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# Tax Alert | Delivering clarity

28 March 2020

## Parliament enacts Finance Act 2020 with amendments in certain Finance Bill 2020 proposals

The Finance Bill, 2020 has been passed by the Parliament as Finance Act 2020 with amendments

### Background

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 27 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. Exceptionally, a large number of amendments, about 59, have been incorporated while passing FA 2020. This includes an entirely new form of Equalisation Levy on foreign e-commerce operators on their revenues earned from India.

The earlier Deloitte Publication on the Finance Bill 2020 can be accessed **here**.

Highlighted below are the key amendments to FB 2020 while enacting FA 2020.

### Amendments to the Finance Bill, 2020

We have highlighted below, the key amendments to the Finance Bill 2020 (FB 2020):

| Sr. No. | Provision per Finance Bill, 2020 [FB 2020] | Amendments to the provisions of FB 2020 made by Parliament while passing it as Finance Act 2020 [FA 2020] |
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| **1** | **Equalisation Levy under Chapter VIII of the Finance Act, 2016** | |
| | 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.<br>FB 2020 had no new provisions regarding Equalisation Levy. | FA 2020 has now introduced a new provision (Section 165A in FA 2016) 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.<br>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.<br>"e-commerce supply and services" has been defined to mean:<br>(i) online sale of goods owned by the e-commerce operator; or<br>(ii) online provision of services provided by the e-commerce operator; or<br>(iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or<br>(iv) any combination of the above activities<br>With regard to the above, the Equalisation Levy shall not be levied |

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| | | (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.<br>(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.<br>(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.<br><br>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 to:<br>(i) a person resident in India<br>(ii) a non-resident in the following specified circumstances:<br>(a) Sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India.<br>(b) Sale of data, collected from a person who is resident in India or uses internet protocol address located in India.<br>(iii) To a person who buys such goods or services or both using internet protocol address located in India.<br><br>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).<br><br>**Our comments:**<br>This amendment to the Equalisation Levy provisions now introduces a kind of digital tax on non-resident e-commerce operators at 2% on the revenue they generate in India from e-commerce supply or services. This levy has to be deposited by the e-commerce operator and not by the buyer of the supply or service. These non-resident e-commerce operators will therefore now need to arrange to compute and deposit Equalisation Levy on their India related revenue from e-commerce supply and services. |
| **2** | **Exemption of income earned by Foreign Pension Funds from investments in Indian infrastructure enterprises** | |
| | FB 2020 proposed to insert a new clause [section 10(23FE] to exempt income from dividend, interest and long term capital gains of sovereign wealth funds (and the Abu Dhabi Investment Authority) from their investments in Indian infrastructure enterprises. | FA 2020 proposes to extend the exemption to income from dividend, interest and long term capital gains of notified Foreign Pension Funds on investments in an Indian infrastructure enterprise, if such Funds are not liable to tax in the foreign country and satisfy the prescribed conditions. The investment needs to be made in the period between 1 April 2020 and 31 March 2024.<br><br>In case of all eligible persons, the exemption is also proposed to be extended to investments made during the above period in: |

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| | This exemption relates to investments which are made on or before 31 March 2024 and are held for at least three years. | (i) A business Trust registered as an Infrastructure Investment Trust under the Securities and Exchange Board of India (SEBI) (Infrastructure Investment Trusts) Regulations, 2014;<br>(ii) SEBI regulated Alternative Investment Fund – Category I and II having 100% investment in one or more company/ enterprise/ entity engaged in infrastructure business.<br>The exempted income is proposed to be taxed in the hands of the exempted persons in the previous year in which the prescribed conditions are not satisfied.<br>**Our comments:**<br>Extension of exemption to notified Foreign Pension Funds and expansion of avenues of investments eligible for exemption will boost direct and indirect investments in the infrastructure sector. |
| **3** | **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.<br>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.<br>**Our comments:**<br>An anomaly in the provisions of FB 2020 that would have created unintended hardship to shareholders on transition from the DDT regime has been removed. |
| **4** | **Section 80M deduction** | |
| | FB 2020 has reintroduced section 80M to remove the cascading effect of taxes on inter-corporate dividend, since dividend will now be taxed in the hands of shareholders on dividend declared, distributed, or paid on or after 1 April 2020.<br>Section 80M permits a deduction from the dividend income received by a domestic company from another domestic company of | FA 2020 states that dividend received by a domestic company from a foreign company or a business trust will also be eligible for deduction under section 80M.<br>**Our comments:**<br>The amendment is a welcome relief to shareholders in setting off inter-corporate dividends by allowing foreign dividend to also be set-off, on par with domestic dividends, under section 80M. |

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| | the onward distribution of dividend by the former company before computing the tax payable by the former company on the taxable dividend income. | |
| **5** | **Taxation of dividend received by the business Trust from special purpose vehicle** | |
| | FB 2020 proposed that dividend received by a business Trust from an SPV would be taxable in the hands of the unitholders of the business Trust, under section 10(23FD).<br><br>Prior to the amendment proposed by FB 2020, dividend received by the unitholder from the business Trust was exempt under section 10(23FD).<br><br>FB 2020 ( vide section 194LBA), also proposed, in light of the change in the dividend taxation regime to tax dividend in the hands of shareholders, that the business Trust will withhold tax at 10% on dividends it distributes. | FA 2020 has modified this proposed provision of FB 2020. Section 10(23FD) now identifies a specific class of SPVs, i.e. companies which have not opted for a lower rate of tax under section 115BAA of the Act. Dividend from such SPVs received by the business trust and distributed to unit holders by the business trust will not be subject to tax in the hands of the unit holders under section 10(23FD).<br><br>An amendment is also made to withholding provisions in section 194LBA. Withholding on dividend distributed by business trust to its unitholders will not apply in a case where the dividend is from an SPV which has not opted for the lower corporate tax regime under section 115BAA.<br><br>**Our comments:**<br>This is a measure of relief as a specific class of dividend received by the unitholder from the business trust will now be exempt in the hands of the unit holder. |
| **6** | **Change in Tax Residency Rule** | |
| (i) | Currently, under the Income tax Act ( Act), one of the criteria to consider an individual as resident of India is:<br>• the individual has been in India for total period of 365 days or more within four years preceding that year; and<br>• 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.<br><br>In FB 2020, this provision was sought to be tightened in | FA 2020 has modified this proposed provision in the FB 2020. It will now cover an 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).<br><br>**Our comments:**<br>This is a relaxation for Indian citizens/Person of Indian Origin, who do not earn substantial income in India (i.e. a total income (excluding income from foreign sources) up to INR 15 lakh). |

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| | 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). | |
| (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).<br><br>**Our comments:**<br>This is a relaxation for Indian citizens who do not earn substantial income in India (i.e. a total income (excluding income from foreign sources) up to INR 15 lakh).<br>Ambiguities remain regarding who will actually get covered under this new provision given disputes about the meaning of 'liable to tax' and that India has numerous tax treaties with other jurisdictions where tax disputes (including disputes regarding tax residency of a person who is considered tax resident in both countries) need to be resolved bilaterally. |
| (iii) | Currently, under the Act, for qualifying to be a 'Not Ordinarily Resident' under the tax residence provision, the individual needs to fulfill two conditions - that the individual:<br>• has been a non-resident in India in 9 out of 10 previous years, or<br>• has been in India for 729 days or less in 7 previous years.<br><br>FB 2020 proposed that the dual conditions above be replaced by one condition i.e. that the individual has been a non-resident in India in 7 out of 10 previous years. | This proposed provision in FB 2020 has been withdrawn so that existing dual conditions in the Act for an individual to qualify to be "Not Ordinarily Resident" (NOR), are retained.<br><br>**Our comments:**<br>This is reversion to the earlier thresholds.<br><br>Further, owing to the new provisions under FA 2020 regarding tax residency of individuals, the following individuals would now qualify to be NOR:<br>• an Indian citizen or person of Indian origin with total income, other than income from foreign sources, exceeding INR 15 lakh during the previous year and who has been in India for 120 days or more but less than 182 days; or<br>• Indian citizen who is deemed to be resident (i.e. Indian citizen with total income, other than income from foreign sources, exceeding INR15 lakh during the previous year) not liable to tax in any other jurisdiction (by reason of his domicile or residence).<br><br>**Our comments:**<br>Introduction of an income threshold of INR 15 lakh is a welcome relaxation. |

| 7 | Rationalisation of provisions relating to Trusts or institution | |
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| (i) | This is a new provision introduced in FA 2020 which was not included in FB 2020 earlier.<br><br>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.<br><br>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.<br><br>**Our comments:**<br>This is a welcome clarificatory amendment. |
| (ii) | These are new provisions introduced in FA 2020, which were not included in FB 2020 earlier.<br><br>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.<br><br>Similarly, currently under section 10(23C) of the Act, voluntary contribution made by certain specified funds / Trusts / institutions / universities / other | 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).<br><br>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.<br><br>**Our comments:**<br>The tax policy perspective is that a charitable entity should not contribute its funds to another charitable entity and claim such contribution as application of its income. These amendments are in line with this policy. |

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| | 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. | |
| **8** | **Taxation of Non-Resident (NRs) on income earned in India** | |
| | FB 2020 extended the scope and period for which the concessional withholding tax rate on interest of 5% would apply for specified borrowings under sections 194LC and 194LD, as well as introduced the concessional withholding tax rate of 4% under sections 194LC in respect of long term bonds or rupee denominated bonds issued on or after 1 April 2020 but before 1 July 2023, and is listed on a recognised stock exchange in International Financial Services Centre.<br><br>However, section 115A(1)(a)(BA) was not correspondingly amended to reflect the new rate of 4% discussed above. | FA 2020 has now deleted the reference to the tax rate of 5% on interest income under sections 194LC, 194LD and 194LBA(2) under section 115A(1)(a)(BA) and now refer to the tax rates provided in the respective sections viz. 194LC, 194LD and 194LBA(2).<br><br>**Our comments:**<br>The amendment in section 115A aligns the tax rates as per section 115A with the corresponding withholding tax provisions under sections 194LC, 194LD and 194LBA(2). |
| **9** | **Reduced tax rate on income of certain domestic companies and manufacturing companies** | |
| | Under the Act, the lower rate of tax as per section 115BAA and 115BAB of the Act is applicable where the taxpayer foregoes deductions under Chapter VIA except for deduction under sections 80JJAA and 80LA.<br><br>FB 2020 had proposed that with effect from AY 2020-21, companies governed by section 115BAA or section 115BAB shall also be allowed | FA 2020 now provides that companies availing the lower rate of tax under sections 115BAA and 115BAB will be eligible to claim a deduction under section 80M with effect from 1 April 2021 (AY 2021-22).<br><br>**Our comments:**<br>This is an amendment to rectify the anomaly regarding the reference to the assessment year from which the new section 80M applies. |

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| | to claim deduction under section 80M (on inter-corporate dividends) of Chapter VI-A.<br><br>However, under a separate FB 2020 proposal, section 80M was to take effect from Assessment Year 2021-22.<br><br>This mismatch gave rise to an anomaly. | |
| **10** | **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.<br><br>**Our comments:**<br><br>The provision for choosing the lower tax regime has been tightened for individuals/HUFs with income from profession as they will now, also have to continue with the new regime for all subsequent years, once they have opted for this regime. 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 or profession. |
| **11** | **Section 194A – Notification power** | |
| | Section 194A of the Act deals with withholding of tax on interest (other than interest on securities) paid to a resident.<br><br>Under section 194A(3)(iii)(f), the Central Government is empowered to notify an institution, association or body or classes of institutions, associations or bodies, for reasons to be recorded in writing, so that their interest income is exempted from the | FA 2020 has dropped the notification provision under section 194A(3)(iii)(f) with effect from 1 April 2020. FA 2020 has introduced new provision under section 194A(5). Under this new provision, the Central Government can notify such person or class of persons from whose interest income, deduction of tax is not required to be made or deduction shall be made at lower rate of tax.<br><br>**Our comments:**<br><br>The replacement of the earlier notification power of the Central Government by a new one, allows it to notify payments to a person or class of persons in whose case income tax shall be deducted at a lower rate besides the earlier power of notifying those in whose case no tax needs to be deducted at source. It also drops the requirement for the Central Government to record reasons in writing before issuing the notification. |

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| | withholding provisions under the section.<br><br>FB 2020 did not propose any change to this provision. An amendment to the above provision has been introduced while passing the Finance Act, 2020. | |
| **12** | **Section 197A – Notification power** | |
| | The current provisions of section 197A(1F) grant power to the Central Government to notify payments to an institution, association or body or class of institutions, associations or bodies on which no tax shall be deducted.<br><br>FB 2020 did not propose any amendment to this section. | FA 2020 has amended section 197A(1F) to also grant power to the Central Government to notify payments to these entities on which tax shall be deducted at a lower rate. |
| **13** | **Section 194J - TDS on fees for technical services paid to resident** | |
| | Prior to FB 2020 proposals, the current general rate of 10% TDS under section 194J of the Act applies, among others, to the following:<br>(i) fees for professional services<br>(ii) fees for technical services<br>(iii) royalty<br><br>FB 2020 proposed to reduce the withholding tax rate applicable to fees for technical services to 2%. | FA 2020 has further amended Section 194J to provide a reduced rate of TDS of 2% on royalty which is in the nature of consideration for sale, distribution or exhibition of cinematographic films.<br><br>**Our comments:**<br>By way of a separate proposal, FB 2020 modified the definition of 'Royalty' (under Explanation 2 to section 9(1)(vi) of the Act) to remove the existing exclusion of the consideration for the sale, distribution or exhibition of cinematographic films from the definition of royalty.<br><br>Consequent to this amendment, a lower rate of TDS at the rate of 2 per cent has now been mandated on this new inclusion to royalty i.e. consideration in the nature of sale, distribution or exhibition of cinematographic films. |
| **14** | **Section 194K - TDS on income distributed by mutual funds to unitholders** | |
| | Prior to FB 2020 proposals, under the Act, the dividend income distributed on units from mutual funds to unit holders was exempt in the hands of the unit holder and dividend distribution tax in the hands of the mutual fund. | 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.<br><br>**Our comments:**<br>After introduction of FB 2020, the government had clarified (vide a Press Release dated 4 February 2020 that) that TDS is applicable at the rate of 10% only on income distributed on units and no TDS needs to done by the mutual fund on income which is in the nature |

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| | 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.<br><br>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. | of capital gains from these units. This clarification has now been incorporated in the statute. |
| **15** | **Section 194N – Withdrawals in cash** | |
| | Currently, under the Act, 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.<br><br>FB 2020 did not propose any change to this provision. | An amendment to the provisions of section 194 N has been made through FA 2020.<br><br>Following are the amendments:<br>(i) 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:<br>(a) @ 2% on withdrawal exceeding INR 20 lakh and<br>(b) @ 5% on withdrawal exceeding INR 1 crore.<br><br>These provisions will be applicable from 1st July 2020.<br><br>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.<br><br>**Our comments:**<br><br>The amendments to section 194N which is a TDS on cash transactions have been further tightened. They will now also apply to substantial cash withdrawals by persons who have not been filing their return of income. |
| **16** | **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. | FA 2020 has amended the proposed section 194-O.<br><br>The amendments are:<br><br>(i) to give the Central Government, powers to issue guidelines for removing any difficulties in implementing these TDS provisions.<br><br>(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 |

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| | The definition of 'e-commerce operator' under FB 2020 was as under:<br>"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.<br>There were doubts on the application and mode of compliance with these proposed TDS provisions. | commerce. Such e-commerce operator would be liable for TDS even if it is not responsible for paying to an e-commerce participant.<br>**Our comments:**<br>The proposal regarding TDS on e-commerce transactions will throw up a number of compliance issues. The government has therefore taken delegated powers to be able to issue binding guidelines for clarifying these issues.<br>Where the e-commerce operator is not responsible for making a payment to the e-commerce participant, deducting and paying TDS under this section will increase the compliance burden on such operators.<br>Further, there are certain other ambiguities regarding its applicability to non-resident e-commerce operators which need to be clarified. |
| **17** | **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). These relate to:<br>(i) overseas remittance,<br>(ii) sale of an overseas tour programme package and<br>(iii) sale of goods.<br>The TCS provisions were proposed to be applicable from 1 April 2020 | The TCS provisions relating to these new classes of transactions shall now apply from 1 October 2020. |
| | FB 2020 proposed, in case of TCS on:<br>(i) overseas remittance, that the Authorised Dealer (AD), dealing in foreign exchange, receiving an amount of INR 0.7 million or more in the financial year (from a buyer) for remittance under the Liberalised Remittance Scheme (LRS) of the Reserve Bank of India (RBI), shall be liable to collect tax at source at the rate of 5% on the sum received from the | Through FA 2020, new TCS provisions have been substantially overhauled:<br>(i) TCS on overseas remittance/ (ii) overseas tour programme package,<br>• TCS applied on all overseas remittances under the LRS scheme of the RBI. However, if the remittance is not for overseas tour programme package, there will be no TCS if the remittance is below INR 0.7 million.<br>• TCS on overseas remittances (other than for purchase of overseas tour programme package) would be on amount in excess of INR 0.7 million<br>• 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.<br>• In case of remittance under LRS scheme over INR 0.7 million out of loan obtained from specified financial |

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| | buyer remitting such amount out of India.<br><br>(ii) overseas tour programme package, that the seller shall be liable to collect tax at source at the rate of 5% on any amount received from the buyer of tour package.<br><br>In both the cases, if the buyer does not have PAN/Aadhaar, the rate of applicable TCS shall be 10%.<br><br>(iii) sale of goods, above a specified limit subject to the conditions stated below:<br><br>A seller whose turnover from business exceeds INR 100 million during the immediately preceding financial year, shall be liable to collect tax at source (at the rate of 0.1%) on consideration received from a buyer in excess of INR 5 million.<br><br>If the buyer does not have PAN/Aadhaar, the rate of applicable TCS shall be 1%.<br><br>TCS provision not applicable if the buyer is liable to deduct tax at source under any other provision of the Act and has deducted tax.<br><br>These new TCS provisions not be applicable in case of certain buyers, such as government authorities and other buyers notified by the government. | institution, for any education, the rate of TCS is 0.5% instead of 5%.<br><br>(ii) TCS on sale of goods<br>• TCS provision not to apply in case of export sales<br>• The definition of buyer amended to exclude person importing goods into India<br>• It has been clarified that 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<br><br>FA 2020 has added a new provision to the Act to provide that if any difficulty arises in implementation of these new TCS provisions, the CBDT with the approval of the Central Government, shall issue guidelines for the purpose of removing the difficulty.<br><br>**Our comments:**<br><br>The overlap between the TCS provisions relating to overseas remittances and overseas tour programme package, has been removed.<br><br>To reduce the burden of TCS on remittance for education, the rate has been reduced from 5% to 0.5%, in case the remittance is out of loan obtained from specified financial institutions.<br><br>TCS provision on sale of goods is amended to exclude export sales. Further, to ease the TCS compliance burden on foreign sellers, a person importing goods into India will not be considered as buyer.<br><br>The amendments bring clarity to the new TCS provisions applicable on these new class of transactions. |

<table>
<tr><td>18</td><td colspan="2">Safe harbour rules to cover determination of profit attributable to a Permanent Establishment (PE)</td></tr>
<tr><td></td><td>The safe harbor rules [under section 92CB read with Rule 10TA to 10TF] have been proposed to be expanded to cover profits attributable [under section 9(1)(i) of the Act] to a PE. This will be applicable for AY 2020–21, and subsequent assessment years.</td><td>The expanded coverage of profits attributable to PE [under section 9(1)(i) of the Act] was left to be included in the definition of "safe harbor" in Explanation to section 92CB. Accordingly, the definition of "safe harbour" in explanation to section 92CB has been amended.<br><br>Our comments:<br>The amendment is only consequential to align the definition of safe harbour with the coverage of safe harbour provisions provided in section 92CB.</td></tr>
<tr><td>19</td><td colspan="2">Withholding tax on dividends paid to non-residents under the First Schedule to the Finance Bill</td></tr>
<tr><td></td><td>Tax on dividend paid to foreign company or other non-residents is required to be withheld as per 'rates in force' under section 195.<br><br>FB 2020 did not provide for a specific withholding tax rate on dividend paid to a foreign company or other non-residents in Part II of First Schedule to FB 2020. Consequently, withholding tax rate of 40% (subject to treaty benefits, if any) was applicable in the aforesaid case.</td><td>FA 2020 now specifically provides, in Part II of the First Schedule of FB 2020, that tax shall be deducted at source on dividends paid to Non-resident Indians, other non-residents and foreign companies, at 20%.<br><br>Our comments:<br>An anomaly that existed on account of the withholding tax rate mismatch on dividends as per section 115A and the First Schedule, has been rectified.</td></tr>
<tr><td></td><td>FB 2020 proposed the following rates of surcharge in case of an individual or HUF or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person:<br><br><table><tr><th>Total income</th><th>Rate of surcharge</th></tr><tr><td>50 lakhs – 1 crore</td><td>10%</td></tr><tr><td>1 crore – 2 crores</td><td>15%</td></tr><tr><td>2 crores – 5 crores</td><td>25%</td></tr><tr><td>> 5 crores</td><td>37.50%</td></tr></table></td><td>In relation to dividend income of such persons included in the total income, FA 2020 caps the rate of surcharge to 15%.</td></tr>
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