

Direct Tax Vista

Your weekly Direct Tax recap

Edn. 51 – 28th March 2023

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Friends,

The Lok Sabha has passed the Finance Bill 2023 with 64 official amendments. In this week's edition of Direct tax Vista, we analyse the major amendments related to Direct Taxes as passed by The Lok Sabha and which most probably shall be enacted

1. Sheen of Debt Mutual Funds vis-à-vis fixed assets now no more

From April 1, 2023 Debt Mutual fund schemes will be taxed at Income tax rates applicable to an Individuals Income tax slab. Section 50AA has been introduced to include specified mutual fund with not more than 35% of investment in equity shares of domestic company.

It is proposed that Capital gain arising from debt based mutual funds (where investment in equity shares of domestic companies is not more than 35% of total proceeds of the mutual fund) acquired on or after 01.04.2023 shall be deemed to be short term capital gain. The implication will be that the lower rate of 20% (with indexation) which is applicable in respect of LTCG shall not be applicable and such gains shall be taxable as per normal slab rate. Thus, pure debt fund will lose its attraction over fixed deposits as far as tax benefits are concerned. Further life insurance products would be superior to debt mutual funds for annual investments up to ₹5 lakh. The new regulations may impede the development of India's debt capital market to some extent in this way. However, this amendment shall only be applicable in respect of investments made post 01.04.2023 and there shall be no impact on investment made on or before 31.03.2023.

After this amendment to Finance Bill 2023 related to debt mutual fund there are three categories of mutual funds for taxation purposes -

- 1) Equity oriented scheme having minimum 65% equity.
- 2) Schemes having not more than 35% equity to be taxed as short term capital gains.
- 3) Mutual funds having more than 35% but less than 65% equity, eligible for indexation and to be taxed at 20%.

2. Marginal Relief for assesses under the New Scheme for income between Rs.7 Lakhs and Rs.7.25 Lakhs

It has been proposed to provide marginal relief for taxpayers adopting new tax regime and having income exceeding Rs 7.00 lakhs. It had proposed to insert a proviso to Section 87A to allow a higher rebate to the resident individual opting for the new tax scheme under Section 115BAC(1A). Hence, it was proposed that there would be no requirement to pay tax under the new regime in case the income does not exceed 7 lakh. This was done vide the rebate route u/s 87A, wherein after the initial threshold exemption the balance income uptill Rs.7 Lakhs would be under rebate.

However, there was no marginal relief prescribed with the implication that the once the income exceeds Rs. 7 lakh (say Rs. 7.05 lakh), the requirement to pay tax would have triggered and the same could have resulted in the person falling within the income range of 7,00,001 to 7,29,000 to be worse off than the person having income of Rs. 7 lakh. To remove this anomaly, marginal relief has now been proposed to be prescribed which would mean that the tax payable shall not exceed the income exceeding Rs. 7 lakh. This would bring such individuals falling within the income range of 7,00,001 to 7,29,000 at par with the person having income of Rs. 7 lakh. Therefore, to calculate the tax payable above Rs.7 Lakhs, one would be required to calculate tax payable on total income before rebate under Section 87A (Say A); then Calculate the difference between total income and Rs. 7,00,000 (Say B); Incase (A-B) is positive, the difference will be the rebate allowed under Section 87A. However, if the figure is negative, then no rebate shall be allowed under Section 87A.

3. Tax on Royalty / FTS rate under section 115A increases to 20% from 10%

The royalty or fee for technical services earned by a non-resident or a foreign company, not connected to PE or a fixed place in India, shall be charged to tax on a gross basis (without deduction for any expenditure) at a special tax rate of 10% under Section 115A(1)(b)(A)/(B).

This will impact non-residents of the countries with whom India doesn't have treaty since tax rate on such income is by and large 10%. So now DTAA will become more relevant. Non-residents of countries with whom India doesn't have tax treaty will now be required to pay higher rate of 20% on income from Royalty and FTS.

4. TDS on winnings from online games preponed

The Finance Bill 2023 (Lok Sabha) has revised the effective date from which TDS on winnings from online games will be deducted. The amendment was made at the time of passing of Finance Bill, 2023 from Lok Sabha today. Earlier, the effective date on TDS on all winnings from online games was proposed to be July 1, 2023. Now it is 1st April 2023. Further, from April 1, 2023, TDS on winnings from online games will be deducted for every rupee earned, net of entry fees (if any). The rate at which TDS on winnings from online games is deducted at 30 per cent.

The proposed Section 115BBJ provides that the net winnings from online games shall be taxable at the rate of 30%. Further, any person responsible for paying the winnings from online games shall deduct tax at source at the rate of 30% under the proposed Section 194BA. The provisions for tax deduction at source under Section 194BA were proposed to be effective from 01-07-2023.

The Finance Bill (Lok Sabha) changes the date of applicability of Section 194BA to 01-04-2023 instead of 01-07-2023. The consequential amendments have also been made to Section 194B w.e.f. 01-04-2023. However, the consequential amendments to Section 271C and Section 276B are still applicable from 01-07-2023, which are also expected to be aligned going forward.

Further, Section 206AB provides that where a person fails to furnish his return of income for the specified period and tax deducted/collected during that period

exceeds the specified limit, the deductor shall deduct the tax at a higher rate. This provision does not apply where the tax is required to be deducted under the specified provisions.

The Finance Bill (Lok Sabha) adds Section 194BA to this list with effect from 01-04-2023. Thus, the tax shall be deducted at the rate of 30% even if the deductee is a non-filer of return.

5. TCS on LRS also on remittance within India and on Credit Card payments

Sub-section (1G) of Section 206C requires tax collection on foreign remittances made under the Liberalised Remittance Scheme (LRS) and on the sale of Overseas Tour Program Packages. The Union Budget 2023 proposed a TCS for foreign outward remittance under LRS other than for Education and medical purposes of 20 per cent applicable from July 1, 2023. Before this proposal, the TCS of 5 per cent was applicable on foreign outward remittances above Rs 7 lakh. It has been proposed now that TCS under section 206C(1G) to be collected in case of remittance under LRS even if remittance is not made out of India. Earlier, TCS was collectible only if LRS is made out of India.

The Finance Bill (Lok Sabha) has effected the amended by omitting the words “out of India” from Section 206C(1G)(a) to expand the scope of the provision to the remittance made under LRS, even within India. Thus, where the remittance is made under LRS to the GIFT city, the new rates of TCS shall apply.

Further Credit card payments for foreign travel will be brought under Reserve Bank's Liberalised Remittance Scheme (LRS) to ensure that such expenses do not escape TCS (Tax Collection at Source). The RBI is to suggest ways of doing this as was mentioned by FM in the Parliament. If credit cards for tourist transactions are brought under the purview of LRS and TCS, credit card transactions will result in tax deductions at the source.

6. TCS rate in absence of PAN and for non-filers restricted to 20%

Under section 206CC, in absence of PAN, TCS is collectible at rate of 5% or twice the rate specified in the relevant provision. It has been proposed to restrict the higher rate of TCS collectible at 20%. Under section 206CCA, in case of non-filer of return, TCS is collectible at rate of 5% or twice the rate specified in the relevant provision. It has been proposed to restrict the higher rate of TCS collectible at 20%. These amendments have been proposed w.e.f 01.07.2023

7. Changes to incentivize IFSC

No surcharge and cess on income earned by GIFT Category III from securities under section 115A(1)(a);

Provision for tax neutral reallocation of any investment vehicle in which ADIA is sole direct or indirect shareholder/ unitholder to GIFT City introduced;

power to notify any other funds for tax neutral reallocation to GIFT City added (section 47(viiad));

Dividend distributions from IFSC unit to be taxable at 10% (as against 20%);

Interest income on borrowing by foreign company from long-term bond or rupee denominated bond listed on IFSC stock exchange taxable @ 9%

8. Changes in relation InvITs / REITs ("Business Trust")

SPV not required to withhold on payment of interest on debentures;

Exemption to sovereign wealth funds / pension funds for debt repayment from Business Trust introduced [section (10(23FE))];

Cost of unit holders reduced to the extent of distributions in form of debt repayment (unless such distributions are taxed as IOS); Investors in Business Trust pay 10% long-term capital gains tax on exit and don't get benefit of full cost;

No tax under IOS until distribution in form of debt repayment are upto amount at which units of Business Trust issued.

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