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## **Finance Bill 2020 vs Finance Act 2020 -** International Taxation Perspective

*International Taxation Study Group of CTC*

# Agenda

01

## **Modification of Residency Provisions**

Changed Residency Norms for Indian Citizens, Person of Indian Origin, Deemed Residency for Stateless persons and RBNOR

02

## **New Era of Taxation of Dividend**

Removal of DDT and revised Scheme of Taxation of Dividend

03

## **Introduction of Equalization Levy on E-Commerce**

Expanding the scope of existing equalization levy on the E-Commerce Operators (Non-Resident)

04

## **Other International Tax Amendments**

Significant Economic Presence, Scope of Safe Harbor & APA, Section 115A, Definition of 'Royalty', MLI Amendment etc

## Amendments in Section – 6

## Modification of residency provisions

- Modification of residency provisions - 120 days to substitute 182 days – Clause (b) to Explanation 1 – Section 6(1)
- Modification of residency provisions – Deemed Residency for Stateless Person
- Modification of residency provisions – Resident but Not Ordinarily Resident (RBNOR)

# Modification of residency provisions – 120 days to substitute 182 day

## **Before Amendment –**

- 1) Condition of 182 days or more in the PY; or
- 2) 60 days or more in that PY and 365 days or more within 4 preceding years.

**However, for two categories period of 60 days to be read as 182 days, which are –**

- Indian Citizen leaving India as member of Crew or for employment outside India;
- Indian Citizen or Person of Indian Origin

## Modification of residency provisions – 120 days to substitute 182 day

### **Proposed Amendment – Finance Bill 2020**

- However, Period of 60 days to be read as 120 days for Indian Citizen or Person of Indian Origin
- Proposal aimed to prevent misuse of 182 criteria and to tax global income

## Final Amendment – Finance Act 2020

- However, Period of 60 days to be read as 120 days for Indian Citizen or Person of Indian Origin **whose total income, other than income from foreign sources, exceeds Rs. 15 lakhs during the previous year.**
- For this provision, *income from foreign sources* means
  - income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India)

# Modification of residency provisions – Deemed Residency for Stateless Person

## Existing Provisions –

- The Residency Provisions as per Income Tax Act may sometime results into a **Indian citizen** to be non resident for all countries and resident for none. Thus, the issue of **stateless persons** has been bothering the tax world for quite some time.

# Modification of residency provisions – Deemed Residency for Stateless Person

## Proposed Amendment – Finance Bill 2020

- Proposed to insert a **new clause (1A) to section 6** of the Income-tax Act to provide that an **Indian citizen** shall be deemed to be resident in India if he is **not liable to tax** in any country or jurisdiction **by reason of his domicile or residence** or any other criteria of similar nature.
- Proposal aimed to tax worldwide income of stateless person - **Immediate clarification by CBDT dt. 02/02/2020** - to give benefit to bonafide persons working in abroad



# Modification of residency provisions – Deemed Residency for Stateless Person

## Final Amendment – Finance Act 2020

- Notwithstanding anything contained in clause (1), an individual, being a citizen of India, *having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year* shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature

# Modification of residency provisions – Resident but Not Ordinarily Resident (RBNOR)

## Existing Provisions – Two Situations

- Individual or Karta of HUF has been a non-resident in India for **9 years out of 10 years** preceding the previous year; or
- Individual or Karta of HUF has been in India for **729 days or less during the period of 7 years** preceding the previous year.

# Modification of residency provisions – Resident but Not Ordinarily Resident (RBNOR)

## Proposed Amendment – Finance Bill 2020

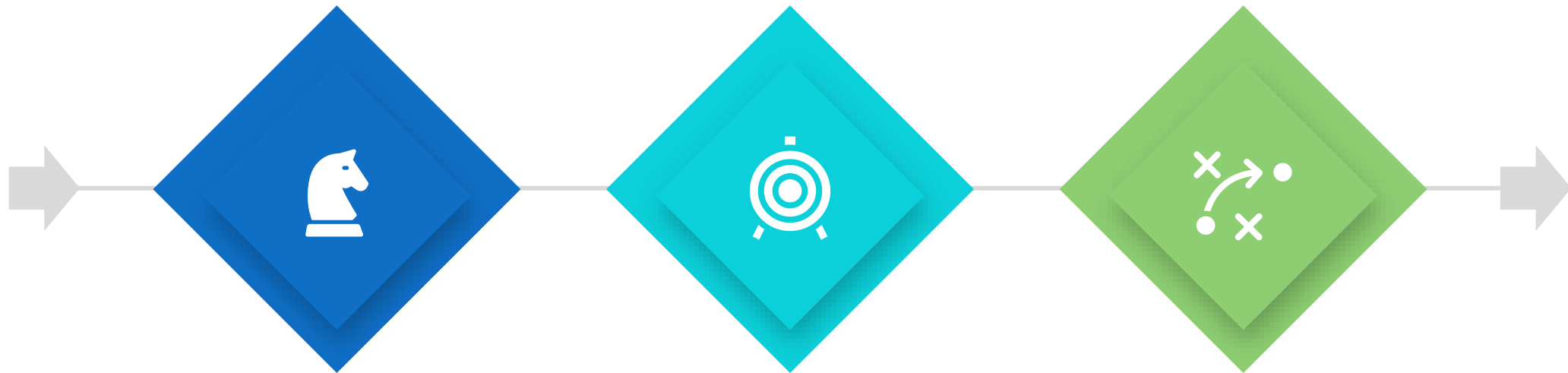
- Substituted both the existing situation with one new condition;
- That an Individual/HUF shall be deemed to be Not Ordinarily Resident if he/Karta of HUF has been a non-resident in **7 out of the 10 immediately preceding years**

# Modification of residency provisions – Resident but Not Ordinarily Resident (RBNOR)

## Final Amendment – Finance Act 2020

- **Set aside the new proposal of Finance Bill 2020. It restored earlier two conditions and added further two situations**
  - 1) An Indian Citizen or a person of Indian origin whose total income (other than income from foreign sources) exceeds Rs. 15 lakhs during the previous year and who has been in India for a period of 120 days or more but less than 182 days; or
  - 2) An Indian Citizen who is deemed to be resident in India as per new Section 6(1A).

# Section 5 - Scope of Total Income



## Resident

- a) Received or Deemed to Received In India
- b) Accrues or arises or Deemed to accrue or Arise in India
- c) Accrues or Arises Outside India

## RBNOR

- a) Received or Deemed to Received In India
- b) Accrues or arises or Deemed to accrue or Arise in India
- c) **Accrues or Arises Outside India but derived from Business Controlled or Profession Set up in India**

## Non - Resident

- a) Received or Deemed to Received In India
- b) Accrues or arises or Deemed to accrue or Arise in India

Same as per definition of **Income from Foreign Source** – Section 6

# Analysis of important terms

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## Exception to 'Income from Foreign Sources'



### ***Derived from***

***Derived from*** is different from term '***Attributable to***'. As per SC in 16 ITR 325, '***Derived from***' should bring first degree relationship. Whereas '***Attributable to***' has a wider meaning



### ***Business Controlled in India***

Language used is '***Business controlled in India***' and not '***carried on in India***'. Difficult to determine whether control exist in India in an Individual's perspective.



### ***Profession Set up in India***

Control of Business is a continues state of affairs, '***Set up in relation to profession is historic set of affairs***'. Once profession is set up in India, same will remain so during the lifetime of said profession

# Reintroduction of Traditional System of Taxation for Dividends Proposals by Finance Bill 2020

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## 04 80M Reintroduced

To remove the cascading effect, a deduction of an amount equal to income by way of dividends received from such other domestic company

## 03 Deduction u/s 57

Deduction u/s 57 can be claimed maximum upto 20% of such dividend

## 02 Dividend Taxable

New regime to move to classical system of taxing dividend in the hands of shareholders/unit holders if it is **received after 01/04/2020**

## 01 DDT Removed

Remove the concept of Dividend Distribution Tax u/s 115-O (from Companies) and 115R (From Mutual Funds etc)

### **Scope of Section 80M as per Finance Bill expanded**

Scope of Section 80M expanded to include the dividend received from a foreign company and business trust

### **Rate of TDS on Dividend Distributed To a Non-Resident or Foreign Company**

Section 115A prescribes Tax Rate for dividend income @ 20%, whereas in most of DTAA it ranges from 5-15%.

But Rate for TDS u/s 195 are prescribed in **Part II of First Schedule**, wherein no rate was hitherto prescribed for Dividend, so it was falling in **residuary category** of 40% for foreign companies and 30% for other NR

Now Part II of First Schedule has been amended to include TDS rate of 20% for such dividends



## Further Amendment – Finance Act 2020

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### Dividend received on or after 01/04/2020 not taxable if DDT is already paid thereon

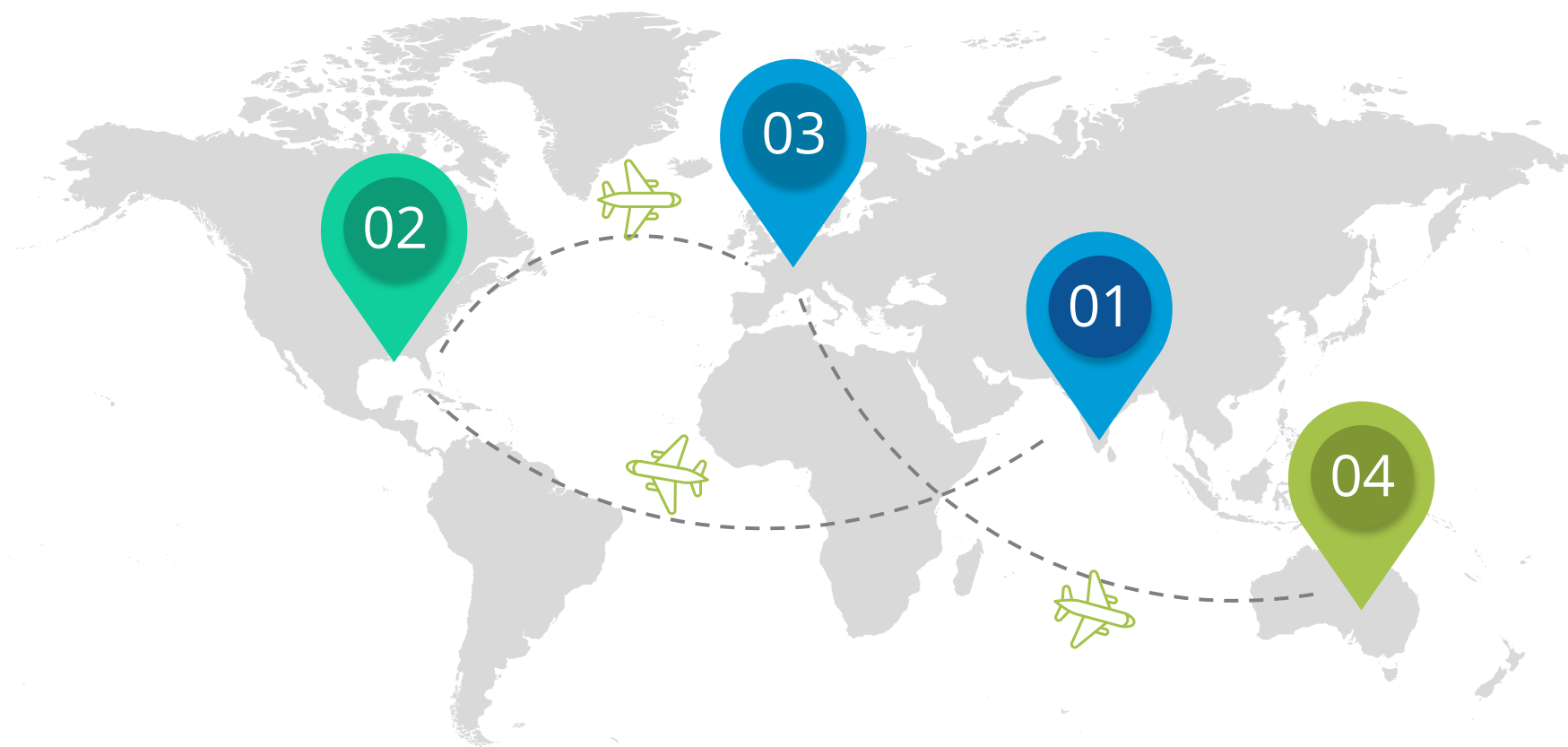
As per Finance Bill 2020 – No exemption u/s 10(34) shall be available in respect of dividend received on or after 01-04-2020.

Whereas as per Section 115-O, DDT was required to be deposited by the Company within 14 days of the earliest of declaration or distribution or payment of Dividend. Further, as per ICDS the recipient has also to pay tax on dividends on earliest of the accrual or receipt basis. **Problem may arise in two cases: -**

1. There may be situations, where dividend is declared prior to 01/04/2020 but received in the hands of the shareholder post 01/04/2020; or
2. The shareholder has already offered such dividend as income in FY 2019-20 on accrual basis

To remove this kind of situation, Finance Act 2020 has amended Section 10(34) and 10(35) to provide that dividend received by assessee on or after 01-04-2020 shall not be included in his income if tax has already been paid on such dividend under section 115-O or section 115BBDA

# Equalization Levy on E-Commerce





## 01 Scope of Equalization Levy



## 02 Taxable Transactions



## 03 Important Definitions



## 04 Threshold & Exceptions



## 05 Compliance Portion



## 01 Scope of Equalization Levy

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### Finance Act 2020

- In the Finance Bill 2020 there was no amendment proposed to the scheme of Equalization levy. But the Finance Act, 2020 expanded the scope of equalization levy on E-Commerce Operators.
- **Scope – two type of transactions: -**

a) Sum received or receivable by a non-resident for the online advertisement services rendered to a specified persons	w.e.f. 01/04/2016 @ 6% by payer of sum
b) Sum received or receivable by an e-commerce operator from e-commerce supply of goods or services to specified persons.	w.e.f. 01/04/2020 @ 2% by recipient of sum



## 02 Taxable Transactions

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- Consideration received or receivable by an e-commerce operator from e-commerce supply of goods or services **made or provided or facilitated** by it to the following persons:
  - A person who is **resident in India**;
  - A person who buys such goods or services or both using **internet protocol address located in India**;
  - **A non-resident person in the following circumstances:**
    - 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; and
    - Sale of data collected from a person who is resident in India or from a person who uses internet protocol address located in India.



## 03 Important Definitions

### a) Meaning of e-commerce operator

- 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.



## 03 Important Definitions

### b) Meaning of e-commerce supply or services

- E-commerce supply or services means: -
  - a) Online sale of goods **owned** by the e-commerce operator;
  - b) Online provision of services **provided** by the e-commerce operator;
  - c) Online sale of goods or provision of services or both **facilitated by the e-commerce operator; or**
  - d) Any combination of above activities



## 03 Important Definitions

### Views on 'Online Sale' or 'Online Service' – By Kamlesh Varshney, Joint Secretary for tax planning and legislation with the Indian Finance Ministry –

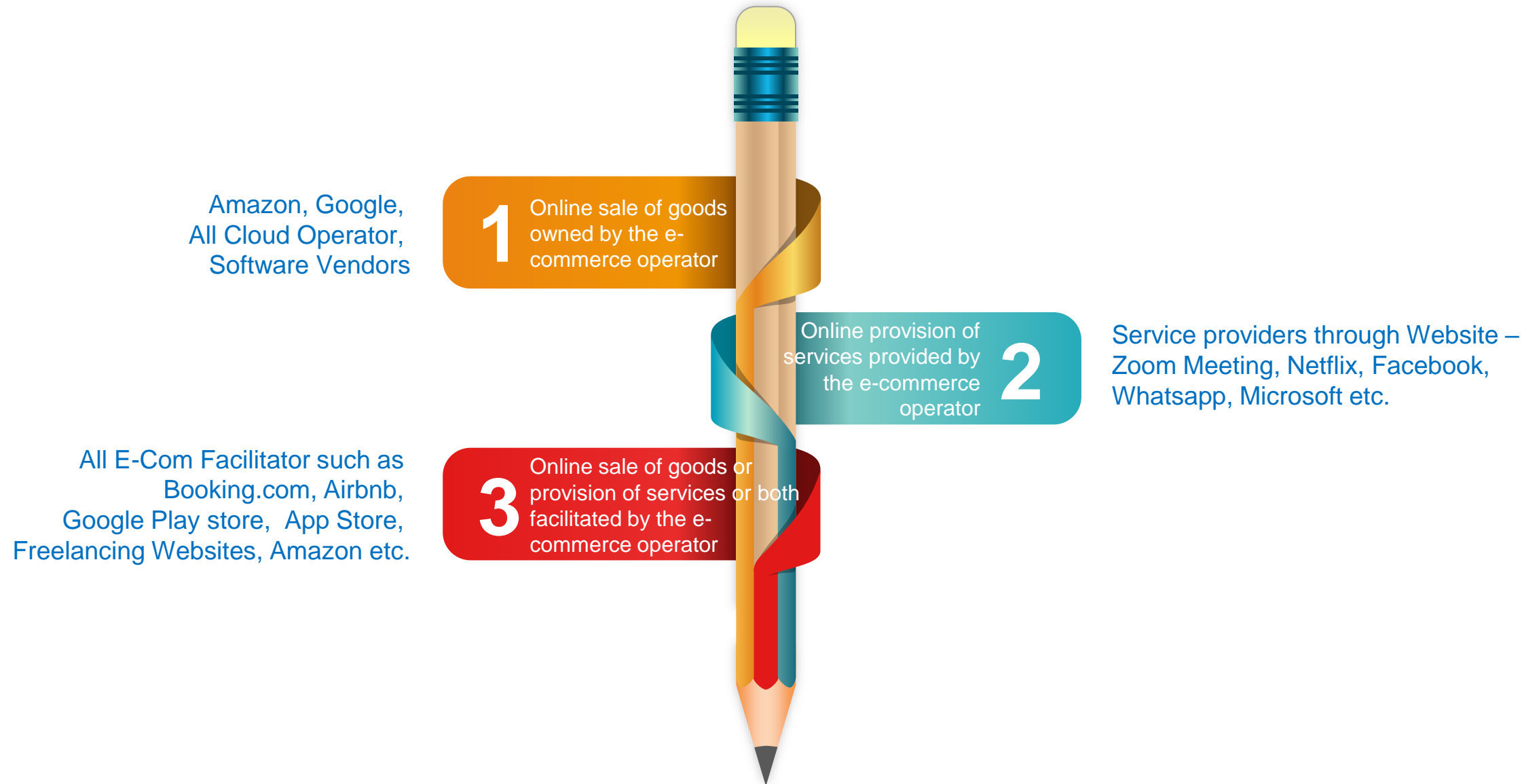
*Extracts from news article - <https://www.law360.com/tax-authority/articles/1260238/new-india-digital-tax-needed-to-tap-value-official-says>*

- ***“Our understanding is that everything will get covered,” Varshney said. **“When we say ‘online sale’ or ‘online services,’ it does not mean that every component of that sale or service must be done online.”*****
- *Taking the view that only goods that are delivered online could be subject to a digital tax would mean that “only downloading will get covered,” he said, which “would defeat the purpose of this levy.”*
- *The tax official said the government views **“any activity that is done online in relation to the sale of a good, or in relation to the furnishing of services,” as qualifying to be an online sale of goods or online provision of services. The online booking of a hotel room is an example,** Varshney said.*



# Example for Potential Coverage of various Tech Giants

25





## 04 Threshold & Exceptions

### Threshold Limit

- Equalization levy shall not be charged if the sale, turnover or gross receipts of the e-commerce operator from e-commerce supply or services made or provided or facilitated to the persons mentioned above is **less than Rs. 2 crore during the previous year in aggregate from all specified buyer.**



## 04 Threshold & Exceptions

### **Exceptions - When equalization levy shall not be charged**

- a) Online advertisement service covered under Section 165
- b) Consideration is less than threshold limit
- c) E-Commerce operator has a PE in India



## 05 Compliance Portion

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### Due Dates for Payment

Period	Due Date
1 <sup>st</sup> April – 30 <sup>th</sup> June	7th July
1 <sup>st</sup> July – 30 <sup>th</sup> September	7th October
1 <sup>st</sup> October – 31 <sup>st</sup> December	7th January
1 <sup>st</sup> January – 31 <sup>st</sup> March	31st March

### Consequences of late payment

- Simple interest at the rate of 1% of such levy for every month or part of the month during which such failure continues



## 05 Compliance Portion

### Penalty –

- If the E-Commerce operator fails to pay whole or any part of the equalization levy required to be paid by him, he shall be liable for payment of **penalty of an amount equals to the amount of equalization levy that he failed to pay**

### Statement of equalization levy

- **Every e-commerce operator** shall prepare and deliver or cause to deliver a statement of equalization levy in respect of all e-commerce supply or services during such financial year **on or before 30 June of the financial year** immediately following the financial year in which equalization levy is chargeable



## No Tax On Income Arising From E-commerce Supply On Which Equalization Levy Is Chargeable

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Section 10(50) of Income Tax Act amended – to give tax exemption for the income arising from any e-commerce supply or services made, on or after 01-04-2020, on which equalization levy is chargeable.

## Issues raised by the Industry

Objection from  
US Giants

01

A representation letter has been written by 7 US trade associations objecting to EL



Whether  
discriminatory

02

US association called EL as discriminatory against US firm as it explicitly exempts Indian firms



Unilateral Act  
of India

03

This unilateral measure by India is stated to be contrary to commitment to arrive at Multilateral solution



Scope is open  
ended

04

This levy requires companies to change its internal systems and billing mechanisms. Even Google expressed its inability to trace.



## Issues raised by the Industry

Whether Treaty  
Benefits & FTC

05

As equalisation levy is not a part of income tax – whether treaty benefits and FTC would be available?



May force to  
set up in India

06

This may push companies to set up office in India for compliance and may pass on the higher cost to Cust.



Whether Extra-  
Territorial

07

Question of Extra-Territorial may arise as the provision also covers NR to NR transaction which uses India data



Without Public  
Consultation

08

Tax was incorporated into the Union Budget 2020 at a later stage without any public consultation or Parliamentary debate





## Why EL Route – Govt. Perspective

To avoid Non  
PE cases

01

To tax the business income transactions which were hitherto non taxable in India in absence of the PE



Concept of Market  
Economy

02

In Digital Economy – apart from Source and Residence, the market economy must get some tax



Tax on Value  
Addition

03

There is some value creation happening, so Govt must get Tax



Proactive  
measure

04

It is not surprising that countries would wish to find ways and means to address their problem of losing revenue rather than wait for the perfect solution through consensus, which does not appear to be forthcoming. The equalisation levy is a response to this urgency felt by some jurisdictions.



## Scope of Safe Harbor Rule and APA Expanded

- **Proposed Amendment – Finance Bill 2020** - it is proposed to it is proposed to amend section 92CB and section 92CC of the Act to cover income referred to in **clause (i) of sub-section (1) of section 9** i.e. determination of attribution income accruing or arising whether directly or indirectly through or from any business connection or any asset or source of any income in India or through the transfer of a capital asset situated in India.
- **Finance Act 2020** further amends the definition of 'Safe Harbor Rule' to include the *transfer price or income, deemed to accrue or arise under clause (i) of sub-section (1) of section 9, as the case may be, declared by the assessee*

## Section 115A – Exempting NR from filing IT Return in certain conditions

- **Proposed Amendment – Finance Bill 2020** - Presently Section 115A(5) provides that a non-resident is not required to furnish its return of income under sub-section (1) of section 139 of the Act, if its total income, consists only of certain dividend or interest income and the TDS on such income has been deducted according to the provisions of Chapter XVII-B of the Act. **Now this relaxation is proposed to be extended for Royalty and FTS as well**
- **Finance Act 2020** – Amends tax rates

Interest as per	Earlier Tax Rate	Amended Rate
Section 10(47)	5%	5%
Section 194LC	5%	As per Resp. Sec.
Section 194LD	5%	As per Resp. Sec.
Section 194LBA(2)	5%	As per Resp. Sec.

## Amendment in definition of 'Royalty'

- **Proposed Amendment – Finance Bill 2020** - Explanation 2 to Section 9(1)(vi) defines the term 'Royalty' which specifically excluded *consideration for the sale, distribution or exhibition of cinematographic films*. Whereas Royalty definition as per many DTAA was including these into definition of 'Royalty'. This was discriminatory provisions against Indian Residents. Therefore, now definition of Royalty is amended to include such transactions.
- **Finance Act 2020** – Further amends TDS rates u/s 194J for domestic taxation from 10% to 2% with respect to above stated transaction of royalty.

## Budget Proposals – Finance Bill 2020

- Section 206C proposed to be amended
- **Scope and Coverage** - An authorized dealer shall be liable to collect TCS if he receives in aggregate **Rs 7,00,000 or more** in a financial year from a person for remittance out of India under the LRS of RBI,
- **Rate** – 5%. However, in non- PAN/Aadhaar cases, rate shall be 10%.
- Not applicable if buyer has deducted TDS under any provision of the Act

## Further Amendment – Finance Act 2020

- **Threshold limit clarified** - TCS to be collected by the AD only on the amount which exceeds Rs 7,00,000
- **Tax to be collected at a lower rate if foreign currency is remitted out of education loan obtained** - Lower rate of 0.5% for collection of tax by an AD where the amount being remitted out of India is being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education.

## Budget Proposals – Finance Bill 2020

- **Scope and Coverage** - A seller of an overseas tour program package shall be liable to collect TCS from buyer
- **Ceiling Limit** – Applicable on all amount without any ceiling limit
- **Rate – 5%.** However, in non- PAN/Aadhaar cases, rate shall be 10%.
- Not applicable if buyer has deducted TDS under any provision of the Act

### Further Amendment – Finance Act 2020

- **No ceiling limit even under LRS Route** - TCS to be collected for remittance for foreign tour packages without any ceiling limit even if same is made through AD bank under LRS scheme of RBI.
- **No double TCS on same transactions if through AD** - Further As a buyer of an overseas tour program package can make payment in respect of such package to the seller either directly or through an AD, both seller and the AD may collect tax from the buyer on the same amount which results in the double collection of tax. **In such cases, AD has been exempted from collecting Tax again.**



### Budget Proposals – Finance Bill 2020

- Proposed to amend Section 206C
- **Scope and Coverage** - A seller of goods is liable to collect TCS whose total turnover from the business carried on by it exceed Rs 10 crore during the immediately preceding financial year
- **Ceiling Limit** – Consideration received from a buyer in a previous year in excess of Rs 50 lakh.
- **Rate** – 0.1% on consideration received from a buyer. However, higher rate of 1% in non-PAN/ Aadhaar cases
- Not applicable if buyer has deducted TDS under any provision of the Act

**Budget Proposals – Finance Act 2020** – This provision not applicable on Export of Goods out of India

## Deferment of New TCS Amendments

- **Proposal of Finance Bill 2020** – these new TCS provisions were to be applicable from 01/04/2020
- **Further Amendment by Finance Act 2020** – Now these TCS amendments are made applicable from 01/10/2020.

# Modification in conditions for offshore fund's exemption from “business connection”

- Section 9A of the Act provides for a special regime in respect of offshore funds by providing them exemption from creating a “business connection” in India on fulfilment of certain conditions.
- Section 9A proposed to be amended, to amend: -

Existing Conditions	Proposed Conditions
Aggregate participation or investment in the fund, directly or indirectly, by <b>persons resident in India does not exceed five per cent of the corpus of the fund</b>	For the purpose of calculation of the aggregate participation or investment in the fund, directly or indirectly, by Indian resident, contribution of the eligible fund manager during <b>first three years up to twenty-five crore rupees shall not be accounted for</b>
where the fund has been established or incorporated in the previous year in which case, <b>the corpus of fund shall not be less than Rs 100 Crore at the end of a period of six months</b> from the last day of the month of its establishment or incorporation, <b>or at the end of such previous year</b> , whichever is later.	if the fund has been established or incorporated in the previous year, the condition of monthly average of the corpus of the fund to be at Rs 100 Crore shall be fulfilled <b>within 12 months from the last day of the month</b> of its establishment or incorporation.

## Section 94B –

### Excluding interest paid or payable to PE of non-resident Bank

- Section 94B of the Act, limits deduction of interest payment to AE in excess of 30% of the EBITA.
- Practically a Branch of the foreign company in India is a non-resident in India is considered as Non-Resident in India.
- Further, the definition of the AE in section 92A, inter alia, deems two enterprises to be AE, if during the previous year a **loan advanced by one enterprise to the other enterprise is at 50 per cent. or more of the book value of the total assets of the other enterprise.** Thus, the interest paid or payable in respect of loan from the branch of a foreign bank may attract provisions of interest limitation provided for under this section.
- Proposed to amend section 94B of the Act so as to provide that provisions of interest limitation would not apply to interest paid in respect of a debt issued **by a lender which is a PE of a non-resident, being a person engaged in the business of banking, in India**

## Incorporation of MLI preamble clause to statute book

- The MLI will modify India's DTAA's to curb revenue loss through treaty abuse and base erosion and profit shifting strategies by ensuring that profits are taxed where substantive economic activities generating the profits are carried out.
- **Article 6 of MLI is a Minimum Standard and shall apply invariably to all the signatories to MLI. Article 6 of MLI contains the Preamble to be incorporated to all the Covered tax agreements.**
- To incorporate such preamble in the statute itself, it is proposed to amend Section 90(1)(b) 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).**

## Deferment the Significant Economic Presence (SEP)

- The current SEP provisions shall be omitted from assessment year 2021-22
- The new provisions will take effect from 1st April, 2022 and will, accordingly, apply in relation to the assessment year 2022-23 and subsequent assessment years – **Explanation 2A to Section 9(1)(i)**

## Amendment in furnishing TP Audit Due Date

- Now amended due date for furnishing TP Audit Report is 31<sup>st</sup> October i.e. one month prior to due date for furnishing return u/s 139(1)

# Question – Feedback - Discussion



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