

NEWS FLASH**Key amendments to the Finance Bill, 2023**

24 March 2023

This document summarises the significant direct tax amendments to the Finance Bill, 2023 as passed by the Lower house of the Parliament today. These proposals are subject to the passage of the Finance Bill by the Upper house and Presidential assent, after which the Finance Bill will become law. Further, the direct tax proposals in the Finance Bill, 2023 are effective from Financial Year ('FY') 2023-24 unless otherwise specifically stated. References to sections are to sections in the Income-tax Act, 1961 ('the IT Act') unless otherwise stated.

I. Provisions relating to non-residents**1. Tax Rates**

- i. It is proposed to tax dividend income earned by non-residents from International Financial Services Centre ('IFSC') units at the rate of 10 percent instead of the existing rate of tax of 20 per cent on dividends.
- ii. It is proposed to increase the rate of tax on income earned by non-residents by way of royalty or fees for technical services from 10 per cent to 20 per cent.
- iii. It is proposed to provide that surcharge will not be applicable on advance tax computed on the income of a Specified Fund located in an IFSC that is covered under Section 115AD(1)(a).

2. Tax holiday for Offshore Banking Units located in a Special Economic Zone [Section 80LA]

- i. It is proposed to provide a 100 percent tax holiday in respect of income earned by a scheduled bank or any bank incorporated outside India and having an Offshore Banking Unit ('OBU') in a Special Economic Zone for a period of 10 consecutive FYs beginning from the FY in which the OBU has received the relevant regulatory approvals. At present, the 100 percent tax holiday is available only for the first five FYs and thereafter, 50 percent of the income is exempt for the next five FYs. The other conditions specified in this regard in order to claim the tax holiday remain unchanged.
- ii. The proposed amendment will be effective retrospectively from 1 April 2022.

3. Exemption from income tax on income arising from transfer of company in IFSC engaged in aircraft leasing [New Section 10(4H)]

It is proposed to exempt the income of a non-resident or a unit of an IFSC arising from capital gains on the transfer of equity shares of a domestic company which is a unit of an IFSC engaged primarily in the business of aircraft leasing and which commences operations on or before 31 March 2026. The exemption is for 10 years beginning from the year of commencement of operations.

4. Exemption for dividend income of certain IFSC units [New Section 10(34B)]

It is proposed to exempt the dividend income earned by an IFSC unit primarily engaged in the business of leasing of aircrafts if such dividend income is earned from another IFSC unit which is also primarily engaged in the business of leasing of aircrafts.

5. It is proposed to allow IFSC units to opt for tonnage taxation scheme after end of the tax holiday period.

II. Capital gains

1. Computation of capital gains in case of specified assets [New Section 50AA]

- i. It was earlier proposed to introduce a new section to tax the gains from transfer or redemption or maturity of Market Linked Debentures as Short Term Capital Gains irrespective of the period of holding. It is now proposed to expand the scope of the newly introduced section to a Specified Mutual Fund ('SMF') acquired on or after 1 April 2023.
- ii. The proposed amendment has defined SMF as a mutual fund where not more than thirty five percent of the total proceeds are invested in equity shares of domestic companies.

2. Exemption on the transfer of capital assets [New Section 47(xx), 49(2AI)]

- i. It is proposed to insert a new sub-clause to provide an exemption from capital gains in cases where a public sector company transfers its interest in a joint venture in exchange of shares of a foreign company. The cost of acquiring the interest in the joint venture shall be deemed to be the cost of acquisition of the shares received.
- ii. It is further proposed to provide that 'joint venture' shall mean a business entity to be notified by the Central Government in this behalf.

3. Expansion of the definition of the term 'original fund' [Sections 47(viia), 47(viia)]

- i. For the purpose of determining transactions which are not regarded as a transfer and thereby not liable to capital gains, it is now proposed to amend the definition of the term 'original fund' to include an investment vehicle, which is wholly owned and controlled by the Abu Dhabi Investment Authority or the Government of Abu Dhabi.
- ii. It is further proposed to include any fund to be notified by the Central Government subject to conditions to be specified in this behalf.

4. Cost of acquisition [Section 48]

It is now proposed to omit the earlier proposed provision that the cost of acquisition of an asset shall not include interest paid on borrowed capital for acquiring, constructing, repairing, renewing or reconstructing a property that is claimed as a deduction while computing the income from house property or under the provisions of Chapter VI-A.

III. Withholding Taxes

1. Withholding tax on winnings from gambling and betting [Sections 194B, 194BB]

- i. It was proposed to exclude winnings from online games from the scope of the existing section on withholding tax on winnings from gambling and betting from 1 July 2023 and introduce separate provisions for winnings from online games.
- ii. It is now proposed to make these provisions applicable from 1 April 2023.

- iii. It is proposed to exclude Section 194BA relating to winnings from online games from the scope of withholding of tax at a higher rate under section 206AB in case of non-filers of the return of income.

2. Withholding tax on interest payable on specified bonds [Section 194LC]

- i. It is proposed to expand the scope of the section to include interest payable on long-term bonds or rupee-denominated bonds issued on or after 1 July 2023 which are listed only on a recognized stock exchange located in IFSC.
- ii. It is proposed that the rate of withholding tax on interest such bonds will be nine per cent.
- iii. The proposed amendments will be effective from 1 July 2023.

3. Non deduction of tax at source on interest [Section 193]

It is proposed to provide that no withholding tax will not be applicable on interest payable by a special purpose vehicle being an Indian company to the business trust in which such business trust holds a controlling interest/any specified percentage of shareholding.

4. Maximum rate of Tax Collection Source in case of non-filers of return of income or in the absence of PAN [Sections 206CC and 206CCA]

- i. It is proposed to restrict the maximum rate of Tax Collection at Source ('TCS') in the absence of PAN or for non-filers of the return of income to 20 percent.
- ii. The proposed amendment will be effective from 1 July 2023.

5. TCS on remittance under the Liberalised Remittance Scheme [Section 206C]

It is proposed to provide that remittances under Liberalised Remittance Scheme ('LRS') made within the Indian territory (for instance to GIFT City in India) will be subject to TCS under section 206C(1G).

IV. Others

1. Taxability of unitholders of a Business Trust [Sections 56(2)(xii), 115UA, 48]

- i. It is proposed to widen the scope of 'other income' to include any specified sum received by the unitholders from a business trust during the year with respect to units held at anytime during the year.
- ii. Specified sum = A-B-C,
Wherein
A = aggregate of sum distributed by the business trust during the year or earlier years to unitholders, other than nature of income referred to in Section 10(23FC) (i.e. interest or dividend distributed by the business trust, taxable in the hands of unit holder) and 10(23FCA) (i.e. rent distributed by the business trust, taxable in the hands of the unit holder) and income not chargeable to tax under Section 115UA(2) (i.e. total income of the business trust),
B = the amount at which such units were issued by the business trust
C= amount charged to tax under this clause in earlier years.
- iii. If the specified sum as per the above formula is negative, income will be deemed to be NIL.
- iv. It is further proposed to reduce the amount of cost of acquisition of a unit of a business trust by the amount of sum received [not being in the nature of income referred to in section 10(23FC) and section

10(23FCA), income not taxable as per section 56(2)(xii) and section 115UA(2)] at the time of computing capital gains on redemption/sale of units of a business trust by the unit holders.

2. Exempt income earned by National Credit Guarantee Trustee Company Limited and Credit Guarantee Funds [New Section 10(46B)]

- i. It is proposed to exempt any income of:
 - a. National Credit Guarantee Trustee Company Limited ('NCGTCL') established and funded by the Central Government for the purpose of operating credit guarantee funds financed by the Central Government; or
 - b. A Credit Guarantee Fund established and wholly financed by the Central Government and managed by NCGTCL; or
 - c. Credit Guarantee Fund Trust for Micro and Small Enterprises created by the Government of India and Small Industries Development Bank of India.

3. Increase in securities transaction tax on sale of options and futures

It is proposed to increase the securities transaction tax ('STT') on sale of options in securities from 0.05 per cent to 0.062 per cent. It is further proposed to increase the securities transaction tax on future options from 0.01 per cent to 0.0125 per cent.

About JMP Advisors

JMP Advisors is a leading professional services firm that offers advisory, tax and regulatory services. The vision of JMP Advisors is to be 'The Most Admired Professional Services Firm in India'. It aims to be the best as measured by the quality of its people and service to clients. The firm has a merit based culture and operates to the highest standards of professionalism, ethics, and integrity. Jairaj (Jai) Purandare, the Founder Chairman has over four decades of experience in tax and business advisory matters and is an authority on tax and regulation in India. Jai was Regional Managing Partner, Chairman - Tax and Country Leader - Markets & Industries of PricewaterhouseCoopers India. Earlier, Jai was Chairman of Ernst & Young India and Country Head of the Tax & Business Advisory practice of Andersen India.

JMP Advisors offers advice in international taxation, domestic taxation, transfer pricing, mergers and acquisitions, Goods and Services Tax (GST), business laws and exchange control regulations and foreign investment consulting. We specialize in fiscal strategy, policy foresight and advocacy matters and are trusted advisors to high net worth families. Our team at JMP Advisors takes pride in being the best at what matters most to clients - technical expertise, innovative solutions, consistent, high quality service, reliability and ease of doing business.

JMP Advisors has been recognized as a leading Tax firm in India, *inter alia*, in the International Tax Review (Euromoney) World Tax Directory for all successive years since incorporation, including in the World Tax and Transfer Pricing 2023 Directory.

Disclaimer

This material and the information contained herein is of a general nature and is not intended to address specific issues of any person. Any person acting on the basis of this material or information shall do so solely at his own risk. JMP Advisors Private Limited shall not be liable for any loss whatsoever sustained by any person who relies on this material or information.