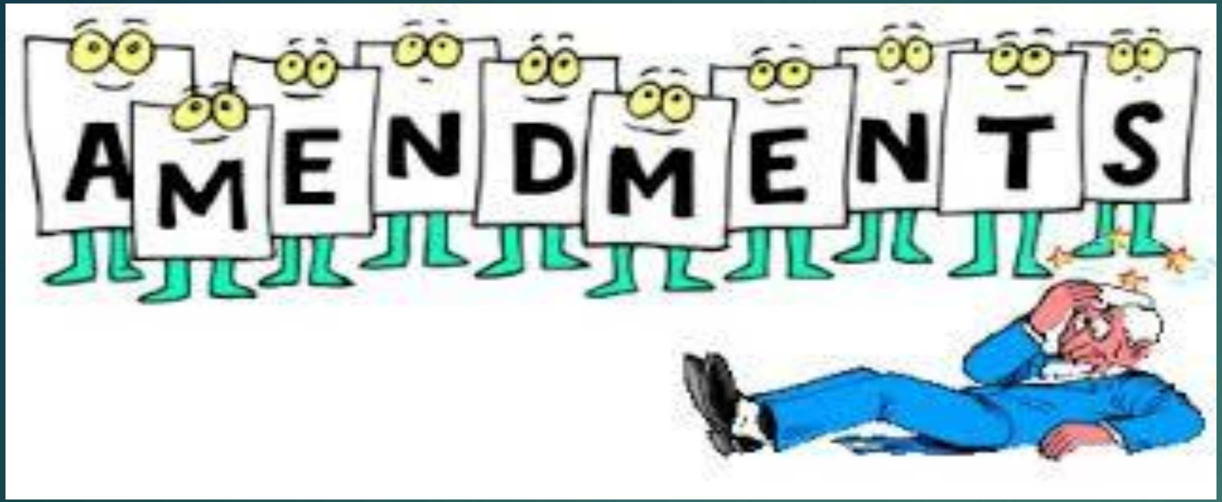


Analysis of amendments to Finance Act 2020 presented in Loksabha on 22.03.2020

-PANKAJ K. JAIN

Introduction

The Finance Bill was presented on 01.02.2020 and was widely discussed and debated due to various amendments viz. Residential status, taxation of dividend, TCS provisions, charitable Trust registrations etc.

Representations were made by stakeholders concerning anomalies, ambiguity, practical difficulties etc to the government which has been duly considered and more than 50 amendments have been proposed to the Finance Bill 2020 by way of Notice of amendments passed by Loksabha on 23.03.2020.

The Finance Bill 2020 and the Amendment Bill has been passed by the Lok Sabha and president assent has been received on 27.3.2020.

Let’s analyse some of the important amendments to the Finance bill 2020..

Let’s Start the ANALYSIS….

Section 6 – Residential status

Original proposal

i. The condition of stay India was reduced to 120 days from 182 days for Citizen of India / PIO visiting India – Section 6(1) Explanation 1 clause(b)

ii. Deemed Residential status was introduced for Citizen of India – Section 6(1A)

iii. The condition of Resident for 9 years out of 10 years was relaxed to 7 years for determination of Not Ordinary Status- Section 6(6)(a).

Section – 6 Residential Status – As amended

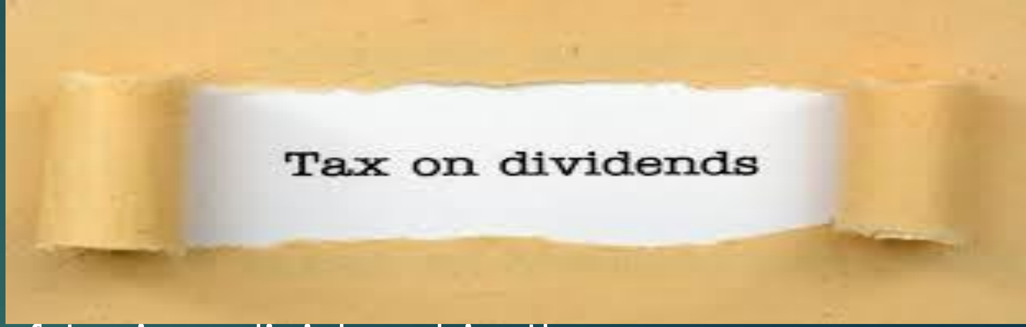
i. No change in the existing provision in respect of Assessee whose Total income, excluding Foreign income, does not exceed Rs. 15 Lacs during the relevant previous year.

ii. Assessee whose Total income, excluding Foreign income, exceeds Rs.15 Lacs will be covered by the original proposed amendments concerning stay in India and Deemed Residential status.

iii. However, the Assessee who qualifies as 'Resident' on account of the amended provisions will always be considered as **'Not Ordinary Resident'**.

iv. The relaxation from 9 years to 7 years has been withdrawn, which means that the earlier condition of 9 out of 10 years would still apply for determination of RNOR status.

Dividend – Section 10(34)



The Finance Act 2020 reintroduced the classical system of taxing dividend in the hands of shareholders and have done away with DDT and exemption.

This has resulted in 19 amendments to the Income Tax Act.

The recent amendments have been made to some Sections to address certain anomalies and ambiguities.

<u>Recent amendment to Section 10(34) to remove anomaly</u>

- Finance Act 2020 introduced a proviso to section 10(34) providing that the exemption under said section will not be available in respect of **<u>dividend received on / after 1.04.2020</u>**.
- This proviso created an anomaly in a case where if DDT is paid on /before 31.3.2020 and the dividend is received after 31.3.2020, it will result in taxation of dividend in the hands of recipient despite the fact that the company has paid DDT.
- The said proviso has now been amended to correct this anomaly.
- The amended proviso would not apply where tax under section 115O / 115BBDA as the case may be has been paid, even though the dividend is received on/after 1.4.2020.

Dividend – Section 80M

<u>Amendment to section 80M to provide some relief</u>

- Deduction under section 80M has been introduced to neutralise the cascading effect of tax on the companies receiving and paying dividend.
- This Section has now been amended to allow deduction in respect of dividend income received from **<u>Foreign company and Business Trust</u>**.
- However, dividend from Foreign company taxable under section 115BBD shall not qualify for this deduction in view of specific restriction on allowability of any deduction under the Act imposed under the said section.

Dividend – TDS- Section 194K

Proposed amendment- Section 194K – Amendment to remove ambiguity

- Section 194K was proposed by Finance Bill 2020 to provide for TDS in respect of **any income** distributed by Mutual Fund.
- The plain reading of the section suggested that even the amount received on redemption of units of mutual fund would qualify as 'any income' and therefore will attract TDS.
- To remove the ambiguity, section 194K has been amended excluding ***'income in the nature of capital gains'*** *from the ambit of Section 194K.*

Equalisation Levy –
Amendment to Finance Act 2016 & Section 10(50) of the I T Act

- The Amendment have been made to Finance Act 2016 to include the payments made to Non Resident E Commerce operator under the ambit of Equalisation levy.
- W.e.f. 01-04-2020, the equalisation levy **shall be payable** by Non resident E commerce operator @2% of consideration received or receivable for e-commerce supply or services made or facilitated to the following persons:
  a) A person who is Resident in India;
  b) A person who buys such goods or services or both using internet protocol address located in India;

Contd…..

Equalisation Levy – Amendment to Finance Act 2016 & Section 10(50) of the I T Act

c) A non-resident person in the following circumstances:

(i) 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; &

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

Exemption from Levy

Equalisation levy shall not be payable

(i) if the sale, turnover or gross receipts of the ecommerce operator from e-commerce supply or services made or provided or facilitated to the persons mentioned above is less than **Rs. 2 crore**, in aggregate, during the **previous year**.

(ii) If such operator has **Permanent Establishment** in India

Equalisation Levy – Amendment to Finance Act 2016 & Section 10(50) of the I T Act

<u>Whose obligation to deposit the Levy ?</u>

- Section 166 contains provisions for collection and recovery of equalisation levy on online advertisement services.
- A new Section 166A has been introduced for collection and recovery of equalisation levy on online supply of goods and services.
- Section 166A shifts this obligation to deposit the equalisation levy on the e-commerce operator. This obligation is of e-commerce operator only.

Equalisation Levy – Amendment to Finance Act 2016 & Section 10(50) of the I T Act

Due dates of payments :

Unlike the equalisation levy on online advertisement services which is payable on monthly basis by 7th day of the next month, the equalisation levy in respect of online supply of goods and services shall be paid to the credit of central government on quarterly basis:

Period	**Due date**
1st April– 30th June	7th July
1st July – 30th September	7th October
1st October – 31st December	7th January
1st January – 31st March	31st March

Equalisation Levy – Amendment to Finance Act 2016 & Section 10(50) of the I T Act

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Exemption under Section 10(50)

In view of Equalisation levy imposed on E commerce operators, the corresponding income is exempt from tax.

Section 10(50) has been amended to provide for the said exemption.

Typo Error

It seems that there is a typographical error in this section as it refers to E commerce goods and services supplied on/after 1.4.2021 whereas the Equalisation levy is applicable w.e.f.1.4.2020.

Section 115BAC

Due to inadvertent error in the drafting of Section 115BAC(5)(a), the individuals earning income from profession got an option to claim the benefit of this section at their choice on a year to year basis. However, the individual having business income were allowed to choose the said option only once.

This anomaly was due to the fact that the reference to ‘Profession’ was missing in subsection (5)(a).

The sub section (5)(a) to section 115BAC has now been amended to cover ‘income from Business or **Profession**’.

This amendment has brought individuals earning income from profession at par with individuals earning business income for claiming the benefit under section 115BAC.

TDS Provisions

<u>Section 194J – TDS on professionals etc:</u>

The concessional TDS rate of 2% has been extended to the Royalty income in the nature of consideration for sale, distribution or exhibition of cinematographic films.

<u>Section 194N – TDS on cash withdrawal – w.e.f.01.07.2020</u>

The provision has been substituted to provide that the threshold limit of 100 Lacs will reduce to 20 Lacs in case where the person withdrawing the cash has not filed his / its Return in time prescribed under section 139(1) during the three years preceding the relevant previous year. The TDS rates in such case will be as under:

Cash withdrawal	TDS Rate
Upto 20 Lacs	Nil
Above 20 Lacs but upto 1 crore	2%
Above Rs.1 crore	5%

TDS Provisions

<u>**Section 194O**</u>

This section refers to TDS applicable in respect of payments made by E commerce operator to ecommerce participant introduced by Finance Bill 2020.

<u>**The definition of E commerce operator has been amended as under:**</u>

e-commerce operator" means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce ~~and is responsible for paying to e-commerce participant~~;

This amended definition is in line with the definition of E commerce operator provided under provisions for Equalisation Levy.

Amended -TCS Provisions

The provisions of section 206C(1G) and (1H) are made **applicable from 1.10.2020**.

TCS on Foreign Remittance – Section 206C(1G)

- The threshold limit of Rs.7 Lacs for remittance under LRS is not applicable in case of remittance is for purchase of overseas tour package.
- In such case TCS rate shall be 5%.
- In case the LRS is out of educational loan the TCS shall be 0.5% in excwess of Rs.7 Lacs.
- In all other cases TCS is AT 5% **in excess** of Rs.7 Lacs remitted under LRS.

TCS on sale of Goods – Section 206C(1H)

- The provisions of Subsection (1H) are not applicable in respect of Export Sale
- The provisions of subsection (IH) are not applicable in respect of import of goods.

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Question Answer session

Questions which could not be answered during webinar due to paucity of time have been addressed and attached separately.

IN CASE YOU HAVE ANY QUERIES

can write to me @

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THANK YOU