

TAX FLASH NEWS

24 March 2020

Proposed amendments to the Finance Bill, 2020

On 1 February, the Finance Minister presented the Finance Bill, 2020 (the Bill) in the Lok Sabha. On 23 March, the Lok Sabha has passed the Bill (the amended Bill) with certain amendments. Key amendments are summarised as follows:

Residential Status

The Finance Bill 2020 had proposed to change/ amend the criteria for determining the residential status of an individual. The amended Bill proposed to alter certain aspects as follows:

- Currently, for an Indian Citizen or a Person of Indian Origin (PIO) being outside India and coming to India on visits, amongst other conditions, the period of stay in India to trigger residency, is extended from 60 to 182 days or more during a Financial Year (FY). In continuation to the existing provisions of the Act, the Amended Bill now also provides that an Indian Citizen or PIO having total income, other than income from foreign sources, exceeding INR 1.5 million, would qualify as Resident in India if he is present in India for 120 days or more during the relevant FY.
- Currently, a resident individual qualifies as 'Not Ordinarily Resident (NOR)' in India in a FY if he is non-resident in nine out of ten preceding FYs or if he has stayed in India for upto 729 days in the preceding 7 FYs. The Finance Bill 2020 had proposed that an individual would qualify as NOR if he is non-resident in seven (reduced from nine FYs) out of the ten preceding FYs. The condition of 729 days stay in India in preceding 7 preceding FYs was proposed to be deleted. However, the Amended Bill proposes to retain the current provisions pertaining to nine FYs and 729 days. Further, the Amended Bill provides that an Indian citizen or person of Indian origin having total Income, other than income from foreign sources, exceeding INR 1.5 million and staying in India for 120 days or more but less than 182 days would also qualify to be NOR in India for such FY.

- The Finance Bill 2020 had also proposed that an Indian citizen would be deemed to be Resident in India if such individual is not liable to tax in any other country or territory by reason of residence or domicile (or any other prescribed criteria of similar nature) in that country. The Amended Bill now provides that an Indian citizen would be deemed to be Resident in India if such individual is not liable to tax in any other country or territory on account of residency or domicile (or any other criteria of similar nature) in that country, provided his total income, other than income from foreign sources, exceeds INR 1.5 million in the relevant FY. Further, the Amended Bill provides such deemed Resident individual would qualify to be NOR in India for such FY
- The Amended Bill explains that 'Income from Foreign Sources' for the purpose of ascertaining residential status would mean income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

Equalisation levy on e-commerce supply or services

Chargeability and definitions

The amended Bill proposed to expand the scope of equalisation levy. It is proposed that with effect from 1 April 2020, equalisation levy is charged at the rate of 2 per cent of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated to:

- A person resident in India; or
- A non-resident in the specified circumstances
- A person who buys such goods or services or both using internet protocol address located in India.

The equalisation levy shall not be charged:

- Where the e-commerce operator making or providing, or facilitation e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment; or
- Where the equalisation levy is leviable under Section 165; or
- Sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than two crore rupees during the previous year.

E-commerce operator means a non-resident who owns, operates or manage digital or electronic facility or platform for online sale of goods or online provision of services or both. Further e-commerce supply or services means –

- Online sale of goods owned by e-commerce operator, or
- Online provision of services provided by the e-commerce operator; or
- Online sale of goods or provisions of services or both, facilitated by the e-commerce operator; or
- Any combination of activities listed above.

'Specified circumstances' are defined to mean –

- Sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India and
- Sale of data collected from a person who is resident in India or from a person who uses internet protocol address located in India.

Collection and recovery of equalisation of levy on specified services

It is proposed that the equalisation levy on e-commerce supply or services shall be paid by every e-commerce operator for the quarter of the financial year ending by the due date specified as under:

Date of ending of the quarter of financial year	Due date of the financial year
30 June	7 July
30 September	7 October
31 December	7 January
31 March	31 March

Exemption to e-commerce income

The amended Bill proposed to extend the exemption available to income which is subject to equalisation levy to income from e-commerce activities which are now subject to equalisation levy.

Set-off of dividend received

The Bill proposed that the dividend received by a domestic company from another domestic company is to be set-off while calculating its total income, to the extent of dividends further distributed by it. Earlier the set-off was available only with respect to dividend received from a domestic company.

It is now proposed to extend such benefit for dividend received from a foreign company or a business trust.

Dividend exemption

The Bill proposed to abolish Dividend Distribution Tax (DDT) on dividends declared, distributed or paid by domestic companies or income distributed by a Mutual Fund on or after 1 April 2020. Consequently exemption under Section 10(34) of the Act has also been removed for such dividend.

It is now proposed that Section 10(34) of the Act will not apply to dividend income received on or after 1 April 2020 other than the dividend on which tax under DDT or super rich tax¹ has been paid.

TDS on dividend distributed to non-resident

Dividend distributed to non-resident shareholders including foreign companies shall be subject to deduction of tax at source at the rate of 20 per cent (plus applicable surcharge and cess).

TDS provisions on redemption by Mutual Fund

The Bill proposed deduction of tax at source at the rate of 10 per cent on the dividend paid to unit holder if the amount of such dividend exceeds five thousand rupees in a financial year.

It is now proposed that a payer is not be required to deduct tax on income paid to a unit holder if it is in the nature of capital gains.

TDS on income from special purpose vehicle

The Bill proposed that the REIT/InvIT, while distributing dividend income to unitholders, are obliged to deduct tax at the rate of 10 per cent for both non-resident and resident unitholders.

¹ Under Section 115BBDA

It is now proposed that if Special Purpose Vehicle (SPV) from which dividend income is received by REIT/InvIT by way of distribution has opted for a concessional rate of corporate tax², then such dividend would not be taxable in the hands of unit holders of a business trust which is distributed by REIT/InvIT.

However, to the contrary, the TDS provisions³ provide that no tax is to be deducted in respect of dividends paid by business trusts to unitholders if the SPV has not opted for the concessional rate of tax⁴.

TDS on e-commerce operator

The amended Bill has proposed to defer the applicability of relevant TDS provisions on e-commerce operator from 1 April to 1 October 2020.

The amended Bill has revised the definition of e-commerce operator to exclude the condition that the e-commerce operator should be responsible for paying to e-commerce participant. However, the e-commerce operator shall be deemed to be a person responsible for paying to e-commerce participant.

Royalty with respect to sale, distribution or exhibition of cinematographic films

The Bill proposed to remove exemption for royalty income deemed to accrue or arise in India with respect to sale, distribution or exhibition of cinematographic films for non-residents.

It is now proposed that such royalty is liable for TDS at the reduced rate of 2 per cent.

TDS on cash withdrawal

The Finance (No. 2) Act, 2019 introduced Section 194N which provides that:

- every person being a banking company or a co-operative society engaged in carrying on the business of banking or a post office;
- who is responsible for paying any sum in cash, in excess of INR 1 crore during the previous year to any person (recipient) from one or more accounts maintained by the recipient;
- shall at the time of payment of such sum, deduct tax at the rate of 2 per cent of the sum exceeding INR 1 crore.

The new provision proposed by the amended Bill 2020 creates an ambiguity on whether the withholding would apply on the entire amount of withdrawal or only on the amount which exceeds the prescribed threshold.

Further it is now proposed that a recipient who has not filed the return of income for three assessment year relevant to three previous years immediately preceding the previous year in which the payment of the sum is made to him, the TDS would be applicable at 2 per cent when the cash withdrawal in a year is more than INR20 lakh but does not exceed 1 crore and at 5 per cent when the cash withdrawal exceed 1 crore.

TCS

- The Bill proposed to apply TCS provisions to person being an authorised dealer who receives an amount of INR7 lakh or more in a financial year for remittance out of India from a buyer under the Liberalised Remittance Scheme (Foreign exchange law).

It is now proposed that authorised dealer shall collect TCS at the reduced rate of 0.5 per cent of the amount in excess of INR7 lakh if the amount remitted out is a loan obtained from any financial institution⁵ for the purpose of pursuing any education.

- The Bill proposed to extend TCS provisions to certain sellers receiving any consideration for sale of goods exceeding 50 lakh rupees from a buyer in a previous year at 0.1 per cent of the sale consideration.
- It is now proposed to provide exception to consideration from sale of goods exported outside India. Further, the definition of 'buyer' has been amended to exclude a person importing goods into India.

The above provisions will now apply with effect from 1 October 2020 instead of 1 April 2020.

Exemption to Sovereign Welfare Fund

The Bill proposed an exemption for income from dividend, interest or long-term capital gains on an investment in the form of debt or equity, to a wholly-owned UAE resident subsidiary of Abu Dhabi Investment Authority from funds owned by the government of UAE or by any other Sovereign Welfare Fund (fulfilling prescribed conditions) from any investment in India made in any debt or equity provided that the:

- Investment is made in Infrastructure facility as defined or any other notified business.
- The investment is made on or before 31 March 2024.

² Under Section 115BAA

³ Under Section 194LBA

⁴ The discrepancy between the two sections may need to be rectified.

⁵As defined in Section 80E

It is now proposed to substitute the aforesaid term 'equity' with share capital or unit. It also proposed to provide an exemption for such income streams provided the investment is made on or after the 1 April 2020 but on or before the 31 March 2024. Further an exemption for such income streams shall be extended additionally to:

- A business trust registered as an infrastructure facility⁶
- A Category I and Category-II Alternative Investment Fund⁷

Where any income has not been included in the total income of a specified person or if the specified person fails to satisfy any of the conditions, so that said income would not have been eligible for such non-inclusion, such income shall be chargeable to income-tax as the income of the specified person of that previous year.

It is proposed to extend the benefit of these provisions to pension fund which is:

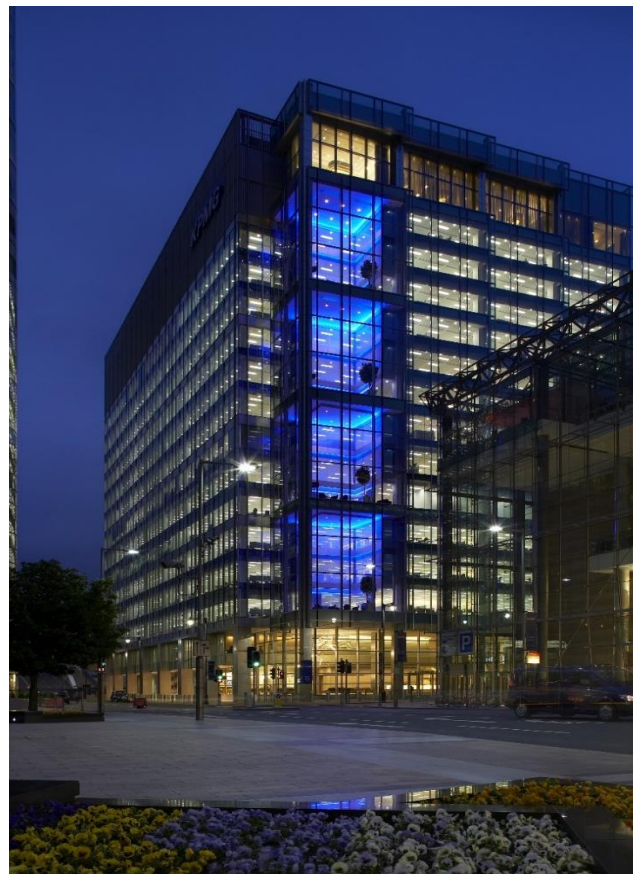
- created or established under the law of a foreign country including the laws made by any of its political constitution being a province, state or local body, by whatever name called
- not liable to tax in such foreign country
- satisfies such other conditions as may be prescribed; and
- specified by the central government, by notification in the Official Gazette

Our comments

The amendments to the Bill have clarified various issues arising out of the Bill like set-off of dividend received from foreign company and business trust, non-applicability of TDS provisions if income paid to unit holder is in the nature of capital gains, etc.

The amended Bill provides relief to the cases of dividend distributed to non-resident shareholders and foreign companies by restricting TDS at the rate of 20 per cent. Further reduced TDS rate of 2 per cent is extended to royalty with respect to sale, distribution or exhibition of cinematographic films. Applicability of certain provisions is deferred from 1 April to 1 October 2020 like TDS provision for e-commerce operator, amended TCS provisions, etc.

However, as a surprise move, the Bill has expanded the scope of equalisation levy on consideration received or receivable for e-commerce supply or services. This may impact the e-commerce industry in this difficult time where global business has been impacted by the spread of COVID 2019. Further there could be practical challenges of implementation as these provisions are applicable from 1 April 2020.



⁶ Under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 made under the SEBI Act 1992

⁷ Regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992, having 100 per cent investment in one or more of the company or enterprise or entity as may be specified

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