

**Recent Developments in Income Tax Act, Companies Act & FCRA**

In the midst of every crisis, lies great opportunity- Albert Einstein.

Today the world is battling with the Novel Corona virus or as more commonly known as COVID-19 which has created problems for citizens and countries working hard to manage the healthcare. There has been an unprecedented economic crisis that the world is facing due to COVID-19 and Indian economy too has suffered to a very great extent. GDP for the First Quarter of FY 2019-20 contracted by 23.9%, which the single largest fall in the history. Government of India has announced several measures which will provide support to the taxpayers as well as business community. Additionally some announcements have also been made in the Companies Act to make the provisions more business friendly. The objective of this note is to provide bird's eye view of recent amendments made to the provisions of the following:

- A. Income Tax Act
- B. Companies Act
- C. Foreign Contribution Regulation Act

As stated earlier, the note shall provide brief overview of the relevant provisions, we would be soon releasing separate publications covering detailed analysis under various measures and legal provisions which would be of great relevance to business community and tax payers. The said publications shall cover introduction of new scheme of assessments and appeals (faceless assessment/appeal), impact of MLI, recent amendments in the GST Law, equalisation levy, dividend distribution amendments etc. Few of the important amendments summarised below are proposed in respective bills, however it is likely that the said amendments may undergo some changes during passage of bill at the parliament. Further it is pertinent to note that the compilation of proposed amendments appearing below has been undertaken on the basis of information available in the public domain.

The subsequent part of the publication shall provide overview of relevant provision as under:

**A. With regard to provisions of Income Tax Act**

In light of the urgency of the situation the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (Ordinance) was promulgated on 31<sup>st</sup> March 2020 even though the Parliament was not in session. The Ordinance provided relaxations from certain provisions, including extension of time limit in taxation and other laws. Ordinance also provided for reduction in interest, waiver of penalty and prosecution for delay in payment of certain taxes or levies during the specified period. Further, certain notifications were also issued under the said Ordinance.

The Central Government has on 18<sup>th</sup> September 2020, introduced The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 ('RACP Bill') before the Lok Sabha, which seeks to replace the Ordinance. The same has been approved by Lok Sabha and Rajya Sabha, however the ascent from the President is awaited. The Detailed analysis of key proposal of the RACP Bill in relation to Income Tax Law (ITL) and Vivad se Vishwas (VSV) is appended below for ease of reference:

**A.1. Provisions relating to COVID-19 compliance reliefs under the direct tax laws in India:**

- Since March 2020, the CG undertook various significant measures to provide relaxation to taxpayers to ease compliance requirements under the ITL.

- The CG brought the Ordinance on 31 March 2020, which extended time limits for various compliances, reduced rate of interest and waived penalties and prosecution.
- Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund ('PM Cares') have been given statutory recognition by granting exemption on its income and 100% deduction to donors.
- The RACP Bill proposes to consolidate and statutorily codify all the above reliefs provided through Ordinance and notifications.
- It may be noted that the RACP Bill offers no further extension or relief in relation to timelines for various compliances to what has been already provided earlier through the Ordinance and notifications.

**A.2. Extension of deadlines and relaxation of interest payments:**

- In partial modification to the timelines provided under the above Ordinance, notifications issued by CBDT dated 24th June 2020 and 29th July 2020, the CG further extended various compliance timelines and requirements as previously covered by the Ordinance.
- With respect to Income-tax Act, all due dates have been extended to 31st March 2021 except the following:

<b>Sr. No</b>	<b>Particulars</b>	<b>Due Date</b>
1	Filing of Revised Return u/s 139(5) and Belated return u/s 139(4) for AY 2019-20	30 <sup>th</sup> September 2020
2	Filing of Original ROI for AY 2020-21	30 <sup>th</sup> November 2020
3	Tax Audit Report under section 44AB for AY 2020-21	31 <sup>st</sup> October 2020
4	Issuance of form 16 by employers	15 <sup>th</sup> August 2020
5	Last date for making Investment for claiming benefit of exemption from Capital Gains u/s 54 to 54GB for FY 2019-20	30 <sup>th</sup> September 2020
6	Last date for making investments/ payments for claiming deduction under Chapter VIA (80C, 80G etc.)	31 <sup>st</sup> July 2020
7	Payment of Self-Assessment tax for AY 2020-21 where liability exceeds Rs.1 lakh	No extension – Interest u/s 234A will be levied post 1 <sup>st</sup> August 2020 till filing of ROI
8	All delayed payments of advance tax, self-assessment tax, TDS, etc. whose due date falls between the period March 20, 2020, to June 29, 2020	Interest will be charged at reduced rate i.e. 9% p.a. instead of 12% p.a. The reduced rate of interest of 9% p.a. for delayed payments of taxes, levies, etc. shall not be applicable for the payments made after June 30, 2020.  No penalty, prosecution shall be sanctioned in respect of such delay.
9	Completion of Scrutiny proceedings for AY 2018-19	31 March 2021
10	Completion of Scrutiny proceedings for AY 2019-20	30 September 2021

**A.3. Removal of certain anomalies in residency-related amendments made by the FA2020:**

- In relation to Indian citizen or Person of Indian Origin (PIO) coming on a visit to India, the Finance Act 2020 ('FA 2020') had reduced the number of days of stay from 182 days to 120 days having a total income, other than income from foreign sources, exceeding Rs.15 Lakhs during the relevant tax year and also provided that such individual shall be treated as "not ordinarily resident". However, the language raised an anomaly about whether such an individual need not be based outside India and comes on a visit to India to trigger this rule. The RACP Bill proposes to rectify this anomaly by clarifying that the new rule will apply to an Indian citizen or PIO who, being outside India comes on a visit to India.
- FA 2020 inserted a new deemed residency rule whereby an individual, being Indian citizen, shall be deemed to be a resident in India (but not ordinarily resident) in any tax year if his total income, other than income from foreign sources, exceeds Rs.15 Lakhs in the relevant tax year and 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 (deemed residency rule). However, the language raised an anomaly about whether an individual who otherwise qualifies as a resident under the normal rule (i.e., ordinary resident) can claim himself to be not ordinarily resident under the deemed residency rule. The RACP Bill proposes to rectify this anomaly by clarifying that the deemed residency rule shall not apply to an individual who qualifies as a resident under the normal rule.
- Clarification on scope of "Income from foreign sources": FA 2020 inserted the definition of "income from foreign sources" to mean income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India). The definition raised an ambiguity about whether or not incomes which actually accrue or arise outside India but are deemed to accrue or arise in India (for instance, interest, royalty, fees for technical services etc., received from residents) will be treated as "income from foreign sources". The RACP Bill proposes to clarify this by specifically providing that "income from foreign sources" shall not include incomes which are deemed to accrue or arise in India.

The aforesaid amendments are proposed to be effective from tax year 2020-21 in line with the effective date of the amendments made by FA 2020.

**A.4. Extension of scheme of conducting faceless proceedings in various other proceedings under ITL:**

- RACP Bill has incorporated, Faceless Assessment Scheme, 2019 (Faceless Scheme) in the ITL and also empowered the CG to notify schemes for conducting various proceedings under the ITL. The proceedings shall include:
  - transfer pricing proceedings,
  - reassessment proceedings,
  - rectification proceedings,
  - proceedings relating to verification of information,
  - proceedings before Dispute Resolution Panel
  - appeal proceedings before Income Tax Appellate Tribunal,
  - revision proceedings,

- withholding proceedings,
  - proceedings in relation to collection and recovery of tax, proceedings relating to initiation of prosecution etc.
- The Scheme will be carried on in faceless and team-based manner with dynamic jurisdiction to the extent that is technologically feasible, which would "impart greater efficiency, transparency and accountability"
- The Scheme so introduced along with any direction issued by the CG for effective implementation of the Scheme is to be placed before each House of Parliament.

#### **A.5. Procedure for fresh registration of a Charitable trust or Research institution**

- RACP bill proposes that provisions governing new registration regime for charitable entities and research institutions registered under various provisions of the ITL (Section 12AB) shall be effective from 1 April 2021 (instead of 1 October 2020 as announced vide Press Release dated 8 May 2020) and the old regime of registration (Section 12AA) will continue till 31 March 2021.
- RACP bill also carried out consequential amendments to give reference of above proposal in certain other provisions of the ITL (viz Section 56(2)).

#### **A.6. Reduction in withholding and tax collection rates for payments made to/received from residents**

- RACP Bill codifies the announcement made by Government as part of COVID-19 stimulus package, on 13th May 2020, providing for reduction in TDS and TCS rates by 25% for the payments made (other than salary) to or received from residents for the period from 14th May 2020 to 31st March 2021.

#### **A.7. Specifying authority to approve eligible projects and schemes (Section 35AC)**

- RACP Bill has proposed that the authority to withdraw approval to specified association or institution / eligible project or scheme be granted to Principal Chief Commissioner of Income Tax (Exemption) or the Chief Commissioner of Income Tax (Exemption) [as against National Committee] w.e.f. 1st November 2020.

#### **A.8. Expenditure on scientific research (Section 35)**

- RACP bill has proposed relaxation in respect of scientific research companies referred in section 35(1)(ia) of the Act where the payment has been made to such companies, deduction would be allowed even where approval granted to them is subsequently withdrawn, which was to be effective from 1st June 2020 has now been made applicable from 1st April 2021.
- Further, the addition of the 5th and 6th proviso [will now be effective from 1st April 2021 as against 1st June 2020] requiring research associations, university colleges, scientific research companies and other institutions to intimate in the prescribed manner within 3 months of such a provision coming into effect and that the notification will remain valid for a period of 5 AYs commencing on/after 1st April 2022.
- The requirement to deliver a statement to the income-tax authorities in the prescribed form and manner & furnish a certificate to the donor for such research associations, university colleges, scientific research companies and other institution will now be effective from 1st April 2021 as against 1st June 2020.

**A.9. Extension of timelines under VSV Act**

- The Ordinance had extended last date for making payment under the first tranche (without any additional amount of 10%) for resolving past direct tax disputes under VSV from 31st March 2020 up to 30th June 2020. The Finance Minister on 13th May 2020 had announced further extension from 30th June 2020 to 31st December 2020 as part of first tranche of COVID-19 stimulus measures. As per Press Release dated 24th June 2020, this extension required necessary legislative amendments, which was to be moved in due course.
- In line with the aforesaid Press Release, RACP bill proposes to extend last date for making payment under the first tranche (without any additional amount of 10%) till 31st December 2020. Separately, RACP bill proposes that any payment made under the second tranche (on or after 1st January 2021 but before the last date for availing benefit of VSV Act) shall attract an additional amount of 10%.
- For the sake of clarification, it may be noted that RACP bill does not propose any last date for availing benefit of VSV Act which is yet to be notified by the CG.
- Further, in line with the Ordinance, RACP bill proposes to extend due date for any compliance falling due under VSV between 20th March 2020 to 30th December 2020 till 31st December 2020. Thus, any compliance falling due 20th March 2020 to 30th December 2020 can be made till 31st December 2020. For example, if a declaration is filed on 25th September 2020, under VSV, Designated Authority is required to issue certificate by 10th October 2020 (i.e. within 15 days from the date of receipt of such declaration). As per extended time period, such certificate can be issued till 31st December 2020

**A.10. Power to Survey is restricted to Investigation and TDS wing only:**

- RACP proposed that approval of Principal Director General or the Director General or the Principal Chief Commissioner (TDS) or the Chief Commissioner (TDS) shall be required for actions to be undertaken under section 133A(6); and
- Income-tax authority which can carry out surveys shall be restricted to subordinate to the Principal Director General of Income-tax (Investigation) or the Director General of Income-tax (Investigation) or the Principal Chief Commissioner of Income-tax (TDS) or the Chief Commissioner of Income-tax (TDS), as the case may be.

**A.11. Other proposals include:**

- Extension of tax exemption/concession in the hands of Category III Alternative Investment Fund located in International Finance Service Centre (IFSC) and its non-resident unit holders.
- Surcharge on dividend income earned by Foreign Portfolio Investors (FPI) to be capped at 15%.
- Proposes to empower the CG to remove difficulty, if any, arising in giving effect to the provisions or inconsistent with the provisions of the ITL, within two years from the end of the month in which RACP bill receives assent of the President of India.

**B. With regard to provisions of Companies Act**

The Lok Sabha on 19<sup>th</sup> September 2020 passed The Companies (Amendment) Bill, 2020.

This amendment aims to decriminalise minor procedural or technical lapses under the provisions of the said Act, into civil wrong; and considering the overall pendency of the courts. A principle based approach was adopted to further remove criminality in case of defaults, which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest. In addition, the Government also proposes to provide greater ease of living to corporates through certain other amendments to the Act. The relevant amendments have been summarised as under:

**B.1. Section 2(52)-Definition of “listed company”**

- Amendment has been made to exclude such listed companies and companies with the intention of getting listed such class of securities from the category of “listed companies”.

**B.2. Section 16-Rectification of name**

- If a company was registered inadvertently with a registered trade mark of a proprietor, and the name is too identical or resembles an existing trade mark, such company has to change its name within 3 months from the issue of CG’s direction instead of 6 months’ timeline provided earlier.
- Further, with a view to decriminalize the offence, if committed by a company, in case of default in this section, the CG shall allot a new name as per the directions of the Registrar of Companies (ROC) to the company and the ROC shall issue a fresh Certificate of Incorporation. Although the company shall not be prevented from changing its name subsequently.

**B.3. Section 62-Further issue of shares (Rights Issue)**

- As per the existing provisions, the time period for providing offer letter to the existing shareholders under rights issue process is 15 days to 30 days, beyond which the offer is deemed to be declined. It is proposed to lay down such other time period which may be less than the timelines prescribed currently.

**B.4. Section 117-Resolutions and agreements to be filed**

- The section requires filing of resolutions with the ROC. It currently exempts banking companies which are providing loan, guarantee, and security in connection with loan in its ordinary course of business from filing the resolution in e-Form MGT-14. The said exemption shall also extend to registered NBFCs and HFCs.

**B.5. Section 129A-Periodical financial results (newly inserted) – Unlisted Companies**

- The CG shall require such class or classes of companies to:
  - Prepare periodical financial results
  - Obtain approval of the Board of Directors
  - Complete limited review of such periodical financial results
  - File a copy with the ROC within 30 days of completion of the relevant period



**B.6. Section 135-Corporate Social Responsibility**

The changes proposed are:

- The amount spent in excess of the requirements may be allowed for set-off for such number of subsequent financial years as may be prescribed.
- Penalty for default in transfer of unspent amount to the respective funds:
  - On the company-twice the amount required to be transferred or 1 Crore whichever is lower, and
  - On every officer in default-1/10th of the amount required to be transferred in the respective funds or Rs. 2 lakhs, whichever is lower
- No requirement of a CSR Committee where the amount required to be spent is less than Rs. 50 lakhs and the Board of Directors shall discharge the functions of that of a CSR Committee.

**B.7. Section 149-Company to have Board of Directors (Independent Directors)**

- The existing provisions provide that Independent Directors (IDs) are not subject to stock options and are entitled to sitting fees, profit related commission and reimbursement of expenses incurred in attending meetings as per Section 197(5).
- The amendments provide for a new insertion and it states that an ID and Non-Executive Directors may receive any other sort of remuneration, excluding the aforesaid, in terms of Schedule V where there is no profit or inadequate profits in the company.

**B.8. Section 197- Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits**

- Section 197(3) has been aligned with Section 149(9) to include NEDs and IDs within the ambit of remuneration payable as per Schedule V in case of no profits or inadequate profits.

**C. With regard to provisions of The Foreign Contribution (Regulation) Amendment Bill, 2020**

The lower house of the Parliament, the Lok Sabha has cleared The Foreign Contribution (Regulation) Amendment Bill, 2020. The Foreign Contribution (Regulation) Amendment Bill, 2020 was introduced in Lok Sabha on 20<sup>th</sup> September, 2020. The Bill amends the Foreign Contribution (Regulation) Act, 2010. The Act regulates the acceptance and utilization of foreign contribution by individuals, associations, and companies. Foreign contribution is the donation or transfer of any currency, security, or article (of beyond a specified value) by a foreign source.

**C.1. Prohibition to accept foreign contribution:**

- Under the Act, certain persons are prohibited to accept any foreign contribution. These include: election candidates, editor or publisher of a newspaper, judges, government servants, members of any legislature, and political parties, among others.
- The Bill adds public servants (as defined under the Indian Penal Code) to this list. Public servant includes any person who is in service or pay of the government, or remunerated by the government for the performance of any public duty.

**C.2. Transfer of foreign contribution:**

- Under the Act, foreign contribution cannot be transferred to any other person unless such person is also registered to accept foreign contribution (or has obtained prior permission under the Act to obtain foreign contribution).
- The amendment prohibits the transfer of foreign contribution to any other person. The term 'person' under the Act includes an individual, an association, or a registered company.

**C.3. AADHAR for registration:**

- The Act states that a person may accept foreign contribution if they have:
  - obtained a certificate of registration from the central government, or
  - not registered, but obtained prior permission from the government to accept foreign contribution.
- Any person seeking registration (or renewal of such registration) or prior permission for receiving foreign contribution must make an application to the central government in the prescribed manner.
- Person seeking prior permission, registration, or renewal of registration must provide the AADHAR number of all its office bearers, directors, or key functionaries, as an identification document. In the case of a foreigner, they must provide a copy of the passport or the Overseas Citizen of India card for identification.

**C.4. FCRA account:**

- Under the Act, a registered person must accept foreign contribution only in a single branch of a scheduled bank specified by them. However, they may open more accounts in other banks for the utilization of the contribution.
- Foreign contribution must be received only in an account designated by the bank as "FCRA account" in such a branch of the State Bank of India, New Delhi, as notified by the central government. No funds other than the foreign contribution should be received or deposited in this account. The person may open another FCRA account in any scheduled bank of their choice for keeping or utilizing the received contribution.

**C.5. Restriction in utilization of foreign contribution:**

- Under the Act, if a person accepting foreign contribution is found guilty of violating any provisions of the Act or the Foreign Contribution (Regulation) Act, 1976, the unutilized or unreceived foreign contribution may be utilized or received, only with the prior approval of the central government.
- Government may also restrict usage of unutilized foreign contributions for persons who have been granted prior permission to receive such contribution. This may be done if, based on a summary inquiry, and pending any further inquiry, the government believes that such a person has contravened provisions of the Act.

**C.6. Renewal of license:**

- Under the Act, every person who has been given a certificate of registration must renew the certificate within six months of expiration. The Bill provides that the government may conduct an inquiry before renewing the certificate to ensure that the person making the application:



- is not fictitious or Benami,
- has not been prosecuted or convicted for creating communal tension or indulging in activities aimed at religious conversion, and
- has not been found guilty of diversion or miss utilization of funds, among others conditions.

**C.7. Reduction in use of foreign contribution for administrative purposes:**

- Under the Act, a person who receives foreign contribution must use it only for the purpose for which the contribution is received. Further, they must not use more than 50% of the contribution to meeting administrative expenses.
- Administrative expense shall now be restricted to 20%.

**C.8. Surrender of certificate:**

- The Bill adds a provision allowing the central government to permit a person to surrender their registration certificate. The government may do so if, post an inquiry, it is satisfied that such person has not contravened any provisions of the Act, and the management of its foreign contribution (and related assets) has been vested in an authority prescribed by the government.

**C.9. Suspension of registration:**

- Under the Act, the government may suspend the registration of a person for a period not exceeding 180 days.
- The Bill adds that such suspension may be extended up to an additional 180 days.

**Disclaimer and Confidentiality**

**For private circulation and for internal use. This document summarizes key amendments/proposals relevant to Faceless Assessment Scheme and Faceless Appeal Scheme. Information is being made available in this document purely for the benefit of the readers. Whilst every care has been taken in the preparation of this document, it may contain errors for which we should not be held responsible. It must be stressed that the relevant notifications shall clarify the amendments being made. The information given in this document provides a bird's - eye view on the changes proposed and should not be relied for the purpose of economic or financial decisions. Each such decision would call for specific reference of the relevant statutes and consultation of an expert**

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