

USISPF – Summary of Amendments to Finance Bill, 2023

Direct Taxes

International Financial Services Centre (IFSC)

- Income Tax rates: No surcharge and health and education cess would be applicable on income tax payable by a specified fund i.e., Category III Alternate Investment Fund (AIF) located in IFSC and investment division of an offshore banking unit which has been granted registration as a Category I Foreign Portfolio Investor (FPI), on any income received in respect of securities as mentioned in Section 115AD(1)(a).
- Income of non-resident from portfolio of securities: Section 10(4G) exempts income received by non-residents from portfolio of securities or financial products or funds, managed or administered by any portfolio manager in an account maintained with an Offshore Banking Unit (OBU) in IFSC. This exemption is now proposed to be extended to such activity carried out by such persons as may be notified by the government in the Official Gazette.
- Expansion of definition of original fund under Section 47(viiad) in the context of relocation of funds to IFSC to include:
 - an investment vehicle of Abu Dhabi Investment Authority (ADIA) in which ADIA is the direct or indirect sole shareholder or unit holder or beneficiary or interest holder and such investment vehicle is wholly owned and controlled, directly or indirectly, by ADIA; or
 - a fund as may be notified by the Central Government in the Official Gazette.
- Deduction in respect of incomes of OBUs in special economic zones under section 80LA(1): For the assessment year commencing on or after 1 April 2023, the deduction of 50% for the next five consecutive years (after the first five years) has been increased to 100%.
- Tax on dividends received from a unit in IFSC: Dividend income received by a non-resident from a unit in IFSC shall be taxable at the rate of 10%.
- Tax on long term bonds/ Rupee denominated bonds: Interest income earned by a non-resident on long- term bonds / rupee denominated bonds (issued on or after July 01, 2023) which are listed only on IFSC stock exchanges to be subjected to withholding and taxation at 9%.
- Income distributed on offshore derivative instruments entered into with an offshore banking unit in IFSC: To be exempt irrespective of its chargeability in the hands of the OBU. It had earlier been proposed that such income would be exempt for non-resident to the extent such income is chargeable to tax in the hands of the OBU.

- Aircraft leasing in IFSC:
 - Exemption of income by way of capital gains earned by a non-resident or a unit of an IFSC from transfer of equity shares of a domestic company, being a unit of an IFSC engaged primarily in the business of lease of an aircraft which has commenced operations on or before 31 March 2026.
 - Exemption of dividend income earned by a unit in IFSC which is primarily engaged in aircraft leasing business if such dividend is from a company, being a unit in IFSC, primarily engaged in aircraft leasing.
- Tonnage tax scheme: A unit of an IFSC which has availed deduction under Section 80LA may make an application within three months from the date on which such deduction ceases and consequently opt to be governed by the tonnage tax scheme.

Business Trust including Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT)

- Taxation of amounts received by unitholders from Business Trust, other than in the nature of interest, dividends or rental income or any other sum which is not chargeable to tax:
 - (i) Section 56(2)(xii) is now proposed to be substituted by the following mechanism:
 - Specific computation mechanism is introduced for unitholders to determine the income chargeable as ‘income from other source
 - s’. Particularly, the provisions have been updated to provide that the amount at which the unit was issued by the Business Trust would now be allowed as a deduction.
 - If the ‘specified sum’ computed as per the prescribed mechanism is a negative number (i.e. a loss), it shall be ignored for the purpose of computation of taxable income of the unitholder.
 - Reference to ‘redemption of units’ has been removed in the substituted mechanism.
 - Amendments are also introduced in section 48 for determining the cost of acquisition of units for computing capital gains:
 - Cost of acquisition of units to be reduced by sums distributed by Business Trust, excluding interest, dividend or rental income exempt in the hands of Business Trust, or any other sums which is chargeable to tax in the hands of Business Trust, or any amounts distributed which are charged to tax in the hands of unitholder as income under section 56(2)(xii)
 - In case the current unitholder has acquired the units through any mode which qualifies as an exempt transfer under section 47, distribution made to any previous unitholder shall also be reduced from the cost of acquisition of the

current unitholder as per the mechanism discussed above.

- (ii) Interest on debt securities by SPVs to Business Trust proposed to be excluded from scope of tax withholding under section 193.
- Exemption to Pension Fund/ Sovereign Wealth Funds etc. under section 10(23FE): Exemption extended to specified sum received from a business trust taxable under proposed Section 56(2)(xii).

Other Direct Tax amendments

- Tax on royalty and fees for technical services earned by a non-resident or a foreign company to be taxed at 20%, enhanced from the current rate of 10%.
- Computation of capital gains in case of Market Linked Debenture under Section 50AA: Proposed section 50AA is now proposed to be expanded to include the units of specified mutual funds acquired on or after 1 April 2023. Thus, capital gains arising from transfer, redemption, or maturity of unit of a specified mutual fund to be taxed as short-term capital gains.

The specified mutual fund to mean a mutual fund where not more than 35% of its total proceeds are invested in the equity shares of domestic companies.

- Withholding tax on winnings from online games: Effective date of proposed withholding tax provision on net winnings from online games advanced from 1 July 2023 to 1 April 2023. Correspondingly, it is proposed to restrict applicability of Section 194B on winnings from online game till 31 March 2023.

Provisions relating to higher withholding tax for non-filers of income-tax return are proposed to exclude newly introduced Section 194BA. The definition of the term 'rate or rates in force' to be amended to include reference to Section 194BA.

- Tax Collection at Source (TCS) for foreign remittance: Under Section 206C(1G)(a), every person, being an authorised dealer, who receives an amount, for remittance out of India from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India, is required to collect from the buyer, a sum equal to five per cent of such amount as income-tax. The term '**out of India**' is to be excluded from the above provisions.
- Provisions relating to TCS in case of non-furnishing of PAN and non-filers of income-tax return: Maximum rate of TCS in such cases shall not exceed 20 per cent.
- Securities Transaction Tax (STT) rate: STT on sale of futures has been hiked from 0.01 per cent to 0.0125 per cent and in case of options it has been hiked from 0.05 per cent to 0.062 per cent.

Indirect Taxes

Effective date for amendments under GST and Customs: The Finance Bill, 2023 as presented during the budget did not specifically state the effective date of the amendments to the GST and Customs laws. To remove this anomaly, Clause 1 of the Finance Bill, 2023 has been amended to provide that Section 123 to 144B shall come into force as and when notified by the Government in the Gazette by way of a notification.

Goods and Services Tax (GST)

- Persons not liable for registration: Retrospective amendment to sub-section (2) of Section 23 w.e.f. July 01, 2017, to provide that government may specify the category of persons who may be exempted from obtaining registration. A notification issued under sub-section (2) will override section 22(1) [person liable to registration basis turnover] and section 24 [mandatory registration under GST].
- Revocation of cancellation of registration (Section 30): Timeline for application for revocation of registration within ‘thirty days’ from the date of service of the cancellation order is proposed to be relaxed. The Government will specify the timeline and conditions, restrictions for the revocation of cancellation of registration. Further, the proviso which provided power to extend such time limit by Commissioner, AC/ JC has been deleted.
- Assessment of non-filers of returns: Timeline to furnish valid return for withdrawal of assessment order, is proposed to be enhanced from ‘thirty days’ to ‘sixty days’ of service of assessment order. In addition to this, in case the returns are filed beyond sixty days as specified above, then late fees shall be payable in addition to the interest and penalty as applicable.
- Constitution of Appellate Tribunal and Benches thereof: Section 109 on constitution of Appellate Tribunal and Benches thereof is proposed to be substituted.
 - Government shall notify the establishment of GST Appellate Tribunal, with a Principal Bench at New Delhi and State Benches at such places as recommended by the GST Council.
 - Issues involving place of supply shall be heard only by Principal Bench.
 - Principal Bench and State Bench shall hear appeals against the orders passed by Appellate Authority or Revisional Authority.
- President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc: Amendment to Section 110 of CGST Act to provide for Qualifications, Appointment, Vacancy, Removal and conditions of service of President and Members of Appellate Tribunal, constitution of Search-cum-Selection Committee for Technical Member.

- Financial and administrative powers of President of Appellate Tribunal: Amendment to Section 114 of CGST Act to provide that the President will exercise financial and administrative powers over the Appellate Tribunal which is yet to be prescribed. Further, the proviso which provided to delegate such power by President has been removed.
- Place of supply of services of transportation of goods, other than by way of mail or courier: As per Section 13(9), the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods where the location of the supplier of services or the location of the recipient of services is outside India. This sub-section is proposed to be omitted.
- GST compensation cess: Cess on pan masala and tobacco and manufactured tobacco substitutes, including tobacco products is proposed to be amended. It is proposed to levy cess on retail sale price of these products as per below table. Further, explanation for the term 'retail sale price' is provided.

Description of Supply of Goods / Services	The maximum rate at which GST compensation cess may be collected – <i>Earlier</i>	The maximum rate at which GST compensation cess may be collected - <i>Amended</i>
Pan Masala	135 per cent. ad valorem .	51 per cent of retail sale price
Tobacco and manufactured tobacco substitutes, including tobacco products.	Rs 4,170 per thousand sticks or 290 per cent. ad valorem or a combination thereof, but not exceeding Rs 4,170 per thousand sticks plus 290 per cent. ad valorem.	Rs 4,170 per thousand sticks or 290 per cent. ad valorem or a combination thereof, but not exceeding Rs 4,170 per thousand sticks plus 290 per cent. ad valorem. or 100 per cent of retail sale price per unit

Customs

- Manufacture and Other Operations in Warehouse Regulations (MOOWR) - A new Section 65A is proposed to be inserted with margin heading '*Goods brought for operations in warehouse to have ordinarily paid certain taxes*'. Conditions associated with bringing the goods into a warehouse for manufacturing and other operations has been changed as follows:
 - Going forward, movement of the goods for manufacturing operations in a warehouse would have to be under a bill of entry for home consumption.
 - Such goods would be assessed to duty and the IGST portion of the Customs duty will have to be paid. Only the BCD and SWS portion of the Customs duty will be deferred.

- Date of determination of duty on imported goods brought into warehouse would be the date of filing the bill of entry.
- The current practice for determining the duty on such goods is the date of filing of ex-bond bill of entry.
- Provisions for payment of deferred BCD and SWS are likely to be notified in due course through specific rules or regulations.

The proposed changes would help in resolving specific situations which were open to interpretation. It would also help in reduction of compliance cost in relation to MOOWR operations. However, it takes away the benefit of IGST deferral.

- General power to make regulations: Section 157 of Customs Act has been amended to grant power to government to specify the manner and conditions for payment of duty (i.e., BCD) on removal of goods from warehouse.
- Tariff changes:
 - Rate for Bispyribac-sodium (ISO) under HS 2933 59 50 increased from 7.5% to 10%.
 - Rate for X-ray generators, X-Ray machines falling under HS 9022 14 10, 20, 90 increased from 10% to 15%