

06th February, 2023
Updates from the Finance Bill, 2023

THE UNION BUDGET - 2023

Salient Features of the Finance Bill, 2023

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CHARTERED ACCOUNTANTS

Macro Insights

- The Economic Survey of India has projected a **real GDP growth** of 6.5%. The overall assessment gives a broader range of 6-6.8%.
- Union Budget has pegged the **nominal GDP growth** at 10.5% in FY 24, which is down from 15.4% in FY 23.
- The Gross Direct Tax Collections as on 11th Jan, 23 were Rs. 14.71 lakh crores which is 24.5% higher than previous year.
- The total expenditure growth is pegged at 7.5% in FY 24. In this, revenue expenditure growth is estimated only at 1.2%.
- The GOIs fiscal deficit to GDP Ratio in FY 24 is estimated at **5.9%**.
- The GOI has indicated a reduction in its fiscal deficit to GDP Ratio to be below 4.5% by 2025-26.
- Capex for FY 24 is budgeted at Rs. 10 lakh crore, which is 33% higher from FY 14.
- Railways is given a capital outlay of Rs. 2.4 lakh crores, which is 9 times higher than in FY 14.
- Defense budget allocation is Rs. 1.62 lakh crores for Capital & Rs. 2.7 lakh crores for Revenue outlay. This is 6.7% & 15.9% higher than budget allocation in FY 23.
- The budget provides for Rs. 35000 crores for priority capital investments towards energy transition, net zero carbon objectives and energy security.
- Direct Benefit Transfer under credit guarantee scheme for MSMEs will take effect from 1 April, 2023 by way of infusion of Rs. 9000 crores in the corpus.
- Agriculture accelerator fund will be set up to encourage agri-startups in rural areas.
- BCD exemption introduced on import of specified capital goods required for manufacturing lithium ion cells used in EVs.
- 100 critical transport infrastructure projects for connectivity identified to be taken up on priority with investment of Rs. 75000 crores.
- R&D grant provided to one IIT for 5 years to encourage production of lab grown diamonds.

Green Hydrogen production target of 5 MMT by 2030

Salient Features of Finance Bill, 2023

Note 1: This writeup is based on the proposals through Finance Bill 2023. These are subject to passing of the same by Parliament with or without any amendments.

Note 2: The reference to the terms Act/Sections in the Direct Tax chapter shall mean Income Tax Act 1961. The reference to the terms Act/Sections in the Goods or Services Tax chapter shall mean CGST Act 2017/IGST Act 2017.

Note 3: Proposals in Finance Bill 2023 relating to Direct Tax would be effective from Financial Year 2023-24 Asst.Year 2024-25, unless stated otherwise. Proposals relating to Goods or Services Tax shall be effective from them being notified.

Note 4: Please note that this write-up does not deal with all the provisions of Finance Bill 2023. It covers only such provisions which in our view are of general importance. For complete list of all the proposals, the readers are advised to refer Finance Bill 2023.

DIRECT TAXES

Analysis of the Proposals

Rates of Taxes

- The Finance Bill 2023 has not changed the rates of tax of Earlier Regime. It remains the same as applicable for FY 2022-23. For immediate reference, the various rates of taxes are reproduced hereunder.
- There are two regimes of alternate tax for Assesseees who are Individuals, HUFs and Co-operative Societies. Both the regimes are discussed hereunder:

Option 1: Earlier Regime

The tax slab rates as applicable for AY 2024-2025 are as follow:

For Individuals up to the age of 60 years, HUFs, BOIs, AOPs, etc.:

Income Slab	Tax Rates
Up to Rs. 2.50 Lakhs	0%
From Rs. 2,50,001/- up to Rs. 5.00 Lakhs	5%
From Rs. 5,00,001/- up to Rs. 10.00 Lakhs	20%
Above Rs. 10.00 Lakhs	30%

For Individuals with age between 60 years and up to the age of 80 years:

Income Slab	Tax Rates
Up to Rs. 3.00 Lakhs	0%
From Rs. 3,00,001/- up to Rs. 5.00 Lakhs	5%
From Rs. 5,00,001/- up to Rs. 10.00 Lakhs	20%
Above Rs. 10.00 Lakhs	30%

For Individuals of the age above 80 years:

Income Slab	Tax Rates
Up to Rs. 5.00 Lakhs	0%
From Rs. 5,00,001/- up to Rs. 10.00 Lakhs	20%
Above Rs. 10.00 Lakhs	30%

Rebate u/s 87A under Earlier Regime: However, where the total income of an **INDIVIDUAL** assessee does not exceed Rs.5 Lakhs under Earlier Regime, he shall be entitled to a deduction by way of rebate u/s 87A to the extent of actual tax or Rs.12,500/-, whichever is less. Please note that this rebate is not allowable where the total income of the individual exceeds Rs.5,00,000/-.

Rates of Surcharge [Earlier Regime]:

Income Slab	Rate of Surcharge
Rs.50,00,001/- to Rs.1 Crore	10%
Rs.1,00,00,001/- to Rs.2,00,00,000/-	15%
Rs.2,00,00,001/- to Rs.5,00,00,000/-	25%
Above Rs.5 Crores	37%

New Regime u/s 115BAC

Option 2 - New Regime u/s 115BAC

Please note the New Regime will be the default regime for all the below mentioned assesses from FY 2023-24 AY 2024-25.

This option which so far was applicable to Individual and HUF assessee only. Now this is proposed to be made applicable to Individual, HUF, AOP, BOI and Artificial Juridical Person [hereinafter referred to as Eligible Assessee].

This new option is subject to following conditions:

- The eligible assessee should forego/surrender *inter alia* the following claims or deductions:

Leave Travel Concession u/s 10[5]

Professional Tax u/s 16[iii]
House Rent Allowance u/s 10[13A]
Special Allowance u/s 10[14]
Daily Allowance to MLA, MP, MLC etc u/s 10[17]
Exemption for Minor's Income Rs.1500/- u/s 10[32]
Additional Depreciation u/s 32[1][iia]
Investment in Plant & Machinery in Notified Backward Areas u/s 32AD
Tea Development Account u/s 33AB
Site Restoration Fund u/s 33ABA
Donation / Expenditure on Scientific Research u/s 35[1][ii] / 35[1](iia) / 35[1](iii)
Payment to Specified Institutions for Scientific Research u/s 35[2AA]
Deduction in respect of Expenditure on Specified Business u/s 35AD
Expenditure on Agricultural Extension Project u/s 35CCC
Deduction against Family Pension u/s 57(iia)
Deductions under Chapter VI-A like 80C, 80D, 80DD etc., except 80CCD[2], 80CCH[2] & 80JJAA
Standard Deduction Rs.50000/- from Salary Income u/s 16
Interest upto Rs.200000/- in respect of Borrowings for Self Occupied House Property u/s 24[b]

- The eligible assessee will not be eligible to set off brought forward loss or depreciation of earlier years, to the extent the loss relates to above deductions.
- Loss under the head "Income From House Property" with respect to Let out properties will not be set off against any other income.
- The eligible assessee can claim normal depreciation. He cannot claim additional depreciation u/s 32[1][iia].

- No claim for any exemption, deduction for allowance/perquisite, by whatever name called under ***any other law for the time being in force***. One of the interpretation therefore could be that any compensation received for compulsory acquisition should not be claimed as exempt.
- The brought forward loss and brought forward depreciation due to above referred specific provisions from any earlier assessment years shall not be carried forward.
- The WDV of block of assets have to be redrawn from the AY 2023-2024 in the year in which one opts to go for the new regime, in case new regime was not opted earlier.
- Tax Credit under Section 115JD [Alternate Minimum Tax] shall not be applicable to the assessee who has opted for tax rates under the new regime.

Rates of Tax for new regime

Total income	Rate of tax
Upto Rs 3,00,000	Nil
From Rs 3,00,001 to Rs 6,00,000	5%
From Rs 6,00,001 to Rs 9,00,000	10%
From Rs 9,00,001 to Rs 12,00,000	15%
From Rs 12,00,001 to Rs 15,00,000	20%
From Rs.15,00,001 onwards	30%

Rates of Surcharge [New Regime]

Income Slab	Rate of Surcharge on Income Other than Dividend and Capital Gain	Rate of Surcharge on Dividend and Capital Gain
Rs.50,00,001/- to Rs.1 Crore	10%	10%
Rs.1,00,00,001/- to Rs.2,00,00,000/-	15%	15%
From Rs.2,00,00,001/- onwards	25%	15%

Rebate u/s 87A: However, where the total income of an eligible **INDIVIDUAL** assessee does not exceed Rs.7 Lakhs, he shall be entitled to a deduction by way of rebate u/s 87A to the extent of actual tax or Rs.25,000/-, whichever is less. Please note that this rebate is not allowable where the total income of the **INDIVIDUAL** exceeds Rs.7,00,000/-.

Option to change from New Regime to Earlier Regime

- As already stated, the new regime will be the default regime. In case an assessee is desirous of opting for earlier regime, the following provisions have to be taken care.

Category	When to exercise option
Assessee having Business Income	On or before due date for filing of return of income u/s 139(1)
Assessee not having any business income	Along with the return of income to be filed on or before due date for filing of ROI

- The option in case of assessee having business income once exercised can be withdrawn only once. Thereafter, such assessee can never ever exercise this option again, unless and otherwise the business is discontinued.

- The option in case of assessee not having business income has to be exercised every year.

In case, any of the conditions relating to the claim of deductions, exemptions etc., as tabulated above are violated, the option becomes invalid for the said year. Further, in case of assessee carrying on business, the said option will also become invalid for all subsequent assessment years.

For Partnership Firms, LLPs

The Rate of Tax shall continue to be 30%. Surcharge is applicable @ 12% in case total income exceeds Rs.1 Crore

For Domestic Companies

For Domestic Companies other than Companies opting for tax under Sections 115BAA and 115BAB, the rates of tax is as under:

Criteria	Rate of Tax
Turnover or Gross Receipts during FY 2021-22 < Rs. 400 Crores	25%
Other than above	30%

Rates of Surcharge for above category of domestic companies are as under:

Total Income	Rate of Surcharge
Rs.1,00,00,001/- to Rs.10,00,00,000/-	7%
Above Rs.10 Crores	12%

For Domestic Companies opting for tax under Sections 115BAA or 115BAB, the rates of tax is as under:

Section	Rate of Tax
Section 115BAA [Any Company foregoing specified deductions/claims]	22%
Section 115BAB [New Manufacturing Companies set up and registered on or after 1/10/2019]	15%

The rates of surcharge for above Companies covered u/s 115BAA / 115BAB is 10%.

“Health and Education Cess” @ 4% to continue.

Payments to Micro and Small Enterprises u/s 43B

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9000 Crore
Credit
Guarantee
Scheme for
MSMEs

- Presently, Section 43B of the Act provides for certain deductions to be allowed only on actual payments like ESI, EPF, GST etc. However, if such payments are made on or before due date for filing of return of income, this section allows deduction on accrual basis.
- In order to promote timely payments to micro and small enterprises, it is proposed to include payments made to such enterprises within the ambit of section 43B of the Act. Accordingly, it is proposed that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction only on actual payment and not on accrual basis. Even if the such amount which is outstanding as on March 31st, and paid on or before the due date of filing of return of income, it cannot be claimed in the year in which the said expense was incurred.
- Section 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days. It may be noted that this section does not cover payments to medium enterprises as defined in MSMED Act 2006.

- The Classification of Enterprises as per MSMED Act 2006 is reproduced hereunder for immediate reference:

Classification	Investment in Plant, Machinery and Equipment Not Exceeding	Turnover Not Exceeding
Micro	Rs. 1 Crore	Rs.5 Crores
Small	Rs.10 Crore	Rs.50 Crores

The above criteria are cumulative.

Special tax provision relating to Agniveers Scheme [Effective from FY 2022-23 AY 2023-24]

- As is known, the Ministry of Defence had introduced Agnipath Scheme 2022 for enrolment of Agniveers in Indian Armed Forces. It is proposed to provide following tax incentives/concessions to Agniveers:
 1. Any payment received from Agniveer Corpus Fund by a person enrolled under Agnipath Scheme 2022 or his nominee shall be exempted from income tax - Sec.10[12C]
 2. Salary for the purpose of section 15 and 16 of the Act shall include the contribution made to Agniveer Corpus Fund account of the individual enrolled in the Agnipath Scheme - Sec.17[1](ix)
 3. Any contribution by an Agniveer to Agniveer Corpus Fund shall be allowed as a deduction of the whole of amount deposited by him and also the amount contributed by Central Government - Sec.80CCH
 4. In new tax regime u/s 115BAC, such Agniveer shall get a deduction of the government contribution to his Seva-Nidhi account.

Extension in the due date for incorporation of Start-up Company/LLP

- Section 80-IAC provides for 100% deduction of the profits for a start-up from an eligible business for three consecutive assessment years out of ten years. This is subject to few conditions. One of the condition is that the eligible start up is required to be incorporated on or after 1.4.2016 but before 1.4.2023. The Finance Bill 2023 proposes to extend the outer date of incorporation to 31-03-2024.

Relief to Start-ups in carry forward and setting off of losses [Effective from FY 2022-23 AY 2023-24]

- Section 79 restricts carry forward and set off of losses in cases of companies (other than company in which public are substantially interested) if there is a change in shareholding. At present, carry forward and set off is allowed only if at least 51% shareholding as at the year end remains same with the company as on the last date of the previous year to which the loss belongs. This condition is at present relaxed in case of eligible start-ups provided the loss has been incurred during the period of seven years beginning from the year in which such company is incorporated. It is now proposed to relax this time line of seven years to ten years from the date of incorporation.

Conversion of Gold into Electronic Gold Receipt or vice versa (Section 47(viid))

- In pursuance to announcement made in Union Budget 2021-22, SEBI has been made the regulator of the proposed Gold Exchange. Thereafter, SEBI came out with a detailed framework for spot trading in gold on existing stock exchange through the instrument of Electronic Gold Receipt [EGR].
- In order to promote the concept of Electronic Gold, it is proposed to exclude the conversion of physical gold into EGR and *vice versa* by a SEBI registered Vault Manager from the definition of “transfer”. It means that whenever physical gold will be deposited with a SEBI Registered Vault Manager for conversion into EGR, it will not be considered as a Transfer and accordingly, there will not be any capital gain.
- Similarly, it is proposed that the cost of acquisition of EGR for the purpose of computing capital gain shall be deemed to be the cost of the gold in the hands of person in whose name EGR is issued and the holding period would include the period for which gold was held by the assessee prior to its conversion into EGR.
- Similarly, provision for conversion from EGR to gold is also proposed.

Deduction on amortization of preliminary expenditure [Sec.35D]

- Section 35D of the Act provides for amortization of certain preliminary expenses which are incurred prior to the commencement of business or after commencement, in connection with extension of undertaking or setting up of a new unit. This includes expenditure in connection with preparation of feasibility report, project report etc. Presently, it is subject to a condition that the preparation of feasibility report, project

2.1% of the GDP is allocated for the Health Care Sector.

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New nursing colleges to come up

report etc shall be either carried out by the assessee himself or by a concern approved by CBDT.

- It is proposed to remove the condition of CBDT approval hereafter. Instead the assessee will be required to furnish a statement of such expenditure in the prescribed manner.

Increasing threshold limits for presumptive taxation schemes for business

- Section 44AD provides for opting of presumptive scheme of taxation in case of eligible business by offering income @ 6% of gross receipts in case of non-cash sales and 8% in case of cash sales. Presently, this is applicable for assesses having business turnover upto Rs.2 Crores. This limit is proposed to be increased to Rs.3 Crores, subject to following conditions:
 - ^ The aggregate amount received in cash during the previous year does not exceed 5% of gross receipts [including sales of trading goods, loans, sale of fixed assets etc.]
 - ^ Cash would include any cheque or DD which is not Account Payee

Increasing threshold limits for presumptive taxation schemes for Professions

- Section 44ADA provides for opting of presumptive scheme of taxation in case of eligible profession by offering income @ 50% of professional receipts. Presently, this is applicable for assesses having professional receipts upto Rs.50 Lakhs. This limit is proposed to be increased to Rs.75 Lakhs, subject to following conditions;
 - ^ The aggregate amount received in cash during the previous year does not exceed 5% of gross receipts [including professional receipts, loans, sale of fixed assets etc.]
 - ^ Cash would include any cheque or DD which is not Account Payee

Taxation of Receipt of money from non-resident investors by a Company in lieu of issue of shares [Sec.56[2](viib)]

- Section 56(2)(viib) of the Act, inter alia, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such

shares in excess of fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'.

- However, the said section is not applicable for consideration (share application money/ share premium) received from non-resident investors.
- It is proposed to include the consideration received from a non-resident also under the ambit of clause (viib). Accordingly, any sum received from a non-resident by such company is chargeable to tax if such receipt is in excess of fair market value of shares.

Distribution of Income by Business Trusts to Unit Holders

- Section 115UA of the Act, *inter-alia*, provides a pass-through status to business trusts in respect of interest income, dividend income received by the business trust [Real Estate Investment Trust or REIT / Infrastructure Investment Trust or InvIT] from a special purpose vehicle in case of both REIT and InvIT and rental income in case of REIT. Such income is taxable in the hands of the unit holders unless specifically exempted. The income distributed by a business trust to its unit holders retains the same character of income as it had been received by the business trust.
- In few cases, the business trusts distributes the income in the nature of repayment of debt, which goes untaxed in the hands of unit holder.
- To plug this loophole, Section 56(2)(xii) is proposed to be inserted to provide that any sum received by the unit holder from a business trust is taxable provided it is not in the nature of income referred in Sec.10(23FC) or (23FCA) and such sum is otherwise not chargeable to tax at maximum marginal rate in the hands of business trust.
- Consequential amendment is being proposed in Sec.115UA.

TDS and taxability on net winnings from lotteries, card games etc [Effective from 1.7.2023]

- Section 194B provides for TDS deduction on lottery winnings, cross world puzzles, card games etc on amount exceeding Rs.10,000/-. Similarly, Sec.194BB provides for TDS deduction on winnings from horse race, betting etc. The tax deductors were avoiding payment of TDS on sums below Rs.10000/- on the ground that the limit of Rs.10000/- is per winning. It is now provided that TDS shall be deducted on above winnings if aggregate amount of such winnings in a year exceeds Rs.10000/-.

TDS and taxability on winnings from Online Games [Effective from 1.7.2023]:

- A new section 194BA to be inserted with effect from 1st July 2023, to provide for deduction of tax at source on net winnings in the user account at the end of the financial year. In case there is withdrawal from user account during the financial year, the income-tax shall be deducted at the time of such withdrawal on net winnings comprised in such withdrawal. In addition, income-tax shall also be deducted on the remaining amount of net winnings in the user account at the end of the financial year. Net winnings shall be computed in the prescribed manner

Change in TCS rates [Effective from 1.7.2023]

In order to increase TCS on certain foreign remittances and on sale of overseas tour packages, amendment is proposed in sub-section (1G) of section 206C of the Act.

**TCS
Rates**

Type of Remittance	Existing Rate	Proposed Rate from 1.7.2023
For Educational purposes, if the remittance is out of educational loan from any bank or financial institution	0.5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	No Change
For the purpose of education, other than as mentioned above or for the purpose of medical treatment	5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	No Change
Overseas tour package	5% without any threshold limit.	20% without any threshold limit.
Any Other Case	5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh	20% without any threshold limit.

TCS

5%



20%

Max
Deduction
of Rs. 10 Cr
u/s 54 and
54F

Limits prescribed for deduction under Section 54 and 54F

- The existing provisions of section 54 and section 54F allows deduction on the Capital gains arising from the transfer of long-term capital asset if an assessee purchased any residential property in India or constructed any residential property in India, subject to the conditions prescribed in such sections.
- For section 54 of the Act, the deduction is available on the long-term capital gain arising from transfer of a residential house if the capital gain is reinvested in a residential house. Under section 54F of the Act, the deduction is available on the long term capital gain arising from transfer of any long term capital asset except a residential house, if the net consideration is reinvested in a residential house. At present, there is no upper ceiling on the amount of reinvestment. Now, it is proposed to cap the limit of maximum deduction to Rs.10 Crore.
- Similarly, the maximum amount of investment into Capital Gain Account Scheme is proposed to be capped at Rs.10 Crore

Special Provision for taxation of Market Linked Debentures

- Currently, capital gain on Market Linked Debentures [MLD] are being taxed as Long term capital gain @ 10% without indexation.
- Section 50AA is proposed to be inserted to tax the capital gains arising from the transfer or redemption or maturity of these securities as short-term capital gains at the applicable rates. It is also provided to exclude Securities Transaction Tax as cost of acquisition or cost of transfer, as the case may be.

Steps for prevention of Undervaluation of Inventory [Effective from FY 2022-23 AY 2023-24]

- The Income Computation and Disclosure Standards-II of the Act relates to Valuation of Inventories. This ICDS is already applicable. In order to ensure that an assessee do not undervalue the inventory, provisions of Sec.142 are proposed to be amended to provide as under:
- At any stage of proceedings before him, the Assessing Officer can direct the assessee to get the inventory valued by a Cost Accountant. Such Cost Accountant has to be nominated by PCCIT or PCIT.

- The assessee should produce all the documents as required by the Cost Accountant to justify the inventory valuation and obtain a report from him. This report has to be produced before the Assessing Officer and the AO can rely on the same.
- The fees of the Cost Accountant shall be borne by Central Government

Removal of Exemption for Certain Life Insurance Policies

- At present, any sum received on maturity of life insurance policies are exempt u/s 10[10D]. This exemption is not available in case of such policies where the aggregate annual premium exceeds 10% of Sum Assured.
- Finance Act 2021 had already brought in a provision to state that any sum received under ULIP shall not be exempt if the premium for such ULIP exceeded Rs.2,50,000/-. However, if such sum is received on the death of the insured, then the exemptions would be available. This provision was made applicable to all ULIPs issued on or after 1.2.2021.
- Similar provisions have now been introduced for life insurance policies [Other than ULIP]. It is now proposed that any excess sum received on maturity of a life insurance policy, where the annual aggregate premium exceeds Rs.5,00,000/-, then the excess receipt from such policy would be taxable as Income From Other Sources. While calculating the excess, the aggregate premium paid in earlier years which has not been claimed as deduction, would be given as a deduction against the sum received. The new proposal is to be made applicable for all Life Insurance Policies to be taken on or after 1.4.2023.
- The above excess would not be taxable in case of receipt of refund on death of the insured.
- Where an assessee takes several policies on or after 1.4.2023, where premium for each policy does not exceed Rs.5 Lakh, but exceeds Rs.5 Lakhs in aggregate for all such policies taken on or after 1.4.2023, whether this amendment would be applicable. As per present proposal, it seems to be YES. However, further clarity on the same is awaited from CBDT.

Capital Gain on Joint Development Agreement

- Section 45(5A) provides for charge of capital gain tax on an Individual or HUF, from transfer of a capital asset, being an immovable property, under a JDA subject to the conditions mentioned therein. Presently it states that the sale consideration would be the stamp duty value of the share of the transferor as increased by the amount received in cash.

- The proposed amendment now states that the tax shall be charged on full value of consideration comprising of stamp duty value of transferor's share as increased by consideration received in cash or cheque or draft or any other mode.

Plugging double deduction claimed on interest on borrowed capital for immovable property

- Presently, the amount of any interest payable on borrowed capital for acquiring, renewing or reconstructing a property is allowed as a deduction under the head "Income from house property" under section 24 of the Act.
- Section 48 of the Act, inter alia, provides that the income chargeable under the head "Capital gains" shall be computed, by deducting the cost of acquisition of the asset and the cost of any improvement thereto from the full value of the consideration received or accruing as a result of the transfer of the capital asset.
- Some assessees have been claiming double deduction of such interest, firstly, as a deduction from income from house property under section 24, and in some cases the deduction is also being claimed under other provisions of Chapter VIA of the Act. Secondly while computing capital gains on transfer of such property this same interest also forms a part of cost of acquisition or cost of improvement under section 48 of the Act.
- In order to prevent this double deduction, it is proposed to insert a proviso after clause (ii) of the section 48 so as to provide that the cost of acquisition or the cost of improvement shall not include the amount of interest claimed under section 24 or Chapter VIA

Defining the cost of acquisition in case of Intangible Assets or any sort of right for Capital Gains purpose

- It is proposed to amend section 55 to define that cost of improvement of any intangible assets apart from goodwill or any sort of right shall be NIL.
- Similarly, the cost of acquisition of such asset shall be NIL except in case where such right was purchased from a previous owner by payment of purchase price.

Creation of Post of Joint Commissioner [Appeals]

- Presently, an appeal against the assessment orders from Assessing officer including CPC or NFAC are to be filed before Commissioner [Appeals]. Due to piling up of appeals before CIT-Appeals, a new post as Joint Commissioner [Appeals] is proposed to be created.

TP
Document30 to 10
days**Reduction in time allowed to file TP Report**

- The time limit for production of Transfer Pricing Report by an assessee before the Transfer Pricing Officer is proposed to be reduced from 30 days to 10 days.

Changes to Penalty and Prosecution provisions [Effective from FY 2022-23 AY 2023-24]

- Finance Act 2022 introduced two new sections relating to TDS.
- Sec.194R was introduced to enable tax deduction on benefit/perquisite in respect of business/profession, where the value of such benefit exceeds Rs.20,000/-. Section 194S was introduced to enable tax deduction on Virtual Digital Asset.
- Provisions were not clear regarding applicability of penalty and prosecution for default in case of TDS deduction on above eligible items being passed on in kind. To bring clarity on these, provisions are being proposed to levy penalty and initiate prosecution in case of non-deduction/short deduction of TDS on above referred items.

Facilitating TDS Credit for Income declared in earlier year

- Sometimes it so happens that an assessee offers a receipt as income for a particular year. However, the payer deducts TDS in a subsequent year. Hence, the recipient is not able to claim the TDS credit in either the year of income or the year of TDS receipt.
- To remove this difficulty, Sec.155[20] is proposed to be inserted to enable such TDS claims.
- Accordingly, the recipient of such TDS credit in any subsequent assessment year will be allowed to make an application before his assessing officer to claim TDS credit.
- Such application can be filed with two years from the end of the year in which tax deduction happens.
- The assessing officer then has to pass a rectification order to give credit for TDS in the year in which the assessee has offered income. The resultant refund also will be granted to him.

Changes in provisions relating to Charitable Trusts

- Far reaching changes are proposed to be made in provisions relating to Charitable Trusts. They are largely procedural in nature and hence not dealt in this writeup in detail. Important non-procedural amendment proposals are discussed below:
- Presently, charitable trusts are allowed to give donation to another charitable trust as non-corpus donation and treat the entire sum of such contribution as an expense [or application]. It is proposed that hereafter, where a payer trust gives non-corpus donation to another recipient trust, then the payer trust can claim only 85% of the contribution as an expense [or application].
- At present, a charitable trust has to spend at least 85% of its income. In case of shortfall in spending, it can file an application in Form 9A with the Income Tax Department [ITD] to enable it to spend the same in next financial year. Similarly, a trust also can accumulate funds for its future plans. The maximum time allowed to accumulate is 5 years. This accumulation has to be informed to ITD through filing of Form 10. The time limit to file Form 9A/10 is one month prior to due date for filing of return of income. This time line is proposed to be reduced to two months prior to due date for filing of return of income.

GOODS & SERVICES TAX

Analysis of the Proposals

Composition dealers eligible to make sale through Electronic Commerce Operator

Section 10 is being amended so as to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operator from opting for Composition Levy.

ITC related amendment in Sec.16

The second proviso to Sec.16 places a condition that if a vendor is not being paid within a period of 180 days, then the ITC availed shall be added to RPs output tax liability. Now it is proposed to amend the proviso to provide that such ITC shall be paid along with interest.

The third proviso to Sec.16 provides for reclaim of above referred ITC in the event of payment being made. The proposed change is to provide that such payment shall be made to the supplier.

ITC related amendment in Sec.17-Blocked Credits

Schedule III of CGST Act 2017 provides for treating certain transactions as neither supply of goods nor services and hence, GST is not leviable on such supplies. One such item included in Sch.III is "Supply of Warehoused Goods to any person before clearance for home consumption". At present, Section 17 restricts claim of ITC on any goods or services in connection with exempt supplies. However, such exempt supplies do not include items mentioned in Schedule III. Hence, so far ITC was allowed on goods or services in connection with Supply of Warehoused Goods to any person before clearance for home consumption. The proposed amendment provides for restricting ITC on goods or services in connection with Supply of Warehoused Goods to any person before clearance for home consumption.

Another amendment relates to claim of ITC on expenses incurred in connection with CSR expenditure u/s 135 of Companies Act 2013 by Companies. It is now provided that ITC is not to be claimed in CSR related payments.

Restrictions on time limits for filing of certain Returns

At present, GSTR-1, GSTR-3B and GSTR-9 returns can be filed belatedly, with late fee. There was no outer time limit prescribed. Now, it is proposed to restrict the outer time limit for filing of such returns to three years from the respective due dates.

Sharing of RP Data with other Agencies

Sec.158A is proposed to be inserted to provide that the GST department can share the data of registered persons after obtaining his consent with such other systems as may be notified by Central Government. Such data shall be restricted to registration, monthly/annual return data, invoice uploaded, e-way bill or any other data as may be prescribed.

Source: Finance Bill, 2023.

For any clarification/queries, reach us at:

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