HIGHLIGHTS OF THE UNION BUDGET-2020-21

Tax proposals- International Taxation

1. Exemption in respect of certain income of wholly owned subsidiary of Abu Dhabi Investment Authority and Sovereign Wealth Fund [Section 10(23FE)]

Exemption proposed to be provided to income of a specified person in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India carrying on the business of developing / operating / maintaining any infrastructure facility as defined in section 80-IA(4)(i)

Applicable in relation to the assessment year 2021-22 and subsequent assessment years

2. Modification in conditions for offshore funds’ exemption from “business connection [Section 9A]

In case of the investment fund incorporated or registered outside India, which satisfies certain conditions as provided in subsection 3 of section 9A of the IT Act, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute the business connection in India of the said fund.

It is proposed to modify certain conditions as provided in subsection 3 of section 9A of the IT Act as under: -

Proviso to clause c inserted

- For the purposes of calculation of aggregate participation or investment in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager during the first 3 years of operation of the fund, not exceeding 25 crore rupees, shall not be accounted for.

Modification in first proviso to clause j of subsection 3 of section 9A

- In case the fund is incorporated in the previous year then the corpus of the fund shall not be less than Rs 100 crores within twelve months from the last day of the month of its establishment or incorporation
Applicable in relation to the assessment year 2020-21 and subsequent assessment years

3. Amendment in Section 194LC

Tax rate of Section 194LC @ 5% for interest payment to non-resident is proposed to be allowed in respect of money borrowed or bond issued up to June 30, 2023 from July 01, 2020 currently.

Tax rate @ 4% for interest payment to a non-resident in respect of monies borrowed in foreign currency from a source outside India, by way of issue of any long term bond or Rupee denominated bond (RDB) on or after 1st April, 2020 but before 1st July, 2023 and which is listed only on a recognised stock exchange located in any IFSC.

Applicable from assessment year 2020-21 and subsequent assessment years.

4. Amendment in Section 194LD

Tax rate of Section 194LD @ 5% in case of interest payable on or after 1st July 2013 but before 1st July 2023 to Foreign Institutional Investors (FII) and Qualified Foreign Investors (QFIs) on their investment in Government securities and RDB of an Indian company.

The tax rate @ 5% is also proposed to apply on the interest payable, on or after 1st April, 2020 but before 1st July, 2023, to a FII or QFI in respect of the investment made in municipal debt security.

Applicable from assessment year 2020-21 and subsequent assessment years.

5. Amendment in Section 94B

It is proposed to amend section 94B so as to provide that provisions of interest limitation (i.e. Restriction of interest allowance to 30% of EBITDA or interest paid or payable to AE, whichever is less if interest payment exceeds 1 crore) would not apply to interest paid in respect of a debt issued by PE of a non-resident Bank in India.
Applicable in relation to the assessment year 2021-22 and subsequent assessment years

6. Exempting non-resident from filing of Income-tax return in certain conditions [Section 115A]

It is proposed to amend section 115A in order to provide that a non-resident, shall not be required to file return of income u/s 139(1) of the Act if his or its total income consists of royalty or FTS income and the TDS on such income has been deducted under the provisions of Chapter XVII-B of the Act at the rates which are not lower than the prescribed rates u/s 115A(1) of the Act.

Applicable from assessment year 2020-21 and subsequent assessment years.

7. Attribution of profit to Permanent Establishment in Safe Harbour Rules under section 92CB and in Advance Pricing Agreement under section 92CC

In order to avoid disputes, it is proposed to include the attribution of income in case of a non-resident person to the PE in Safe Harbour Rules under section 92CB and in Advance Pricing Agreement under section 92CC.

Applicable from assessment year 2020-21 and subsequent assessment years

8. Widening the scope of section 206C 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 limit

An AD receiving an amount of 7 lakhs rupees or more in a FY for remittance out of India under the LRS of RBI, shall be liable to collect TCS @ 5%. In non-PAN/Aadhaar cases the rate shall be 10%.

A seller of an overseas tour program package who receives any amount from any buyer, shall be liable to collect TCS @ 5%. In non-PAN/ Aadhaar cases the rate shall be 10%.

A seller of goods whose total sales/ gross receipts/ turnover exceed 10 crore rupees during the financial year immediately preceding the financial year, is liable to collect TCS @ 0.1% on consideration received from buyer in a PY in excess of 50 lakh rupees. In non-PAN/ Aadhaar cases the rate shall be 1%.
9. Aligning purpose of entering into Double Taxation Avoidance Agreements (DTAA) with Multilateral Instrument (MLI).

**Section 90(1)(b)** of the Act proposed to be amended so as to provide that the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India for, inter alia, the avoidance of double taxation of income under the Act and under the corresponding law in force in that country or specified territory, as the case may be, **without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance** (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of any other country or territory).

It is also proposed to make similar amendment in clause (b) of sub-section (1) of section 90A of the Act.

**Applicable from assessment year 2021-22 and subsequent assessment years.**

10. **Deferring Significant Economic Presence (SEP) proposal**, extending source rule, aligning exemption from taxability of Foreign Portfolio Investors (FPIs), on account of indirect transfer of assets, with amended scheme of SEBI, and rationalising the definition of royalty. [New Section 9]

The current SEP provisions shall be omitted from assessment year 2021-22 and the new provisions will take effect from 1st April, 2022

**income from:**

- such **advertisement which targets a customer** who resides in India or a customer who accesses the advertisement through internet protocol address located in India.
- **sale of data collected from a person** who resides in India or from a person who uses internet protocol address located in India; and
- **sale of goods and services using data collected** from a person who resides in India or from a person who uses internet protocol address located in India.
- It is therefore proposed to insert a new Explanation 3A so as to amend the source rule to clarify this position.
This amendment will take effect from 1st April 2021

Rationalizing of Royalty [Clause (vi) of sub-section (1) of section 9]

Explanation 2 said clause defines the term “royalty” to, inter alia, mean the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films.

Exclusion of consideration for the sale, distribution or exhibition of cinematographic films created a discriminatory situation against Indian Residents. Such royalty is not taxable in India even if the DTAA gives right to tax.

It is hence proposed to amend the definition of royalty so as not to exclude the above-mentioned.

These amendments will take effect from 1st April 2021