ACUITY LAW

India Union Budget 2023-24: Key Tax Proposals

A) Introduction

On 01 February 2023, the Hon'ble Finance Minister of India presented a 'no surprise' Union Budget for 2023-24, laying a positive framework for sustainable growth. This is the last full Budget of the current ruling government, with the Union Elections due in May 2024. The budget has boldly proposed a steep increase in capital investment outlay by 33% to USD 125 billion, aiming to enhance growth, increase job creation, and counter the global headwinds. As regards the tax proposals, there is an attempt to increase exports, deepen domestic manufacturing, generate more value addition in the economy and incentivize green through simplification of indirect taxes. The direct tax proposals focus on reducing compliance burden, promoting entrepreneurial spirit as well as rationalizing/ clarifying certain existing provisions.

In the above backdrop, the key tax proposals in the budget have been summarized below:

B) Direct Tax Proposals

- The Finance Act 2020 had proposed a new tax regime (optional) for individuals and HUF taxpayers wherein the income was taxable at lower tax rates but without allowing any deductions from the taxable income. With the aim to encourage taxpayers to adopt the new tax regime, certain changes have been proposed to the tax slab rates:

Existing slabs	Rate	Proposed slabs	Rate
Up to INR 2,50,000	Nil	Up to INR 3,00,000	Nil
INR 2,50,001 to INR 5,00,000	5%	INR 3,00,001 to INR 6,00,000	5%
INR 5,00,001 to INR 7,50,000	10%	INR 6,00,001 to INR 9,00,000	10%
INR 7,50,001 to INR 10,00,000	15%	INR 9,00,001 to INR 12,00,000	15%
INR 10,00,001 to INR 12,50,000	20%	INR 12,00,001 to INR 15,00,000	20%
INR 12,50,001 to INR 15,00,000	25%	Above INR 15,00,000	30%
Above INR 15,00,000	30%		

- The new tax regime will be the default regime and the taxpayer will be required to expressly opt for the old tax regime for claiming deductions.

- The benefit of lower rates under the new tax regime is now being extended to Association of Persons (other than a cooperative society), Body of Individuals, and Artificial Juridical Persons.

- The income limit for availing rebate (i.e., benefit of no-tax) has been increased from INR 500,000 to INR 7,00,000.

- The peak rate of surcharge is proposed to be capped at 25% for taxpayers under the new tax regime whose income exceeds INR 5,00,00,000. Currently the peak rate of surcharge is 37%. Consequent to this proposal, the effective tax rate will reduce from 42.75% to 39%.

- For a better understanding, a comparative table is provided below:

Existing slabs	Surcharge	Proposed slabs	Surcharge
Up to INR 50 lacs	Nil	Up to INR 50 lacs	Nil
INR 50 lacs to INR 1 Crore	10%	INR 50 lacs to INR 1 Crore	10%
INR 1 Crore to INR 2 Crores	15%	INR 1 Crore to INR 2 Crores	15%
INR 2 Crores to INR 5 Crores	25%	Above INR 2 Crores	25%
Above INR 5 Crores	37%	-	-

- Benefit of 'Standard Deduction' of INR 50,000 is extended to the new tax regime.

- Maturity receipts from Life Insurance Policies issued after 01 April 2023 (other than ULIPs) will be taxable for those policies where the aggregate annual premium exceeds INR 5 lacs (per policy).

- Gifts by residents to a 'not ordinarily resident' will now be taxable; currently, only 'non-residents' were liable to tax.

- Interest on capital borrowed for acquisition/ improvement of house property will not be included in the 'cost of acquisition' for capital gains purposes, if a deduction was claimed on such interest earlier.

- Issuance of shares (by a closely held company) to a non-resident for a consideration in excess of the Fair Market Value ('FMV') will now attract Angel Tax. The closely held company will be liable to tax on the consideration which is in excess of the FMV. Currently, Angel Tax is applicable only to resident investors.

- **Start-ups**

  - Last date for incorporation to claim a 'tax holiday' now extended to 01 April 2024
  - Benefit for carry forward and set off of losses extended to 10 years (currently 7 years)

- **Promoting timely payments to MSMEs**

  - Payments made beyond the time limit specified in Micro, Small and Medium Enterprises Development Act, 2006 ('MSMED Act") will be allowed as a deduction only on payment basis. Section 15 of the MSMED Act, mandates payments within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the payment is required to be made within 15 days.

- **Capital Gains**

  - Gains on Market Linked Debentures ("MLDs") are proposed to be taxable as short-term gains irrespective of the period of holding.

  - Exemption is restricted to INR 10 crores on long term gains generated on sale of capital assets where investment is made in a residential property for claiming an exemption.

- **Tax Deducted at Source ('TDS') / Tax Collected at Source ('TCS')**

  - The TCS rate is proposed to be increased to 20% (currently 5%) on the following remittances:

    - Under the Liberalized Remittance Scheme of Reserve Bank of India
    - For overseas tour packages

  - Currently, TDS @ 30% is applied on payment of accumulated Provident Fund balance if the employee fails to furnish a Permanent Account Number. To avoid hardships to the low-income group employees, such TDS rate is proposed to be reduced to 20%.

  - TDS will now be applicable on interest payable on securities held in dematerialized form and listed on a recognized stock exchange.

  - TDS @ 30% is proposed on 'net winnings' from Online Gaming, to be done at the end of the financial year or upon withdrawal during the year, whichever is earlier. No de-minimis threshold is prescribed. Computation of 'net winnings' to be prescribed.

  - Prosecution provisions for failure to deduct tax at source have been extended to the following transactions:

    - On benefits or perquisites
    - On Virtual Digital Assets
    - On net winnings from Online Games

- The 15-year tax benefit to Special Economic Zone units will be restricted, if:

  - Income tax return is not filed before the prescribed due date; or
  - Export proceeds from sale of goods or provision of services is not received or brought into India in convertible foreign exchange within 6 months from the end of year or within such further time the competent authority may allow.

- Time limit for submission of information/ documents under the 'Transfer Pricing' related provisions has been reduced from 30 days to 10 days, from the date of receipt of notice from Assessing Officer/ Commissioner (Appeals).

- Threshold for availing benefit of presumptive taxation has been revised as under:

  - Small businesses - Increased to INR 3 crores (currently 2 crores)
  - Professionals – Increased to INR 0.75 crores (currently 0.50 crores)

  Additional condition to be fulfilled – total cash receipts during the year does not exceed 5% of the total turnover/ gross receipts of the relevant financial year.

C) <u>Indirect Tax Proposals – Goods and Services Tax</u>

- **Input Tax Credit ('ITC')**

  - ITC is restricted in respect of goods and services which relates to any Corporate Social Responsibility ('CSR') expenditure as obligated under the Companies Act, 2013.

  - Supply of warehoused goods to any person before clearance for home consumption, will be treated as 'exempt supplies', requiring reversal of corresponding ITC.

- **Electronic Commerce Operator**

  - Person supplying goods through an electronic commerce operator are now permitted to opt for the composition scheme.

  - Penalty of INR 10,000 or the tax involved, whichever is higher, is proposed on electronic commerce operators in the following cases:

    - Allowing supply of goods or services by unregistered persons
    - Allowing inter-state goods or services by ineligible persons
    - Failure to furnish statement of outward supplies.

- **Online Information and Database Access or Retrieval Services ('OIDAR')**

  - Definition of 'non-taxable online recipient' to be expanded; condition that OIDAR services should be received only for purposes other than business, commerce or profession has been removed.

  - The condition of "essentially automated and involving minimal human intervention" is proposed to be removed from the definition of OIDAR services.

  - The above amendments would widen the scope of OIDAR services and thus increase the taxability for non-resident companies rendering OIDAR services in India.

- It is clarified that (i) any person who is exclusively engaged in making non-taxable supplies or exempt supplies are not required to obtain registration.

- Time limit to file returns or statements in FORM GSTR-1, GSTR-3B, GSTR-5, GSTR-6, GSTR-7, GSTR-8, GSTR-9, and GSTR-9C is restricted for a maximum period of three (3) years from the due date prescribed for such returns/ statements.

- Threshold for invoking prosecution provisions has been increased to INR 2 crores (currently 1 crore) for prescribed offenses, except in case of issuance of invoice without supply of goods or services.

- Following offences are proposed to be decriminalized:

  - Obstructing or preventing any officer from discharging duties
  - Tampering or destroying material evidence or documents
  - Failing to supply any information or supplying false information.

- Concept of 'consent-based sharing' has been introduced. Information uploaded/ submitted during regular compliances by a taxpayer can now be shared by the GST Authorities with other notified systems.

D) <u>Indirect Tax Proposals – Customs Duty</u>

- **Exemption Notification**

  - Validity period of two years applicable to exemption notifications have been withdrawn for exemptions in the following cases:

    - Multilateral or Bilateral Agreements
    - Foreign Trade Policy
    - Central Government schemes having validity of more than two years
    - Re-imports, temporary imports, goods imported as gifts, personal baggage, etc
    - International Agreements, Treaties, Conventions, etc
    - UN agencies, diplomats, international organizations, privileges of constitutional authorities
    - All duties of customs, except Basic Customs Duties

  - Basic Customs Duty has been extended up to 31 March 2024 for 115 entries; key entries listed below:

    - Goods required for basic telephone/ internet service and their parts
    - Batteries for electrically operated vehicles, specified parts and components, including Lithium-ion cell for use in Lithium-ion batteries and battery packs
    - Special Additional Duty of Customs on goods cleared from SEZ and brought to any place in India
    - Articles supplied free under warranty as a replacement for defective ones
    - Goods for carrying out repairs, reconditioning, testing, calibration or maintenance

- Basic Customs Duty exemption has been extended to 31 March 2025 on raw material and parts used for manufacture of ships and vessels, on life saving drugs/ medicines, on diagnostic kits, and bulk drugs used in the manufacture of life-saving drugs and medicines.

- Basic Customs Duty exemption would be withdrawn from 31 March 2023 on certain products such – specified goods for use in textile industry, machinery/ capital goods for making Gems and Jewellery, goods for use in pharmaceutical and biotechnology sector for research and development.

- **Customs duty rate changes**

  - Basic Customs Duty increased on certain products of chemicals (styrene and vinyl chloride monomer), compounded rubber, electronic appliances (electric kitchen chimney), gems and jewellery (imitation jewellery) and automobiles (semi-knocked down form, completely built unit, electrically operated vehicles).

  - Basic Customs Duty decreased on certain products of gems and jewellery (seeds used in manufacture of rough lab-grown diamonds), electronics (camera lens, its inputs/ parts, etc.), electronic appliances (heat-coil for manufacture of electric kitchen chimney), automobiles (specified parts/ components, sub-systems and tyres imported for testing/ certification, specified capital good/ machinery for manufacture of lithium-ion cells for electric vehicles).

- Time-limit for passing orders by the Settlement Commission has been proposed to be nine months from the last date of the month in which the application is made. In case of failure to pass an order within the prescribed time-limit, the original Adjudicating Authority will continue to adjudicate the matter as if no applicable has made before the Settlement Commission.

- Solar Power Plants/ Solar Power Projects to be excluded from the purview of Project Imports.

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