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# BUDGET AMENDMENTS DIRECT TAX

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# 2023

## PROPOSED AMENDMENTS IN DIRECT TAX – MAJOR UPDATES

### 1. Amendment of section 115BAC and Section 87A (Clause 50 read with Clause 43 of the of Finance Bill) – Moving towards new tax regime.

The tax slabs under New Regime are proposed as follows:

Existing		Proposed	
Slab (In Rs)	Rate	Slab (In Rs)	Rate
0 - 2,50,000	Nil	0 - 3,00,000	Nil
2,50,001 - 5,00,000	5%	3,00,001 - 6,00,000	5%
5,00,001 - 7,50,000	10%	6,00,001 - 9,00,000	10%
7,50,001 - 10,00,000	15%	9,00,001 - 12,00,000	15%
10,00,001-12,50,000	20%	12,00,001 - 15,00,000	20%
12,50,001-15,00,000	25%	Above 15,00,000	30%
Above 15,00,000	30%		

*\*Exemption limit for individuals reaching 60 and 80 years remains unchanged at Rs 3,00,000 and Rs 5,00,000 respectively.*

The new tax regime will be the default section unless the assessee opts for the old tax regime. The new regime is extended to association of persons (other than a co-operative society), body of individuals and artificial juridical persons.

Further, the rebate under section 87A has been increased from Rs.5,00,000 to Rs.7,00,000 in case of assesses who are opting for tax under the new tax regime.

The standard deduction of Rs.50,000 in case of salaried employee is now made available in new tax regime also.

#### **Suri View:**

▶ *The government intends the assesses to opt into new tax regime as the same is proposed as the default regime. The assessee may have to opt for old tax regime as the default regime will be the new tax regime under section 115BAC, which is the opposite of the current scenario. Till now, the tax payers were not so familiar with the new tax regime as the same is only an option while filling the ITR. Now, the return will be pre-filled based on the tax computed under the new tax regime.*

▶ *The government is making providing more flexibility in new tax regime as the rebate in this regime is extended up to Rs.7,00,000. In the old tax regime, the assessee has to invest in specific schemes for availing deductions under various sections such as 80C (Chapter VI-A deductions). Since the rebate in new regime is increased to Rs.7 lacs, the assesses can invest their saving based on their choice and the same is not limited to certain investments as under the old tax regime.*

▶ *The rebate for tax payers opting for old tax regime is unchanged at Rs.5,00,000. The slab rate is also unchanged in the old tax regime.*

▶ *Individuals having business income are not eligible to choose between the new and old tax regime every year. Once they have opted for the new tax regime, they only have a one-time option of switching back to the old tax regime in their lifetime. Once they switch back, they will not be allowed to opt for new tax regime again except where such person ceases to have any income from business or profession.*

*Note: This clause is not an amendment proposed in the current budget. This was a part of the section when the same was initially introduced.*

## 2. Introduction of New Deduction under Section 80CCH – Proposed Tax Benefits to Agniveers (Clause 39 of the finance bill)

A new deduction under Section 80CCH is proposed, which provides for deductions to Individual enrolled in Agnipath Scheme on or after 01st November 2022. The deduction shall be equal to the amount of contributions made to the Agniveer Corpus Fund. **This deduction is available in old as well as new tax regime.**

Receipts from the 'Agniveer Corpus Fund' by a person enrolled under the 'Agnipath Scheme 2022' shall be exempt from tax under Section 10(12C), which is a new clause proposed to be inserted.

## 3. Reduction of Surcharge – Assessee opting for new tax regime

The maximum surcharge is now restricted to 25% under the New Regime i.e., the same has been reduced from 37% to 25%. There is no change in surcharge for those opting Old Scheme.

Further, surcharge shall not exceed 15% on dividends, STT paid capital gains and non-STT paid long term capital gains.

In case of AOPs that consist of only companies as their members, the maximum surcharge is restricted to 15%.

The surcharge rate for assesses opting for old regime and new regime is given in the table below:

Old Regime	New Regime
10% - If total income >INR 5 million but ≤ INR 10 million	10% - If total income > INR 5 million but ≤ INR 10 million
15% - If total income > INR 10 million, but ≤ INR 20 million	15% - If total income > INR 10 million, but ≤ INR 20 million
25% - If total income > INR 20 million, but ≤ INR 50 million	25% - If total income > INR 20 million, but ≤ INR 50 million
37% - If total income > INR 50 million	

**Suri View:** This also reflects the intention of the government to encourage taxpayers in opting new tax regime as the surcharge in new tax regime is reduced. By reducing the surcharge, the highest effective tax rate has been reduced from 42.74% to 39% in new regime.

The Memorandum explaining the provisions in the Finance Bill, 2023 states that for an assessee opting the new tax regime under section 115BAC(1A), the surcharge at the rate of 37% on income exceeding 5 crores shall not be applicable. Hence, the surcharge shall be restricted to 25%.

## 4. Amendment in Section 43B – Inclusion of payments made to MSME Creditors (Clause 13 of the Finance Bill)

Under Section 43B, deductions for sums payable to Micro or Small enterprises is proposed to be allowed only on payment basis. The Finance Bill states that proviso to section 43B, which allows deduction on accrual basis if the specified sum is paid by due date of furnishing of the return of income, will not apply to such payments.

The Bill provides that this amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years.

### Suri View:

▶ The amendment is only applicable for payments to be made to Micro and Small enterprise and hence the provisions of 43B will not be applicable in case of medium enterprises.

▶ The proposed amendment will apply to payments falling due on or after 1st April 2024 and not to the unpaid amounts brought forward from past years on 1st April 2024.

▶ The disallowance under the section will be applicable even if the payment is made within the due date of filing the return under section 139(1) as this is specified proposed in the bill.

▶ The disallowance will have an impact on the deferred tax computation as the same is a temporary timing difference.

▶ It should also be noted that if sums remaining unpaid to the Micro and Small Enterprises at the end of the year for a period of less than 15 days or 45 days, as the case may be, shall not attract section 15 of the MSME Act and therefore, will not attract the provisions of section 43B of the Act.

#### **5. Amendment to section 44AD and 44ADA – Presumptive Taxation (Clause 16 of the Finance Bill)**

The threshold limits for presumptive taxation schemes under Section 44AD and Section 44ADA have been proposed to be increased to INR 3 crores and INR 75 lakhs respectively, provided at least 95% of receipts and payments are made through non-cash methods.

the receipt by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the receipt in cash.

**Suri View:** The enhanced limits are applicable only if the criteria of 95% receipts and payments in non-cash methods is satisfied. If the same is not satisfied, the threshold limit of Rs.2 crores under 44AD and the limit of Rs.50 lacs under 44ADA will be applicable.

#### **6. Amendment to Section 44AB – Audit of Accounts (Clause of 15 of the Finance Bill)**

The provision of section 44AB of the Act shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD of the Act or sub-section (1) of section 44ADA of the Act, as the case may be. The finance bill 2023 proposed has substituted the first proviso by removing the turnover threshold limit of Rs.2 crores, which was previously available in the said proviso.

#### **Suri View:**

▶ The proposed amendments intend to bring assesses who doesn't opt for presumptive taxation under the purview of tax audit under 44AB. However, there are some confusions among the stakeholders because of the way the proposed amendment is drafted.

▶ The amendment proposes tax audit for persons who doesn't opt for presumptive scheme. However, the threshold limit for presumptive scheme is 1 crore whereas the threshold limit of 44AD is 2 crores / 3crores as applicable. Hence an assessee whose turnover falls between 1 crore and the 2 crore/3 crore has to ascertain whether tax audit is applicable. The said scenario can be bifurcated in to two:

**Scenario 1:** Turnover is between 1 crore and 44AD threshold, but 95% or more of the receipt and payment is in non-cash mode: Here **tax audit doesn't get attracted** as the same gets cover under provision to section 44AB(a) i.e., tax audit is applicable only if enhanced turnover limit of Rs.10 crores is exceeded.

**Scenario 2:** Turnover is between 1 crore and 44AD threshold, but 95% criteria is not satisfied: **Tax audit under 44AD is applicable.**

▶ However, more insights on the above will be provided by us once the same is clarified by CBDT by further explanations/notifications. The intent of the department is not expressly mentioned in the Explanatory Memorandum and therefore, it is unclear whether the same is an inadvertent error on drafting the Finance Bill 2023.

#### **7. Amendment to Section 35D – Ease in claiming deduction on amortization of preliminary expenditure (Clause 12 of the Finance Bill, 2023)**

To ease the process of claiming amortization of these preliminary expenses, it is proposed to amend section 35D of the Act to remove the condition of activity in connection with expenses such as preparation of feasibility report, project report, market survey etc to be carried out by a concern approved by the Board. Instead, the assessee shall be required to furnish a statement containing the particulars of this expenditure within prescribed period to the prescribed income-tax authority in the prescribed form and manner.

This amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-2025 and subsequent assessment years.

**Suri View:** This amendment will make the process of claiming the deduction for preliminary expenses much easier and simpler. However, the format of statement is not yet published by the department.

## **8. Amendment of Section 28 – Providing clarity on benefits and perquisites in cash (Clause 11 of the Finance Bill)**

The provision of section 28(iv) is proposed to be amended to include value of any benefit or perquisite arising from business or profession, even if the same is received in cash or kind or partly in cash or partly in kind. The amendment is brought in because courts have interpreted that if the benefit or perquisite are in cash, it is not covered within the scope of this clause of section 28 of the Act.

### **Suri View:**

▶ *This amendment is proposed to nullify the position laid down by the Honorable Supreme Court in the case of Mahindra and Mahindra Ltd. [93 taxmann.com 32] wherein it was held that waiver of loan by a party will not be taxable. It was held the same will not fall under section 28(iv) since the perquisite or value received here is actually in cash whereas the said section will include only value in kind, whether convertible into money or not. The court also held that the same will not be taxed under section 41 also since there was no expenditure which was previously claimed by the assessee against the income which has arisen because of the waiver of the loan.*

▶ *The waiver of loan will now become specifically covered under section 28(iv) and will be taxable in the hand of the assessee for whom the loan is waived off.*

▶ *The TDS provision under section 194R will not be applicable since the same scenario is clarified in the circular issued by the department regarding the application of provisions of section 194R. The amendment is also proposed in similar lines in section 194R also*

## **9. Amendment of Section 45(5A) – Provisions relating to Joint Development Agreement (Clause 20 of the Finance Bill)**

As per the existing provisions, the full value of consideration for calculating the capital gains on account of JDA is the stamp duty value of the assessee's share, as increased by any consideration received in "cash". As per the proposed amendment, full value of consideration for the purpose of computation of capital gains on JDA would include "any consideration paid by way of cheque, draft, or any other mode".

## **10. Amendment of Section 48 – Clarification on claiming deduction for interest on borrowed capital (Clause 22 of the Finance Bill)**

Under the existing provisions of the Act, the amount of any interest payable on borrowed capital for acquiring, renewing or reconstructing a property is allowed as a deduction under the head "Income from house property" under section 24 of the Act. It is also observed that the same is also claimed as a deduction while computing capital gains as the same is treated as a cost of improvement.

Based on the proposed amendment, the interest on borrowed capital cannot be claimed as a cost of improvement while computing the capital gains and can be claimed only under section 24b and under chapter VI-A deductions.

**Suri view:** *The proposed amendment brings restriction in claiming interest on borrowed capital as cost of improvement as the same is already available as deduction under section 24 and chapter VI-A deduction. However, the assessee now cannot claim any interest which is in excess of what is actually claimed under the section 24 and chapter VI-A deduction. This will adversely affect assesses who have large interest pay out on borrowed capital.*

## **11. Insertion of new section 50AA – Computation of capital gains in case of Market Linked Debenture (Clause 24 of the Finance Bill)**

'Market Linked Debentures' are listed securities. They are currently being taxed as long term capital gain at the rate of 10% without indexation. However, these securities are in the nature of derivatives which are normally taxed at applicable rates. Further, they give variable interests as they are linked with the performance of the market.

It is proposed to tax the capital gain arising on accruing as a result of transfer or redemption or maturity of the market linked debentures as short term capital gain.

## **12. Amendment of section 54 and section 54F– Restriction on deduction claimed on reinvestments in house property (Clause 25 of the Finance Bill)**

Long-term capital gain exemption on reinvestment into a residential accommodation in India, capped at Rs 10 Crore.

**Suri View:** *Currently, there is no limit on the amount of exemption which can be claimed under section 54 and section 54F by reinvesting the sale proceeds from sale of capital assets into house property. However, it is observed that the said benefit is over used by certain tax payers by purchasing expensive properties. The proposed restriction of Rs.10 crores will prevent such practices by tax payers.*

## **13. Amendment of Section 55 – Defining cost of acquisition for intangible assets or any other asset (Clause 31 of the Finance Bill)**

To define the term 'cost of acquisition' and 'cost of improvement' of assets in the nature of intangible assets, it is proposed to amend the provisions of sub-clause (1) of the Clause (b) of the subsection (1) and clause (a) of sub-section (2) of section 55 so as to provide that the 'cost of improvement' or 'cost of acquisition' of a capital asset being any intangible asset or any other right shall be 'Nil'.

### **Suri view:**

*This amendment is proposed to nullify various court judgments wherein it is held that capital gain will not arise in case of transfer of goodwill, which is an intangible asset. For computing capital gain, the cost/indexed cost has to be reduced from the sale proceeds. In case of intangible asset where there is no cost of acquisition, the capital gains cannot be computed as the cost of acquisition cannot be ascertained and hence the said transaction will not fall under the purview of capital gain.*

*However, with this proposed amendment, the above proposition as held in various judgements will fail as the cost of acquisition/ improvement of intangible assets or any other asset is defined as "Nil".*

## **14. Amendment in section 56 – Bringing non- residents within the ambit of 56(2)(viib) (Clause 32 of the Finance Bill)**

Section 56(2)(viib) of the Act, inter alia, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'. Rule 11UA of the Income-tax Rules provides the formula for computation of the fair market value of unquoted equity shares for the purposes of the Section 56(2) (viib) of the Act.

The proposed amendment omits the words "being a resident" from the said section and hence all the considerations received against issue of shares by a private company falls under this section

### **Suri view:**

▶ *This amendment will have a huge impact on private company, predominantly startups, where there are high foreign investments.*

▶ *This proposal also intends to tax unaccounted foreign money invested in India as security premium.*

## **15. Amendment of Section 79 – Carry Forward of Loss by eligible startups (Clause 35 of the Finance Bill)**

Section 79 provides restriction on carry forward of losses. The carried forward loss is set off only if at least 51% shareholding (as on the last date of the previous year) remains same with the company on the last date of the previous year to which the loss belongs.

However, some relaxation has been provided in case of an eligible start-up as referred to in section 80-IAC of the Act. The condition of continuity of at least 51% shareholding is not applicable to the eligible start-up, if all the shareholders of the company as on the last day of the year, in which the loss was incurred, continue to hold those shares on the last day of the previous year in which the loss is set off. There is an additional condition that the loss is allowed to be set off, under this relaxation, only if it has been incurred during the period of seven years beginning from the year in which such company is incorporated.

The amendment proposed to increase the **seven years** as given in the above para to **ten years**.

**Suri view:** *The amendment will help the start ups to bring in more investments into the company in the initial 10 years of incorporation. The loss will be eligible to be carried forward even if the 51% criteria is*

notsatisfied provided all the shareholders of the company as on the last day of the year, in which the loss was incurred, continue to hold those shares on the last day of the previous year in which the loss is set off.

#### **16. Insertion of new section 115BAE – Concessional tax regime for new manufacturing corporative Society (Clause 52 of the Finance Bill)**

Section 115BAE is proposed to be inserted in the IT Act to provide an option to co-operative societies to avail concessional rate of tax at 15% upon fulfilment of certain conditions. The benefit is extended only to resident co-operative societies engaged in manufacturing/production of an article or thing.

The “new manufacturing co-operative society resident in India” should be set up on or after April 1, 2023 and should have commenced manufacturing/ production on or before March 31, 2024. It is proposed that any additional income of the entities undertaking manufacturing/ production, which is not derived from or is incidental to manufacturing, will be taxed at 22%.

Certain manufacturing activities i.e., development of computer software, mining, printing of books, production of cinematographic film, bottling of gas in a cylinder, and other activities as notified, are proposed to be specifically excluded from the ambit of Section 115BAE of the IT Act.

#### **17. Amendment of section 115BB and insertion of new section 115BBJ – Taxation of online games (Clause 54 of the Finance Bill)**

The taxation of winning from online games is now excluded from section 115B and a specific section 115BBJ is proposed to be inserted for taxing online games. The tax rate under the new section is 30% on the net winnings by the assessee. The computation of the net winnings is not yet notified by the department.

#### **18. Amendment of Section 194N – TDS on cash withdrawals exceeding specified threshold (Clause 85 of the Finance Bill)**

Where the recipient is a co-operative society, the provisions of this section shall have effect, as if for the words “**one crore rupees**”, the words “**three crore rupees**” had been substituted.”

#### **19. Amendment of Section 269SS and 269T – Relaxation to PACS and PCARD (Clause 105 and 106 of the Finance Bill)**

Primary Agricultural Credit Societies (PACS) and Primary Co-Operative Agricultural and Rural Development Banks (PCARD) can now accept deposits or offer loans to their members in cash up to Rs. 2 lakhs. This increased limit of Rs. 2 lakh also applies to the repayment of these loans or deposits.

Complete Finance Bill can be accessed at

[https://www.indiabudget.gov.in/doc/Finance\\_Bill.pdf](https://www.indiabudget.gov.in/doc/Finance_Bill.pdf)