India Budget 2020 expands digital tax, eliminates double taxation of certain dividends

March 30, 2020

In brief

The Indian Finance Minister presented the Union Budget 2020 (Budget) of the Modi government 2.0 on February 1. According to the legislative process, the Budget 2020 proposals would take effect after the Budget passes both houses of Parliament and obtains Presidential assent.

Both houses of the Indian Parliament passed the Budget, and it obtained Presidential assent on March 27. It will become law effective April 1, 2020. This insight highlights some key changes made to the Budget (over the original proposals). Changes were proposed to the original proposals when the Lower House of the Indian Parliament adopted the 2020 Finance Bill on March 23.

In Detail

Digital tax - Extending the scope to include e-commerce transactions

India has expanded the scope of the 'equalization levy' beyond just online advertising (currently levied at 6%) to all nonresident e-commerce operators who provide 'e-commerce supply or services,' thus applying the levy to remote sales and services into India. An 'e-commerce operator' is a nonresident person who owns, manages, or operates a digital/electronic facility or platform for online sales of goods or provision of services. The expansion of scope is effective April 1, 2020,

A new 2% equalization levy on the consideration/revenue received by e-commerce operators will apply on:

- sales or services to an Indian resident;
- sales or services to a nonresident (if using Indian data/data collected by an Indian person), i.e.,for sale of advertisement, which targets a customer who is resident in India or who accesses the advertisement through an internet protocol address (IP) located in India, or for sale of data, collected from a person who is resident in India or who uses an IP address located in India; and
- sales or services using an Indian IP address.

The following entities are exempt from the levy:

1. A company with a permanent establishment in India is not subject (i.e., it only applies to nonresident entities); and
2. An e-commerce operator entity with less than INR 20 million (around US$275,000) in associated revenues during the financial year.

From a compliance standpoint, the nonresident e-commerce operator must deposit the equalization levy on a quarterly basis and file an annual return. As this provision is not part of the Indian Income Tax law, it will not be subject to the existing tax treaties (or other similar instruments).Online advertising will remain subject to the original 6% levy.

Elimination of double taxation of dividends declared before March 31, 2020, but received on or after April 1, 2020

The original Bill proposed abolishment of the Indian dividend distribution tax (DDT) effective April 1, 2020, and thereafter dividends would be taxable directly to the shareholders. However, the language of the amendments proposed in the original Bill led to double taxation in the event that the dividend is declared on or before March 31, 2020, but is received on or after April 1, 2020. The reason was that such dividends would have been subject to DDT, as they have been declared on or before March 31, 2020, but the dividend also would be included in the total income of the shareholders, as they have been received on or after April 1, 2020.

Amendments now eliminate such double taxation. Now, dividends received on or after April 1, 2020 will be taxable to the shareholders only if the DDT has not been paid.

Credit mechanism for dividends received from a foreign company

The original Bill provided for a credit mechanism, whereby the dividend received by an Indian domestic company from another Indian domestic company is deductible to the extent of the dividend distributed by the first-mentioned domestic company, subject to conditions. Amendments now extend the similar credit mechanism for dividends received from foreign companies.

The takeaway

The elimination of the double taxation of dividends and extension of the credit mechanism to foreign dividends provides much needed clarity. The expansion of the scope of equalization levy to nonresident e-commerce operators is a rather unexpected move. E-commerce companies now should assess the tax impact and undertake compliance obligations.

See also

On April 3 (12:00pm EDT; 9:30pm India time), PwC India is hosting a webcast on implications of the recent amendments to the Budget and legislation on tax dispute settlement. Please join us for India's 2020 Budget: Amendments to the Finance Bill 2020.

In addition to the Budget, described above, the government also enacted the Direct Tax Vivad se Vishwas Act, 2020, on March 17, providing an avenue for taxpayers to settle disputes by paying taxes that have been demanded of them, however eschewing payment of any interest or penalty. This scheme is a significant step to clear the backlog of direct tax litigation in India. The Indian government has extended the beneficial provisions of the scheme from March 31, 2020 to June 30, 2020.

Webcast speakers:

- Bernard Moens, Global International Tax Services Leader, PwC LLP, New York
- Frank D'Souza, Chartered Accountant
- Sriram Ramaswamy, Partner and India Desk Leader, PwC LLP, New York
- Pavan Kakade, Corporate and International Tax Partner, PwC India

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

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