



Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 notified

30 September 2020

In brief

The Government of India notified¹ the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) on 29 September 2020 after receiving the President of India's assent. The TOLA seeks to enact legislative amendments in direct and indirect tax laws, which were introduced by the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (Ordinance) as a COVID-19 pandemic relief measure. The TOLA also legislates subsequent relaxations/ notifications/ amendments announced by the Government and the Faceless Assessment Scheme introduced by the Government, as part of its vision for a 'Transparent Taxation - Honouring the Honest'.

In line with the introduction of the Faceless Assessment Scheme in the TOLA, the Central Board of Direct Taxes (CBDT) has also launched the Faceless Appeal Scheme (Scheme) on 25 September 2020² by issuing appropriate notifications in this regard.

In detail

Extended due dates for tax compliances

The TOLA gives legislative effect to the relaxation in due dates for various tax compliances announced by the Government.³ The following is a snapshot of the extended due dates:

Sr. No.	Compliances	Due date given effect to
1.	Tax deducted source (TDS)/ tax collected at source (TCS) Return for quarter ending March 2020 by the Government	15 July 2020
2.	TDS/ TCS Return for quarter ending March 2020 by other than the Government	31 July 2020
3.	Deductions for specified amount under chapter VIA of the Income-tax Act, 1961 (Act) under heading-B deduction (i.e. insurance premium, contributions to new pension fund, etc.) for financial year (FY) 2019-20	31 July 2020
4.	Issuance of Form 16 for FY 2019-20	15 August 2020
5.	Filing of belated and revised income-tax return (ITR) for FY 2018-19	30 September 2020

¹ No. 38 of 2020 dated 29 September 2020

² Notification Nos. 76 & 77 dated 25 September 2020

³ Vide the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No. 2 of 2020) and Notification Nos. 35 & 56 of 2020

Sr. No.	Compliances	Due date given effect to
6.	Investment under sections 54 to 54GB for capital gains benefit under the Act	30 September 2020
7.	Furnishing of any report of audit for FY 2019-20	31 October 2020
8.	Filing of ITR for FY 2019-20	30 November 2020
9.	TDS/ TCS Returns for quarter ending June 2020 and September 2020	31 March 2021
10.	Linking of Permanent Account Number (PAN) with Aadhar	
11.	Filing of Form 61A (Specified Financial Transactions)	
12.	Completion of assessment proceedings for FY 2017-18	
13.	Completion of assessment for FY 2016-17 (Transfer Pricing cases)	
14.	Issue of intimations under sections 143(1)/ 200A of the Act	
15.	Other notices and orders or compliances for which due date falls until 31 December 2020	
16.	Commencement of business operation in Special Economic Zones where a letter of approval has been received on or before 31 March 2020	
17.	Any other due date falling during the period from 20 March 2020 to 31 December 2020 for the completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval by any authority, commission or Income-tax Appellate Tribunal (Tribunal) under the specified law; or the filing of any appeal, reply or application or furnishing of any report, etc., under the specified law	

Relaxation in computation of interest

In case of small taxpayers whose self-assessment tax liability does not exceed INR 100,000, the benefit of the extended due date shall be available for computation of interest (if any) under section 234A of the Act. Depending on the outstanding tax liability, post advance tax payment, even large taxpayers could avail this benefit.

In case of an individual being resident in India who is a senior citizen and has no income under the head 'profit and gains of business & profession', any self-assessment tax paid by such individual for FY 2019-20, would be treated as advance tax discharged within the original due date of filing of return, i.e., 31 July 2020.

For delayed payments of advance tax, self-assessment tax, regular tax, TDS, TCS, equalisation levy, securities transaction tax (STT), commodity transaction tax due between 20 March 2020 and 29 June 2020 and paid on or before 30 June 2020, reduced interest rate at 9% per annum shall apply. Further, immunity from penalty and prosecution has been granted for the delay relating to this period.

Amendment to deemed residency provisions

An individual is regarded as resident in India in any FY, if he stays in India for 182 days or more during the FY; or his stay in India is 60 days or more during the previous year and 365 days or more in the preceding four FYs. However, relaxation is provided to an Indian citizen or a person of Indian origin, who being outside India, comes to India for the purpose of visit, wherein the 60 days threshold as mentioned above is replaced by 182 days.

The Finance Act, 2020 amended the provisions of section 6 of the Act –

- a) to reduce 182 days to 120 days for an Indian citizen or a person of Indian origin, having total income, other than the income from foreign sources, exceeding INR 1.5m during the FY.
- b) inserted clause (1A) to provide that a citizen of India having total income, other than the income from foreign sources, exceeding INR 1.5m during the FY will be deemed to be a resident of India if he is not liable to pay tax in any country outside India on account of his domicile, residence, or any other criteria of a similar nature.
- c) defined term “income from foreign sources” as income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).

However, there were certain ambiguities⁴ in the amended provisions. In order to provide clarity to the individual taxpayers, TOLA has made the following amendments to the provisions of section 6 of the Act with effect from FY 2020-21 –

- a) The reduced number of days to determine residency will apply only to a citizen of India, or a person of Indian origin who, being outside India, comes on a visit to India.
- b) The above-mentioned deeming fiction to determine the residency of an individual will not apply to an individual who is resident in India otherwise.
- c) For computation of total income, in case of deemed residency provisions, income that is deemed to accrue or arise in India should be factored for determining the INR 1.5m threshold.

Faceless Assessment Scheme

On 13 August 2020, the Prime Minister launched the platform for ‘Transparent Taxation - Honouring the Honest’ to make the tax system ‘Seamless, Painless and Faceless’. Subsequently, the Government issued a series of notifications to implement the faceless assessment scheme. TOLA has legislated these provisions *vide* a new section 144B, which has been inserted with effect from 1 April 2021. The provisions of section 144B of the Act are mostly in line with the procedure notified earlier.⁵ However, some additions have made to these provisions, as follows –

- Additional procedures have been laid down in the context of faceless assessment when a taxpayer has opted for dispute resolution panel (DRP) proceedings.
- The authorities to be assigned for assessment unit, verification unit, technical unit and the review unit have been specified.
- Every notice, or any order, or any other communication shall be delivered to the taxpayer by way of –
 - a) Placing an authenticated copy in the taxpayer’s registered account; or
 - b) Sending an authenticated copy to the registered email address of the taxpayer or his authorised representative; or
 - c) Uploading an authenticated copy on the taxpayer’s mobile app (taxpayer downloads and installs an application software of the Income-tax Department developed for mobile devices, on its registered mobile number).

⁴ *Vide* Press Release dated 2 February 2020

⁵ [PwC News Alert - 17 August 2020 - Central Government amends E-assessment Scheme, 2019 to conduct faceless assessments](#); and [PwC News Alert - 18 September 2019 - Central Government notifies E-assessment Scheme laying down procedure for electronic assessment](#)

In addition, new provisions have been inserted under the Act to widen the scope of the faceless mechanism to conduct other income-tax proceedings, which *inter alia* covers transfer pricing proceedings, DRP, rectifications, giving effect to an appeal order, TDS proceedings, etc. In this regard, the following sub-sections/ sections have been inserted in the Act, which would be effective from 1 November 2020 –

- Transfer pricing [section 92CA(8)]
- Jurisdiction of income-tax authorities [section 130]
- Collection of information [section 135A]
- Inquiry or valuation [section 142B]
- DRP [section 144C(14B)]
- Reassessment [section 151A]
- Rectification of mistakes, amendments and issuance of notice of demand or intimation of loss [section 157A]
- Issuance of lower/ nil withholding certificate, proceedings under section 201 of the Act, recovery of taxes [section 231]
- Appeal to the Tribunal [section 253(8)]
- Revision of orders [section 264A]
- Giving effect to an order of Commissioner of Income-tax (Appeals) [CIT(A)], Tribunal, High Court, Supreme Court, any other order [section 264B]
- Prosecution and compounding [section 279(4)]
- Granting approval or registration [section 293D]

The Central Government has been empowered to make a scheme, by notification in the official gazette, for these proceedings to impart greater efficiency, transparency and accountability.

However, the penalty proceedings remain out of this scheme. The amendments in this regard are expected in due course.

Faceless Appeal Scheme

The Finance Act, 2020 introduced provisions under section 250 of the Act empowering the Central Government to introduce a scheme for the purposes of disposal of appeal by the CIT(A) so as to impart greater efficiency, transparency and accountability. Thereafter, the Prime Minister while launching the platform for 'Transparent Taxation - Honouring the Honest' had announced launching of faceless appeal on 25 September 2020.

In line with the above, the CBDT has launched² the Scheme, which provides for disposal of all appeals by the CIT(A) in a faceless manner, subject to certain exceptions.

For the purpose of this Scheme, Faceless Appeal Centres would be set up. The centre would comprise of a National Faceless Appeal Centre (NFAC), Regional Faceless Appeal Centres (RFAC) and Appeal units, to conduct the e-appeal proceedings⁶.

As per the Scheme, there will be no physical interface between the taxpayers or authorised representative and the tax authorities. However, if need be, a request for personal hearing exclusively *via* electronic mode can be made to present the case. The request would be accepted only if it is approved by the Chief Commissioner or the Director General, in charge of the RFAC.

The Scheme also prescribes the procedure for automated allocation of appeal; admission of appeal; filing of additional grounds, admitting additional evidence; e-communication of the appellate order, etc. It also provides the procedure for penalty proceedings for non-compliance of any notice, direction or order as well rectification

⁶ Income-tax authorities for setting up Faceless Appeal Centres notified *vide* Notification Nos. 80 & 81 dated 25 September 2020

proceedings. An independent review of the draft appeal order is mandated before such order is finalised and communicated to the appellant.

The Principal Chief Commissioner or the Principal Director General, in charge of the NFAC has been empowered, subject to CBDT approval, to specify the format, mode, procedure and processes for effective functioning of the Faceless Appeal Centres set-up under this Scheme.

Centralisation of powers for conducting survey proceedings

On 13 August 2020, the CBDT issued an order under section 119 of the Act⁷ to ensure that survey proceedings under section 133A of the Act, being an intrusive action, be conducted with utmost responsibility and accountability.

The CBDT entrusted Directorates of Investigation (Investigation Wing) for the investigation wing and Principal Chief Commissioner of Income-tax (TDS)/ the Chief Commissioner of Income-tax (TDS) for TDS charges with an "only and exclusively" right to act as an income-tax authority, and take over these powers from the present jurisdictional income-tax authority.

To give the necessary effect to this in the legislation, suitable amendments have been made in section 133A of the Act with effect from 1 November 2020.

New procedure for registration/ re-registration of charitable trusts and institutions extended

The Finance Act, 2020, introduced a new procedure for registration of all existing and new charitable trusts and institutions (under section 12AB of the Act).

To continue claiming exemption, existing registered trusts and institutions were required to apply for fresh registration within three months from the date this section is made effective. Initially, the section was effective from 1 June 2020, which was later deferred to 1 October 2020.⁸

To provide further relief to taxpayers given the continuing pandemic, the applicability of new provisions for registration/ re-registration under section 12AB have been deferred to 1 April 2021. Related sections [viz. 10(23C), 11, 12A, 12AA, 56(2), 115BBDA, 115TD and 253] under the Act have been re-modified such that pre-amended provisions (i.e. provisions prior to amendments made *vide* the Finance Act, 2020) will continue.

Charitable trusts and institutions seeking fresh registrations until 31 March 2021 can make an application under the existing provisions of section 12AA of the Act. From 1 April 2020, the application for registrations will have to be made under section 12AB of the Act. Registered trusts and institutions would be required to apply for re-registration under section 12AB of the Act in FY 2021-22 on or before 30 June 2021.

Similarly, amendments made *vide* the Finance Act, 2020, in sections 35 and 80G of the Act for intimation, filing statement before the income-tax authorities and furnishing certificates to donors, etc., with effect from 1 June 2020 are deferred to 1 April 2021.

Reduction in rates of TDS and TCS

The CBDT, in May 2020,⁹ provided relaxation by reducing the TDS and TCS rate by 25% for payments made to residents for the period 14 May 2020 to 31 March 2021. To give the necessary effect to this in the legislation, sections 197B (for TDS) and sub-section (10A) to section 206 (for TCS) of the Act have now been inserted and made effective from 14 May 2020.

The CBDT has clarified that there shall be no reduction in rates where the tax is required to be deducted or collected at higher rates due to non-furnishing of PAN/ Aadhaar. However, as per the amendment in the TCS provisions, the higher rate of 1% under section 206C(1H) of the Act in case of non-furnishing of PAN/ Aadhaar would reduce to 0.75%.

⁷ F No. 187/3/2020-ITA-I dated 13 August 2020

⁸ Press Release dated 24 June 2020

⁹ Press Release dated 13 May 2020

Extension of the Vivad se Vishwas Amnesty Scheme

The Finance Minister announced the extension of time-limit for payment under the Vivad se Vishwas Amnesty Scheme (VsV Scheme) until 31 December 2020 (from 30 June 2020) without paying any additional amount of 10%, on 13 May 2020.¹⁰ In addition, the compliances falling due under the VsV Scheme during the period 20 March 2020 to 30 December 2020 was extended to 31 December 2020.¹¹ The necessary legislative amendment has now been notified under the VsV Scheme to give effect to the above-mentioned amendments.

Category III AIF in IFSC – new tax regime

To provide tax incentives to Category III Alternative Investment Funds (AIFs) domiciled in the International Financial Services Centre (IFSC), the Act seeks to provide a new taxation framework, summarised as follows –

a) For AIFs¹²

The following incomes earned by an AIF, which are attributable to non-resident investors [not being a permanent establishment (PE) of a non-resident in India] in the AIF, shall be exempt from income-tax –

- Income accruing or arising or received on transfer of any securities (other than shares in a company resident in India). Thus, gains on transfer of derivatives or debt securities or offshore securities shall be exempt.
- Income from securities issued by a non-resident (not being a PE) and where such income otherwise does not accrue or arise in India.
- Income from a securitisation trust, which is chargeable under the head 'profits and gains of business or profession'.

The income-tax leviable on the income earned by the AIF, attributable to non-residents investors (not being a PE of a non-resident in India) in the AIF, shall be as follows –

Income	Proposed income-tax rate
Income in respect of securities (such as interest, dividend)	10% (interest income on certain rupee-denominated bonds, Government securities or municipal debt securities referred to in section 194LD of the Act continue to be taxed at 5%)
Short-term capital gains on transfer of shares in an Indian company	15% (STT paid; else 30%)
Long-term capital gains on transfer of shares in an Indian company	10%

Taxes shall be withheld on income payable to the AIF at the following rates –

Income	Withholding rate
Interest income referred to in section 194LD of the Act	5%

¹⁰ [PIB Press Release dated 13 May 2020](#)

¹¹ Notification No. 35 of 2020 dated 24 June 2020

¹² AIF is a fund established in the form of a trust or a company or a limited liability partnership or a body corporate that has been granted a certificate of registration as Category III AIF, which is located in the IFSC, and all the units are held by non-residents other than units held by the sponsor or manager.

Income	Withholding rate
Income in respect of securities (such as interest, dividends)	10%
Capital gains on transfer of securities	NIL

The manner of attribution of income to a non-resident (not being a PE of a non-resident in India) and resident investors shall be prescribed.

Surcharge on certain long-term capital gains, short-term capital gains and dividends earned by the AIF shall be capped at 15%.

The provisions of alternate minimum tax shall not apply to the AIF.

b) For non-resident investors in the AIF

Any income accruing or arising to or received from the AIF or on transfer of units in the AIF shall be exempt from tax in the hands of investors.

Capping of surcharge on dividend income earned by Foreign Portfolio Investors (FPIs)

The Act was amended earlier this year to abolish the classical system of levying dividend distribution tax on dividends and to shift the tax incidence on dividends with effect from 1 April 2020 to the hands of the shareholder.

Dividends earned by FPIs are taxable at 20% (excluding surcharge and cess).

The surcharge on dividends earned by non-corporate FPIs, which could have been as high as 37%, shall now be capped at 15%.

The effective tax rates for such dividends earned by non-corporate FPIs are as follows –

Income threshold	Effective tax rate - Pre	Effective tax rate – Post
Up to INR 5m	20.80%	20.80%
For INR 5m to INR 10m	22.88%	22.88%
For INR 10m to INR 20m	23.92%	23.92%
For INR 20m to INR 50m	26.00%	23.92%
Above INR 50m	28.50%	23.92%

This change is effective from 1 April 2020.

Power to remove difficulties

The Central Government has been empowered to remove difficulties, if any, that arise in giving effect to the provisions of TOLA, within two years from the end of the month in which TOLA has received the assent of the President.

The takeaways

The TOLA has provided certainty to taxpayers on various relaxations announced by the Government, especially those announced in the press conference that did not form part of the Ordinance.

The TOLA and the Faceless Appeal Scheme has also expanded the scope of a 'technology-enabled administration' of tax proceedings. This move is a bold step towards digitisation and an insight into the Government's vision and road map for tax administration in the future.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.

Our Offices

Ahmedabad 1701, 17 th Floor, Shapath V, Opp. Karnavati Club, S G Highway, Ahmedabad – 380051 Gujarat +91-79 3091 7000	Bengaluru 6 th Floor Millenia Tower 'D' 1 & 2, Murphy Road, Ulsoor, Bengaluru – 560 008 Karnataka +91-80 4079 7000	Chennai 8 th Floor Prestige Palladium Bayan 129-140 Greams Road Chennai – 600 006 Tamil Nadu +91 44 4228 5000
Hyderabad Unit – 1, 8 th Floor, Octave Block E2, Parcel – 4, Salarpuria Knowledge City, Raidurg, Hyderabad – 500081 Telangana +91-40 44246000	Kolkata 56 & 57, Block DN. Ground Floor, A- Wing Sector - V, Salt Lake Kolkata – 700 091 West Bengal +91-033 2357 9101/ 4400 1111	Mumbai PwC House Plot No. 18A, Guru Nanak Road (Station Road), Bandra (West), Mumbai – 400 050 Maharashtra +91-22 6689 1000
Gurgaon Building No. 10, Tower – C 17 th & 18 th Floor, DLF Cyber City, Gurgaon – 122002 Haryana +91-124 330 6000	Pune 7 th Floor, Tower A - Wing 1, Business Bay, Airport Road, Yerwada, Pune – 411 006 Maharashtra +91-20 4100 4444	For more information Contact us at pwctrs.knowledgemanagement@in.pwc.com

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