

BUDGET 2023 NEWS FLASH

KEY PROPOSALS CONCERNING FOREIGN INVESTMENTS IN INDIA

Smt. Nirmala Sitharaman, India's Finance Minister presented the Union Budget 2023-24 on February 1, 2023, the fifth budget of Modi 2.0 and termed it as the first budget of "Amrit Kaal" which will build a strong foundation for building a developed "India". In her speech, she said that India's current year economic growth is estimated to be 7%, which is the highest amongst the major economies, in spite of the massive Global slowdown caused by Covid-19 and a War. The Fiscal Deficit for the Year 2023-24 is estimated to be 5.9%, with a target to further reducing it to 4.5% by FY 2025-26.

"Saptarishi" - The 7 priorities of this budget are:

1. Inclusive Development
2. Reaching the last mile
3. Infrastructure and Investment
4. Unleashing the Potential
5. Green Growth
6. Youth Power
7. Financial Sector

The major focus of the budget was on boosting the economic growth, reducing the fiscal deficit and macroeconomic stability. Considering this theme, Budget 2023 revolves around steep hike in capital investment outlay, biggest ever capital allocation to Railways and changes in the personal tax slabs under the new regime, proposing it to be the default regime.

Some of the announcements concerning foreign investments are summarized below:

1. Amendments to Direct Tax.

❖ Relief from provision for higher rate of TDS/TCS for non-filers on income tax returns

Section 206AB of the Act provides for special provision for higher TDS for non-filers of income-tax returns. Similarly, section 206CCA of the Act provides for special provision for higher TCS for non-filers of income-tax returns. These non-filers in these sections are referred to as "specified person". However, "specified person" exclude a non-resident if the non-resident does not have a permanent establishment in India.



❖ Extending the scope for deduction of tax at source to lower or nil rate

It has been proposed to amend sub-section (1) of section 197 of the Act to provide that interest payment made by business trust to non-resident unit holders on which tax is required to be deducted under section 194LBA of the Act shall also be eligible for certificate for deduction at lower or nil rate.

❖ Tax treaty relief at the time of TDS under section 196A

- It has been proposed to amend section 196A of the Act to provide for TDS on payment of certain income to a non-resident (not being a company) or to a foreign company, at the rate of 20%. The income is required to be in respect of units of a Mutual Fund specified under clause (23D) of section 10 of the Act or from the specified company referred to in the *Explanation* to clause (35) of section 10 of the Act.
- It is proposed that the benefit of tax treaty may be considered at the time of TDS so that if the treaty provides a rate lower than 20%, TDS is made at that lower rate.
- It is proposed to insert a proviso to sub-section (1) of section 196A of the Act. This proviso seeks to provide that the TDS would be at the rate which is lower of the rate of 20% and the rate or rates provided in DTAA referred to in sub-section (1) of section 90 or sub-section (1) of section 90A of the Act, in case of a payee to whom such agreement applies and such payee has furnished the tax residency certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A of the Act.

This amendment will take effect from 1st April, 2023.

❖ Increasing rate of TCS of certain remittances

- Section 206C of the Act provides for TCS on business of trading in alcohol, liquor, forest produce, scrap etc. Sub-section (1G) of the aforesaid section provides for TCS on foreign remittance through the Liberalised Remittance Scheme and on sale of overseas tour package.
- It is proposed to increase TCS on certain foreign remittances and on sale of overseas tour packages, in sub-section (1G) of section 206C of the Act.
- The current and proposed TCS rates are tabulated as under:



S. No.	Type of Remittance	Present Rate	Proposed Rate
1	For the purpose of any Education, if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E.	0.5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	No change
2	For the purpose of education, other than (i) 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
3	Overseas tour package	5% without any threshold limit.	20% without any threshold limit.
4	Any other case	5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	20% without any threshold limit.

* In the table above, the present rate and the proposed rate of TCS are on the amount or the aggregate of the amounts being remitted by the buyer in a financial year.

This amendment will take effect from 1st July, 2023.

❖ **Reducing the time provided for furnishing TP report**

- Section 92D of the Act, *inter-alia*, provides that every person who has entered into an international transaction or a specified domestic transaction shall keep and maintain the information and documents as provided under rule 10D of the Income-tax Rules, 1962 (the Rules).
- As per sub-section (3) of section 92D of the Act, the Assessing Officer (AOs) or the Commissioner (Appeals) may during the course of any proceedings under the Act require such person to furnish any information or document, as provided under rule 10D of the Rules, within a period of 30 days from the date of receipt of a notice issued in this regard. It has been further provided that on an application made by the assessee the time period of 30 days may be extended by an additional period of 30 days.
- The time period allowed for submission of information or documents in respect of international transactions or a specified domestic transaction is required to be rationalized.



- The proposed amendment to sub-section (3) of section 92D of the Act provides that -
 - (i) the Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under the Act, require any person referred to in clause (i) of sub-section (1) of section 92D of the Act i.e., who has entered into an international transaction or specified domestic transaction, to furnish any information or document referred therein, within a period of ten days from the date of receipt of a notice issued in this regard; and
 - (ii) the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person who has entered into an international transaction or specified domestic transaction, extend the period of ten days by a further period not exceeding thirty days.

This amendment will take effect from 1st April, 2023.

❖ **Amendments to provisions dealing with incentives for International Financial Services Centre (IFSC)**

- (i) It is proposed to amend clause (b) of the Explanation to clause (viiad) of section 47 of the Act to extend the date for transfer of assets of the original fund, or of its wholly owned special purpose vehicle, to a resultant fund in case of relocation to 31st March, 2025 from current limitation of 31st March, 2023.
- (ii) It is proposed to amend clause (4E) of the section 10 of the Act to provide exemption to any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts or offshore derivative instruments or over-the-counter derivatives entered into with an offshore banking unit of an International Financial Services Centre as referred to in sub-section (1A) of section 80LA, which fulfils such conditions as may be prescribed, shall not be included in the total income. It is further proposed to include distribution of income on offshore derivative instruments also within the ambit of the clause. It is also proposed to insert a proviso to provide that the amount of distributed income referred to in the said clause shall include only so much of the amount which is chargeable to tax in the hands of the offshore banking unit under section 115AD.
- (iii) IFSCA (Fund Management) Regulations, 2022 has come into force from May 19, 2022. To bring the reference of the said regulation in the provisions of the Act, it is proposed to amend the definition of “Specified Fund”, “Resultant Fund” and “Investment Fund” to include the reference of IFSCA (Fund Management) Regulations, 2022 in the Act.

The above amendments referred to in para (i) and (iii) will take effect from the 1st day of April, 2023 and subsequent assessment years. The amendment in Para (ii) will take effect from the 1st day of April, 2024 and subsequent assessment years.



❖ **Bringing the non-resident investors within the ambit of section 56(2)(viib)**

- It is proposed to insert a clause (viib) of sub section (2) of section 56 of the Act vide Finance Act, 2012 to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. 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 under the ambit of clause (viib) by removing the phrase ‘being a resident’ from the said clause. This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status.

This amendment will be effective from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.

❖ **Extending deeming provision under section 9 to gift to not-ordinarily resident**

- Sub-section (1) of section 9 of the Act is a deeming provision providing the types of income deemed to accrue or arise in India. Finance (No. 2) Act, 2019 inserted clause (viii) to sub-section (1) of section 9 of the Act to provide that the any sum of money exceeding fifty thousand rupees, received by a non-resident without consideration from a person resident in India, on or after the 5th day of July, 2019, shall be income deemed to accrue or arise in India. Sum of money is referred to in sub-clause (xvii) of clause (24) of section 2 of the Act.
- It is proposed to amend clause (viii) of sub-section (1) of section 9 of the Act so as to extend this deeming provision to sum of money exceeding fifty thousand rupees, received by a not ordinarily resident, without consideration from a person resident in India.

This amendment will take effect from 1st April, 2024 and subsequent assessment years.

❖ **Preventing misuse of presumptive schemes**

It has been proposed to insert a new sub-section to section 44BB and to section 44BBB of the Act to provide that notwithstanding anything contained in sub section (2) of section 32 and sub-section (1) of section 72, where an assessee declares profits and gains of business for any previous year in accordance with the provisions of presumptive taxation, no set off of unabsorbed depreciation and brought forward loss shall be allowed to the assessee for such previous year.



These amendments will take effect from 1st April, 2024 and subsequent assessment years.

❖ **Extension of date of incorporation for eligible start-up exemption**

The existing provisions of the section 80-IAC of the Act, provides for a deduction of an amount equal to hundred percent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years, beginning from the year of incorporation, at the option of the assessee subject to the conditions as specified. In order to further promote the development of start-ups in India and to provide them with a competitive platform, it is proposed to amend the provisions of section 80-IAC of the Act so as to extend the period of incorporation of eligible start-ups to 1st day of April 2024.

❖ **Relief to start-ups in carrying forward and setting off of losses:**

The condition of continuity of 51 percent shareholding for setting off and carrying forward of losses under section 79 of the Income Tax Act, 1961, is relaxed for an eligible startup if all the shareholders of the company continue to hold the shares. At present this relaxation is applicable for losses incurred during the period of 7 years from the date of incorporation of such startup. It is now proposed to increase this period to 10 years.

2. Rates of Taxation for Non-Resident.

❖ **Rate of Income Tax for Individual Non-residents in New and Old tax regime is tabulated below:**

Income Slab	Option 1 : New Regime		Option 2 : Old Regime
	Existing Rates	Proposed Rates	
Upto Rs. 2,50,000	0%	0%	0%
Rs. 2,50,001 to Rs. 3,00,000	5%	0%	5%
Rs. 3,00,001 to Rs. 5,00,000	5%	5%	5%
Rs. 5,00,001 to Rs. 6,00,000	10%	5%	20%
Rs. 6,00,001 to Rs. 7,50,000	10%	10%	20%
Rs. 7,50,001 to Rs. 9,00,000	15%	10%	20%
Rs. 9,00,001 to Rs. 10,00,000	15%	15%	20%
Rs. 10,00,001 to Rs. 12,00,000	20%	15%	30%
Rs. 12,00,001 to Rs. 12,50,000	20%	20%	30%
Rs. 12,50,001 to Rs. 15,00,000	25%	20%	30%
Above Rs. 15,00,000	30%	30%	30%



*excluding surcharge and health and education cess

Notes:

- i) The individual non-resident can opt for any option.
- ii) In case of Individual non-resident opting for new regime, the maximum surcharge on the income or aggregate of income is restricted to 25% (instead of 37%) even if the income or aggregate of income exceeds five crore rupees, subject to deduction.
- iii) The non-residents are not eligible for rebate under section 87A under any regime.
- iv) In case of individual having income from business or profession and Option 1 (new regime-proposed rates) has been exercised, the same shall apply to subsequent assessment years. However, the individual person shall have the option of opting back to the old regime only once. In case of individual not having income from business or profession shall be able to exercise this opting out option anytime.
- v) The income tax payable under new regime shall be computed without allowing for any deduction or exemption except standard deduction under section 16(ia), family pension deduction under section 57(iia), amount deposited in the agniveer corpus fund under section 80CCH(2) and deduction for additional payroll expense under section 80JJA

❖ **Rate of Income tax for Foreign Companies**

In the case of foreign company, the rate of tax is the same as those specified for the FY 2021-22 i.e. 40%.

3. Other Policy Announcements

❖ **Enhancing business activities in GIFT city**

- Delegation of powers under the SEZ Act to IFSCA only, to avoid dual regulation.
- Setting up a single window IT system for registration and approval from IFSCA, SEZ authorities, GSTN, RBI, SEBI and IRDAI
- IFSC Banking Units of foreign banks to be permitted to undertake acquisition financing.
- Subsidiary of EXIM Bank to be set-up for trade financing.
- IFSCA Act to be amended to include provisions relating to arbitration, ancillary services, and avoiding dual regulation under SEZ Act.



- Offshore derivative instruments to be recognized as valid contracts in IFSC.
- Data Embassies are proposed to be set up in GIFT cities for countries looking for digital continuity solutions

❖ **Enhancing ease of doing business**

- Jan Vishwas bill has been introduced to amend 42 Central Acts to enhance ease of doing business resulting in more than 39,000 compliances have been reduced and more than 3,400 legal provisions have been decriminalized.
- Various amendments have been proposed in Banking Regulation Act, Companies Act and RBI Act to improve Bank governance and enhance investors protection.
- Permanent Account Number of the business establishments will be used as the common identifier for all digital systems of specified government agencies.
- A system of 'Unified Filing Process' will be set-up for filing of information or return in simplified forms on a common portal, will be shared with other agencies as per filer's choice.



DISCLAIMER

For private circulation and for internal use. This document summarizes key provisions applicable to non-resident investors contained in the Finance Minister Speech and Finance Bill presented on 01st February 2023. Certain policy announcement and changes to the statute carried out by the Finance Minister in the recent past is not brought out in this document. Information is being made available at this document purely for the benefit of the readers. Whilst every care has been taken in the preparation of this document, it may contain errors for which we should not be held responsible. It must be stressed that the Finance Bill may contain proposals which have not been referred to in the budget speech and additionally, the detailed proposal is liable to amendment during the passage of the Finance Bill through Parliament. The information given in this document provides a bird's - eye view on the changes proposed and should not be relied for the purpose of economic or financial decisions. Each such decision would call for specific reference of the relevant statutes and consultation of an expert.

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