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Key direct tax amendments to the Finance Bill, 2020 and the provisions of Equalisation Levy, by the Finance Act, 2020 (President's assent on 27 March 2020)

CONTENTS

The President has given assent on 27 March 2020, to the Finance Act, 2020 passed by the Parliament with certain amendments.

KEY AMENDMENTS - DIRECT TAX

SECTION 2(15A) - DEFINITION OF 'CHIEF COMMISSIONER'

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
Definition of 'Chief Commissioner' **[Amendment to Section 2(15A)]**		- As per extant section 2(15A) of the Income-tax Act, 1961 (the 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 now includes *the Director General and Principal Director General of Income-tax* within the meaning of 'Chief Commissioner'. - The Principal Director General of Income-tax shall now be treated as an authority at par with Director General of Income-tax. - Hence, for all such purposes under the Act, the Principal Director General of Income-tax shall have all the powers which have been conferred upon Director General of Income-tax.

SECTION 6 - RESIDENTIAL STATUS IN INDIA

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
Residence in India **[Amendment to Section 6]**	*Residential Status - determined by the number of days of his stay in India* - The exception provided in Explanation 1(b) to section 6(1), for individuals who are Indian citizens and persons of India origin visiting India in that year has been decreased to 120 days from existing 182 days. *Residential Status - Provision of 'Deemed Resident' applicable if total income exceeds INR 15 lakhs* - A new clause (1A) was inserted to section 6. It provides that an Indian citizen shall be deemed to be an Indian tax resident if he is not liable to tax in any other country by reason of residence or domicile or criteria of similar nature i.e. in case he is a 'stateless person', irrespective of	*Residential Status - determined by the number of days of his stay in India* - The exception provided in Explanation 1(b) to section 6(1), for Indian citizens and persons of India origin visiting India in that year has been decreased to 120 days, *only in cases where the total income of such visiting individuals during the financial year from sources, other than foreign sources, exceeds INR 15 lakhs.* - The term 'income from foreign sources' has been defined to mean *income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).* *Residential Status - Provision of 'Deemed Resident' applicable if total income exceeds INR 15 lakhs* - The amendment to clause (1A), introduced by the Finance Bill, 2020 targeted individuals who do not spend considerable amount of time in any country so as to be treated as tax residents of such foreign countries.

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
	the days spent in India	- This created a lot of misapprehension in the non-resident Indian (NRI) community, especially for Indians who are bonafide employed in other countries or carry on business there, etc.; and who are not subject to tax in those countries as per the domestic tax law of those countries, will be taxed in India on the income that they have earned outside India. - Hence, to avoid such misapprehension, the CBDT issued a Press Release dated 2 February 2020, *clarifying that in case of an Indian citizen who becomes deemed resident of India, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession.* - The scope of clause (1A) has been now limited through the Finance Act, 2020, and shall only be applicable to such Indian citizens who meet the *threshold**. Accordingly, all Indian citizens who fail to meet the threshold, but are not subject to tax in any other jurisdiction, will not be considered as Indian tax resident *(*Threshold: an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh*

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
		rupees during the previous year) *<u>Deemed resident to be treated as 'Not Ordinarily Resident'</u>* - The proposed relaxation to the Resident but Not Ordinarily Resident (RNOR') under the Finance Bill have been removed through the Finance Act, 2020, that is: *The Finance Bill proposed to streamline the test for RNORs by providing that an individual or an HUF shall qualify as an RNOR, if such individual or manager of the HUF has been a non-resident in India for seven out of the ten previous years preceding that year* - The Finance Act, 2020, now adds two categories to the test for RNOR in section 6(6). - The below persons shall also be treated as RNOR: o Indian citizens/ persons of Indian origin who meet the threshold and have been in India for a period of more than 120 days but less than 182 days i.e. those Indian
	<u>Deemed resident to be treated as 'Not Ordinarily Resident'</u> - The existing conditions under section 6(6)(a) and (b) have been substituted, for treating an individual or an HUF to be 'not ordinarily resident' in India in a previous year. It is provided that if the individual or the manager of the HUF has been a non-resident in India in seven out of ten previous years preceding that year, then the individual or the HUF would be treated as 'not ordinarily resident'.	

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
		citizens / persons of Indian origin who fulfil the conditions mentioned above in Explanation 1(b) to section 6(1) and o Indian citizens who fulfil the conditions mentioned above in Explanation (1A) to section 6(1). - The above amendments mean that even where an Indian citizen qualifies as a tax resident under section 6(1) of the Act but owing to the amendment as mentioned above to Explanation 1(b) and Explanation (1A) to section 6(1), he will still not be taxed on a worldwide basis (unless as per section 5 of the Act, such foreign income is derived from a business controlled in or a profession set up in India), even if he does exceed the threshold. - The day count and total income criteria has to be examined every financial year - The same shall be applicable from AY 2021-22

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
VTPA Comments	- The amendments made to the Finance Bill, intends to set right the controversy of determining residential status of Indian citizens or persons of Indian origin. However, the threshold limit of INR 15 lakhs seems low and arbitrary, especially in the current grim economic times.	

SECTION 10(23C) and SECTION 11 - INCOME TAX EXEMPTIONS AVAILABLE TO CERTAIN EDUCATIONAL INSTITUTIONS

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
- **Corpus donations received by institutions under Section 10(23C) will be exempt from tax** - **Corpus donation not to be considered as an application of Income** **[Amendment of Section 10(23C)]**		- The institutions, registered under section 12A, 12AA and new section 12AB, which 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, then such corpus donations is not be included in the total income of such trust or institution. - However, no such specific exemption was available to entities, funds, etc., registered under section 10(23C). - *An Explanation is hence inserted after the third proviso of section 10(23C): Corpus Donation received by institutions referred to in section 10(23C) shall be exempt from tax* - The explanation clarifies that the income of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv), (v), (vi) or (via) of the Act, shall not include income in the form of voluntary contributions made with a specific direction that

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
		they shall form part of the corpus of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution - As per extant provisions of the Act, 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 12th 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 section 10(23C)(iv), (v), (vi) or (via) of the Act, 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

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		application of income for the donor. Currently, this restriction was only in respect of corpus donations made to entities registered under section 12AA. - The amendment provides that the corpus donations shall not form part of the income of the funds or institutions availing the benefit of section 10(23C). - *Consequential amendment has also been made to 12th proviso of section 10(23C): Corpus Donations made by institutions referred to in section 10(23C) of the Act not to be considered as application of income* - Any amount credited or paid out of income - of any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv), (v), (vi) or (via) of the Act, - to any other fund or trust or institution or any university or other educational institution or any hospital or other medical institution

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
No Deduction of Corpus Donations Made to Approved Institutions under Section 10(23C) **[Amendment to Section 11]**		referred to in 10(23C)(iv), (v), (vi) or (via) of the Act or any trust or institution registered under section 12AA of the Act, being voluntary contribution made with a specific direction (Corpus donation) that they shall form part of the corpus of the trust or institution, - shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established. - *Explanation 2 to section 11(1) of the Act: Corpus Donations made by institutions referred to in section 12AA of the Act to institutions referred to in section 10(23C) of the Act not to be considered as application of income* - Similar amendments like amendments to the 12th proviso of section 10(23C) are made in Explanation 2 to section 11(1). - 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

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		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 and also application of income.
VTPA Comments	- The amendments 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 of the Act.	

SECTION 10(23FD) - INCOMES NOT INCLUDED IN TOTAL INCOME

SECTION 194LBA - CERTAIN INCOME FROM UNITS OF A BUSINESS TRUST

SECTION 115BAA - NEW TAX RATE FOR DOMESTIC COMPANIES

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
Incomes not included in total income **[Amendment to Section 10(23FD)]**		*Section 10(23FD)* - A business trust if it distributes the income (interest income and dividend income from SPV, rental income of REITs from real estate property) to its unit holders then such income shall be taxable in the hands of the unit holders under section 115UA as if they have earned such income by directly investing in SPV or real estate properties. - All other incomes which a business trust distributes to its unit holders shall be exempt in the hands of the unit holders under section 10(23FD) of the Act. - The Finance Act, 2020 now provides that no exemption shall available under section 10(23FD), to a unit holder of business trust in respect of a dividend received from SPV if such SPV has not exercised the option of section 115BAA of the Act. Consequential amendments have been made to section 194LBA.

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
		Section 194LBA - Section 194LBA (1) and (2) provide for deduction of tax at source by a business trust from income distributed to unit holders. Section 10(23FC)(b) provides for dividend received or receivable from SPV. - Section 194LBA(2A) has been inserted vide Finance Act, 2020, to provide that no tax shall be deducted by a business trust from dividend distributed to the unit holders provided such dividend is distributed out of sum received as dividend from an SPV and the SPV *has not exercised* the option under section 115BAA. - The dividend received by a unit holder from a business trust will be exempt from tax if an SPV opts for section 115BAA, hence, consequential amendment was required in section 194LBA to provide that no tax shall be deducted in such cases. - The amendment as made by Finance Act, 2020 in section 194LBA(2A) creates conflict with the amendment to section 10(23FD), that is, *In a case where SPV has opted for section 115BAA then section 194LBA requires business*

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
		trust to deduct tax from dividend distributed to unit holders. Whereas, the amendment to section 10(23FD) provides an exemption in such a case. It appears that this is an unintentional mistake and the words 'has not exercised' in sub-section (2A) should be read as 'has exercised'. *<u>Section 115BAA</u>* - Section 115BAA was introduced with effect from AY 2020-21 through the Taxation Laws (Amendment) Act, 2019 to provide for a concessional income tax rate of 22% in case of domestic companies which do not claim specific deductions, exemptions and allowances. - Section 115BAA had been inserted to ostensibly simplify the tax structure and to reduce the litigation arising due to numerous tax exemptions and deductions claimed by the assessee. The new corporate tax regime reduces the tax rates to 22%, but in return, the companies have to forego certain exemptions and deductions.
VTPA Comments	- The possible reason to amend section 10(23FD), that restricts the exemption for dividend income if an SPV does not opt for tax regime of Section 115BAA, could be the intention of the Government to	

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
	persuade economically the SPV to opt for section 115BAA. - Where an SPV opts for new tax regime, no tax shall be levied at the time of distribution of dividend to business trust by an SPV or at the time of further distribution of such dividend by a business trust to the unit holder. Thus, dividend distributed by SPV which opts for section 115BAA shall be completely tax-free, as in the earlier regime. Whereas, if an SPV opts to pay tax as per normal provisions of the Act, the unit holders will eventually be liable to pay tax on dividend distributed by SPV.	

SECTION 10(23FE) - SCOPE OF EXEMPTION EXPANDED

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020

Incomes not included in total income [Amendment to Section 10(23FE)]	- 'Specified Persons' i.e., Sovereign Wealth Funds (SWFs) or wholly owned subsidiary of Abu Dhabi Investment Authority, as defined in the newly inserted section are granted exemption from income:
	  - 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 March 2024 and held for at least three years.
	- The investment can be in the form of debt or equity, and is required to be made on or before 31 March 2024 and should be held for at least three years.
		- The scope of section has now been expanded whereby the exemption shall be available even if investment in infrastructure companies is made through alternative investments funds (AIFs).
		- It has been provided that specified persons shall be exempt from paying tax on any income arising from investment in Category-I / II AIFs, provided AIFs invest 100 per cent 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.
		The exemption shall be available even if specified persons invest in preference share capital of the company, as now the Finance Act, 2020 covers investment in share capital or units and not equity share capital.
		- Further, as section 10(23FE) is introduced for providing impetus for investment in

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		infrastructure activities, the amendment states that exemption shall also be available even in respect of income arising from investment in Infrastructure Investment Trusts (InVITs). - A pension fund created or established under the law of a foreign country is also 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. - A proviso has been inserted to withdraw the exemption if specified person 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. - The investment can be in the form of debt or share capital or unit, and is required to be made on or after 1 April 2020 but on or before 31 March 2024 and should be held for at least three

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
		years.
VTPA Comments	- The amendment has clarified that investment through AIFs and InVITs shall also qualify for exemption by specified persons, that is, sovereign funds and pension funds. Further, the scope of specified persons has also been widened to include pension funds, thus trying to give a fillip to the infrastructure development of the country, especially in today's grim global economic scenario.	

SECTION 10(34) - DIVIDEND RECEIVED ON OR AFTER 1 APRIL 2020 SHALL NOT BE TAXABLE, IF DDT IS ALREADY PAID BY THE COMPANY

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
Incomes not included in total income [Amendment to Section 10(34)]	- Section 10(34) of the Act was amended to provide that no exemption shall be available in respect of dividend received on or after 1 April 2020. - Thus, exemption was not available in respect of dividend received on or after 1 April 2020 but declared on or before 31 March 2020. However, dividend declared on or before 31 March 2020 is already subject to dividend distribution tax (DDT) under section 115-O of the Act, and if received in the current financial year would have resulted in such dividend being doubly taxed in the hands of the shareholder The shareholder may also be liable to pay tax under section 115BBDA for such dividend declared before 31 March 2020.	- The Finance Act, 2020 now provides clarity that dividend received by the assessee on or after 1 April 2020 shall not be included in his income, if tax has already been paid on such dividend under section 115-O and section 115BBDA wherever applicable.
VTPA Comments	- The amendment has resolved the anomaly as there would be no double taxation if the dividend has suffered dividend distribution tax or tax under section 115BBDA in the earlier regime.	

SECTION 10(50) - NO TAX ON INCOME ARISING FROM E-COMMERCE SUPPLY ON WHICH EQUALISATION LEVY IS CHARGEABLE

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020

No tax on Income arising from E-Commerce supply on which equalisation levy is chargeable
[Amendment to Section 10(50)]
		- Section 10(50) of the Act provides that incomes in respect of which equalisation levy has been charged, shall be exempt from tax. Hence, no income-tax would be charged on consideration received or receivable for specified services which are subject to such levy.
		- The scope of Equalisation Levy has now been extended to also cover the consideration received or receivable for e-commerce supply or services made or provided or facilitated by an e-commerce operator. Thus, with effect from 1 April 2020, there will be two types of transactions in respect of which equalisation levy shall be charged, namely:
		  - Sum received or receivable by a non-resident for the online advertisement services rendered to specified persons;
		  - Sum received or receivable by an e-commerce operator from e-commerce supply of goods or services made or provided or facilitated to specified persons.

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
		- Consequential amendments have been made to section 10(50) to give tax exemption for the income arising from any e-commerce supply or services made, or provided or facilitated on or after 1 April 2020, on which equalisation levy is chargeable. - The same shall be applicable from AY 2021-22
VTPA Comments	- This is a consequential amendment due to the widening the scope of equalisation levy to e-commerce operations carried on by non-residents, provided there is a nexus with India as stated in the amended law.	

SECTION 80M - SCOPE OF DEDUCTION IN RESPECT OF INTERCORPORATE DIVIDEND EXPANDED

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020

Deductions in respect of certain inter-corporate dividends [Amendment to Section 80M]	- Section 80M was introduced in the Act so as to prevent cascading effect of dividend on inter-corporate dividends received by the domestic company. In the new regime the dividend distribution tax has been abolished and now the shareholder is liable to pay tax on the dividend received.
	- Section 80M provides for deduction in respect of the dividend income earned by the domestic company to the extent of the dividend further distributed by the same domestic company.
	- The deduction was limited to a deduction equal to 100% of dividends received from another Indian company, subject to a maximum of the dividend distributed by the first mentioned Indian company, and so long as the distribution by the first mentioned Indian company was made on or before one month prior to the due date of filing of return of income.
	- The Taxation Law (Amendment) Act, 2019 had 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 1 April
		- The Finance Act, 2020 expands the scope of deduction in respect of dividend distributed from dividend income earned by the domestic company from another Indian company, and also in respect of dividends received from,:
		  - a foreign company and
		  - a business trust [defined under Section 2(13) of the Act as being a real estate investment trust (REIT) or an infrastructure investment trust (InvIT)].
		- The deduction for the dividend received is still limited to the amount of dividend distributed by the Indian company on or before one month prior to the due date of filing of return of income.
		- 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 AY 2021-22.

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
	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 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 1 April 2021. - The above amendments are due to the insertion of the new section 80M, consequent to the abolishment of dividend distribution tax under section 115-O. The benefit of the said deduction is extended to the sections 115BAA and 115BAB also. - The Finance Bill had not proposed any similar deduction in respect of dividends received by an Indian company from any foreign company, including a specified foreign company, which is subject to a 15% tax under Section 115BBD of the Act.	

SECTION 92CB - MEANING OF 'SAFE HARBOUR' FOR DETERMINATION OF ARM'S LENGTH PRICE EXPANDED

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
Power of Board to make Safe Harbour Rules - meaning of 'safe harbour' for determination of ALP expanded **[Amendment to Section 92CB]**	- The Finance Bill, 2020 proposed substitution of section 92CB(1) with effect from the AY 2020-21 to provide that apart from the determination of arm's length price, the determination of the income referred to in section 9(1)(i), that is, income deemed to accrue or arise to a non-resident from a business connection, etc., shall also be subject to Safe Harbour Rules.	- The existing Section 92CB of the Act provides that the determination of arm's length price under section 92C or section 92CA shall be subject to Safe Harbour Rules as prescribed by the Board. - Explanation to section 92CB(2) provides the meaning of the term 'safe harbour' to mean circumstances in which the income-tax authorities shall accept *the transfer price declared by the assessee.* The Explanation to Section 92CB defining safe harbour was not amended by the Finance Bill, 2020. - The meaning of the term 'safe harbour' has now been amended as circumstances in which the income-tax authorities shall accept *the transfer price or income, deemed to accrue or arise under section 9(1)(i), as the case may be, declared by the assessee.* - The same shall be applicable from AY 2020-21

SECTION 115A - TAX ON SPECIFIED INCOMES OF NON-RESIDENTS

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020

Tax on dividends, royalty and technical service fees in the case of foreign companies [Amendment to Section 115A]		- Section 115A of the Act specifies the tax rates for specified incomes in the hands of a non-resident assessee, inter-alia, dividend income, interest income, capital gains, royalty and fee for technical services.
		- Section 115A(BA) provides that the following incomes received by a non-resident person shall be taxable at the rate of 5 per cent:
		  - Interest received from an infrastructure debt fund as referred to in section 10(47);
		  - Interest of the nature and extent as referred to in section 194LC or section 194LD;
		  - Interest paid by a business trust under section 194LBA(2).
		- Section 115A of the Act specifies the tax rates for specified incomes in the hands of a non-resident assessee, inter-alia, dividend income, interest income, capital gains, royalty and fee for technical services.
		- The Finance Act, 2020 now excludes the below mentioned income from the purview of five per cent taxation.

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
		- Interest of the nature and extent as referred to in section 194LC or section 194LD - Interest paid by a business trust under section 194LBA(2) - Interest income as referred to in section 194LC, Section 194LD and 194LBA(2) shall now be taxable at the rate provided in the respective sections. - The same shall be applicable from AY 2020-21

SECTION 115BAC - TAX ON INCOME OF INDIVIDUALS AND HINDI UNDIVIDED FAMILY

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
Tax on income of Individuals and Hindi Undivided Family (HUF) **[Amendment to Section 115BAC]**	- A new alternative scheme of taxation was proposed for individual and HUFs. - The new scheme is optional in nature and intends to provide comparatively lower rate of taxes vis-à-vis the existing rates of taxes for individuals and HUF. - This regime of lower rate of tax is available on fulfillment of certain conditions. The primary condition in this regard is to not claim various exemptions and deductions. - However, the taxpayer needs to exercise the option to be governed by this new scheme, under section 115BAC(5) as below: i. having business income, on or before the due date specified under section 139(1) for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1 April, 2021, and such option once exercised shall apply to subsequent assessment years ii. having no business income, along with the return of income to be furnished under section 139(1) for a previous year relevant to the assessment year	- The Amendment to section 115BAC(5), *now also applies to persons carrying on a profession and not only to business* and hence the section now reads as under: - Under sub section (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 1 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 section 139(1) for a previous year relevant to the assessment year

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
VTPA Comments	- The proposed Section 115BAC did not give any reference to the taxpayers earning professional income and now brings them at par with those taxpayers who are earning business income, that is, once the option is exercised then the person cannot come back to the normal tax regime, like in the case of persons not having income from business or profession.	

SECTION 194A and SECTION 197A - CENTRAL GOVERNMENT IS EMPOWERED TO PROVIDE FOR A LOWER RATE OF TDS

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
Interest other than 'Interest on Securities' **[Amendment to Section 194A]**		- As per section 194A of the Act, every person (other than an individual or HUF, whose turnover or gross receipts during the preceding year does not exceed INR 1 crore in the case of business and INR 50 lakhs in case of the profession) is required to deduct tax at the rate of 10 per cent from interest, other than on securities, paid or payable to a resident person. - Section 194A(3) contains various clauses, inter-alia, clause (i) to clause (xi), to provide an exemption from deduction of tax in certain cases. - For instance, as per clause (iii), no tax is required to be deducted by a person from the interest paid or payable to a Bank, Financial Corporation, Insurance Company or such other institutions or bodies as may be notified by the Central Government. Various persons had been notified for this purpose by the Government through various notifications. - The Finance Act, 2020 has amended section 194A(3)(iii) to provide that no notification shall be issued by the Central Government in respect of the said clause on or after 01-04-2020. - A new section 194A(5) has been inserted to provide the absolute powers to the Central Government whereby in addition to notifying the cases where no

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
No Deduction to be made In certain cases **[Amendment to Section 197A]**		tax shall be deducted, the Government shall also have the power to provide for the lower rate of tax in certain cases. - Consequential amendments have been made to section 197A. - As per current provisions of Section 197A(1F), no deduction of tax shall be made from the specified payment to such institution, as may be notified by the Central Government in this behalf. - Section 197A(1F) has been substituted, to empower the Central Government to notify the specified payments for both nil deduction of tax and lower deduction of tax. - The new sub-section provides that no deduction of tax shall be made or deduction of tax shall be made at a specified lower rate in cases of persons, or class of persons, institutions, etc., notified by the Central Government.
VTPA Comments	- The Central Government thereby has been granted the absolute power for providing for non-deduction or deduction of tax at lower rate in respect of any person or class of persons.	

SECTION 194J – TDS IN THE CASE OF ROYALTY IN RESPECT OF CINEMATOGRAPHIC FILMS

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
Fess for professional or technical services **[Amendment to section 194J]**	- The Finance Bill, 2020 had proposed to reduce the rate for tax deducted at source (TDS) in respect of fees for technical services (other than professional services) to two per cent from existing ten per cent. - The TDS rate in other cases under section 194J would remain the same at ten per cent. - These amendments will take effect from 1 April 2020.	- The Finance Act, 2020 has now amended to also reduce the rate for TDS in respect of fees for technical services (not being a professional service, or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films) to two per cent from existing ten per cent. - Thus, reduced rate of tax deduction of two per cent would now be applicable to royalty income arising to a person by way of sale, distribution or exhibition of cinematographic films.
VTPA Comments	- Lowering the withholding rate of tax in respect of the film industry may ease their business process, however it needs to be seen how the sale of a film would give rise to royalty income, as a sale of any property would result in business income or income from capital gains.	

SECTION 194K - NO TDS FROM CAPITAL GAINS ARISING ON TRANSFER OF UNITS OF MUTUAL FUNDS

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020

Income in respect of units of Mutual Funds
 	
[Amendment to Section 194K]
	- In the new regime of taxation of income distributed by mutual funds, wherein the unit holder of a mutual fund is to be taxed, due to the abolition of tax on distributed income to unit holders under section 115R, a new section 194K was proposed to be inserted, to provide that any person responsible for paying to a resident any income in respect of:
	  - units of a Mutual Fund specified under section 10(23D) or
	  - units from the administrator of the specified undertaking or
	  - units from the specified company
	- shall at the time of credit of such income exceeding INR 5000 to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax there on at the rate of ten per cent
	- The term 'Administrator', 'specified company' and 'specified undertaking' have been defined in Explanation 1 to section 194K
	- These amendments will take effect from 1 April 2020
		- Various queries were received from stakeholders to the effect that whether under the proposed section 194K, the Mutual Fund would be required to deduct TDS also on the capital gains arising on redemption of units.
		- The CBDT vide Press release, dated 4 February 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.
		- The Finance Act, 2020 hence clarifies that payment by a mutual fund to the unit holders, in the nature of capital gains would not suffer any withholding tax under section 194K.

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
VTPA Comments	- The amendment clarifies that the words *'payment of any income in respect of units…'*, does not include payments in the nature of which the income is capital gains.	

SECTION 194N - PAYMENT OF CERTAIN AMOUNTS IN CASH

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020

Payment of certain amounts in cash
 	
[Amendment to Section 194N]
		- The section provided that a banking company, co-operative bank or a post office is responsible for deducting tax at the rate of two per cent, for any amount withdrawn from a savings or current bank account in aggregate, exceeding INR one crore.
		- The Finance Act, 2020 has now made the provision more stringent and states that:
		  - a recipient who has not filed the return of income for three preceding financial years immediately preceding the financial year,
		  - in which the payment of the sum is made to him,
		  - the provision of said section 194N of the Act would apply
		  - so that the tax to be deducted would be:
		  - at the rate of two per cent, if the cash withdrawal in a year is more than INR 20 lakh but does not exceed INR 1 crore (on amount exceeding INR 20 lakh)
		and
		  - at the rate of five per cent, if the cash withdrawal exceed INR 1 crore (on amount exceeding INR 1 crore)

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
		- The Central Government would be empowered to exempt other recipients, through a notification in the Official Gazette in consultation with the Reserve Bank of India. - The amendments in this section shall be inserted with effect from 1 October 2020.
VTPA Comments	- This provision could cause hardship in the rural economy where the transaction medium is still in cash.	

SECTION 194-O - DEFINITION OF 'E-COMMERCE OPERATOR' AMENDED

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
Payment of certain sums by e-commerce operator to e-commerce participant **[Amendment to Section 194-O]**	- A new section 194-O was inserted in respect of e-commerce transactions, so as to provide for a new levy of TDS at the rate of one per cent, in respect of the following: *The TDS is payable on the gross amount of the sale of goods or provision of service facilitated through the e-commerce operator's digital or electronic facility or platform.* - E-commerce operator is required to deduct tax at the time of credit of or payment of the sale or service or both to the e-commerce participant's account, whichever is earlier. - Further, any amount paid by a purchaser of goods or recipient of services directly to an e-commerce participant, facilitated by the ecommerce operator, shall be deemed to be included in the gross amount of such sales or services for the purpose of deduction of income-tax. - However, if the e-commerce participant of such sale or service is an individual or a HUF, then the TDS liability would only arise if the sum credited or paid during the previous year to such person exceeds five lakh rupees and such e-commerce participant has furnished his Permanent Account Number (PAN) or Aadhaar number to the ecommerce	- The Finance Act, 2020 now empowers the Central Board of Direct Taxes (CBDT) 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. - Further, the definition of e-commerce operator has been amended, *so as to remove the condition that requires an e-commerce operator to make payment to e-commerce participant*. The Finance Act, 2020 also provides that for the purpose of this section e-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant. -

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
	operator. - Consequential amendments are made in section 197 (for lower TDS), in section 204 (to define person responsible for paying any sum) and in section 206AA (to provide for tax deduction at five per cent, in cases where PAN/ Aadhaar are not provided). - Section 204 has inserted clause (v) to state that the person responsible for deducting TDS: *"in the case of a person not resident in India, the person himself or any person authorised by such person or the agent of such person in India including any person treated as an agent under section 163"* - The terms 'electronic commerce', 'e-commerce operator', 'e-commerce participant', 'services' have been defined in the new section. - These amendments will take effect from 1 April 2020.	
VTPA Comments	- The new section aims to bring to tax the income of e-commerce operators and needs to be read in conjunction with the new provisions of equalisation levy, discussed in the Bulletin later. The amendment gives power to the CBDT to issue guidelines after taking approval from the Central Government so as to facilitate the smooth implementation of the new law. - Further, the dichotomy, whereby the condition that the e-commerce operator is responsible to make payment to the e-commerce participant has been removed; as in reality the customer could make payment directly to the e-commerce	

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
	participant, and it is not necessary that payments from customers would have to be routed through the e-commerce operator. - These new provisions are fraught with complexity and would fasten liability of withholding taxes on non-residents, though they may have no tax liability in India, which would be a burdensome requirement on persons not covered under the Act. - Further, the requirement to withhold taxes on a deemed receipt basis, when the moneys do not flow through the e-commerce operator is inequitable and impractical. It would be need to be seen how this scheme of taxation evolves along-with the new equalisation levy on non-resident e-commerce operators, as these provisions may lead to litigation. - It also needs to be seen how due to the health pandemic prevalent globally and social distancing norms being mandated, how these provisions on e-commerce operators marry with today's economic scenario. - Further, it has been witnessed that any attempt to tax the technology participants, who are monopolists economically, only results in the burden being passed on to the individual consumer. - This only results in the middle class subsidizing the large corporations, as economically they have no bargaining power vis-à-vis the technology monopolists. The price of goods or services consumed would therefore increase, resulting in these hapless consumers paying the taxes indirectly to the government, a paradox, which needs to be resolved equitably by the government!!	

SECTION 206(1G) and SECTION 206(1H) - TCS PROVISIONS

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020

Profits and gains from the Business of trading in Alcoholic liquor, forest Produce, scrap, etc.
 	
[Amendment to Section 206(1G) and Section 206(1H)]
	- This section provides for the collection of tax at source (TCS).
	- The scope of section 206C was widened to include TCS on foreign remittance through Liberalised Remittance Scheme (LRS) and on selling of overseas tour package, as well as TCS on sale of goods over a particular limit.
	- An authorised dealer receiving an amount or an aggregate of amounts of INR seven lakh or more in a financial year for remittance out of India under the LRS of Reserve bank of India (RBI), shall be liable to collect TCS, at the rate of five per cent from the buyer. In case of no PAN/ Aadhaar is provided by the buyer, the rate of TCS shall be ten per cent.
	- Similarly, a seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS at the rate of five per cent. In case of no PAN/ Aadhaar is provided by the buyer, the rate shall be ten per cent.
	- Further, a seller of goods is liable to collect TCS at the rate of 0.1 per cent on consideration received from a buyer in a previous year in excess of INR fifty lakh. In case of no PAN/ Aadhaar is provided,
		- The Finance Act, 2020 amends and states that section 206(1G) and (1H) will be effective from 1 October 2020 and not 1 April 2020 as envisaged in the Finance Bill, 2020.
		- The Amendment to section 206(1G) now provides that:
		  - Tax shall be collected at source by the authorized dealer only on the remittance made under the LRS which is in excess of INR seven lakh.
		  - However, no such limit is applicable, where the remittance has been made through the authorized dealer for overseas tour program package.
		  - The authorized dealer shall not collect the tax on an amount in respect of which the tax has already been collected by the seller of such tour program package.
		  - In respect of any remittance made by the authorized dealer under the LRIS scheme, for a loan obtained for pursuing education, from any financial institution referred to in section 80E, then the rate of TCS is 0.5% in excess of INR seven lakh.
		- The Amendment to section 206(1H) now provides that:

SECTION	Amendments as introduced by The Finance Bill, 2020 on 1 February 2020	Amendments as passed by The Finance Act, 2020 on 27 March 2020
	the rate shall be one per cent. - Only those sellers whose total sales, gross receipts or turnover from the business carried on by it exceed INR ten crore during the financial year immediately preceding the financial year, shall be liable to collect such TCS. - Further, the provision of TCS on sale of goods would not be applicable if the buyer of goods is liable to deduct tax on such purchases, and he has deducted such taxes.	- No tax shall be collected at source in respect of goods exported out of India, or in respect of goods imported into India. - The Amendment provides that the CBDT with the approval of the Central Government can issue guidelines to remove difficulty in implementation of section 206(IG) and (IH), and that such guidelines need to be laid before each House of the Parliament.

KEY BUDGET AMENDMENTS IN THE FINANCE ACT - EQUALISATION LEVY

BRIEF BACKGROUND

- Equalisation Levy (EQL) was introduced in India by way of Chapter VIII of the Finance Act, 2016.
- India was the first country in the world to introduce such a levy.
- EQL of 6% was levied on a 'Specified service' which means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government.
- Since EQL was not a part of Income-tax Act, 1961, it was not considered as a tax on income. As a result, foreign tax credit would not be available against the EQL paid, subject to the law prevalent in the country of residence of the non-resident.
- The responsibility to pay the EQL was on the payer of the advertisement services availed, similar to the methodology of a withholding tax.
- The Finance Act, 2020 has now widened the ambit of the EQL, to not just cover payments made for advertising, but also to any online sale of goods or online provision of services or their facilitation by an E-Commerce operator

Note: The amendments to the EQL are effective from 1 April 2020 that is Financial Year 2020-21.

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PRELIMINARY

Extent, commencement and application **[Amendment to Section 163(3)]**	- Section 163(3) has now been amended to provide that the EQL would now be applicable also to ***"to consideration received or receivable for e-commerce supply or services made or provided or facilitated on or after the 1st day of April, 2020"*** - The above amendment expands the scope of EQL to any online sale or provision of services or their facilitation.

DEFINITIONS

Definitions **[Introduction of Section 164(ca) and 164(cb)]** **and** **[Amendment to Section 164(d)]**	- 2 new clauses have been inserted in section 164 which define "e-commerce operator" and "e-commerce supply or services" - Section 164(ca): *"e-commerce operator" means a* ***non-resident*** *who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both* - Section 164(cb): "e-commerce supply or services" means — o *online sale of goods owned by the e-commerce operator; or* o *online provision of services provided by the e-commerce operator; or* o *online sale of goods or provision of services or both, facilitated by the e-commerce operator; or* o *any combination of activities listed in clause (i), (ii) or clause (iii);* - Further, in section 164(d), after the words "specified service", the words "*or e-commerce supply or services*" shall be inserted.
VTPA Comments:	- In line with the objective to widen the ambit of EQL, the definitions have been introduced as well as the amendments to the existing sections made so as to bring to charge e-commerce activities.

CHARGE OF EQUALISATION LEVY

Charge of equalisation levy on e-commerce supply of services **[Insertion of new Section 165A]**	- Section 165A has been introduced so as to create the charge of EQL on e-commerce supply or services. *"165A. (1) On and from the 1st day of Apirl, 2020, there shall be charged an equalisation levy at the rate of* ***two per cent*** *of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it—* o *To a person resident in India; or* o *To a non-resident in the* ***specified circumstances*** *as referred to in sub-section (3); or* o *To a person who buys such goods or services or both using internet protocol address located in India.* - It has also been provided that EQL provisions would not be applicable to persons covered under section 165 (payment for "*specified services*"), or those who have a Permanent Establishment (PE) in India and the e-commerce supply or services is effectively connected with such PE. - A threshold limit for such supply has also been prescribed, whereby, EQL would not be applicable in case the sales, turnover or gross receipts, as the case maybe, is less than INR 2 Crores in the previous year. - Section 165A(3) defines '*specified circumstances'* to mean o *sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement* ***though internet protocol address located in India****;* *And* o *Sale of data, collected from a person who is resident in India or from a person who* ***uses internet protocol address located in India****.*
VTPA Comments:	- Section 165A provides that the e-commerce supply or services or their facilitation would be chargeable to EQL. It has been further clarified that the same is separate from EQL on *specified services* and such would continue to be governed by the existing provisions.

	- The critical point regarding the new widened scope of EQL, is that it intends EQL to be levied on sales / services even to persons who use an ***IP address located in India, irrespective of their residence in India.*** The Government needs to provide more clarity as to how the same is proposed to be monitored and tracked, and whether the same would have an impact on the Fundamental Right, of Right to Privacy as held in various judicial precedents and enshrined in the Article 21 of the Constitution of India. - Another aspect which needs to be considered is the impact of the new Data Protection Bill, 2019, as the same would have wide ramifications regarding the usage and the sale of user data, which would be the key to determine the extent of data privacy and protection laws in India. - The Government believes that the market is also an important contributor of economic activity and hence should be given weightage apart from the usual economic activity indicator of Functions, Assets and Risks (FAR). This has also been evidenced by the recent draft notification on Profit Attribution Rules for PE which envisages a move from the hitherto function, asset and risk (FAR) analysis to the function, asset, risk and market (FARM) analysis for determining the profits attributable to a PE. - However, the Government, in its over-enthusiasm to tax the digital economy and mop up significant revenue, needs to evaluate and form a system of checks and balances, so that the security and privacy of the citizens of India are safeguarded.

COLLECTION AND RECOVERY PROVISIONS

Collection and recovery of equalisation levy on ecommerce supply or services **[Insertion of Section 166A]**	- Section 166A provides that the EQL referred to in section 165A(1), ***shall be paid by every e-commerce operator*** to the Central Government quarterly. - Thus, unlike the EQL on specified services, which is similar to the methodology of a withholding tax, the EQL has to be collected from the e-commerce operator and not the person to who whom the e-commerce operator renders online services or makes online sales of goods or facilitates the same.
VTPA Comments:	- The said amendment is extremely critical as the EQL, hitherto, paid by the users of the specified services, will now be paid by the e-commerce operator for the purposes of section 165A. - Thus, as a result of the amendment there would be two systems by which the Government would collect revenue o First by the users, when they avail of the *specified services* o Secondly by the e-commerce operator, when he makes any online sale of goods or services or facilitates the same - This may result in confusion regarding the compliance burden and may also have an impact on the pricing of the products for the Indian customers/ users. - Further, the power of the Government to impose compliances and taxes on persons outside its territorial jurisdiction and the reasonableness and feasibility of the same also needs to be evaluated

OTHER AMENDMENTS

Other Amendments **[Amendments to Sections 167, 168, 169, 170, 172, 173, 174, 175, 178]**	- In line with the above newly introduced EQL on online sale of goods and services on e-commerce operators, various consequent amendments have been brought about in the existing sections to align them with the new EQL provisions. - As a result, various amendments giving effect to the new sections of EQL introduced have been made in sections 167, 168, 169, 170, 172, 173, 174, 175, 178.

Power to remove difficulties **[Amendment to Section 180]**	- The Government has amended the section to provide that it may pass any orders as required through the Official Gazette to remove any difficulty in giving effect to these provisions up to 31March 2022.

PENALTIES

Penalty for failure to deduct or pay equalisation levy **[Insertion of sub-section 171(aa) and 171(ia), also other amendments in Section 171]**	- The penalty sections have also been amended to provide for penalty on non-payment of any amount of EQL as required under section 166A, to the extent of an amount equal to the EQL that he failed to pay

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21 April 2020