Finance Bill 2020 passed by the Parliament with amendments

The Finance Bill, 2020 (Bill) has been passed by the Parliament today with certain amendments

Background

The Bill which was introduced in the Lok Sabha on February 1, 2020 has been passed by the Parliament today, albeit without a discussion, with certain amendments. In light of the Covid-19, the houses of Parliament were adjourned sine-die after the passage of the Bill.

Subsequent to the Finance Minister presenting the Union Budget 2020 proposals on February 1, 2020, various stakeholders had reached out with suggestions identifying aspects which required reconsideration or needed clarifications. It appears that the voices of the stakeholders have been paid heed to and necessary amendments have been carried out.

The key changes made to the Bill (as passed by the Parliament) have been summarized below.

Tax residency of individuals

- The Bill had proposed certain amendments relating to tax residency of Individuals. Subsequently, the Ministry of Finance had issued[1] certain clarifications and also announced that required amendments would be enacted to avoid any misinterpretation.
- The amendments seeking to treat an Indian citizen or Persons of Indian origin (PIO), who is outside India, as a resident in India, inter-alia, if his period of stay while on a visit

[1] Refer Press Release dated February 2, 2020 (http://pib.nic.in/newsite/PrintRelease.aspx?relid=197862)

to India is 120 days or more during the said FY (vis-à-vis 182 days or more as per existing provisions) will apply only if the total income (excluding foreign source income) of such an individual exceeds INR 1.5 million.

- Similarly, the amendment seeking to treat an Indian citizen as deemed resident of India, if such individual is not liable to tax in any country or territory by reason of his domicile, residence or similar criteria will apply only if the total income (excluding foreign source income) of such an individual exceeds INR 1.5 million.

- An Indian Citizen or PIO becoming resident of India in view of the above amendments (i.e. stay in India exceeds 120 days but is less than 182 days or the Indian citizen is not liable to tax in any other country) to be treated as "not ordinarily resident".

- Further, the proposal to relax the condition for treating an Individual or HUF as "not ordinarily resident" if such an Individual or manager of such HUF is a non-resident in India for 7 out of 10 preceding years (vis-à-vis 9 out of 10 years preceding years as per existing provisions) has been withdrawn i.e. existing rule will continue to apply.

Tax on dividends

- The Bill abolished the Dividend Distribution Tax (DDT) payable by a domestic company on any amount declared, distributed or paid by way of dividends with effect from April 1, 2020.

- Earlier, section 10(34) of the Income-tax Act, 1961 (Act) which exempts dividend in the hands of the shareholders was amended to restrict its applicability only in respect of dividends received prior to April 1, 2020. This created a double tax levy in respect of dividends which were declared prior to March 31, 2020 but received after April 1, 2020 (a) in the hands of the company by payment of DDT and (b) in the hands of the shareholder on receipt basis. The exemption under the section has now been extended to cover even such dividend income which is received post April 1, 2020 and on which the company has paid DDT.

- A deduction under section 80M was available to the recipient domestic company in respect of dividend received by it from a domestic company provided it distributed dividend to another domestic company on or before 1 month prior to the due date of furnishing the return of income. No such deduction was available to the domestic company in respect of dividends received by it from foreign company or a business trust. In the Bill passed by the Parliament, this has been added to the deduction scope.

- Domestic company making any payment of dividend to a non-resident shareholder, to deduct tax at 20% under the provisions of the Act (subject to treaty relief if any available).

Tax exemption for Abu Dhabi Investment Authority (ADIA), Sovereign Wealth Funds and Pension Funds

- The tax exemption proposed in respect of dividend, interest and long-term capital gains announced for (a) wholly owned subsidiary of ADIA and (b) sovereign wealth funds (satisfying prescribed criteria) is now proposed to be extended to Pension Funds (subject to meeting certain conditions).

- As per the Bill, an exemption was proposed only with respect to investment in entities engaged in specified infrastructure facilities and other businesses (to be notified). This exemption will now be also available for investment in InvITs and Category I or Category II Alternative Investment Funds having 100% investment in one or more company or enterprises engaged in specified infrastructure facilities and other businesses (to be notified).

E-commerce transaction by non-resident operators brought under the ambit of equalization levy

- The Finance Act, 2016 introduced an equalisation levy of 6% on the amount of consideration paid to a non-resident for specified services being online advertisement, and provision of digital advertising space or other service for the purpose of online advertisements.

- It is proposed that the applicability of equalisation levy be extended to e-commerce supply or services by non-resident e-commerce operators from April 1, 2020. For this purpose, 'e-commerce operator' is a person who owns, operates or manages a digital or electronic facility or platform for online sale of goods or services or both.

- The levy would be charged at 2% of the amount of consideration received by the e-commerce operator for supply or services rendered or facilitation of supply or service
  - to a person resident in India; or
  - to a non-resident under specified circumstances such as through sale of data collected from a person resident in India; or
  - to a person who buys goods or services through an IP address located in India.

- The levy shall not be applicable where the e-commerce operator has a permanent establishment (PE) in India and such supply of e-commerce services is effectively connected to such PE or where the sales, turnover or gross receipts of the e-commerce operator from such e-commerce supply is less than INR 20 million during a financial year. The levy of 2% shall also not be applicable to online advertisements and provision of digital advertising space which are covered separately.

Applicability of TDS on e-commerce transaction of resident supplier or service provider deferred

- The proposed section 194-O, which requires withholding of tax by an E-Commerce Operator on the amount paid to a resident e-commerce participant, shall come into effect from October 1, 2020.
- Further, the term 'e-commerce operator' has been amended along with the introduction of a specific sub-section to clarify who would be regarded as the person responsible for paying.
- Further, provisions have been brought in to grant power to the Central Government to issue guidelines for removing difficulties in implementation.

Insertion of a new section 194N (slated to be effective from July 1, 2020)

- The existing section 194N mandates a withholding tax of 2% on cash payments in excess of INR 10 million made during the year by a banking company/ co-operative bank/ post office to a person from one or more accounts maintained with it by the recipient.
- The new section 194N, which will replace the existing section 194N, also levies a withholding tax of 2% in case of cash payments by a banking company/ co-operative bank/ post office exceeding INR 10 million to a recipient during a year. However, the withholding tax shall apply to the entire amount paid.
- The new section 194N also provides that in case of a recipient, who has not filed the return of income for all of the three assessment years immediately preceding the previous year of such payment, the withholding tax obligation would need to be discharged as follows:

Amount paid in cash	Withholding tax
More than INR 2 million but less than INR 10 million	2% of the entire sum
More than INR 10 million	5% of the entire sum

Tax Collection at Source (TCS)

- It was initially proposed that with effect from April 1, 2020, TCS at prescribed rates would apply:

- on remittance overseas under Liberalised Remittance Scheme (LRS) exceeding INR 700,000 in a financial year;
- sale of overseas tour package; and
- on sale of goods exceeding INR 5 million, by seller whose turnover/gross receipts exceeds INR 100 million in the previous financial year.

- The section is now purported to be effective from **October 1, 2020.**

- It is proposed that the exemption from TCS on remittance overseas under LRS for amounts less than INR 700,000 in a financial year will not be applicable, if the amount is being remitted for the purchase of overseas tour program package.

- It is now proposed that the rate for TCS on remittance overseas under LRS exceeding INR 700,000 will be reduced from 5% to 0.5%, if the remittance is out of a loan obtained from a financial institution (as defined in section 80E of the Act) for the purpose of pursuing any education.

- The exclusions to the applicability of TCS on sale of goods has been amended to payments made for goods which have been exported out of India.

- Further, the exclusion to the definition of buyer has been amended to also include persons importing goods into India.

- Further, a new sub section has been inserted stating that if any difficult arises in giving effect to the provisions of this section, the Central Board of Direct Taxes may with the approval of the Central Government issue guidelines for removing such difficulty.

Concessional withholding regime for royalty payments

- As per the provisions of section 194J of the Act, any person responsible for paying any fees for professional services or technical services (including payment for royalty) is required to withhold taxes at the rate of 10%.

- The Bill had proposed an amendment to provide for concessional rate of 2% of withholding on payment of fees for technical services (not being a professional service). The amended Bill now proposes to extend the concessional withholding tax rate even to payment for royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films. All other payments would continue to be subject to withholding of 10%.

Others

- Withholding at the rate of 10% is required to be done on dividend paid or distributed / credited by domestic company / Mutual Fund to resident shareholders / unit holders.

This will not be applicable if dividend does not exceed INR 5,000 during a financial year or if the income is in the nature of capital gains.

- It is proposed to provide that section 197A of the Act be amended to include that the Central Government by way of notification may provide for non-deduction of tax or deduction of tax at a lower rate from such payment to such person or class of persons, including institution, association or body or class of institutions, associations or bodies, as may be notified by the Central Government in official Gazette.

- The provisions relating to taxability of unit holders of REIT/InvIT are proposed to be amended to reinstate exemption for dividend income earned by REIT/InvIT in the hands of unit holders if the company declaring the dividends has not opted for the beneficial corporate tax rate under section 115BAA of the Act. However, no exemption has been provided from withholding tax on dividend declared by such a company and paid to REIT/InvIT.

- The Bill had originally proposed an amendment to section 92CB (Safe harbour rules) to include determination of profits attributable to a permanent establishment (PE) in India of a non-resident under safe harbour regime. The meaning of safe harbour has now been widened to include circumstances in which the income tax authorities shall accept the transfer price or income deemed to accrue or arise under section 9(1)(i) of the Act, as may be declared by the assessee.

- The dividend income earned by non-resident individuals and resident non-corporate taxpayers will be subject to a maximum surcharge of 15%. The higher surcharge rates of 25% and 37% will not be applicable to dividend income earned by non-resident individuals and resident non-corporate taxpayers.

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