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UPDATE ON UNION BUDGET 2023

KEY DIRECT AND INDIRECT TAX PROPOSALS

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KEY DIRECT AND INDIRECT TAX TAKEAWAYS FROM BUDGET 2023

The much-awaited Union budget (“**Budget**”) for the financial year 2023-2024 was presented in the Parliament on 1 February 2023 by the Hon’ble Finance Minister. The following are the key takeaways and highlights from the budget announcements and proposals from a direct tax perspective¹ and indirect tax perspective.

A. KEY DIRECT TAX PROPOSALS

1. Tax rates

The Budget has not provided for any changes in the income-tax rates for corporates and firms.

Section 115BAE has been inserted in the Income-tax Act, 1961 (“**the ITA**”) to provide a concessional effective tax rate of 17.16% to a resident manufacturing co-operative society, which is set up on or after 1 April 2023 and commences manufacturing / production on or before 31 March 2024. The concessional tax rate is optional, subject to the new manufacturing co-operative society not availing certain deductions.

On the personal tax front, the tax regime under section 115BAC of the ITA, which provides higher income slabs and lower tax rates in lieu of foregoing certain tax deductions, has now been made the default regime. In addition to individual and Hindu Undivided Family (HUF) taxpayers, the same has been extended to an association of persons (AOP), body of individuals (BOI) and artificial jurisdictional person (AJP). Resultantly, the original tax regime of claiming tax deductions has been made optional. The comparison of income slabs

and tax rates under the two regimes is as under:

Default regime of foregoing certain deductions (Taxable income)	Tax Rate	Optional regime of claiming all available deductions (Taxable income)	Tax Rate
Up to INR 300,000	Nil	Up to INR 250,000	Nil
INR 300,001 – INR 600,000	5%	INR 250,001 – INR 500,000	5%
INR 600,001 – INR 900,000	10%	INR 500,001 – INR 10,00,000	20%
INR 900,001 – INR 1,200,000	15%	INR 1,000,001 and above	30%
INR 1,200,001 – INR 1,500,000	20%		
INR 1,500,001 and above	30%		

¹Unless otherwise specified, all amendments discussed in this document are proposed to apply to transactions undertaken on or after 1 April 2023.

Taxpayers not having income from business or profession can choose to opt-out of the new default regime on an annual basis. However, taxpayers having income from business or profession and opting out of the new default regime will be permitted to switch back to the same only once and such switch will be permanent (unless they cease to have income from business or profession). The attractiveness of the new default regime over the now optional regime is sought to be enhanced in the following ways:

Particulars	Tax Rate	Optional (Original) regime
Rate of surcharge for taxable income exceeding INR 50mn	25%	37%
Highest rate of tax	39%	42.74%
Tax rebate	Up to INR 25,000 on income up to INR 700,000	Up to INR 12,500 on income up to INR 500,000
Standard deduction from salary income	INR 50,000 (it was not permitted earlier)	INR 50,000

2. Angel tax provisions extended to issue of shares to a non-resident

Presently, under section 56(2)(viib) of the ITA, where a closely held company issues shares:

- to a resident;
 - at a premium (i.e. above face value); and
 - the consideration for the shares is higher than the fair market value of such shares;
- then the excess consideration is taxable as income of such company under the head "income from other sources". This provision is also popularly known as "Angel tax". Now, the applicability of section 56(2)(viib) is expanded to also cover cases of issue of shares to a non-resident. No carve-out or exception has been proposed for non-resident institutional investors.

3. No tax exemption for sum received under life insurance policies with premium(s) exceeding INR 500,000 p.a.

Presently, a tax exemption is available for receipt of any sum under a life insurance policy (other than a prescribed unit-linked insurance policy or a keyman insurance policy) without any restriction on the amount of premium payable against such policy (except that the premium should not exceed a certain percentage of the sum assured).

Now, the tax exemption will not be available for receipt of any sum under a life insurance policy (other than a unit-linked insurance policy or a keyman insurance policy) if:

- The said policy is issued on or after 1 April 2023;
- The premium payable towards the above mentioned policy or multiple such policies, exceeds INR 500,000 in any financial year.

The sum received under such policy will be taxable as "income from other sources", after reducing the aggregate premium paid during the term of the policy (which is not already claimed as a deduction under any other provision of ITA). However, the sum received on the death of a person will continue to be exempt from tax.

4. Start-ups – Extension of date of incorporation for availing tax holiday and non-lapse of brought forward losses on change in shareholding

The tax holiday under section 80-IAC of the ITA shall now be extended to those start-ups that are incorporated on or after 1 April 2016 and up to 31 March 2024 (time limit for incorporation extended by 1 year i.e. from 31 March 2023).

Presently, brought forward losses of such start-up, being a company, do not lapse under section 79 of the ITA subject to fulfilment of certain conditions. One such condition is that such losses are incurred during the first 7 years of its incorporation.

Now, the Budget has extended such period of incurring of losses to the first 10 years of its incorporation with effect from 1 April 2022.

5. Taxability of benefit or perquisite arising from business or profession in kind or in cash.

Presently, section 28(iv) of the ITA applies to a benefit or perquisite arising from a business or profession, whether convertible into money or not. Subsequent to the introduction of section 194R with effect from 1 July 2022, there was confusion on whether section 28(iv) applied only to such benefit or perquisite arising in kind or also covers those arising in cash (partly or wholly).

Now, it has been clarified that section 28(iv) applies to all such benefits or perquisites provided in cash or in kind or partly in cash and partly in kind. Obligation to deduct tax at source ("TDS") at the rate of 10% under section 194R on such benefit or perquisite has also been clarified.

Further, penalty provisions under section 271C of the ITA for default in deducting tax and prosecution provisions under section 276B of the ITA for failure to pay / ensure payment of TDS have been made applicable to defaults under section 194R, amongst others.

6. Real Estate Investment Trust (REIT)/Infrastructure Investment Trust (InVIT) – Tax leakage through certain distributions

Presently, income earned and distributed by business trusts like REITs and InVITs to unitholders in the nature of qualifying dividend, interest or rent, are taxable in the hands of the unitholders on a pass-through basis. Any other income of such business trusts is taxable in the hands of the trusts itself. However, where such trusts distribute sums to unitholders in the nature of repayment of debt, the said amount is neither offered to tax by the unitholder nor the business trusts.

Now, it has been provided that any sum distributed to unit holders towards redemption of units will be taxed as 'income from other sources' in the hands of the unitholders after reducing the cost of the acquisition of such units.

7. Payments to micro and small enterprises to be allowed only on payment basis

Section 43B of the ITA permits deduction for certain expenses only when actually paid.

Now, the said section has been amended to include payments made to micro and small enterprises, beyond the time limit specified under section 15 of the MSMED Act.

Such delayed sums will now be allowed as a

deduction only in the financial year they are actually paid.

8. TDS and TCS amendments

The following changes have been made in context of requirement of TDS and Tax Collected at Source ("**TCS**"):

- a. Interest payable to a resident on a listed security will now attract TDS at the rates in force; the exemption presently provided under section 193 of the ITA has been withdrawn.
- b. Non-resident unitholders earning income from business trusts attracting TDS of 5% under section 194LBA of the ITA, will now be eligible to apply for a NIL/lower TDS certificate under section 197 of the ITA from the income-tax authorities.
- c. Non-resident unitholders of mutual funds earning income on their units, will be eligible to avail beneficial treatment / rates under a tax treaty (if lower than 20% provided under section 196A of the ITA), subject to furnishing a valid tax residency certificate.
- d. With effect from 1 July 2023, payment of net-winnings from online games to any person will attract TDS of 30% under section 194BA of the ITA, in line with similar taxability provisions introduced under section 115BBJ of the ITA.
- e. With effect from 1 July 2023, the rate of TCS on foreign remittances towards overseas tour package or any other purpose (other than education and medical treatment) will increase from 5% to 20%.

9. Capital gains tax exemption on investment in residential house limited to INR 100mn

Presently, certain long-term capital gains can be claimed exempt from tax by re-investing the amount of capital gains (section 54 of the ITA) or the net consideration (section 54F of the ITA) in a residential house in India.

Now, the amount of tax exemption under both these sections is restricted to INR 100mn.

10. Non-applicability of limitation on deduction of interest expense to specified NBFCs

Presently, provisions of section 94B of the ITA, which limit deduction of certain interest expenditure to 30% of EBITDA, do not apply to an Indian company or a permanent establishment of a foreign company engaged in the business of banking or insurance. The provisions do not exclude non-banking finance companies (NBFCs) from their purview.

Now, it has been provided that section 94B of the ITA will also not apply to notified NBFCs.

11. Amendments to presumptive income schemes

- a. The limit on turnover for opting for presumptive taxation under section 44AD of the ITA in case of an eligible business is increased from INR 20mn to INR 30mn, provided that the cash receipts of such business do not exceed 5% of the total turnover. Such taxpayer will not be required to get its books of account audited under section 44AB of the ITA.
- b. The limit on gross receipts for opting for presumptive taxation under section 44ADA of the ITA in case of an eligible profession is increased from INR 5mn to INR 7.5mn, provided that the cash receipts of such profession do not exceed 5% of the total gross receipts. Such taxpayer will not be required to get its books of account audited under section 44AB of the ITA.
- c. Non-resident taxpayers opting for presumptive taxation under section 44BB of the ITA (business of exploration, etc., of mineral oils) or under section 44BBB (business of civil construction, etc., in certain turnkey power projects) in any financial year, will not be permitted to set-off any unabsorbed depreciation and/or brought forward loss against its presumptive income for that financial year.

12. Miscellaneous

- a. Gain arising from the transfer or redemption or maturity of a market linked debenture will be taxable as short-term capital gain (at applicable rates), without providing any benefit of cost indexation or deduction for securities transaction tax.
- b. The time period to submit transfer pricing documentation to the tax officer is reduced from 30 days to 10 days, unless the tax officer permits extension of the same to 30 days pursuant to filing an application.
- c. A new authority i.e. Joint Commissioner (Appeals) will be constituted to expeditiously hear and dispose appeals

not involving significant amount of tax demand, thereby relieving existing Commissioner (Appeals) of their overburden. The appeals against the order of such new authority will lie against the Income-tax Appellate Tribunal (ITAT).

- d. For computing capital gains on transfer of property, the cost of acquisition or cost of improvement will not include interest already claimed as a deduction under other provisions of the ITA.
- e. The cost of acquisition and cost of improvement of a capital asset, being an intangible asset or any other right will be considered as 'NIL' if no consideration is actually paid for such asset.

B. KEY INDIRECT TAX PROPOSALS

PART A : Goods & Service Tax

1. Composition levy for registered persons supplying goods through electronic commerce operators

Section 10(2)(d) and 10(2A)(c) of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") will be amended; thereby making registered persons who are supplying goods through ECOs, eligible to opt for Composition Levy.

2. ITC reversal in case of non-payment to vendor within 180 days

The above provision will be amended, whereby the words 'added to the output liability, along with interest thereon' will be substituted with 'paid by him along with interest payable under Section 50'.

3. ITC reversal on In -Bond Sales/sale of warehoused goods

Explanation to Section 17(3) of the CGST Act will be amended to include In-Bond sales of goods/sale of goods in a custom bonded warehouse within the scope of exempt supply. This would lead to additional reversal of ITC which earlier was not done.

4. Restriction of Input Tax Credit on CSR expenses

Section 17(5) of the CGST Act, which provides for restrictions on availing Input Tax Credit (“ITC”) on few goods and services will be amended to provide that ITC shall not be available in respect of goods or services or both received by a taxable person which is used or intended to be used for activities relating to his obligations under corporate social responsibility (CSR) referred to in Section 135 of the Companies Act, 2013.

5. No GST registration in case of wholly exempt supplies

Section 23 will be amended; wherein it will be given an overriding power over Section 22(1) and Section 24. The said amendment will bring clarity for persons to not obtain registration in case they are wholly exempt suppliers.

6. Maximum Time limit for filing Returns

Various clauses have been introduced to provide maximum time limit of 3 years for furnishing Returns (GSTR 1, GSTR 3B, GSTR 4/5/6/7, GSTR 9/9C, GSTR 8) from due date of furnishing the said details.

7. Value of ITC to be excluded for final settlement of refund claim

The reference to “excluding the amount of ITC provisionally accepted” will be removed in Section 54(6). The same will align with the present scheme of availment of self-assessed input tax credit as per Section 41(1).

8. Computation of period of delay for calculating interest on delayed refunds

Under Section 56, the words “to be computed in such manner and subject to such conditions and restrictions as maybe prescribed” will be added. This enables the government to prescribe additional conditions while computing the period of delay for calculating the interest on delayed refunds.

9. Electronic Commerce Operators brought under the ambit of Penal Provisions.

A new clause under Section 122(1B) of the CGST Act, will be inserted wherein Electronic Commerce Operator would be penalized for contravention of provisions relating to supply of goods made through them by an unregistered persons or a composition taxpayer.

10. Decriminalization of certain offences

Section 132(1) of the CGST Act will be amended so as to decriminalise the offences pertaining to:

- a. Obstructing or preventing any officer to discharge his duties under the said Act;
- b. Tampering or destruction of any material evidence or documents; and
- c. Failure to provide any information or providing false information.

Further, the threshold limit for launching prosecution will be increased from INR 10mn to INR 20mn, except for cases involving availment of ITC on the basis of fake invoices.

11. Inter-departmental information exchange with taxpayers' consent

Section 158A of the CGST Act will be inserted which prescribes a procedure for consent-based sharing of information disclosed by the taxpayer in his returns/application for registration or during the generation of e-way bills/ e-invoices on the GST Portal. This will enable the government to share the data available on the GST portal with other government agency with consent.

12. Retrospective applicability of High Sea Sales, Merchant Trading Transactions and In-bond Sales, not being considered as a supply

Para 7,8(a) and 8(b) of Schedule III will be applicable retrospectively from 1 July 2017. Further, it has also been explained that refund will not be available in case tax has already been paid for the said activities during the period from 1 July 2017 to 31 January 2019. This will clear ambiguity and avoid litigation on applicability of tax. However, the restriction on refund will be a challenge for taxpayers.

13. Amendment in the definition of 'non- taxable online recipient' ('NTOR') and 'online information and data access or retrieval services' ('OIDAR') services

Definition of NTOR under Section 2(16) of the IGST Act, 2017 will be amended by specifying the recipient as an unregistered person receiving OIDAR services. It also removes the condition of OIDAR services for any purpose other than business / commerce. Further, the amendment to OIDAR services drops the requirement of the service being essentially automated and requiring minimal human intervention. The said definition has now been widened to capture more online services and eliminate ambiguity to the type of services to be included under OIDAR.

14. Amendment in Place of Supply in case of services by way of transportation of goods

Proviso to Section 12(8) of the IGST Act, 2017 which states that the place of supply for goods being transported to a place outside India, will be the destination of such goods (i.e., outside India), will be omitted. The place of supply will now be based on the registration status of the recipient.

PART B : Customs

1. Non – Tariff changes:

a. Non applicability of validity of two years for certain categories of conditional exemptions:

New proviso to Section 25(4A) of the Customs Act, 1962 is introduced to exclude certain category of conditional exemption notification from the applicability of 2 years limitation.

b Time-limit for disposal of application made under settlement commission:

New sub-section (8A) to Section 127C of the Customs Act, 1962 has inserted the time limit of 9 months (from the last day of the month in which the application), further extendable by 3 months for disposal of the application.

2. Tariff changes:

a. Exclusion of solar power plant / solar power project from the purview of project import:

The Customs Tariff Act, 1975 and the Project Import (Amendment) Regulations, 2023 has been amended to exclude solar power plant & solar power project effective from the date of assent and 2nd February, 2023 respectively. This would impact solar projects claiming project import basis certificates from authorities.

Change in Customs duty implications on

b Electric Kitchen Chimney

Increase in the rate of BCD on EKC from 7.5 % to 15%. Further, reduction in the

rate of Basic Customs Duty ("BCD") on the heat coils used in manufacturing of Electric Kitchen Chimney from 20% to 15%.

c. Change in National Calamity Contingent Duty (NCCD) on specified Cigarettes.

The government has revised the rate of NCCD on specified cigarettes upwards by about 16%.

d. Excise duty exemption on blended CNG to the tune of GST paid on biogas:

Central excise duty exemption is being provided to blended Compressed Natural Gas from so much of the amount as is equal to the GST paid on Bio Gas/Compressed Bio Gas contained in the blended CNG. This also require certain compliance at the end of manufacturer.



This update document provides general information about the key tax proposals provided in the Union Budget 2023 and cannot be construed as professional advice. We undertake no liability for the views expressed herein.

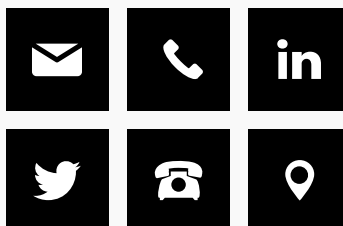
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