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Amidst the COVID-19 outbreak and nationwide lockdown, the Finance Bill 2020 introduced vide Union Budget 2020-21 was passed by both Houses of Parliament and assented by Hon. President, with various key amendments impacting individual taxation, which include relaxation in deemed residency provision, modification to the various TDS sections, etc.

Following are the details of relevant changes made in Finance Bill 2020:

## **Rate of Income Tax**

### ◆ **As per Finance Bill, 2020 –**

**In case having no Business Income:** The option shall be exercised for every previous year. **Means, such person has option to revert back to previous regime in subsequent year.**

**In case of having Business Income:** The option once exercised shall be valid for that previous year and all subsequent years.

### ◆ **As per Finance Act, 2020 –** The said condition has also been extended to **income from profession** as well.

## **Modification of Residency Provisions under Section 6:**

### ◆ **Section 6(1)** provides for situations in which an individual shall be resident in India in a previous year. Clause (c) thereof provides that *the individual shall be Indian resident in a year, if he,-*

(i) *has been in India for an overall period of 365 days or more within four years preceding that year, and*

(ii) *is in India for an overall period of 60 days or more in that year*

Clause (b) of Explanation 1 of said sub-section provides that *an Indian citizen or a person of Indian origin shall be Indian resident if he is in India for 182 days instead of 60 days in that year.*

### ◆ Instances have come to notice where period of 182 days specified in respect of an Indian citizen or person of Indian origin visiting India during the year, is being misused. Individuals, who are actually carrying out substantial economic activities from India, manage their period of stay in India, so as to remain a non-resident in perpetuity and is not required to declare their global income in India.

◆ ***In light of above, it is proposed that –***

- ▲ **As per Finance Bill, 2020** – the **exception provided in Explanation 1(b) to Sec. 6(1)** for Indian citizens visiting India in that year be **decreased to 120 days** from existing 182 days.
- ▲ **As per Finance Act, 2020** – The aforesaid **limit of 120 days applies only to** the individual whose **total income, (other than the income from foreign sources), exceeds Rs. 15 lakhs** during the financial year.  
**‘other than the income from foreign sources’** is defined to mean income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).
- ▲ **As per Finance Bill, 2020** – substitution of new conditions for construing a person not ordinarily resident in India u/s. 6(6), as per which **“an individual or an HUF shall be said to be “not ordinarily resident”** in India in a previous year, if the individual or the manager of the HUF has been a **non-resident in India in 7 out of 10 previous years** preceding that year.
- ▲ **As per Finance Act, 2020** – this proposal has been dropped **and existing provisions for determining NOR has been restored.**  
**Following Additional conditions has been introduced to treat an Individual as Not Ordinary Resident :**
  - **An Indian citizen or a person of Indian origin** whose **total income**, (other than income from foreign sources), **exceeds Rs. 15 Lakhs** during a financial year and who **has been in India** for a **period of 120 days or more but less than 182 days.**
  - **An Indian citizen** whose total income, (other than the income from foreign sources), **exceeds Rs. 15 Lakhs** during the fiscal year and is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.
- ▲ **As per Finance Bill, 2020** – **An Indian citizen who is not liable to tax in any other country or territory shall be deemed to be resident in India**, thereby providing for **‘stateless person’**.
- ▲ **As per Finance Act, 2020** – this amendment shall **apply only if total income**, (other than the income from foreign sources), of such Indian citizen **exceeds Rs. 15 Lakhs** during the financial year.

## TDS & TCS PROVISIONS

### Section 194J :

- ◆ **As per Finance Bill, 2020** – It is proposed to reduce rate for TDS in section 194J in case of **fees for technical services (other than professional services) to 2%** from existing 10%. The TDS rate in other cases under section 194J would remain unchanged at 10%.
- ◆ **As per Finance Act, 2020** – The reduced withholding tax **rate of 2% has been extended to royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films.**

### Section 194N :

- ◆ **Existing Provision – Section 194N** provides for TDS at the rate of 2% by banks or specified financial institutions on the cash payments/withdrawals of more than Rs. 1 crore in a financial year.
- ◆ **As per Finance Bill, 2020** – No Such Amendment
- ◆ **As per Finance Act, 2020** – The scope of Section 194N has been extended.

Section 194N to provide for deduction of tax at source by **a banking company or co-op. bank or post office** at the **rate of 2%** from the **amount withdrawn in cash** from **any account** (saving or current account) if the **aggregate of the amount** of withdrawal **exceeds Rs. 1 crore** during the year.

**Provided that** in case of **a recipient** who has **not filed the returns** of income for all of the **3 assessment years** relevant to the 3 previous years, for which the time limit of file return of income under section 139(1) has expired, immediately preceding the previous year in which the payment of the sum is made to him, the provision of this section shall apply with the modification that—

- ▲ the sum shall be the **amount or the aggregate of amounts**, as the case may be, in cash **exceeding Rs. 20 Lakhs** during the previous year; **and**
- ▲ the deduction shall be—
  - (a) **TDS at the rate of 2%** of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash **exceeds Rs. 20 Lakhs** during the previous year **but does not exceed Rs. 1 Crore; or**
  - (b) **TDS at the rate of 5%** of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash **exceeds Rs. 1 Crore** during the previous year.

**Summarised Provision is as follows:**

Amount Withdrawn (Single or Aggregate in a F.Y.)	Rate of TDS	
	Recipient has not filed ITR for preceding 3 years	Recipient has filed ITR for preceding 3 years
Rs. 20 Lakhs to Rs. 1 Crore	2 %	N.A.
Exceeding Rs. 1 Crore	5 %	2%

However, no tax shall be deducted if amount is withdrawn from the bank or post office by following recipients:

(a) Central or State Government, (b) Banks (c) Co-operative Banks (d) Post Office (e) Banking correspondents (f) White label ATM operators (g) Other persons to be notified by the Govt. in consultation with the RBI.

### Section 194K

- ◆ **As per Finance Bill, 2020** – section 194K to levy TDS at the rate of 10% with the threshold limit of Rs. 5,000 on income distributed by mutual funds to its unit holders.
- ◆ **As per Finance Act, 2020** – Provisions of this section shall not apply if the income is of the nature of capital gains.

### Section 194LBA

- ◆ **As per Finance Bill, 2020** – Section 194LBA has been amended to provide for **TDS by business trust** on dividend income paid to unit holder, **at the rate of 10% for resident and 5% for non-resident.**
- ◆ **As per Finance Act, 2020** –Unit holders of REIT / InvIT shall not be required to pay tax on dividend income distributed by REIT / InvIT if SPV from which dividend income is received by REIT / InvIT has not opted for a lower corporate tax of 22% under Sec. 115BAA.

### New TCS on LRS and Foreign Tours

- ◆ **As per Finance Bill, 2020** –  
In order to widen and deepen the tax net, it is proposed to amend Section 206C to **levy TCS on overseas remittance and for sale of overseas tour package, as under:**
  - ▲ An authorised dealer **receiving** an amount or an aggregate of amounts of **Rs.7 Lakh or more** in a financial year for remittance out of India under the **Liberalised Remittance Scheme (LRS)** of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the rate of **5%** .
  - ▲ A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS at the rate of **5%**.

- ▲ In **non- PAN/Aadhaar cases** the rate shall be **10%**.
- ▲ The above TCS provision shall not apply if the buyer is,-
  - a) liable to deduct tax at source under any other provision of the Act and he has deducted such amount.
  - b) the Central Government, a State Government , an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person notified by the Central Government in the Official Gazette for this purpose subject to such conditions as specified in that notification.
- ▲ "authorised dealer" is proposed to be defined to mean a person authorised by the Reserve Bank of India under section 10(1) of FEMA to deal in foreign exchange or foreign security.

"Overseas tour program package" is proposed to be defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto.

#### ◆ **As per Finance Act, 2020 –**

- ▲ **Effective date has been deferred** from 1<sup>st</sup> April, 2020 to **1<sup>st</sup> October, 2020**
- ▲ The authorised dealer **shall not collect TCS**, if **the amount or aggregate of the amounts** being remitted by a buyer **is less than Rs. 7 lakh in a financial year** (and is for a **purpose other than purchase of overseas tour programme package**)
- ▲ **TCS shall be at rate of 5%** of the amount or aggregate of the **amounts in excess of Rs. 7 lakhs** remitted by the buyer in a financial year (**for a purpose other than purchase of overseas tour programme package**).
- ▲ **TCS Rate is reduced to 0.5%** if the amount being remitted is **a loan obtained** from any financial institution as defined **in section 80E** of the IT Act **for the purpose of pursuing any education**.
- ▲ Authorised dealer **shall not collect the sum** on an amount in respect of which the sum has been collected by the seller.

#### ***New TCS on Sales exceeding Rs. 50 Lakhs:***

##### ◆ **As per Finance Bill, 2020 –**

A new levy of TCS on sale of goods above specified limit, was introduced which is as under:-

- ▲ A seller of goods is liable to collect TCS at the **rate of 0.1 %** on consideration received from a buyer in a previous year in excess of **Rs. 50 Lakh**
- ▲ In **non-PAN/ Aadhaar cases** the rate shall be **1%**.

- ▲ **Only those sellers** whose **total sales, gross receipts or turnover** from the **business carried on by it exceed Rs. 10 crores** during the financial year immediately preceding the financial year, **shall be liable to collect such TCS**.
- ▲ Central Government may notify person who shall not be liable to collect such TCS.
- ▲ No TCS is to be collected from the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to section 10(20) or any other person as the Central Government may notify.

**No such TCS is to be collected, if the seller is liable to collect TCS under other provision of section 206C or the buyer is liable to deduct TDS under any provision of the Act and has deducted such amount.**

- ◆ **As per Finance Act, 2020 –**
  - ▲ **Effective date has been deferred** from 1<sup>st</sup> April, 2020 to **1<sup>st</sup> October, 2020**.
  - ▲ **Export of goods** excluded from the ambit of TCS.
  - ▲ **Importer excluded** from the definition of buyer.

## DIVIDEND INCOME

Finance Bill proposed amendments in various sections due to abolishment of DDT and restore back to classical system of dividend taxation in the hands of shareholders.

- ◆ **As per Finance Bill, 2020 –** No Clarification regarding Surcharge.
- ◆ **As per Finance Act, 2020 –** Surcharge on dividend income for a taxpayer being an individual, HUF, Association of Persons, Body of Individuals or Artificial Juridical Person restricted to **10% if total income (including dividend income) does not exceed Rs 10 lakhs** and **15% if total income (including dividend income) exceeds Rs 10 lakhs**.

### *Taxability of Dividend Declared Before 31st March, 2020 but Paid After the Date:*

- ◆ **As per Finance Bill, 2020 –** there was a possibility of double taxation of dividend declared before March 31, 2020 and paid after March 31, 2020. This is because Dividend Distribution Tax (DDT) regime prescribed under Sec 115-O will be applicable to dividend declared/paid before March 31, 2020, while Sec 10(34) exempting dividends in the hands of shareholders will not apply to dividend received after March 31, 2020.
- ◆ **As per Finance Act, 2020 –** It has now been **clarified that dividend received on or after March 31, 2020 shall not be taxable in the hands of the recipient**, if DDT has already been paid by the company declaring dividend.

### *Withholding tax rate for payment of dividend to non-residents:*

- ◆ **As per Finance Bill, 2020 –** Finance Bill, 2020 had abolished dividend distribution tax and dividends would be taxed in the hands of recipient at applicable rates. For a non-resident recipient, **the applicable tax rate is 20% or rates specified in the treaty**, whichever is

**beneficial.** However, there was an ambiguity on the applicable withholding tax rate for payment of dividends to a non-resident in absence of 20% rate being mentioned in First schedule of Finance Bill, 2020.

- ◆ **As per Finance Act, 2020** – It has been proposed to introduce 20% rate in the First schedule of Finance Bill, 2020 and therefore, the payer will now deduct tax at 20% or rates specified in the treaty, whichever is beneficial, on payment of dividend to non-residents.

### *Deduction for receipt of dividend by domestic companies from any other company under section 80M of IT Act:*

- ◆ **As per Finance Bill, 2020** – Earlier, there was a possibility of double taxation of dividends when an Indian company (which received dividend from a foreign company) further pays dividend to its shareholders. Such dividends would have been subjected to double taxation – once in the hands of Indian company receiving dividend from foreign company and again in the hands of shareholders of the Indian company.
- ◆ **As per Finance Act, 2020** – It has now been proposed to amend section 80M of IT Act to provide deduction of dividends received by a domestic company from any other domestic or foreign companies.

### *Enlarged scope of Equalization Levy to e-commerce supply or services*

- ◆ **As per Finance Bill, 2020 – No Such Amendment**
- ◆ **As Per Existing Provisions of The Act** - Equalization levy @ 6% was introduced vide Finance Act 2016 on amount paid to a non-resident not having any Permanent Establishment (PE) in India, for specified services (i.e., online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government).
- ◆ **As per Finance Act, 2020 –**
  - ▲ The Scope of Equalisation Levy has been enhanced to include consideration received or receivable by an E-commerce operator from E-commerce supply or services made or provided or facilitated by it:
    - i) to a person resident in India; or
    - ii) to a non-resident in specified circumstances – sale of advertisement targeted to Indian market or sale of data collected from India market;
    - iii) to a person who buys such goods or services or both using internet protocol address located in India.
  - ▲ Equalisation Levy shall be charged @ 2% from consideration received or receivable by an e-commerce operator from April 1, 2020.
  - ▲ **'E-commerce operator'** means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or provision of services or both.
  - ▲ **'E-commerce supply or services' means:**
    - i) Online sale of goods owned by the E-commerce operator; or

- ii) Online provision of services provided by the E-commerce operator;
- iii) Online sale of goods or provision of services or both, facilitated by the E-commerce operator;
- iv) Any Combination of Abovementioned activities.
- ▲ The responsibility to deposit Equalisation Levy with the Indian government is on the E-commerce operator.
- ▲ The due date for deposit is as under:

Period	Due Date
<b>April – June</b>	7 <sup>th</sup> July
<b>July – Sept</b>	7 <sup>th</sup> Oct
<b>Oct – Dec</b>	7 <sup>th</sup> Jan
<b>Jan – March</b>	31 <sup>st</sup> March

### **These provisions are not applicable if**

- i) E-commerce operator has a PE in India and such supply is effectively connected with the PE
- ii) such services are already covered under existing Equalisation Levy provisions as introduced in Finance Act 2016 (i.e, online advertisements); and
- iii) sales, turnover or gross receipts of such E-commerce operator is less than Rs. 2 crores during the previous year.

### **Introduction of tax withholding @ 1% by e-commerce operator under S.194-O of the IT Act**

- ◆ **As per Finance Bill, 2020** – It was proposed to introduce tax withholding by e-commerce operator under S.194-O of the IT Act.
- ◆ **As per Finance Act, 2020** –
  - ▲ **Effective date has been deferred** from 1<sup>st</sup> April, 2020 to **1<sup>st</sup> October, 2020**.
  - ▲ A deeming provision is proposed to be included to state that the E-commerce operator shall be deemed to be the person responsible for paying to the E-commerce participant.
  - ▲ The Board has been empowered to issue guidelines with approval of Central Government to remove difficulties. Such guidelines will be binding on IT Authorities and e-commerce operator.

Definition of e-commerce operator is proposed to be amended as under:

- ◆ **As per Finance Bill, 2020** – E-commerce operator means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is responsible for paying to e-commerce participant
- ◆ **As per Finance Act, 2020** – E-commerce operator means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce



## Other Changes

### Section 2(15A)

- ◆ **As per Finance Bill, 2020 – "Chief Commissioner"** means a person appointed to be a Chief Commissioner of Income-tax or a Principal Chief Commissioner of Income-tax under sub-section (1) of section 117;
- ◆ **As per Finance Act, 2020 – "Chief Commissioner"** means a person appointed to be a Chief Commissioner of Income-tax **or a Director General of Income-Tax** or a Principal Chief Commissioner of Income-tax **or a Principal Director General of Income-Tax** under sub-section (1) of section 117;

### Section 10(23C)

- ◆ **As per Finance Act, 2020 –**  
**(B) after the third proviso, the following Explanation shall be inserted,**  
namely:—

"Explanation.—For the removal of doubts, it is hereby clarified that for the purposes of this proviso, the income of the funds or trust or institution or any university or other educational institution or any hospital or other medical institution, **shall not include income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution**"

#### Amendment in 10<sup>th</sup> Proviso:

- ◆ **Existing Provision** – Provided also that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of **section 288 and furnish along with the return of income for the relevant assessment year**, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed
- ◆ **As per Finance Act, 2020** – Provided also that where the total income, of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), without giving effect to the provisions of the said sub-clauses, exceeds the maximum amount which is not chargeable to tax in any previous year, such trust or

institution or any university or other educational institution or any hospital or other medical institution shall get its accounts audited in respect of that year by an accountant as defined in the Explanation below sub-section (2) of **section 288 before the specified date referred to in section 44AB and furnish by that date**, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed

### Amendment in 12<sup>th</sup> Proviso:

- ✦ **Existing Provision** – Provided also that any amount credited or paid out of income of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to **in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), to any trust or institution registered under section 12AA, being voluntary contribution made with a specific direction that they shall form part of the corpus of the trust or institution**, shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established.
- ✦ **As per Finance Act, 2020** – Provided also that any amount credited or paid out of income of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to **"in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), to any other fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) or trust or institution registered under section 12AA, being voluntary contribution made with a specific direction that they shall form part of the corpus,"** shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established.

### Section 11:

#### Amendment in Explanation 2 to Section 11(1) :

- ✦ **Existing Provision (Explanation 2)**– Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, **to any other trust or institution registered under section 12AA, being contribution with a specific direction that they shall form part of the corpus of the trust or institution**, shall not be treated as application of income for charitable or religious purposes.
- ✦ **As per Finance Act, 2020 (Explanation 2)**– Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, **to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi)**

or sub-clause (via) of clause (23C) of section 10 or other trust or institution registered under section 12AA, being contribution with a specific direction that it shall form part of the corpus, shall not be treated as application of income for charitable or religious purposes.

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