Key Amendments by Finance Act 2020 in certain proposals by Finance Bill 2020

In the wake of the country-wide lockdown for dealing with the global Corona virus crisis, India's Parliament, just before adjourning, enacted the Finance Bill 2020 (FB 2020) which contains the tax proposals for the coming Financial Year 2020-21. The Finance Act has now received Presidential assent on 27th March 2020.

The provisions of the Finance Act 2020 (FA 2020) will now get incorporated in the Income-tax Act, 1961 (Act) from 1 April 2020. We have highlighted below, the key amendments to FB 2020 while enacting FA 2020.

S. No.	Topic	Proposals by Finance Bill, 2020	Amendments by Finance Act 2020
1.	**Equalisation Levy on e-commerce Operator**	Currently, an Equalisation Levy (introduced through FA 2016) is levied at the rate of 6% on specified services received from a non-resident. Currently, the specified services cover online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement. The government may also notify other services. The levy is to be collected and deposited by the payer who is receiving the specified service. FB 2020 had no new provisions regarding Equalisation Levy.	FA 2020 has now introduced a new provision vide Section 165A to enhance the scope of the Equalisation Levy. **Equalisation Levy will now be extended to an e-commerce operator on 'e-commerce supply and services' undertaken on or after 1 April, 2020**. An "e-commerce operator" has been defined to mean a non- resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both. "e-commerce supply and services" has been defined to mean: *(i) online sale of goods owned by the e-commerce operator; or* *(ii) online provision of services provided by the e-commerce operator; or* *(iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or* (iv) *any combination of the above activities* The Equalisation Levy shall not be levied in following cases: *(i) where the e-commerce operator has a Permanent Establishment (PE) in India and the e-commerce supply or service is effectively connected to its PE.* *(ii) where Equalisation Levy is already levied on online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement.* (iii) *where sales, turnover or gross receipts of the e-commerce operator from the e-commerce supply and services is less than INR 2 crore during the previous year.* This Equalisation Levy will be at the rate of 2% on the amount of consideration from e-commerce supply and services made or provided or facilitated by an e-commerce operator Consequent to this new Equalisation Levy, an amendment has been made to section 10(50) of the Act. Income arising from e- commerce supply or services which will be covered by the Equalisation Levy will now be exempt from tax under section 10(50).

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2.	**Taxation of dividends in the hands of recipient**	FB 2020 proposes to abolish Dividend Distribution Tax ('DDT') in the hands of a domestic company on dividends declared, distributed, or paid on or after 1 April 2020, and the dividend will now be taxed in the hands of the shareholders. However, the amendment did not provide for relief from taxation in the hands of the shareholder in a scenario wherein dividend is declared in financial year 2019-20 and paid in financial year 2020-21 and has already been subjected to DDT.	FA 2020 now states that dividends received by shareholders on or after 1 April 2020 on which tax has been paid under section 115-O or section 115BBDA, shall be exempt in the hands of shareholder.
3. (i)	**Change in Tax Residency Rule**	Currently, under the Income tax Act, one of the criteria to consider an individual as resident of India is: • *the individual has been in India for total period of 365 days or more within four years preceding that year; and* • *the individual is in India for a period of 60 days (182 days for Indian citizen / Person of Indian Origin) or more in that year.* In FB 2020, this provision was sought to be tightened in case of an Indian citizen / Person of Indian Origin, by reducing the period of stay in that year to 120 days or more (instead of 182 days or more).	FA 2020 has modified this proposed provision in the FB 2020. The limit of 120 days will apply to only those Indian citizen/Person of Indian Origin, if that individual's total income, (other than 'income from foreign sources') exceeds **INR 15 lakh** during the previous year. 'Income from foreign sources' has been defined as income which accrues or arises outside India (except income derived from business controlled in or profession set up in India).
(ii)		FB 2020 proposed a new tax residence provision. This was that an Indian citizen who is not liable to tax in any other jurisdiction (by reason of his domicile or residence), shall be deemed to be resident in India.	FA 2020 has modified the proposed provision in FB 2020. It will now cover that Indian citizen whose total income (other than 'income from foreign sources') exceeds **INR 15 lakh**. 'Income from foreign sources' has been defined as income which accrues or arises outside India (except income derived from business controlled in or profession set up in India).
4. (i)	**Rationalisation of provisions relating to Trusts or institution**	This is a new provision introduced in FA 2020 which was not included in FB 2020 earlier. Currently, in section 10(23C) of the Act, there is an exemption from tax for the income of certain specified funds / Trusts / institutions / universities / other educational institutions / hospitals / other medical institutions, if the income is applied / accumulated wholly and exclusively to the objects for which such entity was established. Unlike section 11 of the Act (which applies to Trusts), there is no explicit provision in section 10(23C) exempting from tax, voluntary contributions received by such entity with a specific direction that they will form part of the corpus of such entity.	In FA 2020, section 10(23C) has now been amended to clarify that voluntary contributions received by such entity with a specific direction that they will form part of the corpus of such entity, shall not be included in the income of such entity.

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(ii)		Currently, under section 11 of the Act, voluntary contribution made by a Trust to any other registered Trust or institution is not treated as application of income of such donor Trust, if such contribution is made with a specific direction that they shall form part of the corpus of the donee Trust or institution. Similarly, currently under section 10(23C) of the Act, voluntary contribution made by certain specified funds / Trusts / institutions / universities / other educational institutions / hospitals / other medical institutions to any Trust or institution registered under section 12AA of the Act is not treated as application of income of such donor entity, if such contribution is made with a specific direction that they shall form part of the corpus of the donee Trust or institution.	In FA 2020, this provision is now proposed to also be extended to voluntary contributions made to certain funds / Trusts / institutions / universities / other educational institutions / hospitals / other medical institutions (specified under section 10(23C) of the Act). This amendment will be applicable to Trusts (under section 11 of the Act) and to certain specified entities (under section 10(23C) of the Act), who make these contributions.
5.	**Simplified tax regime for individuals and HUF – Option to the taxpayer**	FB 2020 proposed that (under section 115BAC of the Act), individuals and HUFs could exercise the option of lower rate of tax (but with no other available tax deductions) available under section 115BAC. However, in case of Individuals and HUFs with business income, once this option is exercised, they will have to continue with the new regime for that year and all subsequent years. They are allowed a one-time exit from the regime but will then not be able to opt for the lower rate regime again, unless they cease to have income from business.	FA 2020 amends section 115BAC to now mandate that in case of individuals and HUFs who have income either from a business **or a profession**, once this option is exercised, they will have to continue with the new regime for that year and all subsequent years.
6.	**Section 194N – Withdrawals in cash**	Currently, Section 194N provides for withholding tax at the rate of 2% on withdrawal of cash (from a bank, co-operative bank and Post Office) exceeding INR 1 crore in aggregate during the year. FB 2020 did not propose any change to this provision.	An amendment to the provisions of section 194N has been made through FA 2020 which are as under: Added a first proviso to section 194N to stipulate that in case of a person who has not filed a return of income for preceding 3 years, tax will be deducted: (a) @ 2% on withdrawal exceeding INR 20 lakh and (b) @ 5% on withdrawal exceeding INR 1 crore. These provisions will be applicable from 1st July 2020. FA 2020 has also added another proviso to section 194N. This empowers the Central Government to notify, in consultation with RBI, persons to whom first proviso to section 194N shall not apply.

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7.	**Section 194-O – TDS by e-commerce operator on payments made to e-commerce participants (sellers)**	FB 2020 proposed to introduce TDS on e-commerce transactions through a new provision (section 194-O) in the Act. The definition of 'e-commerce operator' under FB 2020 was as under: "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. *There were doubts on the application and mode of compliance with these proposed TDS provisions.*	FA 2020 has amended the proposed section 194-O. The amendments are: (i) to give the Central Government, powers to issue guidelines for removing any difficulties in implementing these TDS provisions. (ii) to clarify that for the purpose of this new TDS provision, an e-commerce operator means a person who owns, operates or manages a digital or electronic facility or platform for electronic commerce. Such e-commerce operator would be liable for TDS even if it is not responsible for paying to an e-commerce participant.
8.	**Section 194K - TDS on income distributed by mutual funds to unitholders**	FB 2020 proposed to remove distribution tax at the level of the mutual fund and to tax it in the hands of unit holder. Separately, TDS at the rate of 10% (under section 194K of the Act) was proposed on the dividend/income distributed by the mutual fund to its unit holder, if the amount of the dividend/ income exceeds INR 5000 in a financial year. *This raised doubt whether (under the proposed section 194K), the mutual fund would need to do a TDS on the capital gains component arising to the unit holder, on redemption of units.*	FA 2020 has now inserted a proviso in section 194 K to state that TDS shall not be applicable if the income of the unitholder from the units, is in the nature of capital gains.
9.	**Section 206C - Widening the scope of Tax Collection At Source (TCS)**	FB 2020 proposed TCS provisions on certain new classes of transactions (by amending the existing section 206C of the Act) related to: (i) overseas remittance, (ii) sale of an overseas tour programme package and (iii) sale of goods. The TCS provisions were proposed to be applicable from 1 April 2020	TCS provisions for new classes of transactions shall now apply from **1 October 2020**. Through FA 2020, new TCS provisions have been substantially overhauled: <u>TCS on sale of goods</u> • *TCS provision not to apply in export sales* • *The definition of buyer amended to exclude person importing goods into India* • *TCS provision would not be applicable where a buyer is liable to deduct tax at source in respect of the goods purchased by him from the seller* <u>TCS on overseas remittance/ tour programme package,</u> • *If the remittance is not for overseas tour programme package, there will be no TCS if the remittance is below INR 7 Lacs.* • *TCS on overseas remittances (other than for purchase of overseas tour programme package) would be on amount in excess of INR 7 Lacs.* • *The AD will not be required to collect tax at source on the amount on which tax has been collected by the seller of the overseas tour programme package.* • *In case of remittance under LRS scheme over INR 7 Lacs out of loan obtained from specified financial institution, for any education, the rate of TCS is 0.5% instead of 5%.*