JMP Advisors

TAX MATTERS

Key amendments to the Finance Bill, 2020

23 March 2020

This document summarises the significant direct tax amendments to the Finance Bill, 2020 as passed by the both Houses of Parliament without the customary discussion, on 23 March 2020 as the country is in complete lockdown to fight the Covid-19 virus. These proposals are subject to Presidential assent when the Finance Bill will become law. Further, the direct tax proposals in the Finance Bill, 2020 are effective from FY 2020-21 unless otherwise specifically stated. References to sections are to sections in the Income-tax Act, 1961 ('the IT Act') unless otherwise stated.

1. New simplified tax regime [*Section 115BAC*]

i. It was proposed that individuals and HUFs ('specified persons') can opt for a lower rate of tax if they forego certain exemptions and deductions and comply with certain conditions. It was further proposed that the aforesaid option can be exercised only once by the specified persons having business income and once exercised it will remain same for the subsequent years as well.

ii. It is proposed that this restriction will now be made applicable even in the case of specified persons having income from profession.

2. Withholding tax and tax collection at source

i. *Withholding tax on royalty [Section 194J]*

Currently, the rate of withholding tax on royalty is 10%. It is now proposed to reduce this rate to 2% in the cases where the royalty relates to sale, distribution or exhibition of cinematographic films.

ii. *Withholding tax on income of a resident from mutual funds [Section 194K]*

It is now proposed to clarify that no tax is required to be withheld on capital gains derived by a resident from units of a mutual fund.

iii. *Withholding tax on cash withdrawals [Section 194N]*

a. Currently, withholding tax is applicable at 2% on withdrawal of cash by any person from one or more accounts, exceeding INR 10 million (~ USD 133,000) in a FY from a bank, co-operative bank or post office.

b. It is now proposed that in cases where the withdrawer has not filed a return of income for all 3 FYs preceding the FY in which the withdrawal is made, withholding tax will be applicable at 2% if the withdrawal exceeds INR 2 million (~USD 27,000) and at 5% if the withdrawal exceeds INR 10 million (~USD 133,000).

c. The proposed amendment will be effective from 1 July 2020.

iv. *Withholding tax by e-commerce operators [Section 194O]*

a. It was proposed 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. Further, the definition of e-commerce operator included a person responsible for payment to e-commerce participant. It is now proposed to amend the definition of e-commerce operator to remove the condition that requires an e-commerce operator as being responsible for making the payment to the e-commerce participant.

b. It is now proposed that the Central Government will issue guidelines in case of any difficulty in implementing the new withholding tax provisions relating to payments by e-commerce operators to e-commerce participants. Any guidelines issued by the Central Government in this regard will be binding on the income tax authorities and e-commerce operators.

v. *Tax collection at source [Section 206C]*

a. It is now proposed that the provisions relating to collection of tax at source at 5% for remittance of money outside India under the Liberalised Remittance Scheme ('LRS') will not be applicable if the amount of remittance is less than INR 0.7 million (~USD 9,000), for any purpose other than for the purchase of an overseas tour package or out of an education loan obtained from a specified financial institution.

b. It is also proposed that tax at 5% of the amount remitted in a FY should be collected by the Authorised Dealer ('AD'), if the amount is for buying an overseas tour package and if such tax is not collected by the seller of the overseas tour package.

c. It is further proposed that the AD shall collect tax at 0.5% of the remittance made in excess of INR 0.7 million (~USD 9,000) out of an educational loan obtained from a specified financial institution.

d. It is now proposed that the new provisions for collection of tax at source at 0.1% by in excess of INR 5 million (~USD 67,000) will not be applicable to goods exported or imported from outside India. Further, it is proposed to clarify that if the buyer of goods is liable to withhold tax under any provisions of the IT Act on goods purchased by him from the seller and if the buyer has withheld such tax, then the provisions of tax collection at source will not apply to such transaction.

e. It is also proposed that if there is any difficulty in implementing the new provisions of tax collection at source, the Central Government will issue guidelines, which will be binding on the tax authorities and the seller.

f. The proposed amendment will be effective from 1 October 2020.

3. Residential status of individuals and Hindu Undivided Families ('HUFs') [*Section 6*]

i. The minimum period of stay to qualify as resident of India was proposed to be reduced from 182 to 120 days during a FY in case of an Indian citizen or a Person of Indian Origin, who comes on a visit to India.

It is now proposed that the reduction in the number of days from 182 to 120 days to qualify as a resident of India would apply only in the case of an Indian citizen or a Person of Indian Origin having total income (other than income from foreign sources), exceeding INR 1.5 million (~USD 20,000). It is further proposed that such a person would be treated as Resident but Not Ordinarily Resident ('RNOR') if his aggregate stay during the relevant FY is less than 182 days.

ii. It was also proposed that an Indian citizen who is not liable to tax in any other country by reason of his residence, domicile or any other similar criteria would be deemed to be resident in India, and consequentially to be taxed on his global income in India.

It is now proposed that an Indian citizen who is not liable to tax in any other country by reason of his residence, domicile or any other similar criteria would be deemed to be a resident of India only if such person has total income (other than income from foreign sources) exceeding INR 1.5 million (~USD 20,000) during the relevant FY. Further, it is proposed that such a person who is deemed to be a resident of India under this provision would be treated as RNOR.

iii. For the purpose of this provision, it is proposed to clarify that the term 'income from foreign sources' would mean income which accrues or arises outside India, except income derived from a business controlled in or a profession set up in India.

iv. The earlier amendment that an individual or an HUF shall be considered as RNOR in India in a FY, if the individual or manager of the HUF is non-resident in India in seven out of ten FYs preceding the relevant FY, instead of the existing provision of nine out of ten FYs, is proposed to be deleted.

4. Provisions relating to Business Trusts [*Section 10(23FD) and Section 194LBA*]

i. Due to the proposed abolition of Dividend Distribution Tax ('DDT'), any distribution of income in the form of dividend by the business trust is proposed to get 'pass through' treatment in the hands of such business trust and the same will be liable to tax in the hands of unitholders.

ii. It is now proposed that the dividend income shall be exempt in the hands of unitholders if the Special Purpose Vehicle ('SPV') distributing the dividend, opts for the corporate tax rate of 22% under the special tax regime.

iii. It is further proposed that withholding of tax by the business trust shall be applicable on the dividend income only if the SPV has opted for the corporate tax rate of 22% under the special tax regime.

5. Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority, Sovereign Wealth Funds and specified Pension Funds [*Section 10(23FE)*]

i. It was proposed to provide a 100% exemption for income in the nature of dividend, interest or long-term capital gains arising from an investment made in India in the form of debt investment made by a specified person i.e. a wholly owned subsidiary of Abu Dhabi Investment Authority or a Sovereign Wealth Fund. It is now proposed to include notified pension funds established under the law of a foreign country as a specified person.

ii. In order to claim the exemption, the investment should be made between 1 April 2020 to 31 March 2024 and held for atleast 3 years. Further the investment should be in

a. An Infrastructure Investment Trust ('InvIT') registered under the Securities and Exchange Board of India ('SEBI') InvIT Regulations, 2014, or
b. A company or enterprise engaged in specified infrastructure projects, or
c. A Category I or Category II Alternative Investment Fund ('AIF') regulated under the SEBI (AIF) Regulations, 2012 having 100% investment in one or more of the companies or enterprises engaged in specified infrastructure projects.

It is now proposed to extend the benefit to investment made by such funds in the share capital or units.

iii. It is also proposed that if a specified person avails the said exemption and subequently, fails to satisfy any condition for exemption, then the income for which the exemption was claimed will be taxable in the year in which such failure takes place.

6. Corpus donations [*Section 10(23C) and Section 11*]

i. It is proposed to clarify that income for the specified trust or institutions shall not include voluntary contributions made with a specific direction that it shall not form part of the corpus of the specified trust or institution.

ii. Any amount paid to a charitable or religious trust or registered institution out of its accumulated income, with a specific direction that it will form part of the corpus of the registered trust/ institution, will not treated as application of income for charitable or religious purposes. It is now proposed to extend the above provision to any contribution made to corpus of university, educational institution, hospital, other medical institution referred in Section 10(23C).

7. Taxation of dividend income [*Section 10(34), Section 80M and First Schedule to the Finance Act*]

i. It was proposed to abolish Dividend Distribution Tax ('DDT') on dividend declared or distributed by a domestic company and to tax dividend income in the hands of the shareholder without any threshold limit on or after 1 April 2020. It is now proposed that dividend income, which is subject to DDT or tax on dividend in the hands of specified recipients under Section 115BBDA, is received on or after 1 April 2020 shall be exempt in the hands of the shareholder.

ii. It was proposed that dividend received from a domestic company would be allowed as a deduction in the hands of the recipient company subject to certain conditions being fulfilled. It is now proposed to extend this benefit to dividends received from a foreign company or a business trust.

iii. It is now proposed that from FY 2020-21 deduction for dividend paid by a domestic company, foreign company or a business trust will be available to domestic companies which opt for the lower corporate tax rate of 22%/15%, as applicable.

iv. The enhanced surcharge of 25% levied on the total taxable income exceeding INR 2 crore but upto INR 5 crore and 37% levied on the total taxable income exceeding INR 5 crore would not apply on the dividend income (included in the total taxable income) subject to tax from FY 2020-21 and onwards.

v. Part-II of First Schedule is now proposed to be amended to provide a withholding tax rate of 20% on dividend income distributed to a non-resident.

8. Equalisation Levy [*Section 10(50) and Chapter VIII of the Finance Act, 2016*]

i. It is now proposed to extend the scope of Equalisation levy ('the Levy') which was introduced in the Finance Act, 2016, to consideration received/receivable by an e-commerce operator from e-commerce supply or services, whether provided on its own or facilitated by it.

ii. It is proposed that the Levy will be applicable at 2% of the consideration received/receivable by the e-commerce operator from e-commerce supply or services to-

  a. A person resident in India or
  b. A non-resident engaged in providing advertisements targeting customers resident in India or having an Internet Protocol ('IP') address in India, or selling data collected from persons resident in India or having IP address in India or
  c. A buyer of such goods or services or both using an IP address in India.

iii. It is proposed to define e-commerce operator as a non-resident who owns, manages or operates a digital or electronic facility or platform for the online sale of goods or online provision of services or both.

iv. It is proposed not to apply the Levy in the following circumstances-

  a. If the e-commerce operator has a Permanent Establishment ('PE') in India and the e-commerce supply or services are connected to such PE; or
  b. The sales, turnover or gross receipts of such e-commerce operator having a PE in India are less than INR 20 million (~USD 0.3 million) during the FY; or
  c. The transaction is already covered by the provisions of the Levy (at 6%) as originally introduced by Finance Act, 2016 with effect from 1 April 2016.

v. It is proposed that the e-commerce operators should discharge the Levy on a quarterly basis, failing which, a penalty equal to the amount of the Levy would be applicable.

vi. It is further proposed to provide that all the other provisions originally introduced in the Finance Act, 2016 relating to the Levy will be applicable to the transactions of e-commerce supply or services as well.