

**“What’s
New?”**



February 2, 2023

India Budget 2023 – Key Direct and Indirect Tax Proposals

Indian Finance Minister, Ms. Nirmala Sitharaman on February 1, 2023 presented the Union Budget before the Parliament for the Financial Year 2023-24.

This Budget has brought in several important changes in the taxation laws.

In this alert we have discussed the key direct tax and GST proposals of the Union Budget 2023. These proposals will become effective on approval of the Parliament and receipt of assent of the President of India.



Direct Tax Proposals



Individual tax rates

Budget 2023 has proposed new slab rates ("New Regime") for individual taxpayers and certain other taxpayers for FY 2023-24:

Income in case of Individual, HUF, AOP, BOI	Tax Rates
Upto 0.3 Million ("Mn")	Nil
>0.3 Mn to 0.6 Mn	5%
>0.6 Mn to 0.9 Mn	10%
>0.9 Mn to 1.2 Mn	15%
>1.2 Mn to 1.5 Mn	20%
>1.5 Mn	30%

- Under this New Regime taxpayer will have to forgo tax benefit on investments like life insurance, PPF, home loan interest, etc.
- The government has proposed to retain the Old Regime, which has been made optional for taxpayers:

Income in case of Individual, HUF, AOP, BOI	Age		
	< 60	≥ 60 < 80	≥ 80
	Tax Rates		
Upto 0.25 Million ("Mn")	Nil	Nil	Nil
>0.25 Mn to 0.3 Mn	5%	Nil	Nil
>0.3 Mn to 0.5 Mn	5%	5%	Nil
>0.5 Mn to 1.0 Mn	20%	20%	20%
>1.0 Mn	30%	30%	30%

- Taxpayer has an option to choose between New Regime and Old Regime before the due date of filing of Income-tax return. A person having income from business or profession who has opted for Old Regime shall be able to opt for New Regime only once in lifetime. However, other taxpayers (like salaried) shall be able to exercise this option every year.

Surcharge rates for Individuals

Changes in surcharge rates under New Regime for FY 2023-24:

Income Slabs	New Regime	Old Regime
Upto 5 Mn	Nil	Nil
> 5 Mn to 10 Mn	10%	10%
> 10 Mn to 20 Mn	15%	15%
> 20 Mn to 50 Mn	25%	25%
> 50 Mn	25%	37%

- Surcharge on capital gains and dividend is capped at 15% under both Regimes irrespective of level of income. Health and education cess is same as 4%.
- Rebate u/s 87A proposed to be increased from 0.5 Mn. to 0.7 Mn. under New Regime. Accordingly, income upto 0.7 Mn. is tax free income under New Regime.

Corporate tax rates

No change in Corporate tax rate, MAT, surcharge and cess. Tax rates for FY 2023-24 are as below:

Particulars	Under Section 115BAB and 115BAA		Under First Schedule to Finance Act	
	(A)	(B)	(C)	(D)
Tax Rate	15%*	22%	25%	30%
Surcharge	Flat rate of 10%		<ul style="list-style-type: none"> ■ Nil, if income is up to INR 10 Mn ■ 7%, if income is more than INR 10 Mn. but up to INR 100 Mn. ■ 12%, if income exceeds INR 100 Mn. 	
Health and Education Cess	4%	4%	4%	4%
Subject to conditions	Where total income of the company is computed without claiming specified deductions, incentives, exemptions and additional depreciation available under the Act.		Where its total turnover or the gross receipts in the previous year 2021-22 does not exceed INR 4000 Mn	Where conditions referred to under (C) are not met

* For claiming reduced tax rate of 15% the company should be registered on or after October 1, 2019 and start manufacturing before March 31, 2024.

Socio Economic Welfare Measures

- **Payments to Micro, Small, Medium Enterprises (“MSME”) deductible only on actual payment**
 - In order to promote ‘Micro’ and ‘Small’ enterprises, it is proposed that payments made to such enterprises shall be allowed as deduction only on actual payment basis.
 - As per the MSME Act, payment to Micro and Small enterprises should be made within 15 days (or within 45 days if there is a written agreement for extended timelines).

- **Benefits to Start-ups**
 - Now, startups are allowed to carry forward and set of losses of ten years (earlier seven years) from incorporation even if there is change in shareholding of 51% or more.
 - Last date for incorporation of startup for claiming 100% tax holiday extended by 1 year from March 31, 2023 to March 31, 2024.

Ease of Compliance

- **Presumptive taxation**

- Turnover threshold for presumptive taxation for business income enhanced from INR 20 Mn. to 30 Mn., provided cash receipts does not exceed 5% of turnover.
- Similarly, in case of professionals (like CA, advocate, doctors, etc.) turnover threshold enhanced from 5 Mn. to 7.5 Mn., provided cash receipts does not exceed 5% of turnover.

- **Mechanism for credit of TDS where income is already offered to tax**

- A mechanism is proposed to provide relief in cases where there is mismatch of TDS claim due to difference of the year in which income is offered to taxation and the year in which tax is deducted by the payer. Now, credit will be allowed by making an application within 2 years from the end of the year in which tax is deducted.

Anti avoidance and other measures to plug loopholes

- **New threshold imposed for investment in residential house for capital gain exemption**
 - Capital gain arising from sale of residential house, or any other long-term asset is tax exempt if invested in a residential house without any limit. Now, it is proposed to cap this benefit to INR 100 Mn.
- **Preventing misuse of presumptive taxation for non-resident taxpayers**
 - Non-resident taxpayers engaged in providing services/facilities for oil exploration business or civil construction business are eligible for presumptive taxation.
 - Such taxpayers have an option to offer income to tax on presumptive basis or offer income/claim losses under normal provisions. Now it is proposed that, where such taxpayers opts for presumptive taxation, set-off of unabsorbed depreciation and brought forward losses shall not be allowed.
- **Extending deeming provision to Gift received by not-ordinarily resident taxpayers**
 - Any gifts received by a not-ordinarily resident taxpayer from Indian residents exceeding INR 50,000 shall be deemed be taxable in India. Earlier it was applicable only for gifts received by non-residents.

Anti avoidance and other measures to plug loopholes

- **Issuance of share capital to non-resident taxpayers**
 - Any amount received by a closely held company towards issue of share capital is taxable if received in excess of fair value of shares. This provision applies only in case of resident shareholders. It is now proposed to widen this provision to non-resident shareholders as well.
- **Rationalisation of exempt income under life insurance policies**
 - It is proposed that income received on maturity, except in case of death, from insurance policies issued on or after April 1, 2023, where premium for life insurance policies (other than ULIP) is exceeding INR 0.5 Mn. in a year during the term of such policy, shall be taxable.
- **Self-generated Intangible Assets**
 - It is proposed that the 'cost of improvement' or 'cost of acquisition' of self-generated intangible assets shall be considered as 'Nil' for computing capital gains.
- **Time limit for bringing consideration against export proceeds in India**
 - It is proposed to amend tax holiday for SEZ units under section 10AA to the effect that deduction will be available if the proceeds from sale of goods or services brought into India in foreign exchange within a period of six months from the end of the financial year.

Changes in TDS and TCS provisions

- **TDS on Online Games**

- A new section 194BA is introduced for levying TDS on online gaming at the rate of 30% on net winnings at the time of withdrawal or at the end of the financial year without any minimum threshold.

- **Reduction in rate of TDS for withdrawal from PF**

- Rate of TDS on withdrawal from accumulated balance of provident fund proposed to be reduced from 30% to 20% if no PAN is furnished by the employees. Rate of TDS continues to be 10% in case PAN is furnished.

- **TDS on non-filers of income-tax return**

- A higher rate of TDS and TCS applies for non-filers of income-tax returns. It is proposed to exclude from these provisions a person who is not required to file income-tax return for the relevant assessment year and who is notified by the Central Government in this behalf.

- **Clarification in section 194R**

- Clarification inserted in section 194R to apply TDS on benefits or perquisites provided in cash or in kind or partly in cash or in kind.

Changes in TDS and TCS provisions

- **Increasing rate of TCS for certain foreign remittances**

TCS rate on certain foreign remittances and on sale of overseas tour packages proposed to be increased as under:

S. No.	Type of remittance	Present Rate of TCS	Proposed Rate of TCS
1.	For the purpose of education, if the amount being remitted is out of a loan obtained from a financial institution.	0.5% of the aggregate amount in excess of INR 0.7 Mn.	No change
2.	For the purpose of education, other than (1) or for the purpose of medical treatment.	5% of the aggregate amount in excess of INR 0.7 Mn.	No change
3.	Overseas tour package	5% without any threshold limit.	20% without any threshold limit
4.	Any other case	5% of the aggregate amount in excess of INR 0.7 Mn.	20% without any threshold limit

Above charges will be applicable w.e.f. July 01, 2023.

Assessment and appellate proceedings

- To speed up disposal of appeals at first appellate level (i.e., Commissioner of Income Tax (Appeals)) it is proposed to deploy Joint Commissioner and Additional Commissioner level officers as well for disposal of small appeals.
- It is proposed to increase the time limit for completion of assessment/ reassessment proceedings for AY 2022-23 and subsequent years from 9 months to 12 months from the end of the assessment year. In case of updated return, timeline will be 12 months (earlier 9 months) from the end of the financial year in which return is filed.
- In reassessment proceedings, the return is required to be furnished within 3 months from the end of the month in which notice is issued or such extended period allowed by the tax authorities.
- Tax authorities are now empowered to order valuation of inventory by a Cost Accountant. Such period of valuation will be excluded for computing time for completion of assessment.

Transfer Pricing

- It is proposed to reduce time limit to furnish Transfer Pricing report from 30 days of receipt of notice to 10 days. Earlier this period could be extended by another 30 days. Now, the extension will be granted for another 10 days only.

GST Proposals



Goods and Services Tax

▪ **Composition Scheme**

- A registered person who is engaged in supplying **goods** through E-commerce operator (“ECO”) will be eligible to opt for the composition scheme. However, this benefit will not be available in case of supply of **services**.

▪ **Input Tax Credit**

- Supply of warehoused goods to any person before clearance for home consumption will be considered as an exempt supply. In respect of such transaction, availment of input tax credit (“ITC”) will be restricted.
- ITC shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility.

▪ **Transportation of goods to a place outside India**

- Where the supplier of goods and recipient of goods both are located in India and the destination of the goods is outside India, then the place of supply would fall in India irrespective of destination of goods.

- **Offences and Penal Provision**

- ECO has to be more diligent now, meaning thereby to conduct due diligence of supplier before allowing supply of goods from its platform. The government has proposed that ECO is liable to pay penalty u/s 122 of CGST Act (i.e., INR 10,000 or tax evaded, whichever is higher) if ECO allows any person to supply goods through its platform unless that person has immunity from registration or inter-state supply.
- It is proposed to reduce compounding fees u/s 138 of the CGST Act except for persons involved in the issuance of invoices without supply of goods or services or both.

Proposed compounding fee is as follows:

Minimum : 25 % of tax involved

Maximum: 100% of tax involved

- It is proposed that business person cannot be arrested in cases where the business owner has not allowed the officer to perform his duty, tempered with or destroyed evidences or documents, or has provided wrong information.
- It is proposed to increase the monetary threshold for launching prosecution for the offences from 10 Mn. to 20 Mn., except for the offences related to issuance of invoices without supply of goods or services or both.

- **Retrospective exemption to certain activities and transactions in Schedule III to the Central Goods and Services Tax Act**
 - It is proposed that following transactions will be treated outside the purview of GST retrospectively w.e.f. July 01, 2017.
 - Para.7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
 - Para 8(a). Supply of warehoused goods to any person before clearance for home consumption.
 - Para 8(b). Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

However, if tax has already been paid on such transaction in past, no refund will be allowed.

- **Administrative changes**

- Maximum time limit for filing of returns under the GST such as GSTR-1 (Details of Outward Supplies), GSTR-3B, GSTR-9 (Annual Return), GSTR-8 (TCS) is provided to be three years from the due date of filing of such returns.
- Section 56 amended to prescribe the manner of computation of period of delay for calculation of interest on delayed refunds. The government shall pay interest in case of refund disbursement is delayed beyond 60 days from the date of making refund application.
- In case of an export refund the amount of provisional refund shall be 90% of amount claimed.

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