



Tax Insights

28 March 2023

Key amendments to the Finance Bill, 2023 – enactment awaited

In brief

The Finance Bill, 2023 (Bill) was originally tabled on 1 February 2023¹ by the Finance Minister in the Lok Sabha. The Bill is passed by the Lok Sabha on 24 March 2023² with certain amendments.

We have summarised only the amendments to the Bill as passed by the Lok Sabha in this Tax Insights.

In summary

1. The tax rate applicable on royalty and fees for technical services (FTS) in case of non-resident taxpayers who do not have a PE in India is increased to 20%.
2. Deduction of tax at source on winnings from online games preponed to 1 April 2023.
3. Capital gains taxation regime proposed for market-linked debentures (MLD) is expanded to Specified Mutual Fund units acquired on or after 1 April 2023.
4. Surcharge and cess to be removed on certain income earned by specified funds in the International Financial Services Centre (IFSC).
5. Exemption is provided on certain incomes arising to non-residents or aircraft leasing entities from aircraft leasing business in the IFSC.
6. Concessional tax rate is offered on dividends issued by the IFSC unit to its non-resident shareholders.
7. Concessional tax rate is offered on interest earned on long-term bonds or rupee-denominated bonds listed only on the IFSC stock exchanges.
8. Constitution of the Appellate Tribunal and its powers.
9. Clause on place of supply (PoS) for transportation of goods by mail or courier omitted.
10. Duty assessment and procedure to be followed for goods on which manufacturing and other operations are performed in a bonded warehouse revised with insertion of a new provision in the Customs Act, 1962 (Customs Act).

¹ [Please refer to our Budget analysis released on 1 February 2023.](#)

² [Finance Bill, 2023 as passed by Lok Sabha on 24 March 2023](#)

Tax rate

Income tax

- Income by way of royalty and FTS is to be taxed at 20% (plus surcharge and cess) in the case of non-resident taxpayers that do not have a permanent establishment (PE) in India. The rate at which tax is withheld on royalty and FTS is also increased accordingly.
- Marginal relief is to be offered to taxpayers even under the new Personal Tax regime where income exceeds INR700,000.
- Change in STT rates on sale of options and futures
 - The Bill did not propose any amendment with respect to securities transaction tax (STT) rates on the sale of options and futures.
 - It is now proposed to increase the STT rate on the sale of options to 0.0625% (earlier 0.05%) and on the sale of futures to 0.0125% (earlier 0.01%).

Providing tax certainty

Income tax

- TCS on LRS remittances made by individuals
 - The Bill proposed that the tax collected at source (TCS) rate is to be increased from 5% to 20% for Liberalised Remittance Scheme (LRS) payments (except for payments made for education and medical purposes) with effect from 1 July 2023 for remittance out of India.
 - It is now proposed that the above TCS provisions are to apply to all LRS remittances (including remittances under LRS permissible to be made within India – for instance, to the IFSC).
- Taxability of distributions by REIT or InvIT rationalised
 - The Bill proposed to introduce clause (xii) under section 56(2) of the Income-tax Act, 1961 (the Act) to tax the distribution of any 'specified sum' by Real Estate Investment Trusts (REIT) or Infrastructure Investment Trusts (InvIT) in the hands of unitholders, as 'income from other sources'. However, there was no mechanism for computing the 'specified sum' and 'cost of acquisition' of REIT and InvIT units.
 - It is now proposed to provide a formula for computing the distribution of 'specified sum' as income in the hands of unitholders.
 - 'Specified sum' = $A - B - C$ (if the result of the computation is negative, then it will be deemed to be zero), where –
 - A = Total distributions (other than interest, dividend, capital gains and rental income);
 - B = Unit issue price;
 - C = Amount taxed under this clause in earlier years
 - It is also proposed to clarify that the cost of acquisition of REIT or InvIT units in the hands of unitholders (including units received on swap of shares) is to be reduced by the 'specified sum' received which has not been charged to tax.

Spurring investment and demand

Income tax

- Tax holiday for Offshore Banking Units in Special Economic Zone
 - The Bill did not propose any amendment with respect to tax holidays for Offshore Banking Units (including IFSC Banking Units [IBUs]).

- Currently, Offshore Banking Units are entitled to a tax holiday of 100% of the eligible income for the first five years post registration under the relevant law and 50% of the eligible income for the next five years.
- It is now proposed that Offshore Banking Units in Special Economic Zones will be allowed to claim a tax holiday of 100% of the business income for ten years post registration from the assessment year beginning from 1 April 2023.
- IBUs fulfil the necessary criteria for being considered Offshore Banking Units as defined in clause (u) of section 2 of the Special Economic Zones Act, 2005, and therefore, can avail the above deduction.
- Removal of surcharge and cess on certain income of specified funds setup in IFSC
 - The effective tax rate applicable to specified funds were not at par with the rates under Double Taxation Avoidance Agreements as surcharge and health and education cess were applicable to certain incomes earned by specified funds set up in the IFSC.
 - It is proposed that surcharge and health and education cess will not be levied on the income earned under section 115AD(1)(a) of the Act (such as dividend, interest etc.) by specified funds (certain non-corporates only) as defined under section 10(4D) of the Act.
- Removal of condition for exemption on income distributed to non-residents on offshore derivative instruments (ODIs) entered into with an IBU of IFSC
 - The Bill proposed that the income distributed on ODIs entered by a non-resident into an offshore banking unit of an IFSC be exempt from tax in the hands of such investors.
 - It was also proposed that such exemption be available only to the extent such distributed income is chargeable to tax in the hands of the IBU under section 115AD of the Act. This condition is now proposed to be deleted.
- Expanded scope of exemption to non-residents from income in account maintained with IBU
 - Section 10(4G) of the Act provides for exemption to any income received by a non-resident from a portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an Offshore Banking Unit of an IFSC, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.
 - The Bill did not propose any exemption. However, it now specifically introduces exemption for income received by a non-resident from any activity carried out by such persons, as may be notified by the Central Government, in an account maintained with an Offshore Banking Unit in an IFSC.
- Exemption on certain incomes arising to non-residents or aircraft leasing entities in IFSC
 - The Bill did not propose any amendment with respect to capital gains earned from the sale of equity shares of IFSC units (engaged primarily in aircraft leasing business) and the dividend income paid by such units.
 - It now specifically introduces the following:
 - Exemption from capital gains on the sale of equity shares of IFSC units (engaged primarily in the aircraft leasing business) to non-residents and to IFSC units engaged primarily in the aircraft leasing business under the proposed section 10(4H) of the Act subject to satisfying the following conditions:
 - The operations of such IFSC unit have commenced on or before 1 April 2026; and
 - Such capital gains arise within a period of ten years from the year in which the IFSC unit has commenced operations. In respect of IFSC units that have commenced operations prior to financial year 1 April 2023, capital gains arising during 1 April 2023 to 31 March 2033 will be exempt.
 - Dividend income issued by an IFSC unit (engaged in the aircraft leasing business) to another IFSC unit (engaged in the aircraft leasing business) are exempt under proposed section 10(34B) of the Act.
- Extension of 'original fund' for relocation of fund in IFSC

- Erstwhile definition of the ‘original fund’ included offshore funds located in overseas jurisdictions subject to certain conditions. The Bill did not bring any change to this definition.
- It now proposes to expand the definition of ‘original fund’ to include:
 - An investment vehicle owned and controlled, directly or indirectly by the Abu Dhabi Investment Authority; or
 - A fund, as may be notified by the Central Government, subject to certain conditions.
- Such an amendment can expand the definition of ‘original fund’ to include sovereign wealth funds and pension funds and thereby incentivise relocation to the IFSC.
- Taxation of dividend from unit in IFSC
 - The Bill did not propose any amendment with respect to taxation of the dividends from units in the IFSC.
 - It is now proposed that dividends received by non-residents from an IFSC unit are taxable at a rate of 10% plus applicable surcharge and cess.
- Tax on interest on long-term bonds or rupee-denominated bonds listed on an IFSC exchange
 - The Bill did not propose an extension to the sunset clause of 1 July 2023 wherein a concessional tax rate of 4% is levied on the interest paid by Indian companies on monies borrowed by way of issuance of long-term bonds or rupee-denominated bonds (listed only on recognised stock exchanges in the IFSC).
 - It is now proposed that tax rate at the rate of 9% is to be applicable on long-term bonds or rupee-denominated bonds issued on or after 1 July 2023 that are listed only on a recognised stock exchange in the IFSC.
- Opting for tonnage tax scheme for units in IFSC
 - IFSC units engaged in the ship leasing business were not able to opt for the tonnage tax scheme if they availed a tax holiday period under section 80LA of the Act.
 - The Bill did not propose any exemption. However, it is now specifically proposed to enable such IFSC units to opt for the tonnage tax scheme within three months from the date on which the tax holiday period ceases under section 80LA of the Act.
- Distribution of ‘specified sum’ referred to in section 56(2)(xii) of the Act exempt in case of notified SWF or PF
 - Section 10(23FE) of the Act provides a tax exemption to notified sovereign wealth funds (SWFs) or pension funds (PFs) with respect to income in the nature of interest, dividend and long-term capital gains.
 - Section 56(2)(xii), as introduced by the Bill, proposed to tax the distribution of ‘specified sum’ by REITs or InvITs; however, there was no corresponding proposal to provide exemption to the notified SWF or PF in respect of such distributions.
 - It is now proposed to amend section 10(23FE) of the Act to exempt the distribution of any ‘specified sum’ in the hands of notified SWFs or PFs which would otherwise be taxable under section 56(2)(xii) as ‘income from other sources’.

Ease of doing business

Income tax

- Withholding of tax on interest on securities paid by REIT or InvIT rationalised
 - Interest payable on securities held by REITs or InvITs is subject to withholding of tax under section 193 of the Act.
 - The Bill did not provide an exemption from this withholding of tax requirement.

- However, it is now specifically proposed to provide that the interest payable on securities held by REITs or InvITs is not subject to withholding of tax.

GST

Persons not liable for registration

In the Bill, a 'non-obstante clause' was added to section 23 of the Central Goods and Services Tax Act, 2017 (CGST Act) to provide an overriding effect over sections 22(1) and 24 of the CGST Act in case of the following persons, retrospectively from 1 July 2017:

1. any person exclusively making an exempt supply
2. an agriculturist
3. category of person as the government may specify

It now proposes to insert the non-obstante clause only in case of category of person as the government may specify and not for the first two above.

Since the non-obstante clause was previously introduced for all the three categories as mentioned above (i.e. since section 23 of the CGST Act was proposed to override both sections 22 and 24 of the CGST Act), a question arises in case of a person exclusively making exempt supplies as to whether he or she is not required to take registration even when he or she receives services that are liable to tax under reverse charge. Would he or she then be exempted from paying tax under reverse charge or would a separate mechanism be introduced in this regard?

However, this ambiguity does not arise as the amended Bill provides for a non-obstante clause only in case of category of person as the government may specify. In other words, a person exclusively providing exempt supplies and receiving services on which tax is required to be paid on reverse charge is still required to be registered as per section 24 of the CGST Act.

Revocation of cancellation of registration

An amendment to section 30 of the CGST Act is proposed in the Bill. Section 30(1) of the CGST Act provides that the registered person whose registration is cancelled by an officer may apply to such officer for revocation or cancellation of the registration within 30 days from the date of service of the cancellation order. The provision is amended to provide that application can now be made 'within such time and manner as may be prescribed and subject to such conditions and restrictions.

Moreover, the proviso to section 30(1) of the CGST Act is deleted. The proviso provided for the extension of this time limit is as follows:

- by the Additional Commissioner (AC) or the Joint Commissioner (JC) by a period of 30 days
- by the Commissioner for a further period of 30 days (beyond the extension provided by the AC or JC)

Due to the specific statutory time limit, several taxpayers are facing hardships. The removal of this time limit apparently aims to support regularising the past failures by taxpayers to apply for the revoking of cancelled registrations in a timely manner.

Assessment of non-filers of returns

An amendment to section 62 of the CGST Act is proposed in the Bill. Section 62 of the CGST Act provides that if the registered person furnishes a valid return within 30 days of the service of the assessment order, then the said assessment order will be deemed to have been withdrawn, but the liability for the payment of interest and late fee will continue. The time limit for furnishing the return is revised to 60 days.

Moreover, a proviso is added to state that if the registered person fails to file the return within the said 60 days of the service of assessment order, he or she may be allowed an extension of 60 days on payment of an additional late fee of INR100 for each day of delay beyond 60 days. In case he or she furnishes a return within such an extended period, the assessment order will be deemed to have been withdrawn, but the liability to pay interest and late fee will continue.

The amendment seeks to relax the time available to defaulting taxpayers to file returns by providing a broader time frame (along with further extensions) to furnish their return.

Other key tax and regulatory proposals

Income tax

- Taxation of Specified Mutual Fund Units
 - The Bill proposed that capital gains on the transfer, redemption or maturity of MLD will be deemed to be short-term capital gains.
 - No change is proposed in the above taxation regime of MLD.
 - Now, this taxation regime is also proposed to be extended to Specified Mutual Fund units acquired on or after 1 April 2023.
 - A Specified Mutual Fund is defined as a mutual fund where not more than 35% of its proceeds are invested in the equity shares of Indian companies, computed in a specified manner.
 - Accordingly, it is proposed that capital gains arising on the transfer, redemption or maturity of Specified Mutual Fund units (acquired on or after 1 April 2023) will be deemed to be short-term capital gains.
- Deduction of tax at source on winnings from online games is preponed to 1 April 2023 from 1 July 2023.
- Deduction of tax at source on winnings from online games is excluded from the ambit of punitive rate applicable in case of non-filers of return.
- The applicable rate at which tax is withheld on royalty and FTS payable to non-resident taxpayers under domestic tax provisions is increased to 20%.
- Punitive rate of tax collection where there is no PAN or non-filers of return, is restricted to 20%.
- No amendment proposed in section 56(2)(viib) tax regime
 - The Bill originally proposed that the receipt of excessive share premium from non-residents (earlier applicable only from residents) by closely held Indian companies would be taxable in the hands of such Indian companies under section 56(2)(viib) of the Act.
 - No amendment is proposed to the Bill as regards the tax regime under section 56(2)(viib) of the Act.

GST

Constitution of the Appellate Tribunal and its powers

The Government of India has proposed a few amendments to the CGST Act for the introduction of the Goods and Services Tax Appellate Tribunal (Appellate Tribunal), majorly changing the various levels at which benches can be constituted, the composition of the members of the Appellate Tribunal and the formation of a search-cum-selection committee to appoint the members.

Proposal to change the constitution of the Appellate Tribunal and benches there of

According to the substituted section 109 of the CGST Act, the government, on the recommendation of the GST Council, is to set up the GST Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or Revisionary Authority.

There is to be one Principal Bench in New Delhi. State benches are to be constituted on request of the state governments and on the recommendation of the GST Council. Before the amendment, there were regional, area and state benches; this concept is replaced with the principal and state benches.

Both the benches are to have the power to hear appeals arising out of orders passed by the Appellate Authority or the Revision Authority, but when the issue involves PoS, it will be heard only by the principal bench.

Such matters are to be heard by a single member bench with the approval of the president, in respect of appeals where the tax or input tax credit involved, or the amount of fine fee or penalty does not exceed INR 5m and does not involve a question of law. Other matters can be heard by one judicial and one technical member.

The president has the power to refer a matter to a higher bench, including a member of a state bench in another state, in a scenario where the two-member bench is not able to conclude on an issue. The government,

in consultation with the president, has the power to transfer the members from one bench to another. The concept of a state president for each state prior to the amendment is removed and replaced with that of a vice president for all states concerned.

President and members of the Appellate Tribunal, their qualifications, appointment, conditions of service, etc.

A search-cum-selection committee is to appoint the members of the Appellate Tribunal.

Qualifications of members

Member	Qualification
President	Judge of the Supreme Court or The Chief Justice of a High Court
Judicial member	Judge of a High Court or Combined period of ten years being a district Judge or an Additional District Judge.
Technical Member (Centre)	Needs to be a member of the Indian Revenue services Group A or All India Service with at least three years of experience in administration of an existing law or GST and having completed 25 years in service.
Technical Member (state)	Officer of the state government or an officer of the All India Service not below the rank of Additional Commissioner of value-added tax or state GST; Needs to have 25 years of service in Group A or equivalent with three years of experience in administration in the existing law or GST or finance or taxation.

Instead of consultation with the Chief Justice of India (or state for the state bench), this search-cum-selection committee is to recommend the appointments to the government.

This committee also plays the recommendatory roles in the removal or suspension of members of the Appellate Tribunal, similar to the consultative roles envisaged by the Chief Justice of the country or the state.

Section 110(i)(b)(iii) of the CGST Act, before amendment, enabling a member of the Indian legal service to be considered in the appointment of a judicial member, is removed.

PoS of goods transportation services where the location of supplier or location of recipient is outside India

In the Integrated Goods and Service Tax Act, 2017 (IGST Act), section 13(9) provides that the PoS of services of transportation of goods, other than by way of mail or courier, will be the place of destination of goods.

As per the amended Bill section 13(9) of the IGST Act is deleted.

- The GST Council, in its 49th meeting, recommended such deletion. Moreover, from the press release for the said meeting, it appeared that the PoS for the transportation of goods would be determined by the general rule, i.e. the PoS of such services will be the location of the recipient of services (impact of changes in the PoS, if it were to be determined based on the place of recipient, was covered in our [Tax Insights dated 19 February 2023 on the 49th GST Council Meeting](#)).
- The form in which the amendment has been carried out is evidently contradicting the intent clarified in the press release of the 49th GST Council Meeting. There is lack of clarity as to whether for transportation of goods, the general recipient-based rule contained in clause (2) will apply or whether such services would be covered under any other clause of section 13 of the IGST Act, specifically clause 13(3)(a).
- To address this anomaly, a specific exclusion towards goods transportation services is required under section 13(3)(a) of the IGST Act. Alternatively, a clarification should be issued by the Central Board of

Indirect Taxes and Customs *de-minimis* that post deletion of section 13(9) of the IGST Act on PoS of goods, the transportation services are to be determined based on the provisions of section 13(2) of the IGST Act.

Compensation cess

Amendment to Schedule to Goods and Services Tax (Compensation to States) Act, 2017

- The maximum compensation cess leviable on pan masala and tobacco and manufactured tobacco substitutes, including tobacco products, are amended and pegged to specified percentages of the retail sale prices thereof. The definition and method of determination of the retail sale price in various scenarios is appended by way of the Explanation below the Schedule. The actual impact of the amendment will need to be assessed once the notification is issued specifying rates on the subject products ensuing the amendment.

Customs

Insertion of new section on duty assessment and procedure to be followed on goods subject to manufacturing and other operations in a bonded warehouse in the Customs Act

- An amendment is proposed to introduce section 65A that will be applicable to goods against which manufacturing and other operations are undertaken under section 65 of the Customs Act. However, certain specified goods, class of goods, importers and exporters or the industry sector are to be excluded from the operation of the proposed section (exclusion category is to be notified separately).
- However, unlike the normal manufacturing and other operations in bond, in terms of section 65A of the Customs Act, the goods imported are to be warehoused on the payment of the applicable IGST and compensation cess, and these are to be considered warehoused goods for the purpose of duty deferment for basic customs duty only.
- For these goods, the bill of entry for home consumption is to be filed and will be finally assessed or provisionally assessed to duty at the rate applicable at the time of filing of the said bill of entry.
- Even for transfer of goods to another bonded warehouse, a home consumption bill of entry is to be filed, and applicable IGST and compensation cess are to be paid.
- Moreover, on removal of the warehoused goods (which are not moved to another warehouse), the basic customs duty not paid is also to be paid apart from IGST and compensation cess.
- The warehousing bond requirement and process are to apply to section 65A goods differently.
- These provisions are not to be made applicable to goods warehoused under section 65 of the Customs Act for undertaking manufacturing and other operations prior to the operationalisation of the provisions of section 65A.
- The rules for payment of duty and removal of goods are to be notified separately.
- The rules, notification, etc. under the proposed section 65A are to be approved and concurred by the Parliament.
- The government seems to be revisiting the in-bond manufacturing operations *vis-a-vis* a duty deferment with change in guidelines/ procedures including duty payment mechanism for undertaking manufacturing and other operations under section 65 read with section 65A of the Customs Act. The government may exclude certain specified sectors, goods, exporters and importers from the operations of section 65A. However, the coverage of these sectors or category of goods, importers and exporters needs to be seen. Hence, this may entail deliberation and representation for implications including possible exclusion purposes.
- The deferment of IGST is proposed to be dispensed with, including on transfer to another warehouse by the change in duty treatment and requirement to file home consumption bill of entry.
- Given that goods already warehoused under section 65 of the Customs Act are not to be covered by section 65A businesses need to take stock of their inventory prior to the operationalisation of section 65A.
- Revised or separate guidelines under Manufacturing & Other Operations In Warehouse Scheme for these goods may be issued as well to align with section 65A.

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