Finance Bill, 2020 as passed by the Lok Sabha – amendments related to Financial Services sector

March 25, 2020

In brief

On 23 March 2020, the Lok Sabha passed the Finance Bill, 2020 (Bill). This Tax Insight presents a snapshot, relevant to the financial services sector, of the changes made to the Bill, as passed by the Lok Sabha[1], over the original proposals when the Bill[2] was tabled before the Lok Sabha.

In detail

Private equity and Venture Capital

No double taxation of dividends declared before 31 March 2020 and received on or after 1 April 2020

- The Bill proposed that dividend distribution tax (DDT) would be abolished with effect from 1 April 2020 and dividends would be directly taxable in the hands of the shareholders.
- However, the amendments proposed in the Bill led to double taxation when dividend is declared on or before 31 March 2020 but is received on or after 1 April 2020 for the reasons that:
  - Such dividends would have been subject to DDT, as they have been declared on or before 31 March 2020;
  - Such dividends 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, as passed by the Lok Sabha, eliminate double taxation. Now, dividends received on or after 1 April 2020 will be included in the total income of the shareholders only if (i) DDT has not been paid; and (ii) enhanced tax on dividends under section 115BBDA of the Income-tax Act, 1961 (the Act) where applicable, has not been paid, on such dividends.

Credit mechanism for dividends from foreign company and business trust introduced

- The Bill 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 the other domestic company. However, a similar credit mechanism was not provided for dividends received from foreign companies and/ or business trusts.
- The amendments proposed in the Bill, as passed by Lok Sabha, provide for a similar credit mechanism for dividends received from foreign companies and business trusts as well.

[1] Bill No. 26-C of 2020 as passed by Lok Sabha on 23 March 2020
[2] Please refer to our PwC Financial Services Flyer, which provides a snapshot of the key proposals for the financial services sector, as presented in the Union Budget 2020 on 1 February 2020.

Rate of tax deducted at source on dividends distributed to non-residents/ foreign company

As per the amendments proposed in the Bill, the dividends received by non-residents/ foreign companies were taxable at the rate of 20%, subject to tax treaty benefits. However, the corresponding amendment was not made in the provisions relating to tax deducted at source. This anomaly has now been rectified in the amendments proposed to the Bill, as passed by Lok Sabha.

Real estate and Infrastructure

Expansion of the scope of exemption for infrastructure investment

– The Bill provided for tax exemptions to notified Sovereign Wealth Funds (including wholly owned subsidiaries of ADIA). 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 in –

  – Infrastructure investment trust (InvITs); or

  – Category I or Category II Alternative Investment Funds, which have 100% investment in one or more company or entities engaged in eligible infrastructure business or such other business as may be notified.

- It has been clarified that such investment should be made on or after 1 April 2020 but on or before 31 March 2024.

Exemption of dividend income from REITs/ InvITs

- Dividend distributed to unitholders by Real estate investment trusts (REITs)/ 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 tax will be deducted at source by REITs/ InvITs on distribution of such dividend.

While there appears to be an anomaly in the language changes proposed to the income exemption provision and tax deducted at source 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.

Banking, NBFC and Capital Markets

Tax collection at source on overseas remittances

- The Bill had proposed for new tax collection at source (TCS) provisions, imposing TCS of 5% on remittance made under Liberalised Remittance Scheme (LRS), and purchase of overseas tour packages with effect from 1 April 2020.
- The following amendments have been proposed in the Bill as passed by the Lok Sabha:
  – The proposed TCS provisions will now be effective from 1 October 2020;
  – TCS of 5% on payment(s) in excess of INR 0.7m under the LRS (other than purchase of overseas tour packages);
  – TCS of 0.5% on payment(s) in excess of INR 0.7m under the LRS, out of a loan from specified financial institutions for pursuing any education.

Tax deducted at source by banks

- The current provision of the Act provides for a tax deducted at source at the rate of 2% on cash withdrawals exceeding INR 10m, subject to certain limited exceptions. However, as per the Bill passed by the Lok Sabha with effect from 1 July 2020, every person, *inter alia* being a bank, is required to deduct tax at source on cash withdrawals as follows:

Sr. No.	Recipient	Threshold	Rate of tax deduction
A	Any person other than (C) below	Cash withdrawals <= INR 10m	0%
B	Any person other than (C) below	Cash withdrawals > INR 10m	2%
C	Person who has not filed its tax returns for all three assessment years, for which the due date for filing the tax return has expired	Cash withdrawals > INR 2m but <= INR 10m	2%
		Cash withdrawals > INR 10m	5%

- As per the amendments proposed in the Bill, the rate at which tax is deducted at source on interest income on long-term bonds and Rupee Denominated Bonds listed on stock exchanges in the International Financial Services Centre was reduced to 4%. However, the tax rate on such interest income was retained at 5%. The tax rate on such interest income has now been aligned with the tax deducted at source rate of 4% in the Bill, as passed by the Lok Sabha.

Insurance and Asset Management

The clarification issued by the Central Board of Direct Taxes with respect to tax deducted at source at the rate of 10% to apply only on income distributed by the mutual fund (in excess of INR 5,000) and not income in the nature of capital gains paid to a resident is proposed to be incorporated into the Act.

Start-ups and e-Commerce

Tax deducted at source on e-commerce transactions

- 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 tax deducted at source provision effective from 1 October 2020 instead of 1 April 2020.

Extending scope of Equalisation Levy to include e-commerce transactions

- The Bill, as passed by the Lok Sabha, 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.
- The Equalisation Levy on e-commerce transactions is proposed to not apply where:
  - The Equalisation Levy is charged on specified services, such as online advertising services is applicable;
  - Turnover from specified persons is less than INR 20m in a financial year;
  - The e-commerce operator has a permanent establishment in India and the service is connected with the permanent establishment.

Exemption extended to Equalisation Levy charged on e-commerce transaction

- A corresponding amendment has been proposed in the Bill, as passed by the Lok Sabha, 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.

Other amended tax proposals

- 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%). However, this lower rate of surcharge may not apply to distributions by mutual funds, because such distributions are not technically "dividends."
- Reduction in tax deducted at source to 2% from 10% in the case of fee for technical services 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.
- The provisions in the Bill with respect to individuals and hindu undivided families (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.

- Individual residency test

Bill	Bill as passed by the Lok Sabha
Indian citizen shall be deemed to be resident in India if not liable to tax in any other country by reason of domicile or residence in the other country	The said amendment to apply only if such person has income other than income from foreign source (i.e. India-sourced income), exceeding INR 1.5m during the financial year. Such a person to be regarded as resident but not ordinarily resident (RNOR).
The threshold for number of days visit by Indian citizens/ Person of Indian Origin to be regarded as non-resident reduced to 120 days (from 182 days)	The said amendment to apply only if such person has income other than income from foreign source (i.e. India-sourced income), exceeding INR 1.5m during the financial year. Such a person to be regarded RNOR.

- In addition, the term "income from foreign source" is proposed to be defined as income that accrues or arises outside India (except income derived from a business controlled in or profession set up in India).

Let's talk

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

Our Offices

Ahmedabad
1701, 17th Floor, Shapath V,
Opp. Karnavati Club,
S G Highway,
Ahmedabad – 380051
Gujarat
+91-79 3091 7000

Bengaluru
6th Floor
Millenia Tower 'D'
1 & 2, Murphy Road, Ulsoor,
Bengaluru – 560 008
Karnataka
+91-80 4079 7000

Chennai
8th Floor
Prestige Palladium Bayan
129-140 Greams Road
Chennai – 600 006
Tamil Nadu
+91 44 4228 5000

Hyderabad
Plot no. 77/A, 8-2-624/A/1, 4th Floor, Road No. 10, Banjara Hills,
Hyderabad – 500034,
Telangana
+91-40 44246000

Kolkata
56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake
Kolkata - 700 091
West Bengal
+91-033 2357 9101/
4400 1111

Mumbai
PwC House
Plot No. 18A,
Guru Nanak Road(Station Road),
Bandra (West), Mumbai – 400 050
Maharashtra
+91-22 6689 1000

Gurgaon
Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City,
Gurgaon – 122002
Haryana
+91-124 330 6000

Pune
7th Floor, Tower A - Wing 1,
Business Bay, Airport Road,
Yerwada, Pune – 411 006
Maharashtra
+91-20 4100 4444

For more information
Contact us at
pwctrs.knowledgemanagement@in.pwc.com

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with over 276,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

In India, PwC has offices in these cities: Ahmedabad, Bengaluru, Bhopal, Chennai, Delhi NCR, Hyderabad, Kolkata, Mumbai, Pune and Raipur. For more information about PwC India's service offerings, visit www.pwc.in

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

© 2020 PwC. All rights reserved

Follow us on:

For private circulation only

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.

© 2020 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.