NEWSFLASH – SIGNIFICANT AMENDMENTS TO FINANCE BILL 2020 PASSED BY LOK SABHA ON 23 MARCH 2020

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The Finance Bill 2020 has been passed by the Lok Sabha on 23 March 2020 and also duly returned by the Rajya Sabha. There were significant changes made to the original Finance Bill 2020 which was introduced in the Lok Sabha on 1 February 2020.

The highlights of some of the significant amendments as passed by both the houses of parliament are discussed hereunder:

1.0 NRIs RESIDENTIAL STATUS RULES RELAXED by AMENDED FINANCE BILL 2020

One of the major changes in the Finance Bill 2020, was with respect to the changes in Residential status criteria, which directly impacts the Non-resident Indians (NRI) community. The following are the significant amendments to the Finance Bill 2020 pertaining to residential status as passed by the Lok Sabha:

1.1 NRIs visiting India – Residential Status - Changes:

1.1.1 At present, NRIs (covers Indian Citizens & Persons of Indian Origin) who being outside India can visit India with the maximum number of days stay in India of less than 182 days in a financial year. The Finance Bill 2020 originally proposed to reduce this period to 120 days in all the cases. Now due to amendment proposed while passing the Finance Bill, this reduced period of 120 days shall apply, **only in cases where the total income of such visiting individuals during the financial year from sources, other than foreign sources, exceeds Rs. 15 lakhs**. Accordingly, in case of such visiting NRIs whose taxable income in India is up to Rs. 15 lakhs during the financial year, they can stay in India up to 181 days as was the case earlier. As such, besides the monitoring of the number of days presence in India, the visiting Indian is also required to keep tab of his Indian taxable income. It may be pointed that dividends distributed by Indian companies would be taxable in the hands of the shareholders and as such, would form part of the taxable income and on the other hand, interest on FCNR and NRE deposits is exempt and hence not part of taxable income. This amendment is effective from Financial Year 2020-21 viz. 1 April 2020 to 31 March 2021.

1.1.2 As a result, in case of an NRI whose taxable income exceeds Rs. 15 lakhs and stay in India is 120 days or more, it further needs to be checked whether his stay in India is 365 days or more in the immediately preceding 4 years. For instance, an NR visits India in FY 2020-21 (*having taxable income in the financial year exceeding Rs. 15 lakhs*) and stays for say 130 days, and during the preceding 4 years he was in India for 365 days. In such a case, he will be a Resident. While this may ring alarm bells for many NRIs, the NRIs who are treated as resident by virtue of this clause but whose stay in India is less than 182 days, they would be treated as "Resident but Non Ordinarily Resident (RNOR)" as discussed later whereby their foreign income shall not be subject to tax in India.

1.2 RNOR Criteria Liberalized:

1.2.1 Under the current provisions of the Income-tax Act, if any of the following conditions are satisfied, the individual is treated as RNOR:

- an individual who has been a non-resident in India in 9 out of 10 previous years preceding that year, **or**

- has during the 7 previous years preceding that year been in India for a period of, or periods amounting in all to, 729 days or less

1.2.2 The above 2 additional conditions have been retained as per the current law. It is notable that the proposal under the Finance Bill 2020 initially had proposed to replace the above additional conditions, wherein 7 out of 10 previous years was to be replaced for 9 out of 10 previous year and the other additional condition of stay in India for 729 days or less in 7 previous year was proposed to be omitted.

1.2.3 Further, as per the amended Finance Bill 2020 passed by the Lok Sabha, if a NRI is considered to be resident in India due to his stay in India during the financial year of 120 days or more and less than 182 days as well as stay in India in preceding 4 years is for 365 days or more), he shall be considered as "Resident but Not Ordinarily Resident" for taxation purposes in India and his foreign income shall not be subject to tax.

1.3 Indian Citizens – Provisions Regarded Deemed Residential Status Relaxed based on Indian income criteria (applicable for financial year 2020-21) & RNOR Widened

1.3.1 Post the passage of the amended Finance Bill 2020 in Lok Sabha, an individual being a citizen of India, shall be deemed to be resident in India in any previous year, if he 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, only if his total income from India during the financial year is more than Rs. 15 lakhs. At present, there is no such provision in the Income-tax Act. This provision of determining residential status for a stateless individual shall not be applicable for OCI (Overseas Citizen of India) card holders or foreign citizens.

1.3.2 A separate clarification had previously been issued, which provided that this provision shall not be applicable to "bonafide workers" working outside India. It was clarified vide CBDT press release dated 2nd February 2020, that in case of an Indian citizen who becomes deemed resident of India under this proposed provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession. This has also been clarified by way of amendment in section 6, wherein Income from foreign sources has been specifically defined and the criteria for RNOR have been widened to include such persons who are deemed to be resident in India due to the above provision. Hence, foreign income is not taxed in such cases and the reporting of foreign assets to such Indian citizen who are considered to RNOR, shall not be applicable.

1.3.3 All the above amendments would be effective from Financial Year beginning 1st April 2020.

1.4 Scope of taxation in India based on Residential Status

Sr. No.	Particulars	Residential Status[1] and taxability in India		
		ROR	RNOR	NR
1	Income received or deemed to be received in India	Yes	Yes	Yes
2	Income which accrues or arises or is deemed to accrue or arise in India	Yes	Yes	Yes
3	Income which accrues or arises outside India from	Yes	Yes	No

[1] ROR – Resident and Ordinarily Resident,
RNOR – Resident and Not Ordinarily Resident and
NR – Non-Resident

Sr. No.	Particulars	Residential Status[1] and taxability in India		
		ROR	RNOR	NR
	- Business controlled in India or profession set up in India -Other Income	Yes	No	No
	Foreign Assets Disclosure Requirements under the Income Tax Act	Yes	No	No

1.5 Way forward

Going forward, NRIs need to carefully consider the total income and plan their travel itinerary based on the amendment for their period of stay. The positive aspect is that in most cases, NRIs can continue to visit India for up to 181 days in the financial year and even in other cases where the period of stay in India is 120 days (*and also form 365 days or more in preceding 4 years*) or more or in case of Indian citizens who are not tax residents of any other country and are deemed to be tax residents of India, the status would be RNOR and hence foreign income shall not be taxable in India.

2.0 Widening the scope of Equalization Levy to cover ecommerce supply or services within its ambit

2.1 The Finance Act of 2016 introduced the concept of equalization levy in accordance with the BEPS Action Plan 1 of the OECD. Prior to Finance Bill 2020, equalization levy was imposed on certain specified services like online advertisement services and any provision for digital advertising space or facilities for online advertisement. However, Finance Bill 2020 proposed to levy an equalization levy of 2% on such consideration received or receivable by an ecommerce operator from ecommerce supply or services made or provided or facilitated by it to the following persons:

i. An Indian resident
ii. Any non-resident in case of sale of advertisement, which targets a customer, who is resident in India or customer who accesses the advertisement through internet protocol address located in India.
iii. Any non-resident in case of sale of data, collected from a person who is resident in India who uses internet protocol address located in India.
iv. Any person who buys such goods or services or both using the IP address located in India.

2.2 However, no such equalization levy would be required to be charged where the ecommerce supply or service is effectively connected with a Permanent establishment of the ecommerce operator in India or where the sales, turnover or gross receipts of the ecommerce operator from such ecommerce supply or services is **less than Rs. 2 crores** (total turnover from all the specified buyers) during the previous year. Also, such levy would not be charged on other specified services on which equalization levy of 6% is applicable.

2.3 The ecommerce operator would be required to pay the amount of equalization levy to the Central Government on or before 7th day of the following month of the Quarter ending June, September and December. The due date for the Quarter ending March would, however, be 31st March. The payment timelines are tabulated as follows:

Date of ending of the quarter of financial year	Due date of the financial year

30th June	7th July
30th September	7th October
31st December	7th January
31st March	31st March

2.4 Other provisions pertaining to Furnishing of statement, interest, penalty, etc. as applicable for previously specified services like online advertisement would also be made applicable to ecommerce supply or services. The said amendment would be made applicable from 1st April, 2020.

3.0 No tax on income arising from e-commerce supply or services by e-commerce operator on which equalization levy is chargeable

3.1 Section 10(50) of the Act provides that incomes in respect of which equalization levy has been charged shall be exempt from tax. The Finance Bill, 2020 (as passed by the Lok Sabha) has extended the scope of Equalization Levy to the consideration received or receivable by an e-commerce operator from e-commerce supply or services made or facilitated by it.

3.2 Consequential amendments have been made to section 10(50) of the Act to provide the tax exemption for the income arising from any e-commerce supply or services made or facilitated by e-commerce operator, on or after 1 April 2020, on which is chargeable to equalization levy.

4.0 Corpus Donations received by institutions referred to in section 10(23C) shall be exempt from tax

4.1 In the Finance Bill 2020 (as passed by Lok Sabha), an explanation is to be added to clarify that the 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) of Section 10(23C) of the Act shall not include voluntary contribution made with specific direction (i.e. corpus donation) that they shall form part of corpus of fund, trust, etc.

5.0 Corpus Donations made by institutions referred to in section 10(23C) of the Act not to be considered as application of income

5.1 Finance Bill 2020 (passed by Lok Sabha) provides 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) of Section 10(23C) of the Act, 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) of Section 10(23C) of the Act or any trust or institution registered under section 12AA of the Act, being voluntary contribution made with a specific direction (Corpus donation) 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.

6.0 Corpus Donations made by institutions referred to in section 12AA of the Act to institutions referred to in section 10(23C) of the Act not to be considered as application of income

6.1 Currently, as per Explanation 2 to section 11(1) of the Act, any amount credited or paid out of income of any trust or institution referred to in Section 12AA of the Act, to any other trust or institution registered under section 12AA of the Act, 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 trust or institution, as the case may be, is established.

6.2 Finance Bill 2020 (passed by Lok Sabha) provides to amend the said Explanation- any amount credited or paid out of income of any trust or institution referred to Section 12AA of the Act, 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) of Section 10(23C) of the Act or any trust or institution registered under section 12AA of the Act, 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 trust or institution as the case may be, is established.

7.0 Exemption to unit holders of business trust from paying tax on dividend if SPV opts for section 115BAA of the Act

7.1 Section 10(23FC) of the Act exempts certain income of business trust including income by way of dividend referred to in section 115-O(7) of the Act. Finance Bill, 2020 proposed to amend the said clause so as to exempt all dividend received or receivable by business trust from a special purpose vehicle (SPV) under the said clause.

7.2 Section 10(23FD) of the Act exempts any distributed income, referred to in section 115UA of the Act, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in sub-clause (a) of section 10(23FC) (i.e. interest received or receivable from a special purpose vehicle) or section 10(23FCA) of the Act. Finance Bill 2020 proposed to amend the said clause so as to exclude dividend income received by a unit holder from business trust from such exemption. The Finance Bill 2020 (as passed by Lok Sabha) to further amend the said clause to exclude dividend income received by a unit holder from business trust from such exemption in a case where the special purpose vehicle has not exercised the option under section 115BAA of the Act.

7.3 Thus, dividend distributed by SPV who opts for section 115BAA of the Act shall be exempt from tax. However, if an SPV opts to pay tax as per normal provisions of the Act, the unit holders will be liable to pay tax on dividend distributed by SPV.

8.0 Dividend received on or after 1 April 2020 shall not be liable to tax if such dividend is already subjected to DDT

8.1 The Finance Bill, 2020 proposed to amend section 10(34) of the Act to provide that no exemption shall be available in respect of dividend received on or after 1 April 2020. Thus, exemption was not available in respect of dividend received on or after 1 April 2020 but declared on or before 31 March 2020. However, such dividend declared on or before 31 March 2020 is already subject to DDT under section 115-O of the Act.

8.2 Amendments to the Finance Bill 2020 (as passed by Lok Sabha) to section 10(34) of the Act provides clarity that dividend received by the assessee on or after 1 April 2020 shall not be included in his income if tax has already been paid on such dividend under section 115-O and section 115BBDA wherever applicable.

9.0 Clarity on rate of TDS on dividend distributed to a non-resident or foreign company

9.1 As per the amendment proposed in the Finance Bill 2020, the person paying the amount of dividend to a non-resident person or a foreign company shall deduct tax under section 195 at the 'rates in force', which is provided in Part-II of the First Schedule of the Finance Act. However, Part-II of the First Schedule of the Finance Act was not amended to provide a specific rate for deduction of tax in respect of dividend income. Resulting in the dividend income falling in the residuary entry of Part-II of the First Schedule of the Finance Act, which provides for deduction of tax at the rate of 30% in case of a non-resident and 40% in case of a foreign company.

9.2 Accordingly, the tax would have been required to be deducted at a significantly higher rate in such cases, which now has been resolved in the Finance Bill, 2020 (as passed by the Lok Sabha). Part-II of First Schedule has been amended to provide the rate of deduction of tax from dividend income distributed to a foreign company, non-resident Indian or other non-resident person shall be withheld from the dividend income at the rate of 20%. The non-residents can take the benefit of the tax treaty, if it provides for a lower rate.

10.0 Deduction in respect of dividend received by the domestic company [Section 80M]

10.1 Section 80M in the Act post the amendment to the Finance Bill 2020 (passed by Lok Sabha) provides deduction of dividend received by the domestic company from another domestic company or a foreign company or a business trust. However, such deduction shall not exceed the amount of dividend distributed by the first mentioned domestic company on or before the due date. For this purpose, 'due date' means the date one month prior to the due date of filing the return of income.

11.0 TDS on income in respect of units [Section 194K]

11.1 Sections 194K of the Act is amended to provide that withholding tax of 10% shall be applicable on the payment of dividend to residents and shall not be applicable where:

a) Income in respect of unit of a mutual fund is upto Rs. 5,000 or
b) If the income is of the nature of capital gain

12.0 Threshold of Payment of certain amounts in cash Expanded [Section 194-N]

12.1 As per the existing provision of the Income Tax Act 1961 ('the Act'), every banking company or cooperative bank or post office is liable to deduct tax at the rate of 2% on cash payments in excess of one crore rupees in aggregate made during the year, to any person from aggregate of amount withdrawn from one or more account maintained by the recipient.

12.2 It is proposed that a recipient who has not filed the return of income for 3 preceding financial years immediately preceding the financial year in which the payment of the sum is made to him, the provision of said section 194-N of the Act would apply so that TDS would be at the rate of 2% if the cash withdrawal in a year is more than Rs. 20 lakh but does not exceed Rs.1 crore (on amount exceeding Rs. 20 lakh) and at the rate of 5% if the cash withdrawal exceed Rs.1 crore (on amount exceeding Rs.1 crore).

12.3 The Central Government would be empowered to exempt other recipients, through a notification in the official Gazette in consultation with the Reserve Bank of India.

12.4 The amendments in this section shall be inserted with effect from 1st October 2020.

13.0 TDS on Fees for professional or technical services [Section 194-J]

13.1 In order to reduce litigation, it was proposed in the Finance Bill, 2020, to reduced TDS rate for fees for technical services (other than professional services) to 2 per cent from existing 10 per cent. TDS rates in case of other cases under section 194J to continue at 10%. This reduced TDS rate of 2 per cent has been extended to Royalty (where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films) in addition to fees for technical services (other than professional fees).

14.0 TDS on certain income from units of a business trust [Section 194-LBA]

14.1 It is clarified that TDS, under section 194LBA of the Act, by business trust on dividend income paid to unit holder shall not apply in respect of income of the nature referred to in Section 10(23FC)(b) of the Act, if the SPV referred to in the said clause has not exercised the option under section 115BAA of the Act. There seems to be mistake apparent in section 194LBA as the intent is that TDS shall not be applicable if the SPV has exercised the option under section 115BAA. Therefore clarity on this aspect needs to be awaited.

15.0 Interest other than "Interest on securities" [Section 194-A]

15.1 A proviso has been inserted to clarify that no notification under sub-clause (f) of clause (iii) of sub-section (3) of this section 194-A of the Act shall be issued on/after 1st April 2020. Instead, it is proposed to insert a new sub-section (5) to provide that the Central Government may, by notification in the Official Gazette, provide that the deduction of tax shall not be made or shall be made at such lower rate, from such payment to such person or class of persons, as may be specified in the said notification.

16.0 TDS on E-commerce transactions [Section 194-O]

16.1 Section 194-O was introduced in the Finance Bill, 2020 to provide for one per cent TDS on gross value of sale of goods or services or both facilitated by e-commerce operator through its digital or electronic facility or platform. The tax is required to be deducted by e-commerce operator at the time of credit or payment, whichever is earlier, to the e-commerce participant (seller).

16.2 It is now proposed to insert sub sections (4) empowering the Board to issue Guidelines, with the approval of the Central Government, to remove difficulties that arise in giving effect to the provisions of this section, sub section (5) the Guidelines shall be laid before the House of Parliament and be binding on the income tax authorities and e-commerce operator and sub section (6) for the purpose of this section e-commerce operator to be the person responsible for paying to e-commerce participant.

17.0 TCS on foreign remittance through LRS, selling of overseas tour package and on sale of goods over a limit [Section 206C]

17.1 An authorized dealer receiving an amount for remittances out of India under the LRS of RBI, shall be liable to collect TCS at the rate of five per cent of sum in excess of Rs.700,000 from a buyer being a person remitting such amount out of India. In non- PAN/Aadhar cases, TCS rate shall be at the rate of ten per cent.

17.2 It is further provided that in case the amount remitted under the LRS of RBI is for the purpose of pursuing education through a loan obtained from any financial institution, defined in section 80E of the Act, for the purpose of pursuing any education, the rate of TCS shall be one-half per cent of amount exceeding Rs.700,000 in a financial year.

17.3 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 five per cent. In case, of no PAN / Aadhar number, the rate shall be ten per cent. 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.

17.4 It was inserted in Finance Bill, 2020 that a seller of goods is liable to collect TCS at the rate of 0.1 per cent on consideration received from a buyer in a previous year in excess of Rs.50,00,000. In non-PAN/ Aadhar cases the rate shall be one per cent. Only those seller whose total sales, gross receipts or turnover from the business carried on by it exceed Rs.10,00,00,000 during the financial year immediately preceding the financial year, shall be liable to collect such TCS. It is now provided that the provision of TCS on sale of goods would not be applicable if the buyer of goods is liable for TDS on purchase of goods from seller and he has deducted such amount. The import of goods and export of goods shall be excluded from levy of TCS under said provisions.

17.5 The Board may be authorised to issue guidelines for the purpose of removing difficulty arising regarding interpretation or implantation of these provisions and such guidelines shall be laid before Parliament and shall be binding on income tax authorities and person liable to collect sum.

17.6 It is provided also that authorized dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller.

17.7 These amendments shall be effective from 1st October 2020.

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In this document, we have provided our analysis of the significant amendments to the Finance Bill 2020 as passed by the Lok Sabha on 23 March 2020. It may be noted that nothing contained in this document should be regarded as our opinion and facts of each case will need to be analysed to ascertain applicability or otherwise of the laws and regulations in place and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this document.

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