



Budget 2018 – some amendments **- Sumeet Hemkar, Partner, Deloitte India**

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Direct Tax



Corporate Taxation

“Business connection” to include “significant economic presence”- Section 9(1)(i) - Proposed amendment

- Definition of ‘business connection’ widened to include ‘significant economic presence’ in India. ‘Significant economic presence’ to mean:
 - Transaction in respect of 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 transactions during the previous year exceeds prescribed threshold; or
 - systematic and continuous soliciting of business activities or engaging in interaction with prescribed number of users in India through digital means
- Transactions / activities to 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

• Key considerations

Threshold of “revenue” and “users” to be decided after consultation with stakeholders

India to re-negotiate existing DTAs for inclusion of the new nexus rule

Cross border business profits to continue to be taxed as per existing treaty rules till the DTAs are modified

Non-treaty jurisdictions to be impacted by the proposed amendment

Corporate Taxation

“Business connection” to include “significant economic presence”- Section 9(1)(i) - Proposed amendment

- **Applicability** - Digital products or digitally sold products?
- **Attribution of profits** – In absence of functions, assets and associated risks, profit attribution for digital presence in India may be a challenge, absence any guidance on attribution in the Budget proposals
- **BEPS Action Plan 1 identified ‘significant economic nexus test’ and ‘equalization levy’ as alternative measures that countries may adopt** – The non-expansion of the scope of EL and the expansion of the domestic definition of business connection show that the Government is putting faith in the international discussions being undertaken on the taxation of the digital economy by not taking drastic unilateral actions inconsistent with international practice.
- **Would it be feasible to re-negotiate all the Treaties** – Time consuming and is it worth the effort
- **Impact on online advertisers** - EL is not applicable to non-residents constituting a PE in India. However, there is no exemption from applicability of EL to non-residents constituting a ‘business connection’ in India. With the expansion of the meaning of ‘business connection’, non-residents selling online advertisements in India would be covered by EL and would also be constituting a SEP (and thus business connection) in India. – this would create some anomalies, despite of relief in Section 10(50)
- **Return of income** – Would a foreign company who is exempt from tax net in India (basis beneficial provisions of Treaty), be required to file return of income in India if it is covered by expanded definition under the Act
- **Clarifications and notifications** – Phrases like ‘systematic and continuous soliciting of business activities or engaging in interaction with number of users’ needs clarity.

Corporate Taxation

Relief from minimum alternate tax (MAT) for specified companies (115JB)

Proposed amendment (clarification applicable retrospectively from April 01, 2001)

- MAT shall not be applicable on the following foreign companies, having income solely from :-
 - Shipping business (section 44B)
 - Exploration of mineral oils (section 44BB)
 - Aircraft (section 44BBA)
 - Civil construction etc. in certain turnkey power projects (section 44BBB)

and such income has been offered to tax at the rates mentioned in the specified sections

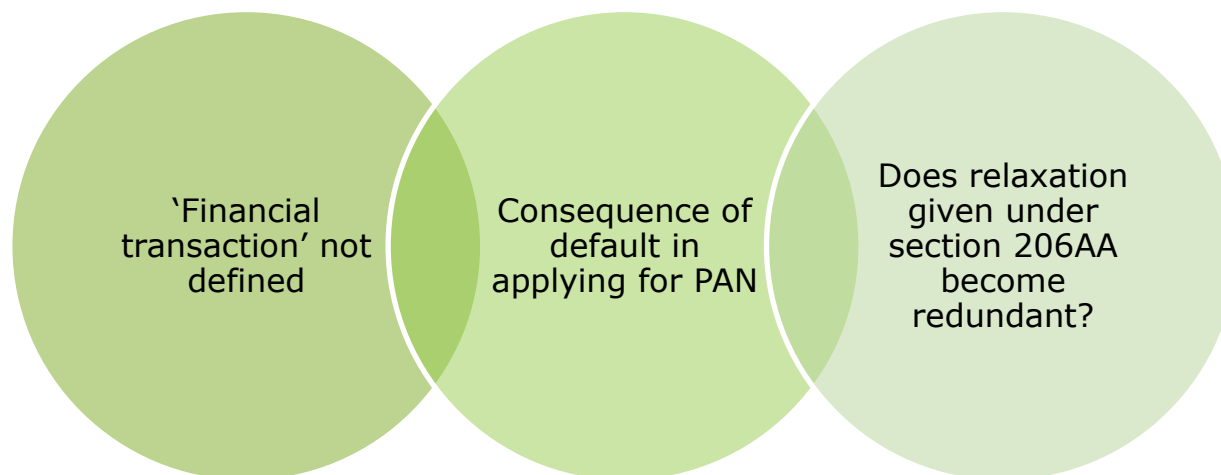
What if these companies earn interest on income tax dues alongwith earning income from specified activities

Corporate Taxation

PAN to be applied in certain cases – section 139A

- With a view to use PAN as Unique Entity Number (UEN), it is proposed to expand the list of cases requiring application for PAN
- A person, not being an individual, which enters into a financial transaction of an amount aggregating to INR 0.25 million or more in a financial year to be required to apply for PAN
- Managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer or any person competent to act on behalf of such entities to also apply for PAN
 - Objective to link financial transactions with natural persons
- Amendment to be effective from assessment year 2018-19

Key considerations



Corporate Taxation

Signing of Return of income for cases governed by Insolvency and Bankruptcy Code– section 140

Signing of return of income – Section 140

- **Existing provision** - For the companies - a) which are being wound up; or b) where the management of the companies are being taken over by Central / State Government – the RoI shall be signed / verified by the liquidators and principal officer respectively.
- **Proposed amendment** - This provision is proposed to be amended to include the companies in respect of which an application of corporate insolvency resolution process (under the provisions of the Insolvency and Bankruptcy Code, 2016) has been admitted – the RoI shall be signed / verified by the insolvency professional (as defined in the code).

Corporate Taxation

Amendments relating to assessment – section 143(1) & 143(3)

Rationalisation of prima-facie adjustments during processing of return – Section 143(1)

- Currently, while processing the return of income, the total income or loss is to be computed *inter alia* after adding income appearing in Form 26AS / 16A / 16 which has not been included in the return
- It is proposed to insert a new proviso to provide that such adjustment shall not be made under this section in respect of any return furnished on or after assessment year 2018-19
- The amendment to be effective from assessment year 2018-19

New scheme for scrutiny assessment (E-assessment) – Section 143(3)

- It is proposed to provide that the Central Government may make a scheme, by notification in the Official Gazette, for the purpose of making assessment of total income or loss of the assessee so as to impart greater efficiency, transparency and accountability by –
 - eliminating the interface between the AO and the assessee in the course of proceedings to the extent technologically feasible;
 - optimizing utilization of resources through economies of scale and functional specialization;
 - introducing a team-based assessment with dynamic jurisdiction.
- The Central Government to be also authorized to direct suitable amendments in other provisions as well
- Every notification to be laid before each House of Parliament



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