (AMT)	20.008		20.389**	

****Inclusive of surcharge @ of 12 % and education cess of 3 %**

*** Inclusive of surcharge @ of 7 % and education cess of 3 %**

\$ Inclusive of surcharge @ of 2 % and education cess of 3 %

Inclusive of surcharge @ of 5 % and education cess of 3 %

GLOSSARY OF TERMS

Abbreviation	Meaning
AMT	Alternate Minimum Tax
AO	Assessing Officer
AY	Assessment Year
CBDT	Central Board of Direct Taxes
DDT	Dividend Distribution Tax
DTAA	Double Tax Avoidance Agreements
FII	Foreign Institutional Investors
FY	Financial Year
HUF	Hindu Undivided Family
ITA / Act	Income-tax Act, 1961 as amended from time-to-time
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
SEBI	Securities and Exchange Board of India
STT	Securities Transaction Tax

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.