

kcmFlash

Direct Tax

April 14, 2021

Amendments effective from April 1, 2021

Snapshot

We have witnessed multiple changes, both in law and in procedure, in the Finance Acts over the past few years. These changes include the changes around Significant Economic Presence (SEP), Equalization Levy, Assessment and Re-assessment proceedings, due dates for various filings, trust taxation, etc.

Amongst a whole host of amendments, various amendments made under the Income-tax Act, 1961 vide Finance Acts 2021 and 2020 have become operational during or from Financial year 2021-22.

In this Flash, we have summarized the key amendments for your ready reference.

Personal Taxation

Interest income received on contribution made on or after April 1, 2021 by employee to Provident Fund or Statutory Provident Fund or Recognized Provident Fund in excess of Rs 2,50,000 in a year shall be subject to tax. However, in case the employer does not contribute to such account, a higher threshold limit of Rs. 5,00,000 is applicable.

In respect of a ULIP issued on or after February 01, 2021, if the annual policy premium is more than Rs.2,50,000 during the term of such policy, it shall be subject to capital gains on its transfer, taxable at 10% if gain is long term in nature and at 15% if gain is short term in nature. It shall also be subject to TDS @ 5% u/s 194DA if payment relates to resident.

If the person fails to link PAN-Aadhaar by June 30, 2021, he shall be liable to pay a fee, maximum of Rs.1,000, which shall be in addition to the other consequences the person has to face if PAN becomes inoperative due to non-intimation of Aadhaar such as (i) inability to file income tax return for AY 2021-22 onwards (ii) higher rate of TDS / TCS would apply u/s 206AA / 206AB or 206CC / 206CCA as the case may be and (iii) levy of penalty u/s 272B of the Act.

Business Tax

Tax Audit requirement is not applicable where turnover from business does not exceed Rs. 10 Crores subject to condition that receipt as well as payment in cash is not more than 5% total amount of receipts and total amount of payments, respectively. Payment/Receipt by way of non-account payee cheque/bank draft is treated as cash for the purpose of computing such limit. Such provision is

applicable for tax audit of Assessment Year ('AY') 2021-22 onwards.

Goodwill, irrespective of mode of acquisition or generation, would not be eligible for depreciation with effect from AY 2021-22. This shall also apply to a goodwill on which depreciation has been claimed under the Act in earlier years.

The definition of slump sale now includes transfer of an undertaking by any means and accordingly, slump exchange is subject to tax under section 50B of the Act.

While computing capital gain in case of slump sale, the fair market value of capital assets shall be regarded as full value of consideration. CBDT will prescribe rules for computing such values. While computing the net worth of the undertaking, value of goodwill as appearing in books of accounts shall be regarded as Nil in case the same is not acquired by the Taxpayer by way of purchase from a previous owner.

Deposit of employee's contribution to various welfare funds (provident fund, superannuation fund, ESIC, etc.) beyond due date specified under relevant Act governing such welfare fund shall not be allowable as deduction u/s.43B.

Benefit of presumptive taxation scheme u/s 44ADA to professional shall be applicable only to resident Individuals and Partnership Firms.

In case of reconstitution or dissolution of a firm, LLP, AOP/BOI, such entities shall be liable to pay tax on capital gain/business income arising on transfer of a capital asset/stock in trade to a partner/member on the fair market value of such assets. Further such entities shall also be liable to pay tax on the amount/capital asset received by a partner/member in excess of his capital account balance in the manner specified in amended section 45(4) of the Act.

MAT provisions shall not apply to dividend income of the foreign company having PE as per provisions of relevant DTAA.

All companies shall now also be required to report details of dividend declared / distributed / paid in FY

2020-21 in Statement of Financial Transactions (SFT) in Form 61A u/s 285BA which is due by May 31, 2021. Necessary procedure in respect of the same has yet not been notified by CBDT.

No deduction under Chapter VI-A (except u/s 80JJAA in respect of payment of employee benefits and u/s 80M in respect of further distribution of dividend income) would be available to Indian Company which has opted for concessional tax regime u/s 115BAA of the Act.

TDS & TCS Obligations

From April 1, 2021, tax is required to be deducted/collected at source at the full rate specified under the applicable provision. For FY 2020-21, CBDT had reduced such rates in case of resident payee by 25% up to March 31, 2021 due to COVID-19 pandemic. No such relaxation has yet been announced for FY 2021-22.

With effect from July 01, 2021, a buyer is required to deduct tax at source @ 0.1% (5% in absence of PAN) on purchase of goods u/s 194Q of the Act. Such tax is required to be deducted by a buyer whose turnover from the business is more than Rs.10 cr. in preceding financial year on the value of purchase exceeding Rs.50 lacs during a financial year from a seller. However, no such provision is applicable if tax is deductible under any other provision or tax is collectible under any other provision (excluding the provision relating to TCS on sale of goods u/s 206C(1H)).

With effect from July 01, 2021, a payer shall be required to deduct or collect tax at twice the rate as provided under the Act or 5%, whichever is higher in case of a deductee (excluding a non-resident having no PE in India) who has not filed return for last two previous years and tax deducted /collected in case of such deductee is Rs. 50,000 or more in each of last two years. Such provision, however, is not applicable in case of TDS on salaries and TDS u/s. 192A, 194B, 194BB, 194LBC or 194N of the Act. Further, in absence of availability of PAN of such person, tax shall be withheld

or collected at rate which is higher of rates applicable u/s 206AA and u/s 206AB or 206CC and u/s 206CCA as the case may be.

Resident Senior citizens above 75 years of age shall have an option to not file tax returns if their income comprises of only pension and interest income and bank deducts tax at source u/s 194P on such income at applicable rates of tax, upon filing of declaration by such person to such bank.

International Tax

Significant Economic Presence ('SEP') regarded as business connection in India

To tax a non-resident in India, by taking a customer as the source for such taxation, section 9 of the Act provides that SEP of a non-resident would constitute a business connection in India and thereby income of any non-resident attributable to its SEP shall be deemed to accrue or arise in India. A non-resident would be said to have an SEP in India if:

- transactions in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India provided that the transaction amount exceeds the prescribed threshold limit (yet to be notified).
- There exists systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India, as may be prescribed (yet to be notified).

It is clarified that SEP is constituted whether or not the agreement is entered in India/ the non-resident has a place of business or residence in India/ services are rendered in India. Further, it has been also clarified that only so much of the income as is attributable to the above transactions shall be deemed to accrue or arise in India. Incomes that shall be attributable to SEP in India shall also include income from advertisement that targets Indian customers or income from sale of data collected from India or income from sale of goods and services using such data collected from India.

For non-residents claiming the benefit of Tax Treaties, the impact of SEP may not be significant as the treaties include the concept of 'Permanent Establishment' which is a much narrower concept than SEP.

Indian Companies availing goods and services from Non-resident companies now need to revisit the TDS implications pursuant to these provisions as now the non-resident having an SEP in India would be subject to TDS at higher rates. If the goods and services obtained from a non-resident exceed the threshold (which is yet to be notified), then it is now mandatory to obtain Tax residency certificate of the non-resident (to claim treaty benefit) or deduct taxes at a higher rate.

Equalization Levy

The concept of Equalization Levy was applicable from April 01, 2020 for taxing the income from e-commerce services in the hands of non-residents. It has been clarified in the Budget 2021 that the scope of equalization levy shall not include consideration which is taxable as Royalty or FTS in India under the Act read with DTAA.

It has also been clarified that the phrases "online sale of goods" and "online provision of services" would include each part of the transaction, viz. acceptance of offer for sale, placing of purchase order, acceptance of purchase order, payment of consideration or supply of goods or provision of services, partly or wholly.

Further, it has also been provided that Equalisation Levy shall apply irrespective of whether the e-commerce operator owns the goods or not or whether the e-commerce operator provides or facilitates the services. However, Equalisation Levy shall not apply when the goods or services that are being supplied or provided belong to persons resident in India or to permanent establishment of non-residents in India.

Other Amendments

From AY 2021-22, Interest Payable on borrowings from Permanent Establishment of Non-resident banks by an

Indian company would be excluded from the scope of Section 94B.

From April 01, 2021, the income of a resident from withdrawal of amount from Overseas retirement account maintained in a country where the income is taxable at the time of withdrawal and not on accrual basis, will be taxed in a manner to be prescribed by the CBDT (yet to be notified) in order to avoid mismatch in the year of taxability in different countries.

Dividends distributed to Foreign Institutional Investors u/s 196D to be subject to lower withholding tax rates if the provisions of tax treaties are more beneficial.

Transfer Pricing

Country-by-Country Report ('CbCR')

The threshold limit for determining the reporting applicability (Form 3CEAD) in India has been increased from INR 5,500 crores to INR 6,400 crores w.e.f. April 01, 2021.

Income-tax Rules have been amended to remove reference to constituent entity resident in India, meaning that in case a group has more than one constituent entities in India (either resident or non-resident), Form 3CEAA could be filed by any one of such constituent entities by exercising options via Form 3CEAB.

Taxation of Trusts and Charitable Entities

All trusts, institutions or funds which are registered u/s 12A, 10(23C)(i) to 10(23C)(iv) or section 80G(5)(iv) or section 35(1)(ii) or 35(1)(iii) of the Act shall have to get themselves re-registered electronically with prescribed authority by making application on or before June 30, 2021. CBDT has already issued a notification prescribing a form and procedure in this regard.

Any amount spent from the fund of corpus donation shall not be treated as application of income u/s 11 / 10(23C) of the Act. Corpus donation has to be preserved by way of investing the amount of such

donation in one or more of eligible forms of investment specified in section 11(5) specifically maintained for such donation.

Any amount spent out of borrowed funds shall not be treated as application of income for the purpose of section 11 & section 10(23C) of the Act.

It is now provided in law itself that no set off or deduction of any excess application of any of the preceding year shall be available against income.

Tax Compliance & Assessments

Filing of Returns

Now, one can file a revised Return or belated return latest by December 31 of the relevant assessment year.

Due date of filing of return of income by a partner of a firm which is subject to transfer pricing audit is November 30 of the relevant assessment year.

Assessment Proceedings

The last date for issuance of intimation u/s 143(1) has been set to 9 months from the end of financial year in which return was filed.

Notice u/s 143(2) for selection of case for scrutiny assessment has been set to 3 months from the end of financial year in which return was filed.

The last date for passing a regular order u/s 143(3) & 144 for AY 2021-22 and subsequent assessment years has been set to 9 months from the end of relevant assessment year.

Provisions of reassessment proceedings have been completely overhauled. A detailed procedure has been laid down for conducting the reassessment proceedings and the same has to be mandatorily followed by the Department.

It has also been provided that a case cannot be reopened after the end of 3 years from the end of relevant AY unless the Department has any document or evidence which shows that the escaped income is held as an asset by the Taxpayer and the amount of

such income is Rs. 50 Lacs or more. If there is such asset held by the Taxpayer, case can be reopened subject to the fact that 10 years have not elapsed from the end of the AY to which such income pertains.

Search/ survey assessments are now merged with Re-assessment proceedings and thus search and survey assessments shall be completed in accordance with provisions applicable in case of re-assessment proceedings.

Fees & Interest

Fee of Rs. 5000 shall be leviable on failure to furnish Return of income within the time limit prescribed. However, if the total income of the person does not

exceed Rs. 5 lakhs the fee leviable shall not exceed Rs.1000.

Interest u/s 234C shall not be levied in respect of short fall in payment of advance tax on account of dividend income subject to the condition that advance tax has been paid in the remaining instalments post receipt of dividend income. However, deemed dividend u/s 2(22)(e) is not included in the above dividend.

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For further analysis and discussion, you may please reach out to us.

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