# Budget Webcast: Tax implications for MNCs and foreign investors

Post event summary

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**Panelists** : CBDT Chairman, Mr. P.C. Mody and Joint Secretary, CBDT, Mr. Kamlesh Varshney

**Moderators** : Hitesh D. Gajaria, Senior Partner and Naveen Aggarwal, Partner at KPMG India

## CBDT Chairman's views on Union Budget 2021

- Budget, 2021 is a landmark announcement as it lays out a roadmap for future growth which the Government hopes to achieve.

- From a direct tax perspective, the key focus is to streamline tax administration through better use of technology and to ensure that taxpayers get due services within time. The provisions of the Budget were guided by the basic principles of 'Honoring the Honest' and 'Transparent Taxation'. The income-tax department ('the Department') shall ensure that compliant and honest taxpayers get the best of services.

- At the same time, Mr. Mody also emphasized on the Department's intention to widen the tax base, especially to cover cases with high value transactions, which are, currently, not being reported, or being reported inappropriately. Towards this end, the Department has substituted Form 26AS with Form 26 AIS, which contains details of a taxpayer collated from other authorities / agencies. The objective is to let the taxpayer know upfront as to what information is in the possession of the Department.

- Mr. Mody also spoke about the Department's focus on providing certainty to the taxpayers through clarity on litigated issues and reducing tax litigation. The constitution of the Dispute Resolution Committee in the Budget is a step in this direction for resolution of disputes with lower tax effect. Further, reduction in timelines for initiating reassessments shall bring about a massive change and help in providing certainty to the taxpayers.

## Questions raised by the Moderators to the Panelists

### 1.1 Substitution of Authority of Advance Rulings ('AAR') with Board of Advance Rulings ('BAR')

- A question was raised on the rationale behind substitution of the AAR with the BAR and the reason for not having retired ITAT members appointed to the AAR or BAR.

- Mr. Varshney mentioned that the reason for substituting BAR with AAR has been the prolonged vacancy in the office of the AAR, resulting in delays in issuance of rulings. The BAR is an alternative mechanism which shall provide good and fair rulings in a shorter span of time. The suggestion of having retired ITAT members appointed to the BAR can be considered. The rationale of having two Chief Commissioners appointed to the BAR, is to ensure that there is never a vacancy on account of unavailability of BAR members and that cases are disposed -off in a timely manner. .

- Mr. Varshney also pointed out that the Department has been given a right to appeal against the ruling of the BAR to ensure that members of the BAR, issue independent and fair rulings like judicial officers.

### 1.2 New provisions for conducting reassessment proceedings

- A set of questions were raised in relation to the new provisions introduced for conducting reassessment proceedings. These were centered around the safeguards that would be adopted by the Department before invoking an extended period of 10 years; the manner in which 'income represented in the form of asset' test would work in practice; the need for demonstrating that asset has been acquired out of escaped income; the rationale behind removing the condition of 'reasons to believe' and not aligning the extended time-limit of 10 years with the 8 year time limit specified under the Companies Act, 2013.

- Mr. Mody clarified that the intent behind revamping the reassessment provisions is to minimize cases of reassessment and provide certainty to taxpayers. With the use of technology, the Department would now undertake data analysis and reopen cases, only if they are information based. He mentioned that the new provisions are more specific as against the concept of 'reasons to believe', which was fairly subjective and open ended.

- Further, the extended time limit of 10 years shall be invoked, only after prior approval of the Chief Commissioner of Income-tax, which would only be granted if there is specific evidence on record.

- On the question of the 10 year time period not aligned to the Companies Act, 2013, Mr. Mody mentioned this time period has been aligned to the search and seizure cases where this period has already been specified in the statute.

- On a request from moderators to align the provisions to 8 years in keeping with the Companies Act, Mr Mody said this could be looked into.

- Another related question which arose was in relation to exercising human intervention or oversight by the Department for reviewing the cases flagged by the computer system, to avoid unnecessary hardships to the taxpayers. Mr. Mody clarified that there would certainly be a mechanism in place to review the information flagged by the computer system, before issuance of any notice of reassessment to the taxpayer. Mr. Varshney further added that based on various judicial precedents, the new provisions have been amended to ensure that reasons for reopening are shared with the taxpayers upfront. Further, at every stage, a requirement for obtaining prior approval of the Chief Commissioner of Income-tax has been specified, so that frivolous notices are not issued.

### 1.3 Introduction of TDS on purchase of goods

- A question was raised on the rationale for introducing TDS on purchase of goods, when similar provisions of TCS had already been introduced last year. It was also requested, to clarify whether there would be a carve out for listed as well as unlisted shares and securities from the definition of 'goods'.

- Mr. Varshney clarified that TDS provisions on purchase of goods have been introduced to enlarge the scope of withholding tax. In a case, where the seller does not meet the specified turnover threshold for collection of TCS on sales in excess of INR 50 lakhs, the buyer shall be required to deduct TDS, subject to satisfaction of the specified threshold. He further mentioned that there shall be no overlap between TDS and TCS provisions.

- On the aspect of carve out for listed and unlisted shares and securities from the definition of 'goods', Mr. Varshney added that the Department shall examine whether listed shares and securities should be excluded from the definition of goods and would issue further guidelines if required. In respect of unlisted shares and securities, Mr. Varshney mentioned that the Government has not taken any stand as yet.

### 1.4 TDS at higher rates for non-filers of tax returns

- Since an additional responsibility of deducting TDS at higher rates from payments to non-filers of income-tax return has been cast upon the deductor, concerns were raised as to how would they enforce compliance of this provision in practice.

- Mr Mody, clarified that the Department shall release a PAN based functional utility to tackle this problem. Using the PAN of the deductee, the deductor would be able to verify compliances of the deductee through this functionality. A similar functionality has been rolled out to verify compliances in case of TDS on cash payments (i.e. Section 194N of the Income-tax Act, 1961)

### 1.5 Non-availability of Depreciation on Goodwill

- As the Finance Bill, 2021 proposes to exclude goodwill from the definition of 'block of assets' and 'intangible assets' to disallow the claim of depreciation, a question arose as to whether the Government would consider a carve out for genuine cases of third-party acquisitions, where a company would have incurred huge sums for acquiring the goodwill, based on the future cash flow projections of the target.

- Mr. Varshney clarified that the position of the Department has always been to allow depreciation on goodwill in cases of third-party acquisitions only. When queried that this intention, unfortunately does not come out explicitly, either in the proposed law or in the Explanatory Memorandum, which seems to read that depreciation on goodwill will no longer be allowed in all cases, Mr Varshney mentioned that proposal for allowing claim of tax depreciation on purchased goodwill can be taken up before the Government.

## 1.6 Expansion in the scope of Equalisation levy ('EL') provisions

- With the expansion in the scope of 'online sale of goods' and 'online provision of services' to include even a part of the transaction conducted online, like acceptance of offer for sale, placing of purchase order, acceptance of purchase order, payment of consideration raises concerns that these provisions could potentially cover almost all transactions conducted in modern trade, like offline import of goods.

- Moreover, a question arose whether payment through banking channels, which involves the use of digital or electronic facility shall attract EL, in the absence of any specific carve outs. In fact, the OECD's Pillar 1 is proposed to be structured to largely apply to consumer facing businesses.

- Mr. Varshney highlighted that the Government is keen to find a multilateral solution to taxation of digital businesses. However, since a global consensus has not been reached yet, India, in the interim, had to resort to introduction of an EL, as a unilateral measure. In fact, India is not alone as there are many countries which have adopted unilateral measures to tax digital businesses.

- He further emphasized that EL is an interim measure and restricting its applicability only to 100% digital businesses would render its scope to a very narrow remit.

- Another related question which arose was on the rationale behind enlargement in the scope of the term 'consideration' to include the entire amount, irrespective of the ownership of goods or services. Mr. Varshney clarified that the intention has been always to cover full consideration and not to restrict the applicability of EL to only commission earned by the e-commerce operators. In case, there are certain businesses with low margins, those issues can be specifically looked into.

## Other questions raised to the Panelists

### Higher tax rates for Indian branches of U.S. banks as against their domestic counterparts

- A question arose on the applicability of higher tax rate of around 43% on Indian branches of U.S. banks in India, as against 25% tax rate applicable to Indian banks, post introduction of the lower tax regime in 2019. This results in a huge operating differential.

- Mr. Varshney mentioned that the difference between the tax rates of Indian branches of foreign banks and Indian companies existed due to the applicability of the previously applicable Dividend Distribution Tax (DDT) on repatriation of profits overseas, which used to bring the effective tax rate of Indian companies, quite close to the tax rate applicable to branches.

- Mr. Varshney added that in order to avail the benefit of lower tax rate, the branches of the foreign banks can consider converting into a wholly owned subsidiary of the foreign banks, as per the foreign exchange and banking regulations framework. Nevertheless, the issue is under consideration by the Government.

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