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Decoding the Indian Union Budget 2023-24

Key Direct Tax and Indirect Tax Proposals

February 2023

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Indian Union Budget 2023-24

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Contents

Foreword

The Union Budget for 2023-24 was presented by the Hon'ble Finance Minister, Ms. Nirmala Sitharaman on February 1, 2023. The policy initiatives outlined in the budget proposals are intended to ensure macroeconomic stability of Indian economy in the face of global recession, while giving momentum to economic growth. The budget seeks to build on the foundation laid over last two years after the Covid pandemic. It seeks to incentivize capital investment, both public and private, to act as a key driver of inclusive growth and employment.

This newsletter summarizes the key tax proposals relating to direct and indirect taxes in the Finance Bill 2023.

Key proposals under Direct Tax

Important proposals in Finance Bill 2023 relating to Direct Taxes

- **Personal taxation**

  - Alternate Tax Regime introduced earlier vide section 115 BAC of the *Income tax Act* is proposed to be made default tax regime applicable to all non-corporate taxpayers, with modified rate structure as under:

Income (INR)	Tax Rate	Income (INR)	Tax Rate
Up to 2.50 lakhs	Nil	Up to 3.00 lakhs	Nil
2.50 to 5.00 lakhs	5%	3.00 to 6.00 lakhs	5%
5.00 to 7.50 lakhs	10%	6.00 to 9.00 lakhs	10%
7.50 to 10.00 lakhs	15%	9.00 to 12.00 lakhs	15%
10.00 to 12.50 lakhs	20%	12.00 to 15.00 lakhs	20%
12.50 to 15.00 lakhs	25%	Above 15 lakhs	30%
Above 15.00 lakhs	30%		

  - Standard deduction of *INR 50,000/-* will be allowed from salary incomes for the New Alternate Tax Regime cases also. But deductions under Chapter VI-A in respect of savings instruments and insurance policies will not be allowed except for contributions to New Pension Scheme

  - Marginal relief under Section 87A of the *Income Tax Act* is being raised for the New Alternate Tax Regime cases such that under this regime there will be no tax if the total income is up to *INR 7.5 lakhs*

  - Persons not wanting to be assessed under the New Alternate Tax Regime will have to exercise formal option before the due date for filing of returns. There is no change in tax rates for such persons

  - Surcharge on incomes above INR 5 crores has been reduced from 37% of tax to 25%

- **Changes relating to salary incomes**
  - Rule for computation of perquisite value of residential accommodation provided by employer free of rent or on concessional rent is being revised and will be notified later
- **Changes relating to Business incomes**
  - **Presumptive taxation** - Eligibility threshold for presumptive taxation of incomes is being raised for:
    - Businesses with annual turnover up to INR 3 crores from present annual turnover of INR 1 crores
    - Professionals with annual receipts up to INR 75 lakhs from present annual receipts of INR 50 lakhs
    - Other conditions in respect of these cases remain unchanged
  - **Start-ups -**
    - Eligibility period for concessional tax treatment is being extended for start-ups registered up to March 31, 2024
    - Carry forward of losses will be allowed in these cases up to 10 years instead of 7 years
  - **MSMEs -** Amounts payable to Micro and Medium Scale Enterprises will be allowed as deduction only on payment basis and not accrual basis
  - Entities in SEZs will have to ensure receipt of foreign exchange proceeds within 6 months of end of the year to claim exemption
  - Amortization of Preliminary expenses can be claimed on self-certification by filing prescribed form
- **Changes relating to income from Capital Gains**
  - In case of ***reinvestment of Capital Gains*** arising on sale of immovable property, in a new house, the relief will be allowed by limiting the cost of new house property to a maximum of INR 10 crores

  - In case of transfer of ***intangible assets or rights,*** capital gains will be computed by taking their cost of acquisition as NIL

  - Capital gains arising on transfer of ***Market Linked Debentures*** will be treated as Short Term capital gains irrespective of period of holding

  - Conversion of physical gold into ***Electronic Gold Receipts (EGR)*** will not be liable to capital gains.

    - On transfer of EGR cost of physical gold will be taken as cost of acquisition of EGR, and

    - Period of holding gold in physical form will also be included for computing capital gains

- **Changes relating to income from Other Sources**

  - In case of unlisted companies share price received in excess of fair market value of the shares from Non-residents, will be treated as income of the company from other sources

  - Any sum (including bonus) received under a Life Insurance Policies taken after April 1, 2023 with aggregate annual premium above INR 5 lakhs, in excess of the total premium paid will be treated as income from other sources

  - Redemption amounts received by Unit holders from Business Trusts (REIT and Inv IT) in excess of cost of acquisition will be taxable

- **Changes in TDS and TCS rates**

  - Interest on listed debentures due to residents will now be subject to TDS at applicable tax rates

  - Net winnings from ***online gaming and betting*** of whatever nature will be subject to TDS @ 30%

  - Rate of TCS on foreign remittances under Liberalized Remittance Scheme (other than for educational/ medical purposes) increased from 5% to 20%

- **Cooperative Societies**
  - New Cooperative Societies engaged in manufacturing activities can avail the option of concessional tax regime of 15%. They will however have to forego deductions under Chapter VI-A and set off losses etc.
  - TDS of 2% under section 194 N relating to withdrawal of cash from banks etc. will not apply to Cooperative societies in cases of aggregate cash withdrawals of INR 3 crores in a year
  - The limit of INR 20,000/- for cash transactions and loans etc. will be increased to INR 2 lakhs in case of cooperative societies
- **Other important changes**
  - Income distributed to non-residents in respect of Offshore Derivative instruments (ODIs) entered with International Banking Units located in IFSC (GIFT City Gandhi Nagar) will be exempt
  - Provisions under sections 44 BB and 44 BBB of *Income tax Act* relating to presumptive taxation applicable to Non-residents engaged in providing services or equipment to entities engaged in oil exploration or Power Projects, are being amended to provide that in these cases set off unabsorbed depreciation and brought forward losses will not be allowed
  - A new penalty provision is being introduced in respect of cases of furnishing inaccurate particulars in statements of financial transactions or reportable account required to be filed under section 285 BA of the Income Tax Act
  - Currently Banks are exempt from restriction of deduction of interest in respect of debt issued by non-resident to its associated enterprise. It is proposed to extend this exemption to Non-Banking Financial Companies (NBFCs) also

Key proposals under Indirect Tax

Customs

- Two-year time limit applicable to exemption notifications under customs not to apply in certain cases viz. exemptions in relation to international trade agreements; treaties, conventions; FTP scheme, Central Government schemes with more than two years; re-imports, temporary imports, goods imported as gifts or personal baggage and IGST leviable under the *Customs Tariff Act*

- Settlement Commission will be required to pass order within 9 months from the last day of the month in which settlement application is made else proceedings shall abate. Power conferred to extend 9 months by further 3 months

- Retrospective amendment to give exclusive power to the Designated Authority for determination of anti-dumping duty and injury under Section 9, 9A and 9C of the *Customs Tariff Act*. Right to appeal against decision of Central Government (CG) to levy or not levy anti-dumping duty taken away i.e., decision of CG outside scope of judicial review

Customs Tariff

- Some products that witnessed increase in Basic Customs Duty are tabulated below:

Item	Existing Rate	New Rate
Styrene	2%	2.5%
Vinyl chloride monomer	2%	2.5%
Naphtha	1%	2.5%
Silver Bar [Agriculture Infrastructure and Development cess increased from 2.5% to 5% and Social Welfare Surcharge reduced from .75% to Nil]	7.5%	10%
Silver dore [Agriculture Infrastructure and Development cess increased from 2.5% to 5% and Social Welfare Surcharge reduced from .61% to Nil]	6.1%	10%
Vehicle (including electric vehicles) in Semi-Knocked Down (SKD) form [Social Welfare Surcharge completely exempted]	30%	35%
Vehicle in Completely Built Unit (CBU) form, other than with CIF more than USD 40,000 or with engine capacity more than 3000 cc for petrol-run vehicle and more than 2500 cc for diesel-run vehicles, or with both. [Social Welfare Surcharge completely exempted]	60%	70%
Electrically operated Vehicle in Completely Built Unit (CBU) form, other than with CIF value more than USD 40,000	60%	70%
Bicycles	30%	35%

- Complete exemption/ reduction in Basic Customs Duty on certain items are highlighted below:

Item	Existing Rate	New Rate
Denatured ethyl alcohol for use in manufacture of industrial chemicals through IGCR route	5%	Nil
Camera lens and its inputs/parts for use in manufacture of camera module of cellular mobile phone	2.5%	Nil
Specified parts for manufacture of open cell of TV panel	5%	2.5%
Aircraft and aircraft tyres	3%	2.5%
Crude Glycerine (for use in manufacture of epichlorohydrin through IGCR route)	7.5%	2.5%

- A mixed approach was followed for exemptions – out of 196 exemptions 146 exemptions were extended for a period of upto one year while out of the remaining, a few were extended for period of five years, two years or one year while some will be discontinued with effect from March 31, 2023

- Under excise, National Contingent Calamity Duty (NCCD) on specified cigarettes increased by upto 16% w.e.f. February 1, 2023

Central Excise

- Central excise duty on natural gas falling under tariff item 2711 2100 when blended with Biogas/ Compressed Biogas exempt from so much of the excise duty payable as specified in notification no. 5/2023- Central Excise dated January 1, 2023

Goods and Services Tax

- Amendment in definition of the term '**online information and database access or retrieval services'** ('OIDAR') and **non-taxable online recipient** ('NTOR') as follows:

    - OIDAR definition amended to remove condition of supply being essentially automated and involving minimal human intervention, thus placing emphasis only on information technology required to provide such service
    - NTOR defined as any unregistered person receiving OIDAR services located in taxable territory
    - The condition regarding supply being for non-business purposes removed

  This amendment makes foreign websites supplying online services to unregistered individuals or entities, liable for payment of tax, even if the services are in relation to profession or business

- Key amendments for E-commerce operators ('ECOs')

    - Penal provisions introduced for ECOs (upto amount of tax) for allowing supplies by unregistered persons (other than specifically exempted persons), inter-state supplies by ineligible persons and furnishing any incorrect details in TCS statement (GSTR-8)
    - Registered persons engaged in supply of goods through ECOs allowed to opt for composition levy

- Place of supply ('POS') for services by way of transportation of goods, where both the supplier and recipient are located in India delinked from destination of goods.

    - For B2B supplies- POS shall be location of service recipient
    - For B2C supplies- POS shall be location at which goods are handed over for transportation

- ITC restriction on supplies received for corporate social responsibility activities required under Companies law

- Value of activities, as may be prescribed, in respect of warehoused goods before their clearance for home consumption will be considered as an exempt supply for common ITC reversal.
- Maximum time limit of '3 years from due date' has been prescribed for filing of following returns/ statements (with powers to extend such time limit):
    - GSTR – 1 and 3B (Monthly returns)
    - GSTR – 9 and 9C (Annual returns)
    - GSTR – 8 (Statement for TCS)

- Power granted to prescribe the manner and conditions for computation of interest in case of delayed refunds.

- Few clarificatory changes/alignments
    - Reversal of ITC along with interest by recipient Payment of tax along with interest in case of non-payment of consideration by recipient to supplier within 180 days
    - Removal of reference of provisional acceptance of ITC from refund provisions

  - Specific transactions (including supply of goods in non-taxable territory, supply of warehoused goods, supply before clearance for home consumption) are to be treated as outside the purview of GST retrospectively for the period 1 July 2017 till January 31, 2019. No refund eligible where tax already collected

  - Provisions incorporated empowering the common portal to share data furnished by taxpayers with other systems notified by Government. Such details to be shared post obtaining consent of supplier/recipient as applicable

- Amendments relating to offences and penalties

  - Proposal to decriminalize following offences
    - obstructs or prevents any officer in the discharge of his duties under GST Act
    - tampers with or destroys any material evidence or documents
    - failure to supply any information which he is required to supply under or supplies false information
  - The minimum monetary threshold for initiating prosecution increased from INR 1 crores to INR 2 crores, except for offences related to issuance of invoices without supply.
  - Option of compounding restricted in respect of offences relating to issuance of invoices without supply of goods or services
  - The minimum and maximum amounts for compounding of offences reduced to 25% and 100% of tax involved, respectively from the present range of 50% to 150%

(The above changes to be effective from a date to be notified, except for retrospective amendments.)

Central Sales Tax Act, 1956

- CESTAT is now the appellate authority to deal with specified inter-state sale disputes under the provisions of the *Central Sales Tax Act*
- Further, all appeals pending as on date on which Finance Bill 2023 receives assent, shall be transferred to CESTAT

Production Linked Incentive Scheme

- No budgetary allocation for Production Linked Incentive scheme (‘PLI’) unlike previous Budgets
- Customs Duty on imports increased to promote ‘Make in India’ for sectors such as Toys and Bicycles where PLI is anticipated

About Kochhar & Co.

Kochhar & Co. (“The Firm”) is one of India's pre-eminent corporate law firms. With a full-service presence in seven (7) prominent cities namely New Delhi, Mumbai, Bangalore, Chennai, Gurgaon, Hyderabad and Chandigarh and three (3) overseas offices – Dubai, Singapore and Chicago, Kochhar & Co. has a reputation for cutting edge legal expertise, clear and commercially driven advice, and an unwavering commitment to our clients' needs through delivering bespoke, sustainable and innovative legal solutions. We pride ourselves on adapting technology and international best practices to a deeply Indian business ethos; with an advisory philosophy that places sustainable legal solutions for our clients at its centre and core.

Kochhar & Co. is the preferred law firm for some of the largest multinational and blue-chip corporations from North America, Europe and Asia including 65 of the Fortune Global 500 corporations. The Firm has an enviable domestic footprint and acts as counsel to several large and iconic Indian corporations across both the private and public sectors.

Kochhar & Co.'s commitment to internationalism also draws from its foundational alliances with leading global law firm networks, defining its ability to provide seamless cross-border advice across all practice areas.

Key Practice Areas

Arbitration & ADR; Aviation; Banking & Finance; Bankruptcy & Insolvency; Capital Markets; Competition & Antitrust; Corporate & Commercial; Defense; E-Commerce; Fintech, Blockchain & Cryptos; Environment; Infrastructure; Intellectual Property; International Trade & Bilateral Investment Treaties; Mergers & Acquisitions; Labour & Employment; Litigation; Power & Energy; Private Equity, Venture Capital & Funds; Privatization & Disinvestments; Project Finance; Real Estate; Shipping & Maritime; Sports & Entertainment; Start-Ups; Taxation (Direct & Indirect); Technology, Media And Telecommunication; White-Collar Crime.

Our UAE Presence

Kochhar & Co. Inc. Dubai is a leading full-service law firm in the UAE advising clients on both UAE and DIFC Laws. Our Dubai presence assumes significance as Kochhar & Co. is the first full-service law firm from the Indian sub-continent to have been granted a license by the Dubai Legal Affairs Department to practice local law in the UAE.

The Dubai team comprises of senior partners and lawyers with several decades of rich and diverse experience on the UAE, English and Indian law matters and specializes in providing a wide range of legal services in the areas of corporate & commercial laws, banking & project finance, dispute resolution and IPR. Within a short span, Kochhar Dubai has established itself as one of the preferred counsels for numerous banks & financing corporations, multinational and Indian companies doing business in the UAE.

Shahid Khan

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Shahid is a Senior Partner and Heads the Direct Tax practice in the Firm. He is a former Indian Revenue Service officer and has worked with the Indian Income Tax Department in various capacities. Immediately prior to joining the Firm, he was a Member of Central Board of Direct Taxes, the highest policy and decision-making body for income tax matters in the Government of India (GOI).

During his tenure of nearly 40 years with the Income Tax Department, he was recognized for his extensive knowledge of Indian tax laws, his efforts to modernize the department and his contribution towards framing policy related to critical income tax issues including international tax issues. He also has the experience of acting as an appellate authority on tax matters. Shahid was also associated with training senior officials of the Tax Department, many of whom are presently at the level of Commissioners and Additional Commissioners.

He has been an integral part of several policy making committees of the GOI and has also assisted tax departments of neighboring countries such as Nepal and Bangladesh on tax policy and modernization issues.

Shahid regularly advises leading multinational clients (including Fortune Global 500 companies) of the Firm on cross-border investment and transaction structures and planning around the group intellectual property assets. His focus areas include:

- Analysis and interpretation of India's Tax Treaties ("DTAA") with different countries to provide efficient solutions for tax related structuring
- Analysis of risks relating to arrangements being construed as Permanent Establishment in India, and devising possible ways to mitigate / minimize the same
- Tax implications of 'indirect transfers' of Indian assets and related tax withholding issues
- Evaluation of viable tax efficient route for cross border mergers and acquisitions, including issues relating to General Anti Avoidance Rules
- Analysis and advice on transfer pricing issues and related aspects of arm's length pricing
- Advice relating to Withholding tax issues under India's domestic tax laws, and India's Tax treaties with various countries
- Devising solutions for tax-effective repatriation and exit arrangements, and
- Structuring Salary, perquisites, and ESOP etc. of expatriate employees for minimizing Indian tax liabilities

Shahid also represents Firm's multinational and domestic clients before the Authority of Advance Ruling, Income Tax Appellate Tribunal, and High Courts.

Shahid has been conferred with the prestigious Prime Minister's Award for Excellence in Public Administration for development of 'Integrated Taxpayer Data Management System' in Indian Income Tax Department 2009. He has also recognized as the Gold Icon of Department of Administrative Reforms, Government of India and has received certificate of Appreciation from Canada Revenue Agency in connection with an Indo-Canada project for modernization of Indian Tax Department. Legal 500 Asia Pacific (2020 – 2023) recognizes Shahid as a 'Recommended Lawyer for Direct Tax' in India.

Reena Asthana Khair

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Reena is a Senior Partner and heads the International Trade & Indirect Taxation Practice at the Firm.

She is a lawyer of eminence with more than 25 years of work experience and specialization in the areas of international trade and indirect taxation. She represents clients regularly before the Customs, Excise, and Service Tax Appellate Tribunal, as well as before various High Courts and the Supreme Court of India. She has extensive court room experience with more than 300 reported cases argued by her.

In the domain of international trade, Reena has represented clients comprising domestic and foreign industries, as well as user industries in India before the Designated Authority, Directorate General of Trade Remedies, and higher forums. She has also successfully argued the highest number of anti-dumping and anti-subsidy cases before the Tribunal. She has also assisted clients in trade remedial investigations in foreign jurisdictions.

She has been regularly providing advisory services and has been involved in dispute resolution for high-profile matters relating to customs, excise, service tax, FEMA, and GST. Critical issues handled by her include classification under the Harmonized System Nomenclature, valuation, export promotion schemes, drawback, EOUs, SEZs, inverted duty structure, admissibility of credits, transitional issues in GST, export refunds. She regularly assists clients in the transition to the GST regime.

She has also conducted Internal Management audits for optimization of tax liability, identifying issues/risks for potential disputes with departmental authorities and restructuring of transactions undertaken for various clients including some of India's major conglomerates and multinational corporations in the oil & gas, specialty materials and chemicals, steel and manufacturing sector.

Reena has been consistently recognized by Forbes Legal Powerlist among "Top 100 Lawyers" in India. She has been ranked & recognized by Asia Pacific Legal 500 as an "Elite Leading Lawyer" for Taxation and WTO & International Trade Lawyers; "Ranked Lawyer" for Taxation and WTO & International Trade by Chambers & Partners; "Litigation Star" and "Top 100 Women Lawyers in Asia" by Benchmark Litigation.

Our Team

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Shampa is a Partner in the Indirect tax practice of the Firm. She has more than 15 years of post-qualification experience in corporate and civil law with exclusive specialization of more than 11 years in the domain of indirect taxes. She has worked extensively on various indirect taxes including Customs, Goods & Services Tax (GST), erstwhile Service tax, Excise laws, Value Added Taxes, Foreign Trade Policy, and other ancillary laws.

Prior to joining Kochhar & Co., Shampa has an enriching extensive experience of having worked with two of the Big 4 international consultancy firms namely Deloitte and Ernst & Young in the indirect tax practice in Delhi and Gurgaon.

She has advised clients and assisted them in litigation matters by way of drafting, pleading and strategizing. Her experience includes advising large MNC and Indian companies on structuring of transactions by devising tax efficient models, identifying potential revenue and tax leakages in existing operations and providing feasible remedies, guiding through assessments, audit and investigations by the revenue authorities and compliance services for clients.

Shampa has advised extensively on revenue investigations by custom authorities, classification of goods as per Harmonized System of Nomenclature ('HSN') including imports under free trade agreements, issues with regard to customs valuation including special valuation bench matters, anti-dumping matters and advising on export benefits and authorizations viz EPCG, SCOMET, AA under the Foreign Trade Policy. She has had the expertise of assisting IT based corporates in setting up special economic zone (SEZ') units and other export -oriented units. She has been a part of the GST implementation for MNCs and also offers supports for periodical compliances including GST/ VAT/ Service tax audit. Shampa has been actively involved in rendering policy advocacy support as an alternative to tax litigations by reaching out to policy makers / tax authorities to pre-empt any business disruption. She also assists clients in their anti – profiteering matters and conducting detailed diagnostic tax reviews of the existing business operations of clients. Her focus is also on central and state incentives offered in India.

Her area of industry expertise includes automobile, infra and power, pharmaceutical, telecom and information technology services, FMCG, consumer durables, defense, oil & gas and several others.

For any queries and any tax related consultation, please reach us at info@kochhar.com

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