



Global pain: Non-resident services outside India to be taxed retroactively

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Mumbai : Though the Budget was welcomed by the industry and markets, it threw up some unpleasant surprises as well. One such proposal is that the services provided completely offshore by a non-resident to a resident of India would be caught within the Indian tax net.

According to legal experts, the Budget has proposed a fundamental change to India's source rules governing non-resident income in the nature of royalties, interest and fees for technical services. As a result, a non-resident may now be taxed on such income, even if it has not rendered any services within India, or does not have a residence, place of business or business connection in India. Under the existing law, a non-resident is taxable in India only on income that is sourced in India.

The change proposed in the Budget has the effect of overriding the 'doctrine of territorial nexus' that was read into the 'law of the land' by the Supreme Court. "The proposed alteration to India's source rules is likely to have adverse ramifications on most conventional cross-border service models. For example, now even the offshore service element in every EPC/turnkey contract would be taxable in India. This is also likely to influence the dynamics of international project financing. Likewise, income earned by foreign advisors and consultants would now be taxable even if no part of the service is performed in India, but simply because the same is utilised in India," said an official of law firm Nishith Desai Associates.

There's also a fear that the proposed change may also give rise to double taxation issues especially in a situation where a foreign country refuses to grant its resident a credit for taxes paid in India under a conflicting or asymmetric source rule.