Changes in the Finance Act, 2020 Viz-a-viz Finance Bill, 2020 and Discussion on Ordinance 2020 with respect to Direct Taxes

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Amendment of section 2

3. In section 2 of the Income-tax Act,–

(ii) in clause (15A),—

(a) after the words "Chief Commissioner of Income-tax", the words "or a Director General of Income-tax" shall be inserted;

(b) after the words "Principal Chief Commissioner of Income-tax", the words "or a Principal Director General of Income-tax" shall be inserted.

1.AMENDMENT IN THE DEFINITION OF ‘CHIEF COMMISSIONER’

As per Section 2(15A) of the Income-tax Act, ‘Chief Commissioner’ means a person appointed to be a Chief Commissioner of Income-tax or a Principal Chief Commissioner of Income-tax.

The Finance Act, 2020 makes an amendment to this provision to include the Director General and Principal Director General of Income-tax within the meaning of ‘Chief Commissioner’.

Now, the Principal Director General of Income Tax shall be treated as an authority at par with Director General of Income-tax.

Hence, for all such purposes under the income tax act, the Principal Director General of Income-Tax shall have all the powers which have been conferred upon Director General of Income-tax.

Amendment of section 6

Before the amendments	After the amendments
Residence in India. 6. For the purposes of this Act,— (1) An individual is said to be resident in India in any previous year, if he— (a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or (b) [***] (c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.	Residence in India. 6. For the purposes of this Act,— (1) An individual is said to be resident in India in any previous year, if he— (a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or (b) [***] (c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Before the amendments	After the amendments
Explanation. 1—In the case of an individual,—	Explanation. 1—In the case of an individual,—
(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been;	(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been ;

Before the amendments	After the amendments
(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted.	(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted **and in case of the citizen or person of Indian origin having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year," for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted.**

(b) after clause (1), the following clause shall be inserted, namely:—

- "(1A) Notwithstanding anything contained in clause (1),
- an individual,
- being a citizen of India,
- having total income,
- other than the income from foreign sources,
- exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that 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;

Before the amendments	After the amendments
6(*6*) A person is said to be "not ordinarily resident" in India in any previous year if such person is - (*a*) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or (*b*) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.	6(*6*) A person is said to be "not ordinarily resident" in India in any previous year if such person is - (*a*) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or (*b*) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.

Before the amendments	After the amendments
	(c) in clause (6), in sub-clause (b), for the words "days or less" occurring at the end, the following shall be substituted, namely:- "days or less; or (c) a citizen of India, or ➢a person of Indian origin, ➢having total income, ➢other than the income from foreign sources, ➢exceeding fifteen lakh rupees during the previous year, ➢as referred to in clause (b) of Explanation 1 to clause (1), ➢who has been in India for a period or ➢periods amounting in all to one hundred and twenty days or more but less than one hundred and eighty-two days; or (d) a citizen of India who is deemed to be resident in India under clause (1A).

Explanation.

For the purposes of this section, the expression "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

2. CHANGES IN PROVISIONS RELATING TO RESIDENTIAL STATUS

2.1. 120 days to substitute 182 days only if total income exceeds Rs.15 lakhs [Applicable from Assessment Year 2021-22]

Section 6 of the Income-tax Act defines parameters to determine the residential status of an assessee.

The residential status of an individual is determined by the number of days of his stay in India.

As per existing section 6(1), an individual is considered as resident in India in a financial year if:

a) he is in India for 182 days or more during the year; or

b) he has been in India for 365 days or more during the 4 immediately preceding years and for 60 days or more during the financial year.

Explanation 1(b) to section 6 provides that in respect of an Indian citizen and a person of Indian origin who visits India during the year, the period of 60 days as mentioned in (b) above shall be substituted with 182 days.

Explanation 1(a) to section 6 also provides similar concession to the Indian citizen who leaves India in any previous year as a crew member or for the purpose of employment outside India.

The Finance Bill, 2020 has proposed an amendment to the Explanation 1(b) that the concession in the period of stay in India, for an Indian citizen and a person of Indian origin, shall be reduced from 182 days to 120 days.

No amendment has been proposed in Explanation 1(a).

The Finance Act, 2020 has restricted the application of amended provisions of Explanation 1(b) only to that Indian citizen or a person of Indian origin whose total income, other than income from foreign sources, exceeds Rs. 15 lakhs during the previous year.

For this provision, income from foreign sources means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

2.2. Provision of ‘Deemed Resident’ applicable if total income exceeds Rs. 15 lakhs [Applicable from Assessment Year 2021-22]

The Finance Bill, 2020 has proposed to insert a new clause (1A) to section 6 of the Income-tax Act to provide that an Indian citizen shall be deemed to be resident in India if he is not liable to tax in any country or jurisdiction by reason of his domicile or residence or any other criteria of similar nature.

This change was proposed as it was noticed that some Indian citizens shift their stay in low or no tax jurisdiction to avoid payment of tax in India.

To avoid any misinterpretation and to give benefit to bonafide persons working in abroad, the CBDT has issued a clarification on 02-02-2020 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.

The Finance Act, 2020 introduced new section 6(1A). The new provision provides that an Indian citizen shall be deemed to be resident in India only if his total income, other than income from foreign sources, exceeds Rs. 15 lakhs during the previous year.

For this provision, income from foreign sources means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

Other conditions proposed in the Finance Bill, 2020 have been kept same, inter-alia, such individual shall be deemed to be Indian resident under the new provision only when he is not liable to tax in any country or jurisdiction by reason of his domicile or residence or any other criteria of similar nature.

Thus, from Assessment Year 2021-22, an Indian Citizen earning total income in excess of Rs. 15 lakhs (other than from foreign sources) shall be deemed to be resident in India if he is not liable to pay tax in any country.

The residential status of such person shall be that of a 'Not Ordinarily Resident' due to new sub-clause (d) added to Section 6(6).

Accordingly, he would be liable to pay tax in India on his global income other than the income not derived from a business controlled in or a profession set up in India.

2.3. Deemed resident to be treated as 'Not Ordinarily Resident' [Applicable from Assessment Year 2021-22]

As per Section 6, a resident individual or a Hindu Undivided Family (HUF) is deemed as Not Ordinarily Resident in India, if he satisfies any of the following conditions:

a) Individual or Karta of HUF has been a non-resident in India for at least 9 years out of 10 years preceding the previous year; or

b) Individual or Karta of HUF has been in India for 729 days or less during the period of 7 years preceding the previous year.

The Finance Bill, 2020 has proposed to rationalize these conditions by providing just one condition that an Individual/HUF shall be deemed to be Not Ordinarily Resident if he/Karta of HUF has been a non-resident in any 7 out of the 10 immediately preceding years. The second condition has been proposed to be removed.

This proposed amendment has been withdrawn in the Finance Act, 2020.

Thus, the existing conditions as contained under section 6(6) of the Income-tax Act shall continue.

However, the Finance Act, 2020 has inserted the following two more situations wherein a resident person is deemed to be 'Not Ordinarily Resident' in India:

a) An Indian Citizen or a person of Indian origin whose total income (other than income from foreign sources) exceeds Rs. 15 lakhs during the previous year and who has been in India for a period of 120 days or more but less than 182 days;

b) An Indian Citizen who is deemed to be resident in India as per new Section 6(1A).

2.4. The consequences upon considering an individual as “not ordinarily resident”.

Section 5 of the Act deals with scope of total income.

The provisions of section 5 are reproduced as under :

Scope of total income.

5. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or

(c) accrues or arises to him outside India during such year :

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

The above provisions are summarized as under :

Remark	Resident	Non Resident	Not Ordinary Resident
Common Provision	includes all income from whatever source derived which - (a) is received or is deemed to be received in India; or (b) accrues or arises or is deemed to accrue or arise to him in India; or	includes all income from whatever source derived which - (a) is received or is deemed to be received in India; or (b) accrues or arises or is deemed to accrue or arise to him in India.	includes all income from whatever source derived which - (a) is received or is deemed to be received in India; or (b) accrues or arises or is deemed to accrue or arise to him in India; or

Variation	(c) accrues or arises to him outside India:	–	(c) the income derived from a business controlled in or a profession set up in India
Summary	Worldwide income taxable in India	Only Indian source income taxable in India	Indian source income and worldwide income derived from a business controlled in or a profession set up in India.

3. AMENDMENTS MADE TO SECTION 10(23C) TO REMOVE CONFLICTING PROVISIONS

3.1. Corpus donations received by Section 10(23C) institutions will be exempt from tax

If institutions, registered under section 12AA, receive any income in the form of voluntary contributions with a specific direction that it should form part of the corpus of the trust or institution, it shall not be included in the total income of such trust or institution.

However, no such specific exemption was available to entities registered under section 10(23C).

Hence, it was always a matter of litigation, compelling the institutions coming within the scope of section 10(23C) to apply even their corpus donations for getting the benefit of exemption.

This was prejudicial to them because they cannot build up the corpus fund in the absence of specific exemption available to them.

The Finance Act, 2020 inserted an Explanation to the Third Proviso to Section 10(23C) to clarify that the corpus donations shall not form part of the income of such institutions.

It has been provided that any corpus donations received by such fund or institution or any university or other educational institution or any hospital or other medical institution, shall not be included in the income of such entities.

Hence, institutions or funds availing exemption under section 10(23C) now specifically get the exclusion from the requirement of mandatory application of income in respect of 'corpus donations'.

This amendment brings exemption available to institutions registered under section 10(23C), for the corpus donations, at par with exemption available to trusts or institutions registered under section 12A/12AA/ 12AB.

3.2. Corpus donation not to be considered as an application of Income

As per extant provisions, entities registered under section 12A/12AA are provided with the benefit of exemption in respect of corpus donations.

Any contribution by a charitable or religious trust to any other trust registered under Section 12AA, with a specific direction that it shall form part of the corpus of recipient trust is not considered as an application of income for the donor trust.

A similar provision is contained in the Twelfth Proviso to Section 10(23C) that any contribution by fund or trust or institution or any university or other educational institution or any hospital or other medical institution [as referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of Section 10(23C)], with a specific direction to the trust or institution registered under section 12AA that it shall form part of the corpus of recipient trust, consequently, it shall not be treated as application of income for the donor.

Currently, this restriction was only in respect of corpus donations made to entities registered under section 12AA.

The Finance Act, 2020 provides that the corpus donations shall not form part of the income of the funds or institutions availing the benefit of section 10(23C).

A consequential amendment has also been made that corpus donations by one such entity to another entity shall not be treated as application of income.

In other words, the corpus donation by 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) to another such fund shall not be considered as an application of income.

This has been done to ensure that these institutes do not avail the dual benefit, i.e., exemption of income as well as the application of income.

3.3. NO DEDUCTION OF CORPUS DONATIONS MADE TO SECTION 10(23C) APPROVED INSTITUTIONS [Section 11].

Income derived from property held under trust, wholly for charitable or religious purpose, is exempt from tax to the extent such income is applied to such purposes in India.

Where any such income is accumulated or set apart for application to such purposes in India, the income so accumulated or set apart is also exempt to the extent it is not in excess of 15% of the income from such property.

However, the donations by a charitable institution to another trust are considered as an application of income except the donation made with a specific direction that it shall form part of the corpus of the donee.

At present, any contribution by a charitable or religious trust registered under section 12AA to any other trust registered under Section 12AA, with a specific direction that it shall form part of corpus of recipient trust shall not be treated as application of income for the donor trust.

The Finance Act, 2020 provides that any corpus donation made by trust or institution registered under section 12AA to 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) shall not be treated as an application of income.

In view of this amendment, corpus donation given by a Section 12AA registered institution to section 10(23C) approved institution will not be treated as an application of income.

This amendment has been introduced so that these institutions do not avail the dual benefit of exemption as the corpus donations received by institutions approved under section 10(23C) shall not be treated as an income in their hands.

Example, A charitable institution approved under section 12AA has an income of Rs. 5 Lakh during the year. It applied income for charitable purposes to the tune of Rs. 3.75 Lakhs.

It also made corpus donation of Rs. 50,000 to an educational institution approved under section 10(23C).

The income in such case, before and after amendment shall be computed as under:

Particulars	Before Amendment (Rs.)	After Amendment (Rs.)
Income	5,00,000	5,00,000
Less: Application of Income	3,75,000	3,75,000
Less: Corpus donation	50,000	-
Less: 15% Exemption	75,000	75,000
Taxable income	**Nil**	**50,000**

4. SCOPE OF EXEMPTION UNDER 10(23FE) EXPANDED

The Finance Bill, 2020 proposed to introduce a new section 10(23FE) under the Income tax Act to attract investment and promote infrastructure facilities in India.

It provides exemption to income of Sovereign Wealth Fund or wholly owned subsidiary of Abu Dhabi Investment Authority, in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or equity, in a company or enterprise carrying on the business of developing, operating or maintaining any infrastructure facility as defined in Explanation to clause (i) of section 80-IA(4) of the Act or such other business as may be notified by the Central Government in this behalf.

However, the investment is required to be made on or before 31-03-2024 and held for at least 3 years

Sovereign Wealth Fund (SWF) as the name suggest is an investment fund which is primarily owned by the Government of any Country.

SWF invests globally in real and financial assets such as stocks, bonds, real estate, precious metals, or in alternative investments funds (AIFs) such as private equity fund or hedge funds.

As Sovereign Wealth Fund and Abu Dhabi Investment Authority can invest in a company or enterprise either directly or indirectly through AIFs, the Finance Act, 2020 has expended the scope of section 10(23FE) whereby exemption shall be available even if investment in infrastructure companies is made through AIFs.

In this respect, it has been provided that specified persons shall be exempt from paying tax on any income arising from investment in Category-I or Category-II AIFs provided AIFs invest 100% of the amount in one or more specified company or entity, i.e., company or enterprise carrying on the business of developing, operating or maintaining any infrastructure facility as defined in Explanation to clause (i) of section 80-IA(4) of the Act or such other business as may be notified by the Central Government in this behalf.

Exemption shall be available even if specified persons invests in preference share capital of the company.

Further, as section 10(23FE) is introduced for investment in infrastructure activities, **exemption shall be available even in respect of income arising from investment in Infrastructure Investment Trusts (InVITs).**

Furthermore, in addition to Sovereign Wealth Fund and Abu Dhabi Investment Authority, **a pension fund created or established under the law of a foreign country is included in the list of specified persons and shall also be eligible for exemption under section 10(23FE)** provided it is not liable to tax in such foreign country and satisfy such other conditions as may be specified in this behalf.

The amended provision also provides that **investment should be made during the period between 01-04-2020 to 31-03-2024**.

This amendment is made to clarify that **no exemption shall be available in respect of income arising from investment made before 01-04-2020.**

A proviso has been inserted to withdraw the exemption if specified persons subsequently fails to satisfy the conditions on basis of which exemption was claimed in earlier years.

It is provided that the amount of exemption claimed in earlier years shall be deemed to be the income of the assessee of the year in which it fails to comply with the conditions.

Section 10(23FE) after the amendment made in Finance Act, 2020 can be explained with the help of following questionnaire:

4.1. Who shall be eligible to claim exemption under section 10(23FE)?

Exemption under section 10(23FE) shall be available to following persons:

a) Sovereign Wealth Fund, i.e., Investment funds owned and controlled by the Government of a foreign country.

b) Wholly owned subsidiary of Abu Dhabi Investment Authority.

c) Pension fund created or established under the law of a foreign country.

4.2. When exemption under section 10(23FE) shall be available to eligible persons?

Exemption under section 10(23FE) shall be available when eligible persons (as referred above) make investment in following:

a) Debt or share capital (equity as well as preference) of a company or enterprise carrying on the business of developing, operating or maintaining any infrastructure facility as defined in Explanation to clause (i) of section 80-IA(4).

b) Units of Category-I or Category-II AIFs who made 100% investment in above companies or entity.

c) Units of Infrastructure Investment Trusts (InVITs).

Further, the investment should be made between 01-04-2020 to 31-03-2024 and held for at least 3 years.

4.3. Which type of income shall be eligible for exemption under section 10(23FE)?

Exemption under section 10(23FE) shall be available in respect of income arising in the nature of dividend, interest and long-term capital gain from investment as specified above.

5. DIVIDEND RECEIVED ON OR AFTER 01-04-2020 SHALL NOT BE TAXABLE IF DDT IS ALREADY PAID BY THE COMPANY

With effect from 01-04-2020, the Finance Bill, 2020 proposed to abolish the Dividend Distribution Tax and move to the traditional system of taxation wherein companies do not pay DDT on dividend and, the shareholders are liable to pay tax on such income at the applicable tax rate.

Consequent amendments have also been proposed to Section 10(34) and Section 115-O.

The dividend received on or after 01-04-2020 will not be exempt in the hands of the shareholder and the company will not be liable to pay DDT on any amount of dividend declared, distributed or paid by the company on or after 01-04-2020.

Section 115BBDA was also proposed to be amended that shareholders receiving dividend in excess of Rs. 10 lakhs shall not be taxed if the same is declared, distributed or paid on or after 01-04-2020.

As per Section 115-O, DDT is required to be deposited by the company on the amount of dividend within 14 days of the earliest of the following dates:

1. Declaration of dividend;

2. Distribution of dividend; or

3. Payment of dividend.

Similarly, tax under Section 115BBDA is required to be paid by the shareholders if the aggregate amount of dividend assessed in his income exceeds Rs. 10 lakhs during the previous year.

Section 8 read with ICDSIV provides that irrespective of the method of accounting followed by the assessee, any dividend (including deemed dividend) declared, distributed or paid by a company is chargeable to tax as income of the previous year in which it is so declared, distributed or paid.

However, interim dividend is chargeable to tax as the income of the previous year in which it is paid.

Companies and shareholders are required to pay tax on dividend (except in case of interim dividend) on due or receipt basis, whichever is earlier.

The amendment to section 10(34) provides that no exemption shall be available in respect of dividend received on or after 01- 04-2020.

Thus, exemption could be denied in respect of that dividend received on or after 01-04-2020 but declared on or before 31-03-2020.

To remove this ambiguity, the Finance Act, 2020 has made changes to section 10(34) to provide that dividend received by assessee on or after 01-04-2020 shall not be included in his income if tax has already been paid on such dividend under section 115-O or section 115BBDA, as the case may be.

Insertion of new section 80M.

40. After section 80LA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2021, namely:—

Deduction in respect of certain intercorporate dividends

- ‘80M. (1) Where the gross total income of a domestic company in any previous year
- includes any income by way of dividends
- from any other domestic company **or a foreign company or a business trust**,
- there shall, in accordance with and subject to the provisions of this section,
- be allowed in computing the total income of such domestic company,
- a deduction of an amount equal to so much of the amount of income by way of dividends received from
- such other domestic company **or foreign company or business trust**
- as does not exceed the amount of dividend distributed by it on or before the due date.

(2) Where any deduction,

- in respect of the amount of dividend distributed by the domestic company,
- has been allowed under sub-section (1) in any previous year,
- no deduction shall be allowed in respect of such amount in any other previous year.

Explanation.

For the purposes of this section, the expression “due date” means the date one month prior to the date for furnishing the return of income under sub-section (1) of section 139.’.

6. SECTION 80M DEDUCTION TO BE AVAILABLE FROM AY 2021-22 TO THE COMPANIES OPTING FOR NEW TAX REGIME

The Taxation Law (Amendment) Act, 2019 has inserted two new sections (section 115BAA and section 115BAB) to provide domestic companies with an option to be taxed at concessional tax rates with effect from April 1, 2020.

Various conditions are provided in the new sections to opt for the new tax regimes including non availability of deductions under Chapter-VIA except deductions under Section 80JJAA or Section 80LA.

The Finance Bill, 2020 has proposed to allow the deduction, to the domestic companies opting for the concessional rates, under section 80M as well.

Section 80M is a newly proposed section which provides deduction in case of inter-corporate dividends with effect from 01-04-2021.

Section 80M has been introduced by the Finance Bill, 2020 but it does not provide any clarity on the date of applicability of the provision.

The Finance Act, 2020 has clarified that deduction under section 80M shall be available to the companies opting for new tax regime with effect from Assessment Year 2021-22.

7. SCOPE OF DEDUCTION UNDER SECTION 80M IN RESPECT OF INTERCORPORATE DIVIDEND EXPANDED

With effect from 01-04-2020, the Finance Bill, 2020 proposed to abolish the Dividend Distribution Tax and move to the traditional system of taxation wherein companies do not pay DDT on dividend and, the shareholders are liable to pay tax on such income at the applicable tax rate.

To remove the cascading effect where a domestic company receives dividend from another domestic company, a new section 80M has been introduced.

This section provides that inter-corporate dividend received by a domestic co. from another domestic co. shall be reduced from the total income of that company that further distributes such dividend income to the shareholders within one month before the due date of filing of return.

The Finance Act, 2020 expanded the scope of deduction available under Section 80M to include the dividend received from a foreign company and business trust.

Thus, a domestic company can claim deduction under section 80M even in those cases where dividend received from a foreign company or business trust is further distributed to shareholders within one month before the due date of filing of return.

Insertion of new sections 115BAC

53. After section 115BAB of the Income-tax Act, the following sections shall be inserted with effect from the 1st day of April, 2021, namely:—

Tax on income of individuals and Hindu undivided family.

- ‘115BAC(1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter,
- the income-tax payable in respect of the total income of a person,
- being an individual or a Hindu undivided family,
- for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2021,
- shall,
- at the option of such person,
- be computed at the rate of tax given in the following Table,
- if the conditions contained in sub-section (2) are satisfied, namely:—

TABLE

Sl. No.	Total income	Rate of tax
(1)	(2)	(3)
1.	Up to Rs. 2,50,000	*Nil*
2.	From Rs. 2,50,001 to Rs. 5,00,000	5 per cent.
3.	From Rs. 5,00,001 to Rs. 7,50,000	10 per cent.
4.	From Rs. 7,50,001 to Rs. 10,00,000	15 per cent.
5.	From Rs. 10,00,001 to Rs. 12,50,000	20 per cent.
6.	From Rs. 12,50,001 to Rs. 15,00,000	25 per cent.
7.	Above Rs. 15,00,000	30 per cent.:

Provided that where the person fails to satisfy the conditions contained in sub-section (2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and other provisions of this Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year:

Provided further that where the option is exercised under clause (i) of sub-section (5), in the event of failure to satisfy the conditions contained in sub-section (2), it shall become invalid for subsequent assessment years also and other provisions of this Act shall apply for those years accordingly.

(2) For the purposes of sub-section (1), the total income of the individual or Hindu undivided family shall be computed,—

(i) without any exemption or deduction under the provisions of clause (5) or clause (13A) or prescribed under clause (14) (other than those as may be prescribed for this purpose) or clause (17) or clause (32), of section 10 or section 10AA or section 16 or clause (b) of section 24 (in respect of the property referred to in sub-section (2) of section 23) or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or section 35AD or section 35CCC or clause (iia) of section 57 or under any of the provisions of Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or section 80JJAA;

(ii) without set off of any loss,—

(a) carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

(b) under the head “Income from house property” with any other head of income;

(iii) by claiming the depreciation, if any, under any provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed; and

(iv) without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.

(3) The loss and depreciation referred to in clause (ii) of sub-section (2) shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year:

Provided that where there is a depreciation allowance in respect of a block of assets which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2021, corresponding adjustment shall be made to the written down value of such block of assets as on the 1st day of April, 2020 in the prescribed manner, if the option under sub-section (5) is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2021.

(4) In case of a person, having a Unit in the International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in the said section.

Explanation.—For the purposes of this sub-section, the term “Unit” shall have the meaning assigned to it in clause (zc) of section 2 of the Special Economic Zones Act, 2005.

(5) Nothing contained in this section shall apply unless option is exercised in the prescribed manner by the person,—

(i) having **income from business or profession**, on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2021, and such option once exercised shall apply to subsequent assessment years;

(ii) having income other than the income referred to in clause (i), along with the return of income to be furnished under sub-section (1) of section 139 for a previous year relevant to the assessment year:

Provided that the option under clause (i), once exercised for any previous year can be withdrawn only once for a previous year other than the year in which it was exercised and thereafter, the person shall never be eligible to exercise option under this section, except where such person ceases to have any **income from business or profession** in which case, option under clause (ii) shall be available.

8. TAXPAYER EARNING PROFESSIONAL INCOME WILL HAVE NO OPPORTUNITY TO OPT OUT OF CONCESSIONAL TAX REGIME OF SECTION 115BAC [Applicable from Assessment Year 2021-22]

The Finance Bill, 2020 has proposed concessional tax regime for individual and HUF by inserting Section 115BAC to the Income-tax Act, 1961.

This provision provides an option for payment of taxes at the reduced rates.

However, the benefit of reduced tax rates is available only after forgoing certain deductions and exemptions.

To get this concessional tax regime, an Individual and HUF is required to exercise the option on or before the due date of furnishing the return of income.

Once the option is exercised, it will be applicable to forthcoming years as well if assessee is earning the business income.

If the taxpayer does not have any business income, the assessee shall have a choice to decide every year if he wants to opt for concessional tax regime.

The proposed Section 115BAC did not give any reference to the taxpayers earning professional income and it was believed that this class was intentionally left out, which brings them at par with those taxpayers who are not earning business income.

The Finance Act, 2020 makes the necessary amendments to section 115BAC to provide that taxpayers having income from profession shall also get only one time option to opt for concessional tax regime.

The taxpayers earning business income or professional income are now at par as far as this provision is concerned.

Circular C1 of 2020

F. No. 370142/2020-TPL

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

New Delhi, April 13,2020

Clarification in respect of option under section 115BAC of the Income-tax Act, 1961

Section 115BAC of the Income-tax Act, 1961 (the Act), inserted by the Finance Act, 2020 w.e.f the assessment year 2021-22, inter alia, provides that a person, being an individual or a Hindu undivided family having income other than income from business or profession", may exercise option in respect of a previous year to be taxed under the said section 115BAC along with his return of income to be furnished under sub-section (1) of section 139 of the Act for each year. The concessional rate provided under section 115BAC of the Act is subject to the condition that the total income shall be computed without specified exemption or deduction, setoff of loss and additional depreciation.

2. Representations expressing concern regarding tax to be deducted at source (TDS) has been received stating that as the option is required to be exercised at the time of filing of return, the deductor, being an employer, would not know if the person, being an employee, would opt for taxation under section 115BAC of the Act or not. Hence, there is lack of clarity regarding whether the provisions of section 115BAC of the Act are to be considered at the time of deducting tax.

3. In order to avoid the genuine hardship in such cases, the Board, in exercise of powers conferred under section 119 of the Act, hereby clarifies that an employee, having income other than the income under the head "profit and gains of business or profession" and intending to opt for the concessional rate under section 115BAC of the Act, may intimate the deductor, being his employer, of such intention for each previous year and upon such intimation, the deductor shall compute his total income, and make TDS thereon in accordance with the provisions of section 115BAC of the Act. If such intimation is not made by the employee, the employer shall make TDS without considering the provision of section 115BAC of the Act.

4. It is also clarified that the intimation so made to the deductor shall be only for the purposes of TDS during the previous year and cannot be modified during that year. However, the intimation would not amount to exercising option in terms of sub-section (5) of section 115BAC of the Act and the person shall be required to do so alongwith the return to be furnished under sub-section (1) of section 139 of the Act for that previous year. Thus, option at the time of filing of return of income under sub-section (1) of section 139 of the Act could be different from the intimation made by such employee to the employer for that previous year.

5. Further, in case of a person who has income under the head "profit and gains of business or profession" also, the option for taxation under section 115BAC of the Act once exercised for a previous year at the time of filing of return of income under sub-section (1) of section 139 of the Act cannot be changed for subsequent previous years except in certain circumstances.

Accordingly, the above clarification would apply to such person with a modification that the intimation to the employer in his case for subsequent previous years must not deviate from the option under section 115BAC of the Act once exercised in a previous year.

(Niraj Kumar)

Deputy Secretary (TPL)-I

Copy to the:

1. PSI OSD to FM/ PS/OSD to MoS(F).
2. PS to the Finance Secretary.
3. Chairman and Members, CBDT.
4. Joint Secretaries/ CsIT/ Directors/ Deputy Secretaries/ Under Secretaries, CBDT.
5. C&AG of India (30 copies).
6. JS & Legal Adviser, Ministry of Law & Justice. New Delhi.
7. Institute of Chartered Accountants of India.
8. CIT (M&TP). Official Spokesperson of CBDT.
9. Principal DGlT (Systems) for uploading on official website.

9. ROYALTY IN RESPECT OF EXHIBITION OF CINEMATOGRAPHIC FILMS TO ATTRACT TDS AT THE RATE OF 2% UNDER SECTION 194J.

Every person (other than an individual or HUF whose turnover or gross receipts during the preceding year does not exceed Rs. 1 crore in case of business and Rs. 50 lakhs in case of the profession) is required to deduct tax under section 194J while making payment of royalty, fee for technical services, fee for professional services, director's fee and non-compete fees to a resident person.

The tax is required to be deducted at the rate of 10%.

However, where the payee is engaged in the business of operation of the callcentre, the tax is deducted at a lower rate of 2%.

In the Finance Bill, 2020, the Government has proposed to reduce the rate of withholding tax to 2% from existing 10% under section 194J in respect of fees for technical services to reduce the litigation as deductors always try to bring the said payments within the ambit of Section 194C, whereas department argues to treat it as FTS under section 194J.

In the Finance Act, 2020 the Government has reduced the rate of tax deduction to 2% on royalty income arising to a person by way of sale, distribution or exhibition of cinematographic films.

This will provide relief to the film distributors as currently tax is deducted at the rate of 10% on revenue they earn from sale, distribution or exhibition right of the film which block their working capital.

10. NO TDS UNDER SECTION 194K FROM CAPITAL GAINS ARISING ON TRANSFER OF UNITS OF MUTUAL FUNDS

With effect from 01-04-2020, the Finance Bill, 2020 proposed to abolish the Dividend Distribution Tax and move to the traditional system of taxation wherein mutual funds do not pay tax on distributed income and, the unitholders are liable to pay tax on such income at the applicable tax rate.

To ensure the collection of tax, a new Section 194K has been proposed to be introduced which require the Mutual Funds to deduct tax at the rate of 10% while making payment of income to the unit-holders.

The stakeholders had raised doubts about the deduction of tax from the capital gains that may arise on maturity or transfer of mutual funds, which the CBDT vide Press release, dated 04-02-2020, has clarified that the tax under this provision is required to be deducted only from the dividend payment.

No tax is required to be deducted from the sum payable which is in the nature of capital gains.

To remove any ambiguity, section 194K explicitly provides that no tax shall be deducted while making payment in respect of capital gain arising from transfer from units.

Substitution of new section for section 194N.

84. For section 194N of the Income-tax Act, the following section shall be substituted with effect from the 1st day of July, 2020, namely:—

Payment of certain amounts in cash.

"194N. Every person, being,—

(i) a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking; or

- (iii) a post office,
- who is responsible for paying any sum,
- being the amount or the aggregate of amounts,
- as the case may be,
- in cash exceeding one crore rupees during the previous year,
- to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall,
- at the time of payment of such sum,
- deduct an amount equal to two per cent. of such sum, as income-tax:

Provided that in case of a recepient who has not filed the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit to file return of income under sub-section (1) of section 139 has expired, immediately preceding the previous year in which the payment of the sum is made to him,

the provision of this section shall apply with the modification that-

(i) the sum shall be the amount or the aggregate of amounts, as the case may be, in cash exceeding twenty lakh rupees during the previous year; and

(ii) the deduction shall be –

(a) an amount equal to two per cent. of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds twenty lakh rupees during the previous year but does not exceed one crore rupees; or

(b) an amount equal to five per cent. of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds one crore rupees during the previous year:

- **Provided further that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette,**
- **the recipient in whose case the first proviso shall not apply or apply at reduced rate,**
- **if such recipient satisfies the conditions specified in such notification:**

Provided also that nothing contained in this section shall apply to any payment made to –

(i) the Government;

(ii) any banking company or co-operative society engaged in carrying on the business of banking or a post office;

(iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934;

(iv) any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007:

- Provided also that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette,
- the recipient in whose case the provision of this section shall not apply or apply at reduced rate,
- if such recipient satisfies the conditions specified in such notification.

11.1. Threshold of Rs. 20 lakhs and Rs. 1 crore of cash withdrawal

A new proviso has been inserted to Section 194N, which changes the threshold limit for deduction of tax from Rs. 1 crore to Rs. 20 lakh if the person, has not filed return of income (ITR) for three previous years immediately preceding the previous year in which cash is withdrawn, and the due date for filing ITR under section 139(1) has expired.

The deduction of tax under this situation shall be at the rate of:

a) 2% from the amount withdrawn in cash if the aggregate of the amount of withdrawal exceeds Rs. 20 lakhs during the previous year; or

b) 5% from the amount withdrawn in cash if the aggregate of the amount of withdrawal exceeds Rs. 1 crore during the previous year.

In the above situation, the tax shall be deducted on the amount exceeding Rs. 20 lakhs or Rs. 1 crore, as the case may be.

It is going to be a cumbersome task for the banks to ensure that this condition has triggered so that tax shall be deducted at the higher rate and from the reduced threshold limit.

Banks will now require to ask the account holders to submit the proof of filing of return for preceding 3 financial years.

As different due dates have been prescribed in Section 139(1) for filing of return, banks may not find it easy to substantiate that they were filed within the due date specified in section 139(1).

The due dates for the different class of taxpayers under section 139(1) are as below:

Situations	Due date for filing of return
If assessee is required to furnish a report of transfer pricing (TP) Audit in Form No. 3CEB	30th November
Company assessee not required to furnish transfer pricing audit report in Form No. 3CEB	30th September
If assessee is required to get its accounts audited under Income-tax Act or under any other law	30th September[1]
If Individual is a working partner[2] in a firm whose accounts are required to be audited.	30th September[1]
In any other case	31st July

11.2. Exclusion from the provision

The exclusion provided previously in the section 194N has been continued in the new section 194N.

However, the Govt. may specify the recipient to whom the provisions of this section shall not apply or apply at the reduced tax rate.

Further, no tax shall be deducted if the amount is withdrawn by the following recipients:

a) Central or State Government

b) Banks

c) Co-op. Banks

d) Post Office

e) Banking correspondents

f) White label ATM operators

g) Other persons notified by the Govt. in consultation with the RBI.

Insertion of new section 194-O.

85. After section 194N of the Income-tax Act, the following section shall be inserted with effect from the **1st day of October, 2020**, namely:—

Payment of certain sums by e-commerce operator to e-commerce participant.

- '194-O.(1) Notwithstanding anything to the contrary contained in any of the provisions of Part B of this Chapter,
- where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator
- through its digital or electronic facility or platform (by whatever name called),
- such e-commerce operator shall,
- at the time of credit of amount of sale or services or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant by any mode,
- whichever is earlier,
- deduct income-tax at the rate of one per cent. of the gross amount of such sales or services or both.

Explanation

For the purposes of this sub-section, any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of income-tax under this sub-section.

(2) No deduction under sub-section (1) shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of an e-commerce participant, being an individual or Hindu undivided family, where the gross amount of such sale or services or both during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his Permanent Account Number or Aadhaar number to the e-commerce operator.

(3) Notwithstanding anything contained in Part B of this Chapter, a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall not be liable to tax deduction at source under any other provision of this Chapter:

Provided that the provisions of this sub-section shall not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services referred to in sub-section (1).

(4) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(5) Every guideline issued by the Board under sub-section (4) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the e-commerce operator.

(6) For the purposes of this section, e-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant.

Explanation.-For the purposes of this section,-

(a) “electronic commerce” means the supply of goods or services or both, including digital products, over digital or electronic network;

(b) “e-commerce operator” means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

(c) “e-commerce participant” means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce;

(d) “services” includes ‘‘fees for technical services’’ and fees for ‘‘professional services’’, as defined in the Explanation to section 194J.’.

Explaining the Newly Inserted Provision of Deduction of TDS u/s 194O with Practical Examples.

1. Shashank, (recipient of services), a tax practitioner, orders his favourite pepe paneer pizza of Dominos (e-commerce participant), on Zomato (e-commerce operator) and makes the online payment of Rs. 300/-.

   In this e-commerce transaction, the payment of Rs. 300/- being made by an individual Shashank, (recipient of services), directly to Dominos (e-commerce participant), shall be deemed to be amount credited or paid by Zomato (e-commerce operator) to Dominos (e-commerce participant) and shall be included in the gross amount of such sales or services for the purpose of deduction of income-tax. Dominos, furnishes its PAN/Aadhar Card to Zomato.

Zomato (e-commerce operator), shall be required to deduct TDS of Rs. 3/- @ 1 % u/s 194O, on Rs. 300/-, and deposit the said amount of TDS with the Exchequer, just like any other TDS and Dominos (e-commerce participant) can claim the credit of this TDS u/s 194O in its Return of Income.

2. On another day, being conscious about his junk diet, Shashank orders a 'Home Thali' from 'Homely Kitchen' a brand listed by Ms Arti (an individual e-commerce participant, having her annual sales of Rs. 5 lakhs from her brand 'Homely Kitchen' listed on Swiggy (e-commerce operator) and makes the payment of Rs 300/-.

Swiggy (e-commerce operator), shall be required to deduct TDS of Rs. 3/- @ 1 % u/s 194O, on Rs. 300/-, and deposit the said amount of TDS with the Exchequer, just like any other TDS.

It is pertinent to mention here that TDS @ 1% is applicable only, if Ms Arti furnishes her PAN/Aadhar Card Number. In the absence of PAN/Aadhar Card Number the rate of TDS deduction shall be 5%.

Further, if Ms Arti's gross annual sales from her brand of 'Homely Kitchen' listed on Swiggy, are Rs 4 lakhs (less than the prescribed threshold of Rs. 5 lakhs, in case of an individual/HUF ecommerce participant'), then Swiggy shall not deduct any TDS u/s 194O of the Act.

12. DEFINITION OF ‘E-COMMERCE OPERATOR’ AMENDED TO REMOVE AMBIGUITY UNDER SECTION 194-O

The Finance Bill, 2020 has proposed to insert a new section 194-O to provide for deduction of tax from the payment made by an e-commerce operator to e-commerce participant for the sale of goods or provision of services through a digital or electronic facility or platform facilitated by it.

This section provides that any payment made by the purchaser of goods or recipient of services directly to the e-commerce participant, for sale of goods or services facilitated by an e-commerce operator, shall be deemed as the amount paid or credited by the e-commerce operator.

Whereas the section has defined e-commerce operator as the person responsible for payment to e-commerce participant.

Thus, the provision deeming the payment made by the customer as payment made by an e-commerce operator.

This interpretation is contradictory to the definition of e-commerce operator as an e-commerce operator is not actually making payment to e-commerce participant in such cases.

To remove this ambiguity, the **Finance Act, 2020 has amended the definition of e-commerce operator to remove the condition that requires an e-commerce operator to make payment to e-commerce participant.**

Further, the CBDT has been empowered to issue guidelines for removing the difficulties arising in giving effect to the provisions of section 194-O.

Each such guideline shall be binding on the Income-tax authorities and the e-commerce operator.

Amendment of section 206C

95. In section 206C of the Income-tax Act with effect from the 1st day of October, 2020,-

(I) after sub-section (1F), the following sub-sections shall be inserted, namely:-

‘(1G) Every person,-

(a) being an authorised dealer,

- who receives an amount,
- for remittance out of India from a buyer,
- being a person remitting such amount out of India
- under the Liberalised Remittance Scheme of the Reserve Bank of India;

(b) being a seller of an overseas tour programme package,

- who receives any amount from a buyer,
- being the person who purchases such package, shall,
- at the time of debiting the amount payable by the buyer or
- at the time of receipt of such amount from the said buyer,
- by any mode,
- whichever is earlier,
- collect from the buyer,
- a sum equal to five per cent. of such amount as income-tax:

Provided that the authorised dealer shall not collect the sum, if the amount or aggregate of the amounts being remitted by a buyer is less than seven lakh rupees in a financial year and is for a purpose other than purchase of overseas tour programme package:

Provided further that the sum to be collected by an authorised dealer from the buyer shall be equal to five per cent. of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, where the amount being remitted is for a purpose other than purchase of overseas tour programme package:

Provided also that the authorised dealer shall collect a sum equal to one half per cent. of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education:

Provided also that the authorised dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller:

Provided also that the provisions of this sub-section shall not apply, if the buyer is,–

(i) liable to deduct tax at source under any other provision of this Act and has deducted such amount;

(ii) the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Explanation.– For the purposes of this sub-section,–

(i) “authorised dealer” means a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of the Foreign Exchange Management Act, 1999 to deal in foreign exchange or foreign security;

(ii) “overseas tour program package” means 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 expenditure of similar nature or in relation thereto.

- (1H) Every person,
- being a seller,
- who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year,
- other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall,
- at the time of receipt of such amount,
- collect from the buyer,
- a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:

Provided that if the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words “five per cent.”, the words “one per cent.” had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

Explanation.– For the purposes of this sub-section,–

(a) “buyer” means a person who purchases any goods, but does not include,–

(A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(B) a local authority as defined in the Explanation to clause (20) of section 10; or

(C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;

(b) “seller” means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.’;

13. AMENDMENT IN TCS PROVISIONS TO REMOVE CERTAIN AMBIGUITIES

In the Finance Bill, 2020, the provisions relating to TCS were amended to require collection of tax from a person remitting the amount outside India under Liberalised Remittance Scheme (LRS) or buying an overseas tour program package.

LRS is a scheme of RBI which allows a resident individual to freely remit out of India up to USD 2,50,000 per financial year for any permissible current account transaction such as travel, medical treatment, studies abroad, etc.

For this purpose, a new sub-section (1G) was proposed to be inserted in section 206C of the Income-tax Act which requires the collection of tax by an authorised dealer who receives an amount or aggregate amount of Rs. 7 lakh or more during the financial year from a person for remitting such amount out of India under LRS. The tax shall be required to be collected at the rate of 5% of such amount.

In respect of overseas tour program package, it is provided in the said sub-section (1G) that a seller of such package shall be required to collect tax from buyer thereof.

The seller shall be required to collect tax at the rate of 5% of the amount received from the buyer.

Further, the Finance Bill, 2020 has proposed to insert a new sub-section (1H) under section 206C to provide for the collection of tax from the sale of goods other than those already covered under TCS provisions.

The Finance Act, 2020 has amended sub-section (1H) to provide that no tax shall be collected in respect of export or import of goods.

Further, the following ambiguities in the newly introduced sub-section (1G) of section 206C have been addressed:

13.1. Clarification as to threshold limit for collection of tax

Liability of an authorised dealer to collect the tax from a person remitting amount out of India under LRS arises only when the amount or aggregate of such amount remitted during the year is Rs. 7 lakh or more.

However, it was not specified in the proposed sub-section (1G) that whether authorized dealer shall be required to collect tax on the entire amount or only on the amount in excess of Rs. 7 lakh?

In this respect, a new proviso has been inserted in sub-section (1G) by the Finance Act, 2020 to provide that tax shall be collected only on the amount in excess of Rs. 7 lakh except where the remittance has been made for overseas tour program package.

13.2.No threshold limit to apply for collection of tax from foreign currency remitted for the tour package.

In case of an overseas tour program package, the seller of such package is required to collect tax from the buyer at the rate of 5% irrespective of the amount he receives from the buyer for such package.

Thus, no threshold limit has been proposed where a buyer directly makes payment to the seller of the overseas tour program package.

As overseas travel is also covered under the Liberalised Remittance Scheme of RBI, a buyer may make payment to seller indirectly through an authorized dealer.

In this situation, the authorized dealer is required to collect tax only when the amount to be remitted out of India is Rs. 7 lakh or more.

Whereas, there is no such limit when a buyer makes payment to the seller directly.

Thus, buyer's making payment for overseas travel to a seller through an authorized dealer is at advantage as compared to buyer's who makes payment directly to the seller.

To rationalise this situation and make things equal in both the cases, the Finance Act, 2020 amends sub-section (1G) to provide that an authorised dealer shall be required to collect tax from the buyer of overseas tour program package irrespective of the amount to be remitted out of India for that purpose.

Thus, authorised dealer shall be required to collect tax even if the amount or aggregate the amounts being remitted by the buyer for the overseas tour package in a financial year is less than Rs. 7 lakh.

As a buyer of an overseas tour program package can make payment in respect of overseas tour package to the seller either directly or through an authorized dealer, both seller and the authorized dealer may collect tax from the buyer on the same amount which results in the double collection of tax.

To remove this ambiguity, a proviso has been inserted under sub-section (1G) by the Finance Act, 2020 to provide that the authorised dealer shall not collect the tax on an amount in respect of which the tax has already been collected by the seller.

13.3. Tax to be collected at a lower rate if foreign currency is remitted towards loan repayment

The Finance Act, 2020 amends sub-section (1G) to provide for a lower rate of 0.5% for collection of tax by an authorised dealer where the amount being remitted out of India is a loan, which is obtained from a banking company (including any bank or banking institution) or any other financial institution notified by the Central Government for section 80E, for the purpose of pursuing any education.

13.4. No requirement to collect TCS from export or import of Goods

The Finance Bill, 2020 has proposed to insert a new sub-section (1H) under section 206C to provide for the collection of tax from the sale of goods other than those already covered under any other sub-section of section 206C.

The Finance Act, 2020 has amended the said sub-section (1H) to provide that no tax shall be required to be collected in respect of goods exported out of India and goods imported into India.

13.5. Deferment of the date of applicability of the amendments made to TCS provisions.

The Finance Bill, 2020 has proposed certain amendments to the provisions relating to TCS which were originally proposed to be effective from 01-04-2020.

The Finance Act, 2020 has deferred the applicability of such amendments. Now, they will be effective from 01-10-2020.

14. Equalisation Levy (Sec – 165A)

Equalisation levy @2% is applicable on E-commerce transactions (on the amount of consideration from e-commerce supply and services made or provided or facilitated by digital or electronics by non-resident e-commerce operators to:

(i) a person resident in India

(ii) a non-resident in the following specified circumstances:

(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.

(b) Sale of data, collected from a person who is resident in India or uses internet protocol address located in India.

(iii) To a person who buys such goods or services or both using internet protocol address located in India.

“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

(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 levy has to be deposited by the e-commerce operator and not by the buyer of the supply or service.

Applicable from 1st April, 2020.

15. Practical Illustration on Equalisation Levy u/s 165, as inserted by the Finance Act 2016.

M/s XYZ Pvt Ltd, an Indian Company, has availed the online advertisement services of Google for its business promotion and has made a payment of Rs. 5,00,000/- to Google towards these online advertisement services.

As per provisions of section 165, M/s XYZ Pvt Ltd shall be required to deduct an equalization levy @ 6% from the payment of Rs. 5,00,000/- to Google, i.e. Rs. 30,000/- shall be deducted and deposited by M/s XYZ Pvt Ltd as equalization levy and Google shall receive the payment of Rs. 4,70,000/-.

16. Practical Illustration on Levy of Equalisation Levy of 2% on Foreign e-Commerce Operator u/s 165A of Finance Act 2020.

Amazon receives a consideration of Rs. 100 crores towards the e-commerce supply of goods and services in its Indian market place amazon.in, (which in our example is not to be considered as its PE in India), to Indian Residents during the previous year 2020-21. Thus, by virtue of the newly inserted section 165A of Finance Act 2020, Amazon shall be required to deposit an equalisation levy @ 2% on its total turnover of Rs 100 crores from the e-commerce supply of goods and services to the Indian Residents, i.e Rs. 2 crores with the Exchequer in India.

THE TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020 NO. 2 OF 2020

Promulgated by the President in the Seventy-first Year of the Republic of India.

An Ordinance to provide relaxation in the provisions of certain Acts and for matters connected therewith or incidental thereto.

WHEREAS, in view of the spread of pandemic COVID-19 across many countries of the world including India, causing immense loss to the lives of people, **it has become imperative to relax certain provisions, including extension of time limit, in the taxation and other laws:**

AND WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action:

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

CHAPTER I
PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be called the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020,

(2) Save as otherwise provided, it shall come into force at once.

CHAPTER I
PRELIMINARY

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires, -

(a) "specified Act" means

(i) the Wealth-tax Act, 1957;

(ii) the Income-tax Act, 1961;

(iii) the Prohibition of Benami Property Transactions Act, 1988;

(iv) Chapter VII of the Finance (No. 2) Act, 2004;

(v) Chapter VII of the Finance Act, 2013;

(vi) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;

(vii) Chapter VIII of the Finance Act, 2016; or

(viii) the Direct Tax Vivad se Vishwas Act, 2020;

(b) "notification" means the notification published in the Official Gazette.

CHAPTER I
PRELIMINARY

(2) The words and expressions used herein and not defined, but defined in the specified Act, the Central Excise Act,1944, the Customs Act, 1962, the Customs Tariff Act,1975 or the Finance Act, 1994, as the case may be, shall have the meaning respectively assigned to them in that Act.

CHAPTER II
RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

Relaxation of certain provisions specified Act.

3. (1) Where, any time limit has been specified in, or prescribed or notified under, the specified Act which **falls during the period from of the 20th day of March, 2020 to the 29th day of June, 2020** or **such other date after the 29th day of June, 2020 as the Central Government may, by notification**, specify in this behalf, for the completion or compliance of such action as

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the specified Act; or

CHAPTER II
RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

(c) in case where the **specified Act is the Income tax Act, 1961**,-

(i) **making of investment, deposit, payment, acquisition, purchase, construction** or such other action, by whatever name called, **for the purposes of claiming any deduction, exemption or allowance under the provisions contained in-**

(I) **sections 54 to 54GB** or under any **provisions of Chapter VI-A under the heading "B.-Deductions in respect of certain payments"** thereof; or

(II) such other provisions of that Act, subject to fulfillment of such conditions, as the Central Government may, by notification, specify, or

(ii) beginning of manufacture or production of articles or things or providing any services referred to in **section 10AA** of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005, **has been issued on or before the 31 day of March, 2020,**

CHAPTER II
RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action shall notwithstanding anything contained in the specified Act, stand extended to the 30th day of June, 2020, or **such other date after the 30th day of June, 2020, as the Central Government may, by notification, specify in this behalf**:

Provided that the Central Government may specify different dates for completion or compliance of different actions.

Provided further that such action shall not include payment of any amount as is referred to in sub-section (2).

CHAPTER II
RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

(2) Where any **due date** has been specified in, or prescribed or notified under the specified Act **for payment of any amount towards tax or levy**, by whatever name called, **which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020** or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, and **such amount has not been paid within such date, but has been paid on or before the 30 day of June, 2020, or such other date after the 30th day of June, 2020** as the Central Government may, by notification, specify in this behalf, then, notwithstanding anything contained in the specified Act:

(a) the rate of interest payable, if any, in respect of such amount for the period of delay shall not exceed three-fourth per cent for every month or part thereof;

(b) no penalty shall be levied and no prosecution shall be sanctioned in respect of such amount for the period of delay.

Explanation. For the purposes of this subsection, the **period of delay" means the period between the due date and the date on which the amount has been paid**.

CHAPTER III
AMENDMENT TO THE INCOME TAX ACT, 1961

Amendment of sections 10 and 80G of Act 43 of 1961.

4. In the Income-tax Act, 1961, with effect from the 1st day of April of 1961.

(i) in **section 10, in clause (23C)**, **in sub-clause (i)**, after the word “Fund", the words and brackets "or the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund **(PM CARES FUND)" shall be inserted;**

(ii) in **section 80G, in sub-section (2), in clause (a), in sub-clause (iiia)**, after the word "Fund", the words and brackets or the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund **(PM CARES FUND)" shall be inserted**.

CHAPTER IV
AMENDMENTS TO THE DIRECT TAX VIVAD SE VISHWAS ACT

Amendment of section 3 of Act 3 of 2020.

5. In section 3 of the Direct Tax Vivad Se Vishwas Act, 2020, -

(a)in third column, in the heading, for the figures, letters and words "**31st day of March, 2020**", the figures, letters and words **“30th day of June, 2020" shall be substituted:**

(b) in fourth column, in the heading, for the figures, letters and words "**1st day of April, 2020**", the figures, letters and words **"1st day of July, 2020" shall be substituted.**

CHAPTER VI
AMENDMENT TO THE FINANCE ACT (NO. 2), 2019

Amendment of section 127 of Act 23 of 2019.

7. In section 127 of the Finance Act (No.2), 2019,

(i) in sub-section (1), for the words within a period of sixty days from the date of receipt of the said declaration", the words, figures and letters "on or before the 31 day of May, 2020" shall be substituted;

(ii) in sub-section (2), for the words "within thirty days of the date of receipt of the declaration", the words, figures and letters "on or before the 14 day of May, 2020" shall be substituted;

(iii) in sub-section (4), for the words within a period of sixty days from the date of receipt the declaration", the words, figures and letters on or before the 31 day of May, 2020" shall be substituted;

(iv) in sub-section (5), for the words within a period of thirty days from the date of issue of such statement", the words, figures and letters "on or before the 30th day of June, 2020" shall be substituted.

Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 31st March, 2020

PRESS NOTE

New Delhi: In order to give effect to the announcements made by the Union Finance Minister vide Press Release dated 24.03.2020, regarding several relief measures relating to statutory and regulatory compliance matters across sectors in view of COVID-19 outbreak, the govt has brought in an Ordinance on 31.03.2020 which provides for extension of various time limits under the Taxation and Benami Acts. It also provides for extension of time limits contained in the Rules or Notification which are prescribed/ issued under these Acts.

PRESS NOTE

It may be noted that the outbreak of Novel Corona Virus (COVID-19) across many countries of the world has caused immense loss to the lives of people, and accordingly, it has been termed as pandemic by the World Health Organisation and various Governments including Government of India. Social distancing has been unequivocally accepted to be the best way to contain its spread, leading to announcement of complete lockdown in the country. Keeping in view the challenges faced by taxpayers in meeting the compliance requirements under such conditions, the Union Finance Minister had announced several relief measures relating to statutory and regulatory compliance matters across sectors in view of COVID-19 outbreak on 24.03.2020 vide a press release

PRESS NOTE

Some of the important features and time limits which get extended by this Ordinance are as under:-

Direct Taxes & Benami:

(i) Extension of last date of filing of original as well as revised income-tax returns for the FY 2018-19 (AY 2019-20) to 30th June, 2020.

(ii) Extension of Aadhaar-PAN linking date to 30th June, 2020.

(iii) The date for making various investment/payment for claiming deduction under Chapter-VIA-B of IT Act which includes Section 80C (LIC, PPF, NSC etc.), 80D (Mediclaim), 80G (Donations), etc. has been extended to 30th June, 2020. Hence the investment/payment can be made up to 30.06.2020 for claiming the deduction under these sections for FY 2019-20.

PRESS NOTE

(iv) The date for making investment/construction/purchase for claiming roll over benefit/deduction in respect of capital gains under sections 54 to 54GB of the IT Act has also been extended to 30th June 2020. Therefore, the investment/ construction/ purchase made up to 30.06.2020 shall be eligible for claiming deduction from capital gains arising during FY 2019-20.

(v) The date for commencement of operation for the SEZ units for claiming deduction under deduction 10AA of the IT Act has also extended to 30.06.2020 for the units which received necessary approval by 31.03.2020.

(vi) The date for passing of order or issuance of notice by the authorities under various direct taxes& Benami Law has also been extended to 30.06.2020.

PRESS NOTE

(vii) It has provided that reduced rate of interest of 9% shall be charged for non-payment of Income-tax (e.g. advance tax, TDS, TCS) Equalization Levy, Securities Transaction Tax (STT), Commodities Transaction Tax (CTT) which are due for payment from 20.03.2020 to 29.06.2020 if they are paid by 30.06.2020. Further, no penalty/ prosecution shall be initiated for these non-payments.

(viii) Under Vivad se Vishwas Scheme, the date has also been extended up to 30.06.2020. Hence, declaration and payment under the Scheme can be made up to 30.06.2020 without additional payment.

PRESS NOTE

PM CARES FUND

4. A special fund “Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)” has been set up for providing relief to the persons affected from the outbreak of Corona virus. **The Ordinance also amended the provisions of the Income-tax Act to provide the same tax treatment to PM CARES Fund as available to Prime Minister National Relief Fund. Therefore, the donation made to the PM CARES Fund shall be eligible for 100% deduction under section 80G of the IT Act. Further, the limit on deduction of 10% of gross income shall also not be applicable for donation made to PM CARES Fund.**

PRESS NOTE

PM CARES FUND (Contd……)

As the date for claiming deduction u/s 80G under IT Act has been extended up to 30.06.2020, the donation made up to 30.06.2020 shall also be eligible for deduction from income of FY 2019-20.

Hence, any person including corporate paying concessional tax on income of FY 2020-21 under new regime can make donation to PM CARES Fund up to 30.06.2020 and can claim deduction u/s 80G against income of FY 2019-20 and shall also not lose his eligibility to pay tax in concessional taxation regime for income of FY 2020-21.

Ordinance 2020

Deduction under Section 80G in respect of contribution to ‘PM CARES Fund’

The Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) has been set up by the Central Government on 28-03-2020 following the COVID-19 pandemic in India. The fund will be used for combating the Coronavirus outbreak and similar pandemic like situations in the future.

To encourage donations to PM CARES Fund, the Government has amended Section 80G of the Income-tax Act through the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.

As per the amendment, every person donating to PM CARES Fund shall be eligible to claim a 100% deduction of the amount donated from his total income.

Further, the restriction of Section 80G(4) which limits the deduction to 10% of adjusted gross income shall also not be applicable for donation made to PM CARES Fund.

Section 10(23C) has also been amended to provide that income of PM Cares Fund shall be exempt from tax.

In the Ordinance, it has also been provided that for claiming deduction under Part B of Chapter VI-A (including section 80G) for Financial Year 2019-20, a person can make investment or contribution up to 30-06-2020.

Thus, the donations made up to 30-06-2020 in PM CARES Fund shall also be eligible for deduction from income of the Financial Year 2019-20.

In the Press Release, dated 31-03-2020, it has been clarified that any person including corporate assessees paying concessional tax on the income of Financial Year 2020-21 under the new regime can donate to PM CARES Fund up to 30-06-2020.

They can claim deduction under section 80G against income of the financial year 2019-20, without losing the eligibility to opt for concessional tax regime in the financial year 2020-21.

Thus, the donations made to PM Cares Fund between 01-04-2020 and 30-06-2020 can be claimed as deduction either in the financial year 2019-20 or 2020-21, at the option of the taxpayer.

But, if the taxpayer opts to claim a deduction in the Financial Year 2020-21, then he shall not be eligible to opt for concessional tax regime of section 115BAC and 115BAD, as the case may be.

F. No. 279/25/2020-IT(B)

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

North Block, New Delhi

03 April 2020

Subject : Order U/s 119 of the Income-tax Act, 1961 (the Act) regarding submission of Form 15G and 15H for financial year 2020-21 reg.

Due to outbreak of pandemic Covid-19 virus, there is severe disruption in the normal working of almost all sectors of economy including functioning of the Banks, other Institutions etc., Amidst such situation, there can be instances that some eligible persons may not be able to submit the Form 15G and 15H timely to the Banks, other Institutions etc. This would result into the deduction of TDS by the Banks and other Institutions even where there is no tax-liability. To mitigate the genuine hardship of such persons, the CBDT issues following directions/ clarifications by exercise of its powers u/s 119 of the Income Tax Act.

2. In case if a person had submitted valid Forms 15G and 15H to the Banks or other Institutions for F.Y. 2019-20, then these Form 15G and 15H will be valid up to 30.06.2020 for F.Y. 2020-21 also. It is reiterated that the payer who has not deducted tax on the basis of said Forms 15G and 15H, shall require to report details of such payments / credits in the TDS statement for the quarter ending 30.06.2020 in accordance with the provisions of rule 31A(4)(vii) of the Income-tax Rules, 1962.

Thanks to my computer operator

Sri. N. Beeresh Kumar