FINANCE BILL PROPOSES TO TAX LONG TERM GAINS ARISING ON SALE OF LISTED EQUITY SHARES

The Finance Minister of India presented the Finance Bill, 2018 (the Bill) in the Parliament on 1 February 2018. The Bill, inter alia, proposes tax on gains arising on transfer of equity shares listed on a recognized stock exchange in India held for more than 12 months and where Securities Transaction Tax (STT) has been paid.

Impact of this:

- There would be an additional tax burden of 10% on the sale of listed equity shares (compared to the existing "nil" tax regime) which may impact potential wealth realization of employees.

- There is uncertainty on whether the benefit of grandfathering in the form of stepped up cost of acquisition based on FMV as on 31 January 2018 would be available for equity shares that were unlisted on 31 January 2018.

- If the sale of listed equity share results in a loss, such loss would be allowed to be set-off or carried forward for set-off against future long-term capital gains as per the provisions of the Income-tax Act, 1961.

- There might be an unanticipated tax burden on ESOP trusts at the time of sale of listed equity shares that were allotted pre-IPO.