Amendments to the Finance Bill, 2020, as passed by the Lok Sabha

March 27, 2020

In brief

The Finance Bill, 2020 (Bill) was passed[1] by the Lok Sabha on 23 March 2020, with amendments to the original Bill that was tabled before the Lok Sabha on 1 February 2020. Today, the President has assented the Bill, and is now referred to as the Finance Act, 2020[2]. This Tax Insight explains the key amendments as passed by the Lok Sabha.

In detail

Clause No. as per the original Bill	Section as per Income-tax Act, 1961 (the Act)	Proposal made in the original Bill as tabled on 1 February 2020	Amendments made/ passed by Lok Sabha	Comments
Clause 4	Section 6	• **Resident** - Replace 182 days threshold with 120 days for an Indian citizen or a person of Indian origin, who being outside India, comes to India for the purpose of a visit. • **Deemed Resident** - Indian citizen will be deemed to be a resident of India if he is not liable to pay tax in any country outside India on account of his domicile, residence, or any	• **Resident** - Replace 182 days threshold by 120 days for Indian citizen or a person of Indian origin having a total income, other than income from foreign sources, exceeding INR 1.5m during the relevant financial year (FY). • **Deemed Resident** - Indian citizen having total income other than income from foreign sources, exceeding INR 1.5m during the	• The threshold of 182 days has been reduced to 120 days only in cases where the total income, excluding income from foreign sources, exceeds INR 1.5m. For others, the threshold of 182 days continues to apply. • Provisions for deemed resident to apply only in cases where total income, excluding income from

[1] Bill No. 26-C of 2020 as passed by Lok Sabha on 23 March 2020
[2] The Finance Act, 2020 No. 12 of 2020 dated 27 March 2020

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		other criteria of a similar nature. • **Not Ordinarily Resident (NOR)** - Replacing of condition for being non-resident in nine out of ten years with seven out of ten years preceding the relevant financial year (FY); removal of condition of staying in India for less than 730 days during preceding seven FYs.	relevant FY, will be deemed to be a resident of India if he is not liable to pay tax in any country outside India on account of his domicile, residence, or any other criteria of a similar nature. • **NOR** (i) Indian citizens or a person of Indian origin visiting India and having total income other than income from foreign sources, exceeding INR 1.5m during the relevant FY shall qualify as NOR in India, if the stay is 120 days or more but less than 182 days in India during the relevant FY. (ii) Indian citizen qualifying as deemed resident shall be regarded as NOR in India in the relevant FY.	foreign sources, exceeds INR 1.5m. • The current conditions for NOR continues to apply. Relaxation provided to deemed resident and cases where threshold of 120 days is applicable.
Clauses 7 and 9	Sections 10(23C) and 11		• Benefit has been extended to specified institutions approved under section 10(23C) of the Act. Now, any corpus donation made to specified institutions approved under section 10(23C) of the Act, will not form part of the total income. • Further, any corpus donations made by institution approved under section 10(23C) of the Act, shall also not be considered as application of income.	• Currently, corpus donations received by any institution registered under section 12AA of the Act, do not form part of total income of such institution. • The amendment has provided relief to the institution approved under section 10(23C) of the Act from long drawn litigation, wherein, corpus donations were considered as their income.

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			• Similar amendment has also been made under section 11 of the Act. Any corpus donation made by institution registered under section 12AA of the Act to an institution approved under section 10(23C) of the Act, will not be considered as application of income.	
Clause 7	Section 10(23FE)	• Exemption to any income of a "specified person" in the nature of dividend, interest or long-term capital gains arising from an investment made in the form of debt or equity. • Investment to be made on or before 31 March 2024, with a lock-in period of three years. • Exemption available only on investment made in a company or enterprise carrying on the business of developing, or operating and maintaining, or developing, operating or maintaining any infrastructure facility (as defined under section 80 IA(4)(i) of the Act) or other notified businesses (referred to as specified entities).	• Exemption to any income of a "specified person" in the nature of dividend, interest or long-term capital gains arising from an investment made in the form of debt or share capital or unit. • Investment to be made on or after 1 April 2020, but on or before 31 March 2024, with a lock-in period of three years. • Investment to be made is proposed to also include the following: (i) Business trust referred to in section 2(13A)(i) of the Act; (ii) Category I or II Alternative Investment Fund having 100% investment in one or more of the specified entities. • Power granted to the Central Board of Direct Taxes (CBDT) to issue guidelines for removing difficulty, if any, arises in the interpretation or implementation of the provisions of this clause. • These guidelines shall be presented before the parliament and shall be	• The original Bill provided for tax exemptions to notified Sovereign Wealth Funds (including wholly owned subsidiaries of Abu Dhabi Investment Authority). The amendments proposed in the Bill, as passed by the Lok Sabha, extend these exemptions to notified Pension Funds (fulfilling certain conditions). • Exemptions that were previously proposed for investment in the form of debt or equity, are now amended to include investments in the form of debt, share capital or units. • Further, the category of specified entities in which the investments can be made has been expanded.

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			binding on the income-tax authorities, and the specified person. • Income to be taxable in the year in which the specified person fails to comply with the conditions. • The definition of specified person amended to include a pension fund, which (i) is established/ created under the laws of a foreign country; (ii) is specified by the Central Government in the Official Gazette for this purpose; (iii) is not liable to tax in such foreign country; (iv) satisfies other prescribed conditions.	
Clauses 7 and 40	Sections 10(34) and 80M	• Dividend distribution tax (DDT) would be abolished on or after 1 April 2020 and dividends would be directly taxable in the hands of the shareholders. • The original Bill further provided for a credit mechanism, whereby the dividend received by a domestic company from another domestic company is deductible to the extent of dividend distributed by the first-mentioned domestic company, before the specified due date (i.e. one month prior to the date of filing the tax return). The deduction is restricted to the amount of dividend received from	• Dividend income (except where DDT and tax under section 115BBDA of the Act has been paid) will be taxable in the hands of the shareholder on or after 1 April 2020. • Dividend income received from a foreign company and business trust will be considered, in addition to dividend received from a domestic company, for removal of cascading effect of tax on dividend income.	• The amendments proposed in the original Bill led to double taxation when dividend is declared on or before 31 March 2020 but is received on or after 1 April 2020. • Such dividends would have been subject to DDT, as they have been declared on or before 31 March 2020. The same would also be included in the total income of the shareholders, as they have been received on or after 1 April 2020. • The amendments proposed in the Bill eliminate such double taxation.

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		the other domestic company. • The deduction should not exceed the dividend distributed by the recipient company.		• The amendments provide for a similar credit mechanism for dividends received from foreign companies and business trusts in addition to domestic companies.
Clause 43	Section 92CB	Profit attribution to a business connection under section 9(1)(i) of the Act was proposed to be covered in the Safe Harbour Rules.	The definition of safe harbour has been amended to include the income, deemed to accrue or arise to a business connection under section 9(1)(i) of the Act.	Currently, the definition of safe harbour covered only the transfer price declared by the taxpayer. The income attributable to a business connection under section 9(1)(i) of the Act has also been included under the definition of safe harbour.
Clause 53	Section 115BAC	• The benefit of reduced tax rates under section 115BAC of the Act for an individual and Hindu undivided families (HUFs) can be exercised by a person carrying on the business after furnishing a declaration on or before the due date of filing tax return under section 139(1) of the Act. • Individuals and HUF having business income that have opted for such a regime can opt out only once and would not be eligible to exercise such an option again, unless the individual ceases to have business income. • In case of any other income, the declaration is to be filed with the tax return.	• To avail the benefit of reduced tax rates by an individual and HUF, it has now been proposed to include income from profession (in addition to business income) to file a declaration on or before the due date of filing tax return under section 139(1) of the Act. • For income other than referred above, the declaration is to be filed with the tax return.	The provisions in the Bill with respect to individuals and HUFs, having business income, adopting the new tax regime, is now amended such that the restrictions apply even to individuals and HUFs with income from profession.
Clause 75 and new Clause 89A	Sections 194A and 197A		• Section 194A(3)(iii)(f) of the Act has been amended to provide that the Central Government will not issue any	• Section 194A(3)(iii)(f) of the Act had granted the power to the Central Government to provide exemption through notification, from the

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			notification on or after 1 April 2020. • New sub-section (5) has been inserted to grant power to the Central Government to notify the persons or class of persons, wherein the tax deducted at source (TDS) will not be made or shall be made at lower rate on payment of interest (other than securities).	deduction of tax on payments of interest (other than securities) to institutions, associations, body or class of institutions, associations or bodies. A sunset clause has been brought in that provision. By inserting sub-section (5), the power has been given to the Central Government to notify any class of persons to grant exemption from TDS or require a lower rate of TDS.
Clause 79	Section 194J	The applicable TDS rate under section 194J of the Act on fees for technical services (FTS) (other than professional services) is reduced to 2%.	The benefit of lower TDS rate i.e. 2%, has now been extended to royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films.	Reduction in TDS rate to 2% from 10% in the case of FTS payments (except professional services), now proposed to be made applicable to royalty payments in the nature of consideration for sale, distribution or exhibition of cinematographic films.
Clause 80	Section 194K	• A new section has been inserted to provide TDS at 10% on income in respect of units of a mutual fund specified under section 10(23D) of the Act, or units from the administrator of the specified undertaking, or units from the specified company. • The provisions are not applicable in case the aggregate income from units specified above, does not exceed INR 5,000.	Section 194K of the Act has been amended to provide that these provisions shall also not apply where the income is in the nature of capital gains.	• It was ambiguous whether in case of mutual fund there would be a requirement to apply TDS on the capital gains arising on redemption of units. • It was clarified by the CBDT that a mutual fund shall be required to apply TDS at 10% only on dividend payment and no TDS to be applied by the mutual fund on income which is in the nature of capital gains. • The clarification is proposed to be incorporated in the Act.

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Clause 81	194LBA		• Dividend distributed to unitholders by Real estate investment trusts (REITs)/ Infrastructure investment trust (InvITs) exempt in the hands of the unitholder, if the Special Purpose Vehicle (SPV) distributing such dividend to REIT/ InvIT does not opt for lower corporate tax regime (i.e. the 22% tax rate exclusive of surcharge and cess). • In addition, no TDS is required by REITs/ InvITs on distribution of such dividend.	While there appears to be an anomaly in the language in the changes proposed to the income exemption and TDS provision applicable to REITs/ InvITs, the intention appears to be to provide the above exemption on dividend income received by unitholders of REIT/ InvIT from such SPVs who do not exercise the lower corporate tax regime.
New Clause 83A	Section 194N		• Currently, section 194N of the Act provides that every person, being a banking company or cooperative society in the banking business or post office is required to apply TDS where cash withdrawal during the relevant FY exceeds INR 10m. Tax to be withheld at the rate of 2% of sum exceeding 10m. This section has now been substituted w.e.f. 1 July 2020. • The section has been amended to provide for TDS on the total sum of cash withdrawal (as against on sum exceeding INR 10m, as provided earlier). • The section has been further amended to cover cases in which the recipient has not furnished tax return for three FYs immediately preceding the relevant FY and the time limit of	This measure of section 194N of the Act was brought in Finance (No.2) Act, 2019 to discourage cash transactions and move towards less cash economy. The provisions have now been made more stricter by linking cash withdrawal done by those taxpayers who have not filed tax returns for the past three years. Also, the 2% rate of TDS is now proposed to be applied on the entire amount of withdrawal and not limited to an amount exceeding INR 10m.

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			filing tax return has expired. In such cases, the threshold of INR 10m will be read as INR 2m and TDS shall be as follows: (i) TDS at the rate of 2%, where the amount of cash withdrawal exceeds INR 2m but does not exceed INR 10m during the relevant FY; and (ii) TDS at the rate of 5% on cash withdrawal exceeding INR 10m during the relevant FY. • The Central Government, in consultation with the Reserve Bank of India (RBI), may specify by notification in the Official Gazette, the persons on whom the above provisions will not apply or apply at reduced rates.	
Clause 84	Section 194-O	• An e-commerce operator is required to withhold taxes at the rate of 1% at the time of credit of amount of sale or services or both to an account of e-commerce participant. • 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.	• The provisions have been made effective from 1 October 2020. • The definition of e-commerce operator amended to mean a person who owns, operates or manages digital or electronic facility or platform for electronic commerce. • E-commerce operator shall be deemed to be a person responsible for paying to e-commerce participant. • Power granted to the CBDT to issue guidelines for the purpose of removing difficulty (if	• In the amended Bill as passed by the Lok Sabha, a provision has been inserted to deem an e-commerce operator as the person responsible for making payment to e-commerce participants. The definition of "e-commerce operator" has been correspondingly amended to exclude the requirement for being responsible for making the payment to the e-commerce participant. • It is also proposed to make this TDS provision effective from

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			any) to give effect to the provisions. • These guidelines shall be presented before the Parliament and shall be binding both on the income tax authorities and the e-commerce operator.	1 October 2020 instead of 1 April 2020.
Clause 93	Section 206C	• Section 206C(1G) is inserted to provide: (i) Taxes to be collected by the authorised dealer at the rate of 5% on receiving an amount or an aggregate of amounts of INR 0.7m or more in a FY on overseas remittance under the liberalised remittance scheme (LRS) of the RBI. (ii) The seller of an "overseas tour programme package" would be required to collect taxes at the rate of 5% on the amount received from any buyer purchasing such a package. • Section 206C(1H) was inserted levy tax collected at source (TCS) on the sale of goods, at the rate of 0.1%, on consideration received from the buyer in excess of INR 5m in a FY. • However, such provision would apply only if the total sales, gross receipts or turnover of seller from the business carried on by it exceeds INR 100m	• Provisions have been made applicable from 1 October 2020. • The following amendments made under proposed section 206(1G): (i) The threshold limit of INR 0.7m or more in respect of payments under LRS to apply in cases where the payment is for a purpose other than the purchase of overseas tour programme package. In such a case, the authorised dealer shall collect the TCS equal to 5% of the aggregate of the amounts, in excess of INR 0.7m. (ii) The authorised dealer will collect a sum equal to 0.5% of the aggregate of amounts, in excess of INR 0.7m, where remittance is for a loan obtained from a specified financial institution. (iii) Authorised dealer will not collect TCS on the amount on which the seller has	• The Bill proposed for collection of TCS by specified persons, where the value of the sale of goods exceeds the specified limit. The provisions were ambiguous regarding their applicability extending to import and export of goods. The amendment has provided a big relief to the industry by clarifying this position. • In addition, the applicability of the provisions has been deferred to 1 October 2020, which will give time to the industry to prepare itself to comply with these provisions.

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		during the immediate preceding FY. • The provisions were made applicable from 1 April 2020.	already collected TCS. • Amendments made under proposed section 206C(1H) to clarify that no TCS is required to be collected by the seller, where – (i) the goods are exported out of India; (ii) the buyer is importing goods into India; (iii) the buyer is liable to withhold tax under any other provisions of the Act on goods purchased from the seller and has deducted such amount. • Power has been granted to the CBDT to issue guidelines for the purpose of removing difficulty (if any) to give effect to the provisions of sections 206C(1G) and 206C(1H). • These guidelines shall be presented before the Parliament, and they shall be binding on the income-tax authorities and the person liable to collect TCS.	
New clauses 149A and 149B	Chapter VIII of Finance Act 2016		• The Finance Act 2016 had inserted a separate Chapter VIII titled 'Equalisation Levy'. The provisions of the Chapter provide for an equalisation levy of 6% to be deducted from amounts paid to a non-resident not having any permanent establishment (PE) in India, for	• The amendment proposes Equalisation Levy to be charged at 2% in the hands of an e-commerce operator, being a non-resident, on the consideration receivable from e-commerce supply or services provided to specified persons from 1 April 2020 onwards.

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			specified services such as advertising. • Provisions of equalisation levy extended to include consideration received/ receivable by a non-resident 'e-commerce operator' for 'e-commerce supply or services' made/ provided/ facilitated on or after 1 April 2020. • E-commerce operator and e-commerce supply or services have been defined. • Equalisation levy @ 2% shall be chargeable on the consideration received/ receivable by the e-commerce operator from e-commerce supply/ services provided/ facilitated by it to – (i) a person resident in India; (ii) a non-resident in specified circumstances (defined separately); (iii) a person who buys such goods/ services or both using internet protocol located in India. • Equalisation levy not applicable in following cases: (i) E-commerce operator has a PE in India and e-commerce supply/ services are effectively connected with PE in India. (ii) Equalisation levy is charged at 6% on specified services. (iii) Sales/ gross receipts/ turnover of	• The amendment widens the scope of equalisation levy to cover e-commerce transactions by operators who do not have a PE in India.

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			e-commerce operator from e-commerce supply or services is less than INR 20m during relevant FY. • E-commerce operator to deposit equalisation levy to credit of Government by seventh of subsequent month from the end of each quarter (1, 2 and 3) and by 31 March for last quarter. • A corresponding amendment has been proposed in the Bill to provide a tax exemption for the income arising from any e-commerce supply or services made, on or after 1 April 2020, on which the Equalisation Levy is chargeable.	
First Schedule	Section 195		• Part-II of First Schedule has been amended to provide the TDS rate , i.e. 20% from dividend income in the case of non-resident Indian, foreign company or any other non-resident person. • The surcharge rate on dividends in the hands of non-corporate taxpayers is proposed to be capped at 15% (instead of the higher rate of surcharge of 25%/ 37%).	• The taxability of dividend income in the hands of a non-resident or foreign company is governed by the provisions of the domestic law or provisions of double taxation avoidance agreements (tax treaty), whichever is more beneficial to the taxpayer. • The person paying the amount of dividend to a non-resident person or a foreign company shall deduct tax under section 195 of the Act at the 'rates in force'. • Dividend income was falling in the residuary entry which provides for TDS rate being 30% in case of a non-resident and 40% in

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				case of a foreign company. • This anomaly has now been rectified by making suitable amendment.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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