

# Budget 2023

An in-depth analysis of the provisions of the Union  
Budget of India 2023



### Foreword

The Finance Minister in this Budget has focused on seven priorities (“Saptarishis”) that will guide the country through the “Amrit Kaal”.

Despite being the last Budget before the general elections, the macroeconomic parameters have been kept under control. The fiscal deficit for FY 24 is pegged at 5.9% and is projected to come down to 4.5% by FY 26. However, it is equally essential to keep a close eye on Debt/GDP ratio which has crept over 84% post Covid. According to the World Bank this ratio should be below 77%.

The Budget has rightly focused on capex and infrastructure expenditure, which is projected to rise by a whopping 33%. Existing Government programs have been given further impetus and many more development schemes have been introduced. However, India’s spending on health and education is dismally low at 2% and 3% of GDP respectively, despite certain initiatives proposed in the Budget. If India’s aspiration of becoming a global power is to be actualised, these sectors simply need more attention and funding. There is a case to scale down the spending on some of the Government schemes and divert resources to health and education.

On the direct tax front, the Budget shows a clear intention of prodding taxpayers to opt for the new tax regime of lower taxes and fewer deductions. So far there have been few takers, but now the new regime is made more attractive with increase in exemption limit, reduction in slab rates of tax and a slew of other favourable changes. These amendments will benefit the middle-class constituency, which has been loyal to the Government from the beginning and was getting restive lately. The new regime also benefits the super-rich, where the effective peak tax rate is reduced from 42.7% to 39%. Perhaps, it is a matter of time when the old tax regime will be completely scrapped.

The IFSC initiative has been the pet project of the Modi Government and several amendments have been introduced to give it a further boost.

As has now become a norm, Charitable Trusts have once again been targeted with some harsh amendments and increased burden of compliances.

Angel Tax on companies issuing shares to a Non-Resident at a premium which exceeds the “Fair Market Value of shares” is ill advised and is likely to adversely impact funding to unicorns and startups.

In case of indirect taxes, the Tariff rate have been changed to align them with the Government’s priorities of boosting exports, promoting Atmanirbhar Bharat, encouraging green mobility and rationalising the duty structure. On the flip side, the denial of Input Tax Credit for CSR activities is a definite dampener.

The much-awaited GST framework with regards to Virtual Digital Assets is conspicuous by its absence. The expected extension of the PLI Scheme to more sectors has not happened, and there is nothing to bring clarity on the Development of Enterprise and Service Hubs (DESH) Bill (a substitute for the Special Economic Zones Act 2005). Hopefully, some of these misses will be addressed separately post-budget.

There is a plethora of changes where the screws of burdensome compliance keep getting ever tighter every year, which starkly contradicts the Government’s constant mantra of ease of doing business.

With global recession and inflationary pressure looming large, the world is looking eastward to fuel revival. Let us hope that this Budget will usher in the “Amrit Kaal”.

Every Budget has its intricacies and team CNK is happy to present its Budget analysis demystifying the complexities. Happy Reading!!!



## Glossary

Abbreviation	Description
%	Percentage
Act	Income tax Act, 1961
AJP	Artificial Juridical Person
AMT	Alternative Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
AY	Assessment Year
BCD	Basic Customs Duty
BOI	Body of Individuals
CBDT	Central Board of Direct Taxes
CBU	Completely Built Unit
CGST	Central Goods and Service Tax
CIT	Commissioner of Income-Tax
CNG	Compressed Natural Gas
COA	Cost of Acquisition
COI	Cost of Improvement
CPC	Centralised Processing Centre
CSR	Corporate Social Responsibility
DCF	Discounted Cash Flow
DESH	Development of Enterprise and Service Hubs

Abbreviation	Description
DTA	Domestic Tariff Area
EGR	Electronic Gold Receipt
EPFO	Employee Provident Fund Organisation
ETR	Effective Tax Rate
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FMV	Fair Market Value
FTP	Foreign Trade Policy
FY	Financial Year
GDP	Gross Domestic Product
GIFT	Gujarat International Finance Tec-City
GST	Goods and Service Tax
GSTR	Goods and Service Tax Return
HSN	Harmonized System of Nomenclature
HUF	Hindu Undivided Family
IFSC	International Financial Services Centre
IGST	Integrated Goods and Service Tax
INR	Indian Rupees/ Rs.
InVIT	Infrastructure Investment Trust

Abbreviation	Description
IRDAI	Insurance Regulatory and Development Authority of India
ITC	Input Tax Credit
KYC	Know Your Customer
LLP	Limited Liability Partnership
LRS	Liberalised Remittance Scheme
MAT	Minimum Alternate Tax
MLD	Market Linked Debentures
MMR	Maximum Marginal Rate
NBFC	Non-banking Financial Company
NCCD	National Calamity Contingent Duty
NFT	Non-Fungible Token
NPA	Non-Performing Asset
OBU	Offshore Banking Unit
ODI	Offshore Derivative Instruments
OIDAR	Online Information Database Access and Retrieval Services
PAN	Permanent Account Number
PCIT	Principal Commissioner of Income-Tax

Abbreviation	Description
PE	Permanent Establishment
PY	Previous Year
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
REIT	Real Estate Investment Trust
Rules	Income Tax Rules, 1962
SCRA	Securities Contract Regulation Act, 1956
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
SGST	State Goods and Service Tax
SKD	Semi-Knocked Down
STT	Securities Transaction Tax
SWS	Social Welfare Surcharge
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TRC	Tax Residency Certificate
ULIP	Unit Linked Insurance Plan
VDA	Virtual Digital Asset
w.e.f.	with effect from



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**Note:**

Unless otherwise stated the amendments referred to in this e-publication are effective from AY 2024-25 onwards.

All non-tariff amendments (except retrospective amendments) relating to Indirect Tax shall become effective either from the date of enactment of the Finance Bill or from a notified date, post enactment of the Finance Bill. All tariff amendments shall be effective from 2 February 2023 or date set out in the respective notifications.

## Income Tax Rates for AY 2024-25

The tax rates and surcharge applicable to Individuals, HUF, AOP, BOI and AJP paying tax in accordance with the new tax regime under section 115BAA have undergone a change. Further, newly incorporated manufacturing co-operative societies have been provided with an option to pay tax at a lower tax rate of 15% under the new provision of Section 115BAE subject to fulfilment of the conditions. This would enable a level playing field to manufacturing co-operative societies vis-à-vis new manufacturing companies.

For all other class of taxpayers, the tax rates, surcharge, and education cess remain unchanged including the rates applicable to certain class of taxpayers under different schemes of taxation under sections 115BAA, 115BAB and 115BAD. The rates of tax as applicable for AY 2024-25 are as under:

### A. For Individuals, HUF, AOP, BOI and AJP

#### I. Tax rates under old tax regime (Normal Provisions)

Individuals below 60 years of age and all Non-Resident Individuals	Resident Individual aged 60 years or more but less than 80 years (Senior Citizen)	Resident Individual of age 80 years and above (Very Senior Citizen)	Rate
Up to INR 250,000	Up to INR 300,000	Up to INR 500,000	Nil
INR 250,001 to INR 500,000	INR 300,001 to INR 500,000	-	5%
INR 500,001 to INR 10,00,000	INR 500,001 to INR 10,00,000	INR 500,001 to INR 10,00,000	20%
Above INR 10,00,000	Above INR 10,00,000	Above INR 10,00,000	30%

Individuals having taxable income up to INR 5 lakh are eligible for tax rebate under section 87A up to INR 12,500

#### II. Tax Rates under Section 115BAC (New tax regime) – Now made the default tax regime for Individuals, HUFs, AOP, BOI and AJP

The concessional tax rates, subject to fulfilment of conditions as provided under this section, have been changed as under:



Total Income	Rate of Tax
Up to INR 3,00,000	NIL
INR 3,00,001 to INR 6,00,000	5%
INR 6,00,001 to INR 9,00,000	10%
INR 9,00,001 to INR 12,00,000	15%
INR 12,00,001 to INR 15,00,000	20%
Above INR 15,00,000	30%

Individuals having taxable income up to INR 7 lakh are eligible for tax rebate under section 87A up to INR 25,000. Further, salaried individuals are now eligible to claim standard deduction under section 16(ia) of the Act which was earlier not allowable in the new tax regime.

III. Rate of surcharge for Individuals, HUF, AOPs (having any member which is not a company), BOIs and AJPs

The Rate(s) of surcharge are as under:

Nature of Income	Total Income				
	Up to INR 50 lakh	More than INR 50 lakh but up to INR 1 crore	More than INR 1 crore but up to INR 2 crore	More than INR 2 crore but up to INR 5 crore	More than INR 5 crore
Short term capital gains on listed shares/ specified units attracting STT u/s 111A	NIL	10%	15%	15%	15%
Any Long-term capital gains (u/s 112 or u/s 112A)	NIL	10%	15%	15%	15%
Dividend Income	NIL	10%	15%	15%	15%
Any other income*	NIL	10%	15%	25%	25%/37%**



\* The surcharge rate of 25% or 37% are applicable only if other incomes (i.e., total income excluding the income by way of dividend or income under the provisions of sections 111A, 112 and 112A) exceeds the limit of INR 2 crore or INR 5 crore respectively.

\*\* The Maximum Surcharge rate for new tax regime has been capped at 25%. The Surcharge of 37% continues to be present for persons opting to pay tax in accordance with the old tax regime.

Health and Education Cess at the rate of 4% shall be applicable on the aggregate of tax and surcharge.

**Rate of surcharge for AOPs (where all members are companies):**

Nature of Income	Total Income				
	Up to INR 50 lakh	More than INR 50 lakh but up to INR 1 crore	More than INR 1 crore but up to INR 2 crore	More than INR 2 crore but up to INR 5 crore	More than INR 5 crore
On total income	NIL	10%	15%	15%	15%

**B. For Firms (including LLP) / Local Authorities**

Income	Rate	Surcharge	Health and Education Cess	ETR
Up to INR 1 crore	30%	-	4%	31.20%
Above INR 1 crore	30%	12%	4%	34.94%

C. Co-operative Societies:

I. Tax under Normal Provisions:

Income	Rate	Surcharge	Health and Education Cess	ETR
Up to INR 10,000	10%	-	4%	10.40%
INR 10,001 to INR 20,000	20%	-	4%	20.80%
INR 20,001 to INR 1 Crore	30%	-	4%	31.20%
INR 1,00,00,001 to 10 Crore	30%	7%	4%	33.38%
Above INR 10 Crore	30%	12%	4%	34.94%

II. Concessional tax rates under section 115BAD - for resident co-operative societies

Co-operative societies resident in India continue to have the option under section 115BAD to pay tax at a concessional rate of 22% along with surcharge of 10% and Health and Education Cess of 4% i.e., ETR of 25.17%, upon fulfilment of certain conditions.

Further, under proposed new section 115BAE of the Act, a new manufacturing co-operative society set up on or after 1 April 2023, which commences manufacturing or production on or before 31 March 2024 may opt to pay tax at a concessional rate of 15% w.e.f. AY 2024-25 onwards on satisfaction of conditions mentioned in the section.

Particulars	Resident co-operative society opting for section 115BAD	Resident co-operative society opting for section 115BAE
Basic Tax Rate	22%	15%*
Rate of Surcharge	10%	10%
Health and education cess	4%	4%
<b>ETR</b>	<b>25.17%</b>	<b>17.16%</b>

\* Only income which is derived from or is incidental to the manufacturing activities will be taxed at 15%. Other income will be taxable at 22%/ 30% plus the applicable surcharge and cess.

D. For Companies:

Particulars		Domestic company (Having turnover below INR 400 crore in FY 2021-22)	Domestic company (Having turnover above INR 400 crore in FY 2021-22)	Domestic company opting for section 115BAA	Domestic company opting for section 115BAB	Foreign Company
Total Income up to INR 1 crore	Basic Tax Rate	25%	30%	22%	15%	40%
	Rate of Surcharge	Nil	Nil	10%	10%	Nil
	Health and education cess	4%	4%	4%	4%	4%
	ETR	<b>26%</b>	<b>31.20%</b>	<b>25.17%</b>	<b>17.16%</b>	<b>41.60%</b>
Total Income above INR 1 crore and up to INR 10 crore	Basic Tax Rate	25%	30%	22%	15%	40%
	Rate of Surcharge	7%	7%	10%	10%	2%
	Health and education cess	4%	4%	4%	4%	4%
	ETR	<b>27.82%</b>	<b>33.38%</b>	<b>25.17%</b>	<b>17.16%</b>	<b>42.43%</b>
Total Income Above INR 10 crore	Basic Tax Rate	25%	30%	22%	15%	40%
	Rate of surcharge	12%	12%	10%	10%	5%
	Health and education cess	4%	4%	4%	4%	4%
	ETR	<b>29.12%</b>	<b>34.94%</b>	<b>25.17%</b>	<b>17.16%</b>	<b>43.68%</b>



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E. **MAT** (not applicable if company is paying tax in accordance with section 115BAA or Section 115BAB)

Type of Companies	Domestic Company			Foreign Company		
	Below INR 1 crore	INR 1 crore to INR 10 crore	Above INR 10 crore	Below INR 1 crore	INR 1 crore to INR 10 crore	Above INR 10 crore
Rate of Tax	15%	15%	15%	15%	15%	15%
Surcharge	-	7%	12%	-	2%	5%
Health and Education Cess	4%	4%	4%	4%	4%	4%
<b>ETR</b>	<b>15.60%</b>	<b>16.69%</b>	<b>17.47%</b>	<b>15.60%</b>	<b>15.91%</b>	<b>16.38%</b>

F. **AMT** (not applicable if the person is paying tax in accordance with Section 115BAC, 115BAD or 115BAE)

Particulars	Co-operative Society	Others
Rate of Tax	15.00%	18.50%
Surcharge	At applicable rates	At applicable rates
Health and Education Cess	4%	4%



## Personal and Non-Corporate Taxation

### Withdrawal of exemption under section 10(10D) where premium or aggregate of premium exceeds INR 5 lakh

Presently, sum received under the life insurance policy, including bonus on such policy is exempt. There is no cap in respect of premium payable on life insurance policies, other than premium in respect of ULIP, for claiming exemption of maturity proceeds.

Now, maturity proceeds from life insurance policies issued on or after 1 April 2023, where the premium or aggregate of premium exceeds INR 5 lakh in any of the year would be taxable. Such maturity proceeds pertaining to policy or policies where the premium amount has exceeded INR 5 lakh would be taxable under the head 'Income from other sources' in the year of receipt, in a manner to be prescribed. Maturity proceeds received on death would continue to be exempt.

**CNK Comments:** In a situation of multiple policies, where the premium paid for each policy does not exceed INR 5 lakh, but the aggregate premium paid during the year for all such policies exceeds INR 5 lakh, there is no clarity on the taxability of the proceeds from such policies on maturity. We understand that due clarification on this would be provided.

### Taxation and TDS on winning from Online Games, lotteries, etc.

#### Taxation on winning from Online Game

Presently, the income by way of winnings from lottery, crossword puzzle, racing (including horse race) or card game and other game of any sort or from gambling or betting is taxable at 30% (plus applicable surcharge and cess). There is no separate provision for taxation of winning from online gaming.

Now, a separate regime for taxation of income by way of winnings from any online game is introduced. The tax payable will 30% on net winnings from such online games to be computed in the prescribed manner.

Online game means game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device.

#### TDS on winnings of online games

TDS will apply on net winnings in the user account at the end of the year. However, if there is withdrawal, TDS is applicable at the time of withdrawal on the net winning attributable to such withdrawal.

In case where the net winnings are wholly in kind or partly in cash and partly in kind but the cash part is not sufficient to meet the TDS liability in respect



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of whole of the net winning, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the entire net winnings.

Unlike other winnings, where threshold of INR 10,000 is prescribed, TDS is applicable on online gaming without any threshold.

The TDS provisions would apply w.e.f. 1 July 2023.

**CNK Comments:** TDS on winning from online gaming is applicable even at the time of withdrawal. If there is lower net winning or losses at the end of the year, the excess TDS credit will be adjusted against any other liability or claimed as refund as the case may be at the time of filing the return. The online gaming intermediary will need to carry out necessary KYC for TDS purposes and subsequent filing of TDS return. The computation mechanism for calculation of net winning is to be prescribed.

### TDS on winning from lotteries, games, etc.

Presently, the income from winnings from lottery, crossword puzzle, race (including horse race), card game and other game of any sort or from gambling or betting is subject to TDS at 30%. TDS is applicable on an amount exceeding INR 10,000. The limit of INR 10,000 was being applied for each transaction.

Now, TDS will be apply if the amount or aggregate of the amount of winning exceeds INR 10,000 during the financial year.

### Taxation of gift received by not-ordinarily resident

Presently, any sum of money received by a non-resident from a resident, is deemed to accrue or arise in India.

The taxation of sum of money received from a resident has now been extended to not-ordinarily residents as well in respect of monies received on or after 1 April 2023.

**CNK Comments:** The amendment applies only in respect of receipt of sum of money and does not cover receipt of property, which may need to be analysed separately as to the place of accrual of such income. Further, as the amendment applies to gifts received by not-ordinarily residents, one may be able to argue that for the period prior to such amendment, such gifts were not taxable in the hands of the recipients.

## Amendments related to Business Income

### Taxability of benefit or perquisites received in cash

Presently, value of any benefit/perquisite, whether convertible into money or not is taxable as Business Income under section 28(iv).



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Now, any benefit/ perquisite received in cash or in kind or partly in cash and partly in kind would also be taxable. Similar amendment has been made in section 194R whereby such perquisite would be subject to TDS.

**CNK Comments:** Supreme Court in the case of Mahindra and Mahindra Ltd. (93 taxmann.com 32) had held that section 28(iv) is not applicable in the case of loan waiver, as the amount waived is receipt in the nature of cash/money. In certain other tribunal decisions, it was held that benefit or perquisites received only in kind are taxable under section 28(iv). The ratio of the above decisions would not apply in case of benefit or perquisite received in cash.

### Disallowance for delayed payments to Micro and Small Enterprises

Any sum payable to micro and small enterprises beyond the time limit specified in the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 shall be allowed only in the PY in which such payment is made.

**CNK Comments:** Micro enterprise is an enterprise in which the investment in plant and machinery is not more than INR 1 crore and turnover is not more than INR 5 crore. Small enterprise is an enterprise in which the investment in plant and machinery is not more than INR 10 crore and turnover is not more than INR 50 crore.

The time limit specified in the MSMED Act is either the date mentioned in the agreement (not exceeding 45 days from the date of acceptance) and in the absence of an agreement, within 15 days from the date of acceptance. Now one would need to keep a track of payments made to micro and small enterprises. Further, it is important to note that the above provision applies only to delayed payments and therefore, any amount payable micro and small enterprises as at the end of the year would be allowed on accrual basis if such payment is made within the time limit specified.

### Increase in turnover limit for presumptive taxation

The limit of turnover for opting for the presumptive taxation in case of eligible business is increased from INR 2 crore to INR 3 crore.

Similarly, the limit of gross receipts for specified professionals for opting for the presumptive taxation scheme has been increased from INR 50 lakh to INR 75 lakh.

The increased limits would apply if the cash receipts are equal to or lower than 5% of the total turnover or gross receipts. Cash receipts would include amount received by cheque or bank draft, which is not account payee.

**CNK Comments:** It is important to note that for the purpose of tax audit under section 44AB, one needs to consider cash expenses as well as cash



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receipts whereas in the case of presumptive tax for eligible business / specified profession only receipts are to be considered.

### Deduction claimed by a unit in SEZ

Presently, unlike other provisions related to activity-based exemption or deduction, deduction for profit and gains derived by a unit in SEZ is available even if the return of income is not filed within the due date specified.

Now, the deduction would be available only if the return is filed within the due date specified.

Presently, there is no restriction on deduction to a unit in SEZ if the sale proceeds from exports are not brought into India within specified time limit.

Now, the deduction would be available only if sale proceeds are brought into India within 6 months from the end of the PY or within such further period as allowed by the competent authority. Further, export proceeds received in a bank account outside India with the approval of RBI would also be considered as satisfying the above condition.

**CNK Comments:** While the section did not require the export proceeds to be brought into India within a specified time, the form to be filed in respect

of such entities for claiming the deduction specified the 6 months condition even before the amendment.

### Claiming deduction for preliminary expenditure

Presently, deduction of preliminary expenditure incurred in relation to preparation of feasibility report, project report, market survey, etc. is allowed if these activities are undertaken by the taxpayer or a concern approved by the CBDT.

Now, the requirement of the activities to be undertaken by a concern approved by the CBDT has been removed. The taxpayer shall be required to furnish a statement containing the particulars of this expenditure before the tax authorities.

### Re-categorization of NBFCs

Presently, the interest paid to an NBFC is allowed as deduction on payment basis. Further, for NBFCs, interest on NPAs is taxed on receipt basis. The definition of NBFCs in the above provisions is restricted to Deposit taking NBFC and Systematically Important Non-deposit taking NBFC.

As such categorisation of NBFCs is now no longer followed by the RBI, the definition of NBFCs in the above provisions has been amended to those categories of NBFC which may be notified by the Central Government.





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### Carry forward and set-off of losses in case of eligible start-up

Presently, a registered start-up is allowed to set-off and carry forward losses even if there is a change of more than 51% of the voting power provided that all the shareholders in the year of incurring the loss continue to hold such shares in the year of set-off and such loss has been incurred during the first 7 years after incorporation.

Now, this period is extended from 7 years to 10 years.

### Extension of time limit for incorporation of eligible start-up engaged in eligible business.

The time limit for incorporation of eligible start-up engaged in eligible business is extended to 1 April 2024.

### Restrictions on set-off of brought-forward losses against income under presumptive tax regime under section 44BB and section 44BBB

Section 44BB provides for presumptive scheme of taxation in the case of a non-resident engaged in the business of providing services or facilities used in prospecting, extraction or production of mineral oils. Section 44BBB provides for presumptive scheme in the case of a foreign company engaged in the business of civil construction or erection of plant or machinery or testing or commissioning thereof, in connection with an approved turnkey power project.

Presently, the taxpayer has the option to be governed by the presumptive scheme on an annual basis. Accordingly, in years of losses, the taxpayer was able to exit the presumptive scheme. The taxpayer could claim set-off of such brought forward losses in subsequent years in which they opted for the presumptive scheme.

Now, set-off of any brought forward losses is prohibited in the year in which the taxpayer has opted for the presumptive scheme.

### Limitation on interest deduction under section 94B not to apply to certain class of notified NBFCs

The above section limits the allowability of interest under certain conditions. However, any Indian company or a PE of a foreign company which is engaged in the business of banking or insurance is not subject to such limitation on interest deduction.

Now such limitation will also not apply to interest paid by certain class of NBFCs to be notified.



## Investment related Amendments

### Cost of new residential property for claiming deduction under sections 54 and 54F capped at INR 10 crore

Section 54 grants exemption for long-term capital gains on the transfer of a residential property where capital gain is invested in a new residential property within a specified period. Section 54F grants similar exemption for long-term capital gains on the transfer of a long-term capital asset, other than a residential property, where net consideration is invested in a new residential property within a specified period.

Presently, there is no cap on the cost of new residential property purchased while computing deductions under the said sections.

Now, if the cost of new residential property exceeds INR 10 crore, the cost of such property shall be restricted to INR 10 crore for the purpose of computing the deductions. Consequentially, the deposit in the Capital gain account scheme, which facilitates investment in residential property at a future date, has also been capped at INR 10 crore.

**CNK comments:** Where exemption is claimed under section 54 and the new property is sold within the period of 3 years, then there can be unintended consequences to the detriment of the taxpayer.

### Extension of angel tax provisions to shares issued to non-residents

Presently, angel tax provisions, taxing the company issuing shares at a premium if the issue price exceeds the fair market value of such shares, apply only in case of issue of shares to resident shareholders.

The angel tax provisions have now been extended to cover issue of shares at a premium to non-resident investors as well, if the issue price exceeds the fair market value of such shares.

**CNK Comments:** The extension of angel tax provisions to shares issued to non-residents would have a significant impact on foreign investment by way of FDI in India. It is important to note that the current FEMA (Non-Debt Instrument) Rules, 2019 require the issue of shares to non-residents by an Indian company to be equal to or higher than the fair market value as computed under an internationally accepted methodology, with the DCF Method being the most widely used method. On the other hand, the angel tax provisions, which requires the valuation to be undertaken either under the DCF Method or the Net Asset Value Method, require the shares to be issued at a price lower than or equal to the fair market value. This would lead to a contradiction between both the laws. Moreover, recent trend of judicial precedents indicates the questioning of the projections used in the valuation by the tax authorities. This would create unnecessary



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impediments for foreign investments as generally, the fair market value for the actual transaction is subjective.

### Double deduction not allowed on interest on borrowed capital for acquiring residential property

Interest paid on loans taken for acquiring house property is allowable as deduction under the head 'Income from house property'. Interest paid on loan taken for property may also be eligible for deduction under Chapter VI-A, subject to fulfilment of conditions.

Presently, taxpayers could also claim deduction of the above interest while computing capital gains on transfer of such property as a part of cost of acquisition/ improvement.

Now, such interest already claimed as above would not be allowed as a deduction for computation of capital gains.

**CNK Comments:** The implication of the above amendment is that interest not claimed as a deduction under Income from house property or under Chapter VI-A would be allowed in computing the cost of acquisition/improvement.

### Capital gains on transfer of Market Linked Debentures (MLDs) taxable as short-term capital gains

MLDs are listed securities, with an underlying principal component in the form of a debt security and return is linked to market performance. MLDs also includes any securities classified or regulated as MLDs by SEBI.

Presently, any gains arising on sale of MLDs held for more than 12 months is long-term capital gains and is subject to tax at 10% without indexation.

Now, gains arising on sale of MLDs would be treated as short-term capital gains irrespective of period of holding.

### COA/ COI for certain intangible assets shall be Nil

While the COA for self-generated goodwill is considered as nil, there could be certain other intangible assets or rights for which no consideration has been paid for acquisition, but the provisions do not specifically provide for the cost to be considered as 'nil' in the present provision.

Now, in the case of such assets or rights the COA and COI shall be considered as 'nil'.

**CNK Comments:** The Supreme Court in the case of CIT vs. B.C. Srinivasa Setty (5 Taxman 1) and many subsequent decisions had held that in the absence of a definite COA, the capital gain computation mechanism fails



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and hence, such gains are not taxable. The ratio of the above decision would now not apply to intangible assets and other rights covered by the amendment.

### Repayment of debt by Business Trust to unitholders now taxable under the head 'Income from other sources'

Distributions by Business Trusts i.e., REIT and InVIT are categorized in the form of dividend payment, interest, rental income, debt repayment/proceeds from amortization of debt. Distribution in the form of interest income, dividend income and rental income is generally accorded a pass-through status for tax purposes wherein the unitholders are taxed on such income and not the Business Trust. Any other distributions received by the unitholders from a Business Trust are not taxable in the hands of such unitholders.

Presently, distribution by Business Trusts in form of debt repayment are not regarded as income in hands of unitholders.

Now, any sum received by the unitholder, namely interest, dividend, rental income as well as repayment of debt or redemption of units is taxable in the hands of the unitholder. Payment received out of repayment of debts would be fully taxable. The redemption of units as exceeding the COA of the units would be taxed as income from other sources.

**CNK Comments:** The sum received on redemption of units exceeding COA would be taxed as Income from other sources at the applicable rates as against the rate applicable to capital gains.

### Conversion of gold into Electronic Gold Receipt or vice versa is not a taxable transfer

SEBI regulates gold spot-trading in India through the Indian Bullion and Jewellers Association Limited. As per SEBI regulations, gold spot-trading must be conducted through the designated exchanges, viz the Multi-Commodity Exchange and the National Commodity and Derivatives Exchange, in order to ensure transparency and prevent market manipulation. The exchanges provide a platform for participants to trade gold spot-contracts, which are backed by physical delivery.

To promote electronic gold, conversion of physical gold to EGR and vice versa would not be regarded as 'transfer' for the purpose of capital gains. In the case of conversion of gold to EGR, cost of acquisition would be cost of acquisition of physical gold in the hands of EGR holder. In the case of conversion from EGR to physical gold, cost of acquisition would be cost of EGR. The period of holding of physical gold or EGR would include the period of holding prior to conversion, as the case may be.



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### Amendments related to Charitable Trusts

The following amendments relate to Charitable Trusts registered under section 12AA/12AB and under clauses (iv),(v),(vi) and (via) of section 10(23C).

#### Depositing back of corpus and repayment of loans or borrowings

Presently, corpus donations received are exempt only if they are invested in specified modes. If the amount is spent from such corpus, it is not treated as application of income for charitable or religious purposes. However, in the year in which the funds are invested back in specified modes, such amount is considered as application of income.

Similarly, expenditure incurred on objects of the Trust out of loans is not treated as application in the year in which such expenses are incurred. However, when loan is repaid, the same is treated as application on objects of the Trust in that year to the extent of such repayment.

In order to claim the benefit in the year of recoupment of corpus or the repayment of loan, the following conditions have now been introduced:

- The original application from corpus or loan is not in the form of corpus donation to another Trust
- TDS, if applicable, has been deducted on such original application

- Provision relating to cash payments exceeding INR 10,000 to a person in a day was adhered to, while making such original application
- Carry forward and set-off of excess application is not allowed
- The original application does not directly or indirectly benefit the specified persons and the income of the Trust does not enure any benefit to such persons
- The original application was undertaken in India, other than as approved by the CBDT for promoting international welfare in which India is interested

It is also provided that application out of corpus or loans before 1 April 2021 would not be allowed as application when such amount is deposited back into corpus or when the loan is repaid.

For application made on or after 1 April 2021 out of corpus or loan, such investment or repayment of loan will be treated as application only if the Trust deposits back the amount into corpus or repays the loan within 5 years of application.

The above amendment would apply w.e.f. AY 2023-24.

**CNK Comments:** It is unfair for the Trusts to be denied this benefit if the corpus is recouped or the loan is repaid beyond the period of 5 years.



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### Treatment of donation to other Trusts:

Presently, donation given to another Charitable Trust (other than corpus) is allowed as application of income.

It is now provided that the application of income by way of donations made to other Charitable Trusts shall be restricted to 85% of such donations paid.

**CNK Comments:** The amendment has harsh consequences as 15% of donation made to other Charitable Trusts would now be taxable in the hands of the donor Trust.

### Steps to obtain final registration/approval in certain cases

In the new registration regime of Charitable Trusts, concept of provisional registration was introduced mainly for newly setup Trusts. However, as per the current provisions, a Trust not having existing registration needs to apply for provisional registration first and then in due course obtain a final registration, even though the activities were already commenced at the time of obtaining provisional registration.

In order to allow for direct final registration/approval in such cases, following amendment is proposed w.e.f. 1 October 2023 in the procedure provided for registration under section 12A, approval under section 10(23C) and approval under section 80G(5) –

Scenario	Application to be made for	Grant / rejection of approval
Before commencement of activities	Provisional Approval/ Registration at least 1 month prior to the relevant AY from which the said registration is sought.	Automatic provisional approval will be granted for 3 years by CPC within 1 month from the end of the month in which the application was received.
Activities already commenced but exemption not claimed in any of the PY	Final Approval/ Registration at any time after the commencement of activities.	<ol style="list-style-type: none"> <li>1. Examination by PCIT/CIT about objects and genuineness of activities and compliance of other laws.</li> <li>2. Order granting (for 5 years) or rejecting the application within 6 months from the end of the month in which the application was received.</li> </ol>

**CNK Comments:** Even after the amendment, Trusts incorporated during the PY will not be able to claim exemption for the donations received during the year in which they are formed if the activities have not commenced as



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they still need to apply for provisional registration prior to the commencement of relevant AY from which the registration is sought.

### Additional violation specified for cancellation of registration

Where a Trust makes an application for provisional registration or re-registration for the first time under the new registration regime, automated approval is granted by CPC without verification.

Now, w.e.f. 1 April 2023, furnishing incomplete, false or incorrect information at the time of seeking registration will be treated as “specified violation” which will empower the PCIT/CIT to cancel the registration of Trust.

**CNK Comments:** Cancellation of registration/approval in such a case would attract the harsh provisions of exit tax on accreted income.

### Exit tax applicable if Trust does not apply for re-registration/approval in time

The accreted income of the Trust or institution is taxable at MMR on conversion into a non-charitable form. The accreted income means the amount by which the aggregate fair market value of the total assets of the Trust or the institution, as on the specified date, exceeds the total liability of such Trust or institution and it is calculated in the manner provided. The new registration regime for Charitable Trusts provides for timebound

application for registration or approval. In case a Trust or institution fails to apply within the prescribed time limits, it is deemed to be converted into a form not eligible for registration under section 12AB or 10(23C). Therefore, w.e.f. 1 April 2023, provisions of Exit Tax would also get attracted in following cases –

- i. Trust or institution has not applied for final registration after taking the provisional registration
- ii. Trust or institution having existing registration/approval as on 1 April 2021 has failed to apply for re-registration
- iii. Trust or institution has not applied for renewal of registration before the expiry of 5 years for which registration was granted earlier

In such cases, accreted income is to be calculated as on the last date for making an application for registration or approval.

Accordingly, provisions of section 115TE and 115TF for levy of interest and recovery of exit tax shall also apply in these cases.

**CNK Comments –** If a Trust or institution inadvertently fails to apply for registration/approval on time, it would not only result in denial of exemption but will also be subject to hefty taxes on accreted income.





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### Advancement of due date for furnishing Form 9A and Form 10

To avail the benefit of exemption, the Trusts and institutions are required to furnish the audit report at least one month before the due date of furnishing the return of income. However, the other relevant forms (Form 10 / 9A) for claiming accumulation / deemed application could be filed on or before the due date for furnishing the return of income.

The amounts mentioned in these forms are also required to be reported in the audit report. Since the due date for furnishing the audit report was before the due date of furnishing the relevant forms, the date of furnishing these forms has been advanced w.e.f. AY 2023-24, these forms are to be filed at least 2 months before the date of furnishing return of income.

Form No.	Purpose	Trust / Institution	Current due date	Proposed due date
10	Accumulation towards specific purposes for maximum of 5 years	Approved under 10(23C) or registered under section 12AB	31 October [Date of filing of return under section 139(1)]	31 August [2 months prior to the date of filing of return under section 139(1)]
9A	Option to spend in subsequent year where income has not been received	Registered under section 12AB		

	during the year or for any other reason			
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Due date of furnishing Audit Report in Form 10B / 10BB remains unchanged i.e. one month prior to the due date of filing return of income.

### Denial of exemption where return of income is not furnished within time

W.e.f. 1 April 2023, the benefit of exemption will be available only if the Trust or institution furnishes return within the time specified under section 139(1) and 139(4).

Further, the benefit of exemption cannot be claimed in updated return filed under section 139(8A) if the Trust or institution has not furnished return of income within the time specified above.

## Incentives for IFSC

### Income from Offshore Derivative Instruments

Presently, income earned by a non-resident on transfer of ODIs entered into with an OBU in an IFSC is exempt.

Now, income distributed on such ODIs in the form of capital gains, interest and dividends (other than income derived on transfer of ODIs) shall also be





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exempt for non-resident investor provided that such income has been taxed in the hands of the OBU.

**CNK Comments:** The exemption granted to income from offshore derivatives coupled with the amendment to treat such instruments as valid contracts under the SCRA would provide an impetus for foreign investors to invest in instruments such as Participatory Notes in GIFT City.

### Extension of sunset clause for exemption for relocation of Funds to GIFT City

Finance Act 2022 had provided an exemption for gains arising on relocation of certain Funds registered outside India to GIFT City provided that the relocation had been undertaken before 31 March 2023.

Now, the sunset clause for the exemption has been extended to 31 March 2025.

## Amendments related to TDS/TCS

### Increase in the rate of TCS for certain remittances

Section 206C(1G) deals with collection of tax at source for foreign remittances under the LRS and on sale of overseas tour package.

An authorised dealer or a seller of an overseas tour package, who receives such amount to be remitted outside India from the buyer for the above purposes is required to collect tax at source from such buyer. Presently, the TCS rate for remittance in respect of overseas tour package is 5% without any threshold limit. For remittances other than for overseas tour package, TCS @ 5% is applicable if the remittance exceeds INR 7 lakh.

Now, the TCS rates on foreign remittances under LRS and for overseas tour package are increased as under:

Type of remittance	Rate of TCS
Overseas tour package	20% without any threshold limit.
Under LRS (other than medical and education purpose)	20% without any threshold limit.

This amendment will be w.e.f. 1 July 2023.

**CNK Comments:** The TCS rate of 20% is excessive and unjustified. This will significantly impact overseas investments and remittances by individuals. For example, an overseas investment under LRS route of USD 2,50,000 would attract TCS of USD 50,000.



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### Penalty and prosecution applicable on non-compliance of TDS on VDA, benefits or perquisites and online games

Presently, penalty and prosecution is not provided for non-compliance of TDS provisions on:

- i. Benefits or perquisites arising from business or profession provided in kind.
- ii. Exchange of VDA.
- iii. Net winnings on online games in kind.

Now, failure to comply with above TDS provisions may attract penalty and prosecution.

### Facilitating TDS credit for income already disclosed in the return of income of past year

TDS credit is available in the year in which income is offered to tax. However, there is no mechanism for claiming tax credit where income is offered to tax in an earlier year.

Now, the taxpayer can file an application with the AO in the prescribed form to claim credit of TDS deducted in subsequent year against the income offered to tax in the earlier year. This application can be made within 2 years from the end of the financial year in which the tax is actually deducted.

The rectification would be carried out within a period of 4 years from the end of the financial year in which such tax has been deducted.

Further, in case of any refund arising on account of carry back of TDS credit, interest on refund under section 244A at 0.5% per month or part of the month would be available from the date of application upto the date of refund.

This amendment will be applicable w.e.f. 1 October 2023.

**CNK Comments:** This is a welcome amendment which would provide relief for the numerous cases where TDS credit could not be claimed in the year in which income is offered to tax as tax is deducted subsequently. This effectively allows for carry back of TDS credit. However, providing interest from the date of application is unfair.

### Removal of exemption from TDS on payment of interest on listed securities to a resident

Presently, no TDS is required on payment of interest on listed security in dematerialised form.

Now, TDS will be required on payment of interest on listed security in dematerialised form at the rates in force (presently 10%).



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**CNK Comments:** TDS is not required on payment of interest up to INR 5,000 during a financial year to individual or HUF.

### Extending the scope for lower or nil rate of TDS

Presently, a unitholder cannot apply for a certificate for lower deduction or nil rate of TDS in case of receipt of income from REIT or InVIT.

Now, such unitholder will be able to apply for lower deduction or nil rate certificate in respect of receipt of income from such REIT or InVIT.

### Treaty benefit for TDS on income from mutual funds

Presently, TDS on payment of income from units of mutual funds to non-residents is applicable at the rate of 20%, irrespective of treaty benefit.

Now, TDS will be applicable at the lower of 20% or rate provided under the applicable tax treaty provided the recipient has provided TRC.

**CNK Comments:** The amendment is a welcome move towards rationalisation of TDS. Prior to this amendment, as per the decision of Supreme Court in PILCOM v CIT (425 ITR 312), TDS would be at 20% despite the non-resident being entitled to benefit under the applicable tax treaty. Income from mutual fund is generally covered under Other Income Article of the treaty which may either provide for taxation as per the domestic law of India or may not be taxable in India.

### TDS on payment of accumulated balance due to an employee

Presently, EPFO is required to deduct tax on payment of the taxable component of accumulated balance due to employees at MMR if PAN is not furnished.

Now, in the above case, on failure to furnish PAN, TDS will be applicable at 20% instead of MMR.

### Relief from special provision for higher rate of TDS/TCS for non-filers of income-tax returns

Presently, taxpayers, other than non-residents not having PE in India, who are not required to furnish their return of income are subject to higher rate of TDS/ TCS.

Now, the Government can notify the persons who are not required to furnish their return of income and to whom the higher rate of TDS/TCS will not apply.

## Other miscellaneous amendments

### Filing of modified income tax return by successor in business reorganisation

Finance Act, 2022 introduced a modified return to be filed by the successor entity in the case of a business reorganisation such as a merger or demerger



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for the period covered under the order passed by a High Court or tribunal or an Adjudicating Authority.

While the relevant prescribed rule provided for procedure to be followed by the AO pursuant to such filing, the section has been amended to provide such procedure as well. Accordingly, after the filing of the modified return by the successor entity, the AO shall modify the income in accordance with the business reorganisation order passed and the modified return filed.

Presently, there is ambiguity in the section which allows a modified return to be filed by the successor entity only if such successor entity had filed a return before the business reorganisation order. This ambiguity has also been removed by allowing the successor entity to file the modified return even in a situation where it had not filed its return of income before the order has been passed but the entities to which the order applies had filed the return before such order.

This amendment is applicable w.e.f. AY 2023-24.

**CNK Comments:** While clearly spelling out the procedure to be followed by the AO is a welcome move, ambiguity still exists on various aspects in relation to the return to be filed pursuant to the business reorganisation. Even though the memorandum provides that the filing of the modified return by the successor entity would enable modification of return filed by

the predecessor, the section does not provide any clarity on this aspect. Further, there is no timeline prescribed within which the AO has to pass the order. Similarly, while the procedure prescribed covers two scenarios – where the assessment or reassessment proceedings are pending and where such proceedings have been completed, the section is silent about the procedure to be followed in a case where there are no assessment or reassessment proceedings of the predecessor or successor entity.

## Set-Off and Withholding of Refunds

Presently, the AO has powers to adjust the refund due to the taxpayer against outstanding demand. Further where refund is due to a taxpayer on processing of his return of income by way of intimation, the AO has powers to withhold refund, till the assessment is completed. The power to withhold refund could be exercised only when the refund is determined as per intimation and not any other refund.

Now, the AO can withhold any refund due to a taxpayer, subject to following conditions.

- Any proceedings for assessment or reassessment are pending
- AO is of the opinion that the grant of refund is likely to adversely affect the revenue
- AO records reasons in writing, and
- Prior approval of PCIT or CIT is obtained



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It is further provided that no additional interest on refund under section 244A(1A) would be payable to the taxpayer in case refund is withheld as above.

**CNK Comments:** In context of section 241A, the Courts had held that the refund due to a taxpayer by way of intimation cannot be withheld merely because the assessment is pending. The Courts have also held that the AO has to record cogent reasons for withholding of refund. This order of withholding of refund is not appealable. There are cases where huge routine additions are made every year and refund is finally due to the taxpayer pursuant to favorable order at appellate level. This amendment will adversely impact the receipt of such refunds.

### Penalty for inaccurate reporting to Financial Institutions

Certain financial institutions i.e. Custodial institution, depository institution, Investment entity and specified insurance company which is a resident or any Indian branch of a non- resident financial institution is required to furnish a statement of financial transactions or reportable accounts.

Now, if there is any inaccuracy in furnishing the above by the financial institution, the said reporting institution will be liable to a penalty of INR 5,000 for every inaccurate reportable account. Further, if such inaccuracy is due to false or inaccurate information furnished by the account holder of

the relevant reportable account, the said penalty can be recovered from the account holders or any moneys of the account holder that is in possession of the reporting financial institution may be retained.

### Appointment of cost auditor for valuation of inventory

Presently, if at any stage of proceeding, due to complexity of accounts and in interest of revenue, AO is of the view that the accounts of the taxpayer should be audited then with prior permission of the relevant authority, the AO may direct the taxpayer to get such audit undertaken by a Chartered Accountant nominated by the PCIT.

Now, the AO may, with prior approval of the relevant authority, also direct the taxpayer to undertake valuation of inventory by a Cost Accountant nominated by the PCIT, etc.

### Exemption for leave encashment on retirement

While presenting the Budget, the Finance Minister announced the increase of the exemption limit for leave encashment received by non-government salaries employees on retirement from INR 3 lakh to INR 25 lakh.

While there is no amendment made in the Finance Bill 2023, the said enhanced limit will be duly notified separately.



## Indirect Taxation

### Key Highlights

- Budget focuses on consistency with minimal policy changes.
- Substantial changes effectuated in tariff rates across products in order to align with the Government's strategic priorities of boosting exports, incentivizing the make in India and Atmanirbhar Bharat initiative, encouraging green mobility and rationalizing the duty structure.
- The retrospective clarification on non-taxability of out-and-out exports, supply of custom bonded warehoused goods prior to clearance and high sea sales puts an end to past unwanted litigations.
- Decriminalization of specified offences under GST Law, except for offences relating to the menace of fake invoicing.
- ITC restriction on CSR activities is a dampener entailing a significant hike in CSR costs by 12% to 18% and may result in reduced CSR spends to factor the GST impact.
- Scope of OIDAR services expanded significantly with the removal of condition of human intervention.
- No clarity yet on the GST implications with regards to virtual digital assets (cryptos, NFTs, etc.).

## Goods and Services Tax

### Legislative Amendments

#### Composition Scheme

(Section 10 of the CGST Act)

- Registered persons engaged in supply of goods through electronic commerce operators shall be allowed to opt for payment of GST under the Composition Scheme.

**CNK Comments:** The Budget amendment enables small tax-payers supplying goods through e-commerce operators, to opt for the Composition Scheme (which was not permissible earlier).

#### Reversal of Input Tax Credit

(Section 16 of the CGST Act)

- In case of non-payment of value and GST to the supplier within 180 days from date of issue of the invoice, the recipient would be required to pay ITC along with the interest under Section 50, instead of adding the said amount to the output tax liability.
- In terms of the present provision, the recipient of supply can re-claim ITC on payment of the value and the GST. It has been proposed that such payment shall be made to the supplier.



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**CNK Comments:** Whilst the proposed amendments intend to align the provisions with the return filing system, the requirement of mandatory payment by the recipient to the supplier could create unnecessary confusion and entail litigations with regards to allowability of ITC in situations where any part of the payment is made to other stakeholders such as tax authorities, third party, etc.

### Input Tax Credit

(Section 17 of the CGST Act)

- No ITC can be availed in respect of procurements towards corporate social responsibility activities.
- Value of exempt supply shall include the value of supply of warehoused goods before clearance for home consumption for the purposes of ITC reversal.

**CNK Comments:** There have been conflicting advance rulings on eligibility of ITC in respect of CSR activities. The Budget amendment seeks to put this controversy to rest by expressly providing that ITC would not be available for CSR activities. Whilst, there is a window to contend that the budget amendment can only be prospective and such credits should be allowed for the past periods, it is likely to be an uphill task and could entail a protracted litigation with the tax authorities. The proposal for disallowance of ITC in respect of supply of warehoused goods before

clearance attempts to overturn past judicial precedents and may trigger a change in business strategies and practices.

### Person not liable for registration

(Section 23 of the CGST Act)

- The exemption from GST registration is proposed to be retrospectively amended (from 1 July 2017) to provide that persons engaged exclusively in supply of exempted goods and services do not require registration.

**CNK Comments:** This is a welcome amendment which saves taxpayers engaged only in supply of exempted goods and services, from going through the hassles of registration and other compliance requirements. Basis the budget amendment, it also appears that such taxpayers may also not be required to register for discharge RCM liability.

### Time Limit for Filing of GST Returns

(Insertion of Section 37(5), Section 39(11), Section 44(2), and Section 52(15) in the CGST Act)

- A maximum time limit of 3 years from the due date has been prescribed to file GST returns (Form GSTR-1, GSTR-3B, GSTR-8 and GSTR-9). This time limit can be relaxed for a registered person / class of registered persons.



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**CNK Comments:** It is pertinent to note that non-filing of GSTR-3B returns for a continuous period of six months leads to cancellation of GST registration, whilst non-filing or delayed filing of GSTR-9 (annual return) attracts late fee. Consequently, the rationale for this budget amendment and the practical implications thereto, lack clarity.

### Provisional ITC for Refund

(Section 54(6) of the CGST Act)

- The reference to provisional ITC has been removed in order to align with the present scheme of ITC availment.

### Interest on Delayed Refunds

(Section 56 of the CGST Act)

- Power have been given to the Government to lay down conditions/restrictions and the manner of computing the delayed period, for the purpose of granting interest on delayed refunds.

### Penalty on E-Commerce Operators

(Section 122 of the CGST Act)

- A penalty equivalent to higher of INR 10,000 or the amount of tax involved is proposed to be imposed on e-commerce operators, for permitting supply of goods /services by unregistered / composition / ineligible suppliers in contravention of GST provisions.

**CNK Comments:** This amendment increases the compliance burden on e-commerce operators wherein they would be required to monitor and track that composition suppliers do not undertake inter-State supply. E-commerce operators may have to put in place or strengthen its systems for vendor onboarding process, tracking the validity of supplier's registration etc.

### Penalties and Prosecution

(Section 132 of the CGST Act)

- The following offences are proposed to be de-criminalized.
  - Obstructing/preventing any officer to discharge his duties.
  - Tampering/ destroying any material evidence/ documents.
  - Failure to provide any information or providing false information.
  - Abetment in commission of the above offences
- The threshold for launching prosecution has been increased from INR 1 Crore to INR 2 Crore, except for offences related to fake invoicing.

### Compounding of Offences

(Section 138 of CGST Act)

- The amendment seeks to rationalize the existing compounding provisions.





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- The amendment also proposes revisions in minimum and maximum amount for compounding of offences.

Compounding Amount	Present	Proposed
Minimum	Higher of INR 10,000 or 50% of tax	25% of tax
Maximum	Higher of INR 30,000 or 150% of tax	100% of tax

**CNK Comments:** The compounding provision would apply to all offences under the GST Law except offences relating to fake invoicing and other specified offences.

## Sharing of Information:

(Section 158A of the CGST Act)

- A new provision is proposed to be introduced to empower the Government to share the taxpayer's information uploaded on the GST portal with other regulators, subject to obtaining consent from the supplier/ recipient and compliance with other conditions, as may be prescribed.
- The information to be shared would include details furnished in the GST registration application, GST Returns (GSTR-1, GSTR-3B, GSTR-9), E-invoice, E-way bill or any other details uploaded on the GST portal.

## Retrospective Amendment

(Schedule III of the CGST Act)

- W.e.f. 1 February 2019, the following supplies were excluded from the scope of supply:-
  - Supply of goods from outside India to outside India without importing it in India.
  - Supply of warehoused goods before clearance for home consumption
  - High Sea Sales
- A retrospective amendment (w.e.f. 1 July 2017) has been proposed to exclude the aforesaid supplies from the scope of supply.
- The amendment also proposes to deny refund of GST paid on the aforesaid supplies, if the tax-payer has collected the tax in respect of past transactions.

## OIDAR Services

(Section 2(16) and 2(17) of the IGST Act)

- The definition of OIDAR services is proposed to be amended to delete the condition of 'essentially automated and involving minimum human intervention'.



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- The definition of 'non-taxable online recipient' is proposed to be amended to mean any unregistered person (including person registered only for TDS purpose) availing OIDAR services located in India.

**CNK Comments:** The scope of OIDAR services has significantly widened and it would cover within its ambit (as listed out in the said definition), irrespective of the level of human intervention. In addition, any unregistered recipient availing OIDAR services for business purpose was hitherto required to register and pay GST under RCM. The proposed amendment now casts a liability on the supplier to pay GST on services provided to unregistered recipients, irrespective of the whether such services are used for business or any other purpose. As such, the unregistered recipients availing OIDAR services for business purpose would no longer be required to obtain GST registration, merely for the purposes of discharging GST liability on OIDAR services.

## Place of Supply for Goods Transportation Services

(Section 12(8) of the IGST Act)

- The place of supply for services provided by an Indian supplier to an Indian recipient in respect of transportation of goods outside India is proposed to be amended as set out below:

Recipient	Present	Proposed
Registered under GST	Destination of Goods	Location of Recipient
Unregistered		Location where goods are handed over for transportation

**CNK Comments:** Hitherto, IGST was applicable on the transportation of goods from India to outside India. Pursuant to the budget amendment such supply would be subject to CGST and SGST or IGST, depending upon whether such supply is an intra-State supply or inter-State supply.

## Customs

### Legislative Amendments

#### Validity of Conditional Exemptions

(Section 25(4A) of the Customs Act)

- The Budget amendment provides that the conditional exemptions granted to or in relation to the following shall be excluded from the automatic expiry of the two-year validity period:
  - Multilateral or bilateral trade agreements;



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- Obligations under international agreements, treaties, conventions including with respect to United Nations agencies, diplomats and international organisations;
- Privileges of constitutional authorities;
- Schemes under FTP;
- Central Government Schemes having validity of more than two years;
- Re-imports, temporary imports, goods imported as gifts or personal baggage;
- Any duty of customs under any law including IGST other than BCD.

**CNK Comments:** The amendment addresses the concern of the taxpayers and clarifies that the sunset clause would not apply to schemes under FTP, foreign trade agreements, etc.

## Settlement Proceedings

(Section 127C(4A) of the Customs Act)

- A time limit of nine months (further extendable by another three months) has been prescribed for the Settlement Commission to pass an order.
- The amendment also provides for abatement of settlement proceedings in the event of a failure to pass the order within the

prescribed period and for remanding the case back to the adjudicating authority.

**CNK Comments:** Disputes could arise where the delay in passing of the order is on the part of the Settlement Commission.

## Retrospective Amendments

(Section 9(6), Section 9(7), Section 9A(5), Section 9A(6) and Section 9C of the Customs Tariff Act)

- The Tariff Act is proposed to be amended retrospectively (w.e.f. 1 January 1995) to clarify that the determination or review of safeguard duty, countervailing duty or anti-dumping duty and the filing of appeals against an order is to be done as per the prescribed Rules.

## Key Tariff Amendments

Key amendments in the customs tariffs are tabulated below:

Particulars	BCD Rate	
	Present Rate (%)	New Rate (%)
<b>Chemicals:</b>		
Styrene and Vinyl Chloride Monomer	2	2.5



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Particulars	BCD Rate	
	Present Rate (%)	New Rate (%)
<b>Gems and Jewellery:</b>		
Articles of precious metals	20	25
Imitation Jewellery	Higher of 20% or INR 400 / kg	Higher of 25% or INR 600 / kg
Seeds for use in manufacturing of rough lab-grown diamonds	5	NIL
Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form	7.5	10
Silver dore bar having silver content not exceeding 95%	6.1	10
<b>Petrochemicals:</b>		
Naphtha	1	2.5
<b>Automobiles:</b>		
Vehicle in SKD form	30	35

Particulars	BCD Rate	
	Present Rate (%)	New Rate (%)
Vehicle and electric vehicle (CBU Form) other than with CIF value more than USD 40,000	60	70
Vehicles, specified automobile parts/components, sub-systems and tyres when imported by notified testing agencies for the purpose of testing and/ or certification, subject to specified conditions	As applicable	NIL
<b>Others:</b>		
Fish meal/ krill meal/ mineral and vitamin premixes for use in manufacture of aquatic feed	15	5
Camera lens and its inputs/parts for use in manufacture of Camera Module of cellular mobile phones	2.5%	Nil



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Particulars	BCD Rate	
	Present Rate (%)	New Rate (%)
Specific capital goods/ machinery for manufacture of Lithium-ion cell for use in battery of electrically operated vehicle (EVs)	As applicable	Nil

### Concessional Rate

Concessional rate of BCD is proposed to be withdrawn on the following goods w.e.f. the date set out in the respective notifications.

- Gold ores and concentrates for use in manufacture of Gold.
- Electrical energy supplied to DTA by power plants.
- Resin/ Catalyst for manufacture of cast components of Wind Operated Electricity Generator.
- Moulds, tools and dies for manufacture of parts of electronic components/equipment.
- Foreign currency coins when imported into India by a Scheduled Bank.
- Capital goods/ Machinery for printing industry.

- Batteries for electrically operated vehicles, including two and three wheeled electric motor vehicles.
- Used bonafide personal and household effects of a deceased person.

### Other Amendments

- Agriculture Infrastructure and Development Cess and Social Welfare Surcharge rates have been modified for specified goods.

## Excise

### Tariff Amendments

- NCCD on specified cigarettes covered under HSN 2402 increased by almost 16%.
- Excise duty on blended CNG has been exempted, to the extent of GST paid on biogas/ compressed bio gas contained in such CNG, and subject to fulfilment of specified conditions.

**CNK Comments:** The intention of exempting excise duty to the extent of GST paid, is to avoid the cascading effect of taxes.



## Key Non-Tax Budget Amendments

### Incentivizing Operations in GIFT City

A slew of measures has been announced to further incentivize operations in GIFT City. These measures include the following:

1. Simplifying the process for setting up a unit in IFSC through-
  - Strengthening the powers of IFSC Authority ('IFSCA') by delegation of powers under the SEZ Act to IFSCA – duality of governing authorities has been done away with.
  - A single window IT system for registration and approval from various regulatory authorities - IFSCA, SEZ, GSTN, RBI, SEBI and IRDAI.
2. Recognition of offshore derivative instruments in IFSC as valid contracts under the SCRA.
3. Permitting acquisition financing by IFSC Banking Units of foreign banks.
4. Subsidiary of EXIM Bank to be setup for trade re-financing of debt obligations.
5. Enabling provisions for arbitration, ancillary services, and avoidance of dual regulation under the SEZ Act to be introduced.
6. Setting up Data Embassies in GIFT IFSC for digital continuity solutions.

### Measures for Ease of Doing Business

#### Common Business Identifier:

PAN to be used as a common business identifier for all digital systems of specified government agencies, which will be facilitated through a legal mandate.

#### Centralised Address Updation / DigiLocker Services:

1. A one-stop solution to reconcile and update the identity and the address of individuals maintained by various government agencies, regulators and regulated entities will be established using the DigiLocker services, with Aadhaar as a foundational identity.
2. An Entity DigiLocker to be set up for use by MSMEs, large business and Charitable Trusts for storing and sharing documents online in a secure manner with various regulators.
3. Government to set up a National Financial Information Registry that would serve as a central repository of financial and ancillary information.

#### Ease of Reclaiming Shares / Dividends from Investor Education and Protection Fund Authority (IEPFA):

Establishment of an integrated IT portal to enable investors to reclaim unclaimed shares and unpaid dividends from the IEPFA with ease.



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