Tax Matters

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Key direct tax proposals of the Finance Bill, 2023

After a year characterized by geopolitical uncertainty, high inflationary conditions and a depreciating Rupee, the current Financial Year (‘FY’) witnessed the Indian economy emerge relatively unscathed from recurring waves of the COVID-19 pandemic and poised to become the fastest growing large economy in the world. Against this backdrop, the Indian Finance Minister presented Budget 2023-24, her last full Budget ahead of the General Elections in 2024, on 1 February 2023.

The team at JMP Advisors is pleased to summarise below the significant direct tax proposals announced in Budget 2023-24. These proposals are subject to enactment of the Finance Bill, 2023 and are effective from FY 2023-24 unless otherwise specifically stated.

➢ Tax Rates

- No change proposed in tax rates for corporate taxpayers.

- It is proposed to extend the concessional tax regime to a new manufacturing co-operative society set up on or after 1 April 2023 and commencing manufacturing or production on or before 31 March 2024. The concessional tax rate of 15% and applicable surcharge at 10% results in an effective tax rate of 17.16%.

- Tax Rates for Individual/Hindu Undivided Family (‘HUF’)/Association of Persons (‘AOP’)/Body of Individuals (‘BOI’) etc.:

  - The new income tax regime is proposed to be extended to AOPs and BOIs as well.

  - The new income tax regime to become the default tax regime, with an option to taxpayers to continue with the old regime.

  - Limit for eligibility to tax rebate under the new tax regime to be enhanced from taxable income of INR 500,000 (~ USD 6,250) to INR 700,000 (~ USD 8,750), only in case of individuals.

  - Highest rate of surcharge is proposed to be reduced from 37% to 25% under the new tax regime, thereby reducing the Maximum Marginal Rate to 39%.

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- The slab rates under the new tax regime are proposed to be revised as under:

Existing Income tax slabs	Existing Rates of Income tax	Proposed Income tax slabs	Proposed Rates of Income tax
Upto INR 250,000	NIL	Upto INR 300,000	NIL
INR 250,001 - INR 500,000	5%	INR 300,001 - INR 600,000	5%
INR 500,001 - INR 750,000	10%	INR 600,001 - INR 900,000	10%
INR 750,001 - INR 1,000,000	15%	INR 900,001 - INR 1,200,000	15%
INR 1,000,001 - INR 1,250,000	20%	INR 1,200,001 - INR 1,500,000	20%
INR 1,250,001 – INR 1,500,000	25%		
Above INR 1,500,000	30%	Above INR 1,500,000	30%

- The threshold limits for presumptive taxation are proposed to be enhanced for –
  - Micro, Small and Medium Enterprises ('MSMEs') from total turnover or gross receipts of INR 20 million (~ USD 250,000) to INR 30 million (~ USD 375,000), and
  - Professionals from INR 5 million (~ USD 62,500) to INR 7.5 million (~ USD 94,000)

  The enhanced threshold limits are subject to fulfilment of certain conditions.

Provisions relating to non-residents

- It is proposed to include in the scope of taxable income of a private company, the consideration received from a non-resident for the issue of shares where such shares are issued at a value higher than their face value. The taxable amount would be computed as the consideration received in excess of the fair market value of the shares.

- In order to prevent misuse of presumptive taxation schemes for non-residents engaged in the business of providing services in connection with prospecting, extraction or production of mineral oils or civil construction or erection of plant or machinery in connection with an approved turnkey power project, it is proposed to provide that no offset of brought forward losses or unabsorbed deprecation of past years will be allowed in the FY in which such non-resident declares its income on a presumptive basis.

- It is proposed to provide that the rate of withholding tax on any income paid to a non-resident in respect of units of a specified mutual fund or from a specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002, shall be the lower of 20% or the rate specified in the relevant Double Taxation Avoidance Agreement, provided the non-resident holds a valid Tax Residency Certificate.

- It is proposed to reduce the time period provided to a taxpayer to submit the information and documentation relating to an international transaction i.e. the Transfer Pricing Study Report which is sought by a tax officer or the Commissioner of Income tax (Appeals) ['CIT(A)'] during the course of any proceedings, from 30 days to 10 days, from the date of receipt of a notice by the taxpayer. The taxpayer may make an application to extend the time period for submission for a further period of upto 30 days.

Provisions relating to International Financial Services Centre ('IFSC')

- It is proposed to extend the time limit for transfer of assets of the original fund or of its wholly owned special purpose vehicle to a resultant fund located in an IFSC, in case of relocation, from 31 March 2023 to 31 March 2025.

- The exemption available to income arising to a non-resident as a result of transfer of offshore derivative instruments entered into with an offshore banking unit of an IFSC, shall be extended to income distributed on offshore derivative instruments to non-residents by the offshore banking unit of an IFSC.

Capital gains

- It is proposed to introduce a cap of INR 100 million (~ USD 1.25 million) on the amount of deduction available against eligible Long Term capital gains arising to an individual or HUF in the following cases:

  - In the case of transfer of a residential house, where the capital gains are invested by the taxpayer in a new residential house within the period specified in the tax law; and

  - In the case of transfer of any long term capital asset other than a residential house, where the net consideration is invested in a new residential house within the period specified in the tax law.

- It is proposed to tax gains from transfer or redemption or maturity of Market Linked Debentures ('MLD') as Short Term Capital Gains irrespective of the period of holding. However, no deduction towards Securities Transaction Tax paid will be allowed as a deduction.

- It is proposed to provide that while computing capital gains, the 'cost of acquisition' and 'cost of improvement' in case of an intangible asset or any other right for which no consideration has been paid for acquisition, is to be considered as NIL.

- It is proposed to clarify that in computing capital gains arising to an individual or HUF from the transfer of land or building or both under a Joint Development Agreement, the full value of consideration shall mean the stamp duty value of his share as increased by the consideration received in cash or by a cheque or draft or by any other mode.

Start-ups

- Time limit for incorporation of eligible Start-ups in order to avail tax holiday is proposed to be extended by one year i.e. upto 31 March 2024.

- Start-ups to be permitted to carry forward losses for an offset against future income for a period of 10 FYs instead of 7 FYs. The other conditions to claim such an offset remain unchanged.

Withholding tax/Tax collected at source ('TCS')

- It is proposed to provide that if the tax on any income offered in the return of income of a taxpayer has been withheld and deposited with the Government treasury in a subsequent FY, the taxpayer may make an application to the tax officer within a period of two years from the end of the FY in which the tax was withheld. Upon receipt of such application, the tax officer is required to grant credit for the withholding tax in the year in which the income has been taxed, by amending the relevant order. The proposed amendment will be effective from 1 October 2023.

- The rate of TCS on foreign remittances for purchase of overseas tour packages or for purposes other than education or medical treatment is proposed to be increased from 5% to 20%. The proposed amendment will be effective from 1 July 2023.

- Relief from special provision for higher rate of withholding tax/TCS for non-filing of return of income is proposed to be provided also to any person who is not required to file return of income as notified by the Central Government.

- It is proposed to withdraw the exemption from withholding tax currently available on interest payment to a resident taxpayer on listed debentures.

Other key proposals

- It is proposed to widen the scope of taxable income of a unitholder in a Business Trust (i.e. Real Estate Investment Trusts and Infrastructure Investment Trusts) by including incomes other than dividend, interest and rental income received by the unitholder, which are not chargeable to tax at the Business Trust level. It is further proposed that in case of redemption of units by the unitholder, such sum received shall be reduced by the cost of acquisition of the units redeemed. However, no loss can be claimed by the unitholder against such income.

- It is proposed to provide a carve out for certain classes of Non-Banking Finance Companies ('NBFCs') so as to exclude such NBFCs (being borrowers) from the scope of Thin Capitalisation Norms which restrict the deduction for interest expense exceeding INR 10 million (~ USD 125,000) on debt provided by an Associated Enterprise which is a non-resident, to 30% of the Earnings before Interest, Taxes, Depreciation and Amortisation ('EBITDA').

- It is proposed to provide that income/receipts on maturity under life insurance policy issued on or after 1 April 2023 (other than ULIP), will be taxable if the aggregate premium paid on such policies exceed INR 500,000 per year (~ USD 6,250) except if the said income is received on death of the insured.

- In order to expedite the disposal of significant number of appeals which are pending before the CIT(A) i.e. the first level appellate authority, it is proposed to introduce a new authority for appeals i.e. the Joint Commissioner (Appeals) in order to handle certain classes of cases involving a lower amount of disputed tax demand.

- It is proposed to expand the scope of provisions for levy of penalty and initiating prosecution proceedings for default in withholding tax payment of any benefit or perquisite to a resident in the course of business or profession, in kind and on transfer of virtual digital asset, in kind.

- It is proposed to provide that any sum payable by a taxpayer to MSMEs would not be deductible in computing the taxable income if the payment has been made beyond the time limit for payment specified in Section 15 of the Micro, Small and Medium Enterprises Development Act, 2006.

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us at coe@jmpadvisors.in.

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