

Full Year Union Budget 2024-25

Transfer Pricing Perspective

July 2024



Background

The Finance Minister presented the full year Union Budget for 2024-25 on 23 July 2024. This budget was centered around the theme of employment, skilling and MSMEs and had 9 priorities including productivity and resilience in Agriculture, employment & Skilling, Innovation, Research & Development and Next Generation Reforms.

The alert covers the Transfer Pricing related proposals in the Finance (No.2) Bill 2024.



Transfer Pricing Updates

1. Determination of Arm's Length Price in respect of specified domestic transactions in proceedings before Transfer Pricing Officer

The existing provisions of Section 92CA provides that the Assessing Officer (AO) during the course of assessment, may refer the computation of arm's length price in relation to an international transaction or specified domestic transaction (SDT) entered by an Assessee to the Transfer Pricing Officer.

Further sub section (2A) & (2B) of Section 92CA provide that if during the course of assessment, any other international transaction:-

- which has not been referred to him by the AO or
- which has not been reported in Form 3CEB (i.e report under Section 92E)

comes to the notice of the TPO, then the TPO shall have the powers to determine arm's length price of such international transactions as well. However, the provisions of sub section (2A) & (2B) of Section 92CA did not cover SDTs.

Budget 2024 has amended sub section (2A) & (2B) of Section 92CA to bring SDTs also within the ambit.

This amendment will be applicable from 1 April 2024.

2. Safe Harbour Rules

The Finance Minister in the budget speech mentioned that the scope of Safe Harbour rules would be expanded and would be revised to make it more attractive.

Safe Harbour is a dispute resolution mechanism wherein the tax authorities of a jurisdiction prescribe the arm's length terms and conditions for certain routine / non-complex transactions. On complying with these terms and conditions, the said transactions entered by the taxpayers are deemed to be at arm's length in the respective jurisdiction and obtain immunity from litigation.

The Safe Harbour regime was first issued by the CBDT in 2013 and amended in 2017. Thereon, these rules have been extended year on year. Taxpayers at large have viewed Safe Harbour program critically, and have not witnessed any major participation, because of which rules were revised in 2017. Despite the amendment, adoption of dispute resolution mechanism have been largely skewed towards Advance Pricing (APA) and Mutual agreement procedure (MAP).

With a view to provide greater tax certainty and aiming at reducing transfer pricing litigation, the Finance Minister has announced that the scope of Safe Harbour Rules will be widened and would make them more attractive. Further the Finance Minister also stated that Safe Harbour rates would be announced for foreign mining companies selling raw diamonds in India.

The Safe Harbour rules are operational through Income Tax Rules -10TA to 10THD, and the amendment to these rules are expected to be announced separately vide Notification.

3. Section 94B – Exclusion of Finance Companies in IFSC

Section 94B was introduced to limit base erosion and profit shifting w.r.t. interest deductions by Indian taxpayers, in line with the BEPS Action Plan 4. The section limits the quantum of deduction on interest to associated enterprises up to 30% of the earnings before interest, taxes, depreciation and amortization. The limitation also extends to loans from third party lenders but the associated enterprise provides guarantee to such lender.

Exceptions are provided for Indian company or a permanent establishment of a foreign company that are engaged in business of banking or insurance. The Finance (No.2) Bill 2024 now extends the exception to finance companies, located in International Financial Services Centre (IFSC).

The Section is to be amended to exclude 'Finance Company located in any International Financial Services Centre'. The definitions of Finance Company and International Financial Services Centre are to be included through insertion of two new clauses – (iv) and (v) to the sub section 5 of section 94B.

This amendment will take effect from 1st April 2024.

4. Reduction in Corporate Tax Rate for Foreign Companies:

With an intention to boost foreign investment in India by providing a level playing field for both domestic and foreign companies, the rates of tax of foreign companies has been reduced from 40% to 35%, on income other than income chargeable at special rates (specified in respective sections of Chapter XII of the Act).

The existing surcharge of 2% (on income greater than INR 1 crores and less than INR 10 crores) and 5% (for income greater than INR 10 Crores) shall continue to be levied.

Thus, this amendment comes as an incentive to foreign companies who have a permanent establishment and a taxable presence in India.

This amendment will be applicable from 1st April 2024.

5. Income Tax Appellate Tribunal (ITAT) Time limit - Rationalization

In connection with appellate proceedings, currently aggrieved taxpayers will have to file an appeal before the ITAT within a period of 60 days from the date of order which is sought to be appealed. The orders of Commissioner of Income Tax (Appeals) used to be pronounced in batches – monthly or fortnightly.

With the onset of the faceless assessment, these orders are said to be issued on a day-to-day basis. To ensure easier tracking of cases by the Assessing Officer, the time limit for filing the appeal before the Tribunal is proposed to be amended to '2 months from the end of the month in which order sought to be appealed is communicated'.

This will be effective from 01 October 2024.

6. Introduction of Direct Tax Vivad Se Vishwas Scheme 2024.

As a measure to address the rising number of pending litigation cases at various levels, it has been now proposed to introduce Vivad Se Vishwas Scheme, 2024 with an objective of providing a mechanism for dispute resolution, which shall also apply to pending TP Appeals. The Taxpayer can now settle pending appeals by paying the disputed tax amount without interest and penalty, as per the scheme.

However, as the Scheme requires upfront payment of the disputed demand, taxpayers may still opt to go through the regular channels as relief is generally granted at higher levels in case of TP appeals.

It is proposed that this Scheme shall come into force from the date to be notified by the Central Government. The last date for the Scheme is also proposed to be notified.

7. Streamlining of Transfer Pricing Assessment

As part of efforts to rationalize litigation and appeals, the Finance Minister announced that Transfer pricing assessment proceedings would be streamlined. Currently, the timeline of regular assessment is extended by 12 months to provide for the Transfer Pricing audit to be conducted by Transfer Pricing Officer under Section 92CA.

Revision to the existing Income Tax Act sections to align Transfer pricing assessment proceedings are expected to be announced vide a separate notification.

8. Withdrawal of Equalization Levy

The withdrawal of equalization levy was announced by the Finance Minister in the budget speech. During the post budget conference the Finance Minister rationalized the withdrawal of equalization levy owing to the introduction of Pillar One and Pillar Two rules in India in the near future.

The formulation and implementation of the two-pillar solution is undertaken by the OECD/G20 Inclusive Framework, of which India is a member. In one of its statements, in October 2021, the OECD/G20 Inclusive Framework provided a detailed implementation plan of Pillar One and Pillar Two. The statement provided for member countries to remove Digital Services Taxes and other relevant similar measures in connection with implementation of Pillar One. Equalization levy in India is unilateral measure, similar to the digital services taxes.

As per the Finance Minister, during the post budget conference, India is said to be finalizing the implementation of Pillar One and Pillar Two in its Tax legislations. As part of these efforts, the equalization levy has been withdrawn.

It is expected that the draft legislations on Pillar One and Pillar Two would be announced in the near future.

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Our offering spans the end-to-end Transfer Pricing value chain, including design of intercompany policy and drafting of Interco agreement, ensuring effective implementation of the Transfer Pricing policy, year-end documentation and certification, Global Documentation, BEPS related compliances (including advisory, Masterfile, Country by Country report), safe harbour filing, audit defense before all forums and dispute prevention mechanisms such as Advance Pricing agreement.

We are structured as an inverse pyramid where leadership get involved in all client matters, enabling clients to receive the highest quality of service.

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