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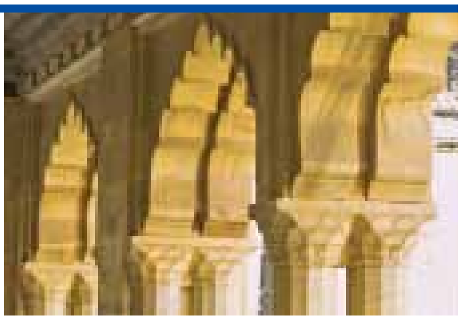
Client Alert

India/Tax Practice

May 2013

India Budget 2013: Key Amendments to the Finance Bill, 2013 Affecting International Investors



India's Parliament has approved the country's budget for the fiscal year beginning April 1, 2013 (Budget) by passing the Finance Bill, 2013 (Finance Bill) on May 2, 2013 with several amendments to the earlier version of this bill presented to the Parliament on February 28, 2013 (see our earlier alert on the Budget proposals of February 28, 2013). While some of these amendments are favorable to foreign investors and lenders, the scope of certain other amendments is unclear.

Key amendments to the February 28, 2013 version of the Finance Bill approved by the Parliament include the following:

- Indian tax laws will no longer prescribe the particulars to be contained in a tax residency certificate (TRC) to be issued by the country of residence of a non-resident assessee (in order for such assessee to obtain tax treaty benefits in India). The amendments also delete the language in the prior version of the Finance Bill which stated that a TRC would be necessary but not sufficient for a non-resident assessee to claim tax treaty benefits. However, the assessee may be required to provide "such other documents or information as may be prescribed" in order to obtain such tax treaty benefits. No such documents or information has been prescribed to date.
- Interest earned by foreign entities registered as foreign institutional investors (including their sub-accounts) (FIIs) or qualified foreign investors (QFIs) on or after June 1, 2013 but before June 1, 2015 on Indian Rupee denominated bonds of an Indian company or Indian Government securities will be subject to a reduced withholding tax rate of 5% (plus surcharge and cess). The previously applicable rate was 20% (plus surcharge and cess).
- Interest earned by foreign lenders on or after June 1, 2013 but before June 1, 2015 from long term foreign currency infrastructure bonds issued by Indian issuers will be subject to a reduced withholding tax rate of 5% (plus surcharge and cess) even if such lenders do not have a permanent account number (PAN) issued by the Indian tax authorities. The previously applicable rate in the absence of a PAN was 20% (plus surcharge and cess).

1 Surcharge and cess are special additional assessments imposed by the Government of India. The surcharge is between 0 and 5% of the amount of the withholding tax liability (depending on the amount of the payment to a non-resident company). The cess is 3% of the amount of the withholding tax liability plus the surcharge.

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Implications of the Amendments to the Finance Bill

Certain amendments to the version of the Finance Bill tabled before Parliament on February 28, 2013 are positive and appear to reflect a desire by the Government of India to facilitate FII and QFI investments in Indian corporate and Government debt and promote offshore borrowing through long term infrastructure bonds. However, it is unclear what documents and information in addition to a TRC will be required for foreign investors to avail of tax treaty benefits in India.

As always, Indian transactions require careful tax structuring and parties should consult their advisors to fully understand these changes and their possible applications to particular situations.

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