

# TT Alert

April 2023

## Key Amendments in the Finance Act 2023 vis-a-vis the Finance Bill 2023

The Finance Bill 2023 ('FB23') was introduced in the Lok Sabha on 1 February 2023. On 24 March 2023, the Finance Minister, Nirmala Sitharaman, proposed about 64 amendments in the Bill and the same was passed by both the houses of Parliament on 27 March 2023 incorporating the recommended changes. The Finance Act 2023 ('FA23') was passed after receiving President's assent on 31 March 2023.

We have provided a brief overview on the key amendments made in the FA23 vis-à-vis FB23 presented on 1 February 2023.

Sr. No	Particulars	Provision in the FB23 / Existing provisions of the ITA	Changes in the FA23
<b>A. Amendments pertaining to Specified MF, Non-resident and Other</b>			
1	<b>Income from Specified mutual funds to be taxed as Short-term Capital Gains</b>	The FB23 proposed to insert S. 50AA in the Income tax Act, 1961 ('ITA') to treat the Income from sale of units of Market Linked Debentures as short-term capital gains, taxable at normal rate irrespective of the period of holding.	The FA23 has expanded the scope of S. 50AA and also included income from sale of 'Units of Specified Mutual Fund' acquired on or after 1 April 2023, under the purview of short-term capital gains.  Further, the 'Specified Mutual Fund' has been defined as mutual funds not having more than 35% of its total proceeds invested in equity shares of domestic companies.
2	<b>Change in the tax rates on specified income of non-resident</b>	S. 115A of the ITA provides for the taxability of dividend, interest, royalty and fees for technical services in the hands of non-resident and a foreign company.  The royalty or fees for technical services, was chargeable to tax at 10%, whereas the dividend was chargeable to tax at 20%.	The FA23 has brought the following two changes in the tax rates under S. 115A:  a. A new proviso has been inserted in S. 115A to provide that the dividend received from a unit of IFSC shall be taxable at 10%.  b. The tax rate on royalty or fees for technical services has been increased to 20%.
3	<b>Marginal relief to a resident individual opting new tax scheme</b>	The FB23 proposed to provide the enhanced rebate of INR 25,000 under the new tax regime, where the resident individual has a taxable income up to INR 7,00,000.	The FA23 has provided marginal relief where tax on income exceeding INR 7,00,000 is more than excess income over INR 7,00,000.

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4	<b>Transfer of Interest in the Joint Venture shall be exempt transfer</b>	S. 47 of the ITA, exempts certain transfer from chargeability of capital gains tax and S. 49 provides for the cost with reference to certain modes of acquisition.	The FA23 has inserted clause (xx) in S. 47 of the ITA exempting the transfer of capital asset being interest in joint venture held by public sector undertaking, transferred in exchange of shares of a company incorporated outside India by Government of foreign State.  Further, S. 49(2AI) has been inserted to provide that the cost of acquisition of shares shall be deemed to be the cost of acquisition of interest in the joint venture.

## B. Amendments pertaining to Withholding Tax Rates

1	<b>TDS provision under S. 194BA on winning from online games</b>	The FB23 has proposed to tax the net winnings from online games at the rate of 30% under S. 115BBJ w.e.f. 1 April 2023. However, the withholding tax on winnings from the online games under S. 194BA was proposed to be effective from 1 July 2023.	To align the provisions of S.115BBJ and S.194BA, the FA23 amended the date of applicability of S. 194BA to 1 April 2023.
2	<b>S. 206AB will not apply in respect of TDS on winning from online games</b>	S. 206AB provides that where a person fails to furnish his return of income for the specified period, tax shall be deducted at higher rate. This provision does not apply where tax is required to be deducted under certain sections.	The FA23 added S. 194BA to the list of specified section and thus the tax on winnings from online games shall be deducted at 30% even if the deductee is a non-filer of return.
3	<b>TDS on interest on a long-term bonds or rupee-denominated bond</b>	As per S.194LC(2)(ib), TDS of 4% is applicable on interest payable to non-resident w.r.t monies borrowed from source outside India via any long-term bond or rupee denominated bond issued on or after 1 April 2020 but before 1 July 2023 and is listed on recognised stock exchange in IFSC.	The FA23 provides the tax withholding of 9% in respect of long-term bonds or rupee – denominated bonds issued on or after 1 July 2023 which is listed only on a recognised stock exchange located in IFSC.
4	<b>TDS on interest paid on certain securities</b>	The FB23 has removed the exemption provided in S. 193 and now the TDS is required to be deducted on any interest payment on listed securities.	The FA23 further amended S. 193 and provided that the TDS is not required to be deducted on any interest payable to a 'business trust' by the SPV.
5	<b>TCS rate under S. 206C(1G) will apply even if the remittance is made within India</b>	The FB23 had proposed to amend the provisions of S. 206C(1G) to provide that any remittance made under the Liberalised Remittance Scheme ('LRS') and on sale of Overseas Tour Program Packages, the TCS rate shall be 20%.	The FA23 has expanded the scope of the provision to remittance made under LRS, even within India. Thus, where the remittance is made under LRS In India, the new rates of TCS shall apply.
6	<b>TCS rate shall not exceed 20%</b>	S. 206CC and S. 206CAA of the ITA provides the higher rate of TCS in case of non-furnishing of PAN and in case of non-filer.	The FA23 has amended both the section and provides that the rate of TCS shall not exceed 20% even if the collectee does not furnish his PAN or is a non-filer. It has been inserted with effect from 1 July 2023.

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<b>C. Amendments pertaining to International Financial Services Centre ('IFSC')</b>			
1	<b>Tax exemption to Capital Gains and Dividend Income for certain entities in the IFSC</b>	S. 10 provides exemption to certain income from taxation under the ITA.	<p>The FA23 has inserted S. 10(4H) in the ITA to provide for exemption to a</p> <ul style="list-style-type: none"> <li>a. Non-resident or</li> <li>b. Unit in IFSC (primarily engaged in the business of leasing of aircraft</li> </ul> <p>in respect of capital gains arising from the transfer of equity shares of domestic company, being unit in IFSC engaged in business of lease of an aircraft which has commenced operations on or before 31 March 2026.</p> <p>Further, the FA23 has inserted S. 10(34B) to provide for exemption of dividend income, received by a unit in IFSC engaged in the business of leasing of aircraft from a company, being unit in IFSC engaged in the business of leasing of an aircraft.</p>
2	<b>Tax exemption of Income received in IFSC</b>	S. 10(4G) of the ITA provides that any income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident in an account maintained with an Offshore Banking Unit in any IFSC is exempt.	The FA23 has amended S. 10(4G) and provides that any income received by non-resident from such activity carried out by such person in any IFSC as may be notified by Central Government in Official Gazette shall also be exempt.
3	<b>Non-applicability of surcharge and cess on certain income of Specified Funds</b>	As per the existing provisions of ITA, surcharge and cess is to be considered for the advance tax liability.	The FA23 provides that the surcharge and cess shall not be applicable on the advance tax computed on the income from the securities of Specified Fund located in the IFSC.
4	<b>Scope of Original fund in S. 47(viiad) widened</b>	S. 47(viiad) of the ITA provides for the tax exemption to shareholder or unit holder or interest holder on relocation of the Original Fund to IFSC.	The FA23 has widened the definition and scope of Original Fund so as to include (i) Investment vehicle in which Abu Dhabi Investment Authority is direct or indirect sole shareholder or unit holder or beneficiary or Interest holder and such investment vehicle is wholly owned and controlled by Abu Dhabi Investment authority or Government of Abu Dhabi (ii) a fund notified by the Central Government in the Official Gazette in this behalf.
5	<b>Extension of 100% tax holiday to Offshore Banking Units ('OBU')</b>	S. 80LA of ITA provides for 100% tax deduction for the initial 5 tax years and 50% tax deduction for the subsequent 5 tax years with respect to the income earned by an OBU.	The FA23 increases the tax deduction under S. 80LA to 100% during the subsequent tax years i.e. 6th year to 10th year to the OBU.

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6	<b>Unit of IFSC allowed to opt for tonnage tax scheme</b>	S. 115VP provides that a qualifying company may opt for the tonnage tax scheme by making an application to Joint Commissioner having jurisdiction over the company.	The FA23 has extended the tonnage tax scheme to any entity located in IFSC, which has claimed deduction under S. 80LA of the ITA provided that such application is made within three months from the date on which deduction claimed under S. 80LA of the ITA ceases.

#### D. Amendments pertaining to Business Trust

1	<b>Taxation of Sum received from Business Trust</b>	The FB23 provided that a sum received by the unit holder from the business trust is subject to tax in the hands of the unit holders under S. 56(2)(xii) of the ITA.	<p>The FA23 has provided that specified sum shall be <math>A - B - C</math>, wherein,</p> <p>A = Cumulative distributions made to unit holders, other than distributions covered under the provisions of S. 10(23FC)/(23FCA) and not chargeable to tax under S. 115UA (2) of the ITA.</p> <p>B = Issue price of units</p> <p>C = Amount already charged to tax in earlier years.</p> <p>Further, the FA23 has extended the exemption provided under S. 10(23FE) of the ITA in respect of any income of a specified person, to include the income specified under S. 56(2)(xii).</p>
2	<b>Change in Cost of Acquisition of Units of Business Trust</b>	S. 48 of the ITA provides that income chargeable under the head "Capital gains" is to be computed by deducting from the Sale Consideration, the cost of acquisition of the asset.	<p>The FA23 amended S. 48 of ITA to provide that the cost of acquisition of units of business trust is to be reduced by any sum received by a unit holder from the business trust, except income referred in S.10(23FC) / (23FCA), S.56(2)(xii) and S.115UA.</p> <p>The FA23 also provides that when the transfer of unit is not considered as transfer under S. 47 and the cost of acquisition is determined as per S. 49, any sum received with respect to such unit, before as well as after such transaction shall be reduced from the cost of acquisition.</p>

## RBSA Comments

After introducing the FB23 in Lok Sabha, the Government realized that certain amendments are required basis the clarification sought by professional bodies and associations. Further, such amendments reflect the intention of the Government to promote IFSC Gift City as an alternative for the foreign institutions. The increase in tax rate on royalty and fees for technical services to 20%, will increase the compliance burden on the non-resident in respect of obtaining / maintaining the requisite documents for availing the beneficial tax rate as per the treaty. The exemption provided on the transfer of interest in joint venture is in consonance with the Government policy of the strategic disinvestment of the PSU. Change in tax treatment in respect of Market linked debentures and Debt mutual funds, would impact the growth of the debt industry.

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