

TAX FLASH NEWS

24 March 2023

Proposed amendments to the Finance Bill, 2023

On 1 February 2023, the Finance Minister presented the Union Budget 2023-24 in the Lok Sabha¹. Recently, the amendments were proposed to the Finance Bill, 2023 and a notice of such amendments was introduced in the Lok Sabha. The Lok Sabha has passed the Bill with the amendments. Key amendments are summarised as follows:

Direct Tax

International Financial Services Centre (IFSC)

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Rates of Income-tax	-	It is proposed that no surcharge and health and education cess would be applicable on income tax payable by a specified fund i.e., Category III Alternate Investment Fund (AIF) located in IFSC and investment division of an offshore banking unit which has been granted registration as a Category I Foreign Portfolio Investor (FPI), on any income received in respect of securities as mentioned in Section 115AD(1)(a).
Income of non-resident from portfolio of securities	-	Section 10(4G) exempts income received by non-residents from portfolio of securities or financial products or funds, managed or administered by any portfolio manager in an account maintained with an Offshore Banking Unit in IFSC. This exemption is now proposed to be extended to such activity carried out by such persons as may be notified by the government in the Official Gazette.
Capital Gains exemption on transfer of equity shares of a company engaged in aircraft leasing in IFSC	-	It is proposed to exempt the income by way of capital gains earned by a non-resident or a unit of an IFSC from transfer of equity shares of a domestic company, being a unit of an IFSC engaged primarily in the business of lease of an aircraft which has commenced operations on or before 31 March 2026.

¹ The lower house of Parliament

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		<p>The above exemption is available only for an Assessment Year (AY) falling within-</p> <p>(a) period of 10 AYs beginning with the AY in which the domestic company has commenced operations; or</p> <p>(b) period of 10 AYs beginning with the AY commencing from 1 April 2024, where the period referred to in clause (a) ends before 1 April 2024.</p> <p>Aircraft has been defined to mean aircraft or helicopter, or an engine of an aircraft or helicopter, or any part thereof.</p>
Exemption for dividend income earned by an IFSC unit engaged in the business of leasing of an aircraft	-	It is proposed to exempt dividend income earned by a unit in IFSC which is primarily engaged in aircraft leasing business if such dividend is from a company, being a unit in IFSC, primarily engaged in aircraft leasing.
Expansion of definition of original fund in the context of relocation of funds to IFSC	-	<p>Section 47(viiad) provides that relocation of an offshore fund (Original Fund) to IFSC shall not be considered as a transfer if certain conditions are fulfilled. The definition of Original Fund is proposed to be expanded to include -</p> <ul style="list-style-type: none"> • an investment vehicle of Abu Dhabi Investment Authority (ADIA) in which ADIA is the direct or indirect sole shareholder or unit holder or beneficiary or interest holder and such investment vehicle is wholly owned and controlled, directly or indirectly, by ADIA; or • a fund as may be notified by the Central Government in the Official Gazette.
Deduction in respect of incomes of Offshore Banking Units in special economic zones under section 80LA(1)	-	Currently, deduction is available to an Offshore Banking Unit located in a special economic zone for a period of 10 years with deduction being 100% for the first five consecutive years and 50% for the next five consecutive years. For the assessment year commencing on or after 1 April 2023, the deduction of 50% has been increased to 100%.
Tax on dividends received from a unit in IFSC	-	It is proposed to amend Section 115A to provide that dividend income received by a non-resident from a unit in IFSC shall be taxable at the rate of 10%.
Tonnage tax scheme	-	<p>Section 115VP provides that a qualifying company may opt for the tonnage tax scheme by following the prescribed procedure.</p> <p>It is proposed that a unit of an IFSC which has availed deduction under Section 80LA may make an application within three months from the date on which such deduction ceases and consequently opt to be governed by the tonnage tax scheme.</p>

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Tax on long term bonds/ Rupee denominated bonds	-	Interest income earned by a non-resident on long-term bonds / rupee denominated bonds (issued on or after 1 st July 2023) which are listed only on IFSC stock exchanges is proposed to be subjected to withholding and taxation at 9%.
Income distributed on offshore derivative instruments	It was proposed that income distributed on offshore derivative instruments entered into with an offshore banking unit in IFSC to be exempt from income-tax in the hands of non-resident investor to the extent such income is chargeable to tax in the hands of offshore banking unit.	It is now proposed to exempt such income irrespective of its chargeability in the hands of the offshore banking unit.

Business Trust

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Amendments related to Business Trust	<p>Section 56(2)(xii) was inserted for considering amounts received by unitholders from Business Trust, other than in the nature of interest, dividends or rental income or any other sum which is not chargeable to tax in the hands of Business Trust, as income chargeable under the head 'income from other sources'. Further, no benefit provided for the cost of units while computing the said income.</p> <p>Sum received on redemption of units also covered by the said provision. However, in case of sum received for redemption of units, reduction of cost of acquisition of the units provided, but to the extent the cost does not exceed such sum received (i.e. loss will not be allowed in case of redemption of units).</p>	<p>The Section 56(2)(xii) is now proposed to be substituted by the following mechanism:</p> <ul style="list-style-type: none"> • Specific computation mechanism is introduced for unitholders to determine the income chargeable as 'income from other sources'. Particularly, the provisions have been updated to provide that the amount at which the unit was issued by the Business Trust would now be allowed as a deduction. • If the 'specified sum' computed as per the prescribed mechanism is a negative number (i.e. a loss), it shall be ignored for the purpose of computation of taxable income of the unitholder. • Reference to 'redemption of units' has been removed in the substituted mechanism. • Amendments are also introduced in section 48 for determining the cost of acquisition of units for computing capital gains: <ul style="list-style-type: none"> ○ Cost of acquisition of units to be reduced by sums distributed by Business Trust, excluding: <ul style="list-style-type: none"> ➤ interest, dividend or rental income exempt in the hands of Business Trust, or

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		<ul style="list-style-type: none"> ➤ any other sums which is chargeable to tax in the hands of Business Trust, or ➤ any amounts distributed which are charged to tax in the hands of unitholder as income under section 56(2)(xii) <ul style="list-style-type: none"> ○ In case the current unitholder has acquired the units through any mode which qualifies as an exempt transfer under section 47, distribution made to any previous unitholder shall also be reduced from the cost of acquisition of the current unitholder as per the mechanism discussed above. <p>Interest on debt securities by SPVs to Business Trust proposed to be excluded from scope of tax withholding under section 193.</p>
Exemption to Pension Fund/ Sovereign Wealth Funds etc. under section 10(23FE)	-	Tax exemption under Section 10(23FE) is extended to specified sum received from a business trust taxable under proposed Section 56(2)(xii)

International Tax

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Tax on royalty and fees for technical services	-	The existing provisions of Section 115A provide for taxation of income by way of royalty or fees for technical services earned by a non-resident or a foreign company at the rate of 10%. It is proposed to enhance this rate to 20%.

Personal Tax

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Rebate under Section 87A	A resident individual with taxable income up to INR 7,00,000 computed under Section 115BAC will receive a tax relief upto INR25,000 as a rebate under Section 87A.	It is proposed to provide an additional rebate to taxpayers whose total income computed under Section 115BAC exceeds INR 700,000 and total tax thereon exceeds such income over INR 700,000. The rebate in such instance, would be equivalent to the difference between the tax payable on the total income and the amount of income that exceeds INR 700,000.

Direct Tax – Other Changes

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Computation of capital gains in case of Market Linked Debenture under Section 50AA	Capital gains arising on account of transfer, redemption or maturity of market linked debentures to be taxed as short-term capital gains at applicable rates without allowing deduction for Securities Transaction Tax (STT) paid.	Proposed section 50AA is now proposed to be expanded to include the units of specified mutual funds acquired on or after 1 April 2023. Thus, capital gains arising from transfer, redemption or maturity of unit of a specified mutual fund to be taxed as short-term capital gains. The specified mutual fund to mean a mutual fund where not more than 35% of its total proceeds are invested in the equity shares of domestic companies.
Withholding tax on winnings from online games	New withholding tax provisions on winnings from online games under section 194BA were introduced from 1 July 2023.	It is proposed to make Section 194BA applicable from 1 April 2023. Correspondingly, it is proposed to restrict applicability of Section 194B on winnings from online game till 31 March 2023. Provisions relating to higher withholding tax for non-filers of income-tax return are proposed to exclude newly introduced Section 194BA. The definition of the term 'rate or rates in force' is proposed to be amended to include reference to Section 194BA.
Provisions relating to Tax Collection at Source (TCS) for foreign remittance	-	Under Section 206C(1G)(a), every person, being an authorised dealer, who receives an amount, for remittance out of India from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India, is required to collect tax from the buyer at the prescribed rate. It is proposed to exclude the term 'out of India' from the above provisions.
Provisions relating to TCS in case of non- furnishing of PAN and non-filers of income-tax return	-	It is proposed that the maximum rate of TCS in case of persons not furnishing PAN or who are non-filers of income-tax return shall not exceed 20 per cent.

Indirect Tax

Customs Act, 1962

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Manufacturing and other operations in warehouse	-	A new Section 65A is proposed to be inserted with margin heading ' <i>Goods brought for operations in warehouse to have ordinarily paid certain taxes</i> '. Conditions associated with bringing the goods into a warehouse for manufacturing and other operations has been changed.

		<p><u>Key changes are:</u></p> <ul style="list-style-type: none"> • Going forward, movement of the goods for manufacturing operations in a warehouse would have to be under a bill of entry for home consumption. • Such goods would be assessed to duty and the IGST portion of the Customs duty will have to be paid. Only the BCD and SWS portion of the Customs duty will be deferred. • Date of determination of duty on imported goods brought into warehouse would be the date of filing the bill of entry. • The current practice for determining the duty on such goods is the date of filing of ex-bond bill of entry. • Provisions for payment of deferred BCD and SWS are likely to be notified in due course through specific rules or regulations. <p>The proposed changes would help in resolving specific situations which were open to interpretation. It would also help in reduction of compliance cost in relation to MOOWR operations. However, it takes away the benefit of IGST deferral.</p>
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Customs Tariff Act, 1975

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Standard rate of duty for tariff items	CTH 2933 59 50 was added to the Tariff	<ul style="list-style-type: none"> • Tariff rate for Bispyribac-sodium (ISO) under HS 2933 59 50 increased from 7.5% to 10%. • Tariff rate for X-ray generators, X-Ray machines falling under HS 9022 14 10, 20, 90 increased from 10% to 15%.

Central Goods and Services Tax Act, 2017

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Persons not liable for registration	Section 23 (Persons not liable for registration) of the CGST Act will have an overriding effect with effect from 1 July 2017 over other provisions for obtaining registration.	<ul style="list-style-type: none"> • Proposal to substitute sub-section (2) of Section 23 retrospectively i.e. 1 July 2017. • Government may specify the category of persons who may be exempted from obtaining registration. • This sub-section will have overriding effect over other provisions for obtaining registration.
Revocation of cancellation of	-	<ul style="list-style-type: none"> • Timeline for application for revocation of registration within 'thirty days' from the date of service of the cancellation order is proposed to be relaxed.

registration (Section 30)		<ul style="list-style-type: none"> The Government will specify the timeline and conditions, restrictions for the revocation of cancellation of registration.
Assessment of non-filers of returns	-	<ul style="list-style-type: none"> Timeline to furnish valid return by the non-filers of return, is proposed to be enhanced from 'thirty days' to 'sixty days' of service of assessment order for the assessment order deemed to be withdrawn. In addition to this, in case, the returns are filed beyond sixty days as specified above, then late fees shall be payable in addition to the interest and penalty as applicable.
Constitution of Appellate Tribunal and Benches thereof	-	<ul style="list-style-type: none"> Section 109 on constitution of Appellate Tribunal and Benches thereof is proposed to be substituted. Government shall notify the establishment of GST Appellate Tribunal. There shall be a Principal Bench at New Delhi and State Benches at such places as recommended by the GST Council. Issues involving place of supply shall be heard only by Principal Bench. Principal Bench and State Bench shall hear appeals against the orders passed by Appellate Authority or Revisional Authority. Generally, bench will comprise 4 members, out of which 2 will be judicial member and 1 will be appointed by Central Government and 1 by the State Government.

Integrated Goods and Services Tax Act, 2017

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Place of supply of services of transportation of goods, other than by way of mail or courier	-	<ul style="list-style-type: none"> As per Section 13(9), the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods where the location of the supplier of services or the location of the recipient of services is outside India. This sub-section is proposed to be omitted. This would imply that the place of supply of these services would be the location of the recipient of services and if such location is not available, the place of supply shall be the location of the supplier of services.

Goods and Services Tax (Compensation to States) Act, 2017

Topic	Provisions of the Finance Bill 2023	Amendments to the Finance Bill 2023
Schedule to the Goods and Services Tax (Compensation to States) Act, 2017	-	<ul style="list-style-type: none">• GST compensation cess on pan masala and tobacco and manufactured tobacco substitutes, including tobacco products is proposed to be amended.• It is proposed to levy cess on retail sale price of these products.• Explanation for the term 'retail sale price' is provided.

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