

TAXATION TIMES

February 2023



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Introduction

On February 01, 2023 the Hon. Finance Minister Mrs. Nirmala Sitharaman presented the Union Budget for the year 2023-2024 which she referred to as the 'First Budget of Amrit Kaal'. During her budget speech she made announcements to amend the Income Tax Act, 1961. In this edition of taxation times, we will analyse the key direct tax proposals.

In this month's Taxation Times, we cover:

1. An article encompassing the recent direct tax proposals announced in the Union Budget
2. Case Laws from various courts & jurisdictions;
3. Tax Compliance Calendar – March 2023;
4. Circulars & Notifications – February 2023;
5. Tax News from around the world

We hope that you find this month's edition of the Taxation Times useful. In case you have any feedback or need us to include any information to make this issue more informative, please feel free to write to us at info@uja.in

Happy Reading!
Best Regards,
UJA Tax Team



Neha Raheja

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A Synopsis Of The Notable Direct Tax Proposals Of The Finance Bill, 2023

1. New Changes in Section 115BAC

By the Finance Act, 2020 a new Section 115BAC was introduced making an option available to the assessee to choose to pay tax under the said section from AY 2021-2022, or under the existing rates. However, if the option was exercised to pay tax under Section 115BAC, most of the Chapter VI-A deductions (under Section 80C etc.), and also depreciation, set off of losses etc. would not be available. The option is still available for AY 2023-2024 subject to the proviso to sub-section 5 of Section 115BAC.

A new sub-section 1A is proposed to be inserted where the slab rates for an individual, HUF, AOP (other than co-operative societies), BOI (whether incorporated or not), or an artificial juridical person under Section 115BAC for AY 2024-2025 are as follows:-

Sr. No.	Total Income	Rate of Tax
1.	Up to Rs. 3,00,000/-	Nil
2.	From Rs. 3,00,001/- to Rs. 6,00,000/-	5%
3.	From Rs. 6,00,001/- to Rs. 9,00,000/-	10%
4.	From Rs. 9,00,001/- to Rs. 12,00,000/-	15%
5.	From Rs. 12,00,001/- to Rs. 15,00,000/-	20%
6.	Above Rs. 15,00,001/-	30%

2. New changes in rebate under Section 87A

The rebate under Section 87A was Rs. 12,500/- for a total income up to Rs. 5,00,000/-. This has been increased by increasing the total income for the purposes of rebate to Rs. 7,00,000/- and increasing the rebate of tax to Rs. 25,000/-. Therefore, individual's resident in India having a total income of up to Rs. 7,00,000/- will not be liable to pay any income-tax.

3. Changes in taxation of capital gains on investment in residential property

Section 54 provides for exemption of capital gain on sale of a residential house when a new residential house is purchased. However w.e.f 1-4-2023, it is proposed that where the cost of the new asset (new residential house) exceeds 10 crore, the amount exceeding 10 crore will not be taken into account for the capital gains exemption.

4. New provision for computation on income from co-operative society

A new Section 115BAE is proposed to be inserted where the income of a co-operative society is to be taxed at 15% for AY 2024-2025 and subsequent years if certain conditions are satisfied, or 22% in case the co-operative society is not engaged in the manufacture of any article or thing. Short-term capital gains on transfer of capital asset on which no depreciation is allowable is to be taxed at 22%. Some of the conditions for claiming exemption are that the co-operative society must be registered on or after 1st April, 2023 and has commenced manufacture and production of an article or thing before 1st March, 2024 and the business is not formed by splitting up or reconstruction of an already existing business.

5. Changes in taxation of income from online games

Section 115BB which provides for taxation of income from card games, horse racing etc. now makes it clear that the said section shall not apply to income from online games. A new Section 115BBJ is proposed to be inserted which provides for taxation of online games.

Income from online games is to be taxed @30%. 'Online game' is defined in clause (iii) to the Explanation as a game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device. 'Computer resource' and 'Internet' are also defined under the said Explanation

From 1st July, 2023, winnings from an online game are not subject to TDS under Section 194B.

A new section 194BA is proposed to be inserted for deduction of TDS from winnings from an online game. Sub-section 1 is the charging section which provides for deduction of TDS in the manner prescribed. Proviso 1 makes it clear that deduction of TDS is mandatory even if there is a withdrawal from the account at any time during the financial year.

The TDS is to be deducted on net winnings. TDS is to be deducted from the user account at the end of the financial year.

Net winnings are to be subjected to TDS irrespective of whether the amount is in cash or kind.

6. Interplay between the provisions of Section 44AB, Section 44AD and Section 44ADA

Section 44AB provides for audit of accounts of certain persons carrying on business or profession. Proviso 1 has been amended and now provides that the said section shall not apply to persons who declare income from business or profession under Section 44AD and Section 44ADA.

Therefore, no audit under Section 44AB will be required for such persons.

Section 44AD provides for presumptive taxation in the hands of an eligible assessee in the case of an eligible business. The presumptive scheme can be utilized by the assessee if they are engaged in an eligible business. Clause (b) of the Explanation to Section 44AD defines 'eligible business'. Two provisos to clause (b) of the Explanation to Section 44AD have been inserted to provide that:

- (i) if the total cash receipts of a business do not exceed 5% of the total turnover or gross receipts, the business will be an eligible business if the total turnover does not exceed 3 crore (Proviso 1)
- (ii) For the purposes of the (i) above, if the cheque drawn on a bank is not account payee, the amount of the receipt would be deemed to be in cash (Proviso 2)
Therefore, the business may have a turnover of upto 3 crore in case the conditions are satisfied to avoid audit under Section 44AB.

Section 44ADA provides for computation of profits and gains of a profession on presumptive basis. Proviso 1 is inserted which states that if the total cash receipts do not exceed 5% of the gross receipts, the total gross receipts for the purposes of Section 44ADA would be Rs. 75 lacs. Therefore, assuming proviso 1 is complied with, an assessee may have gross receipts of upto 75 lac to claim the benefit of Section 44ADA. Proviso 2 of Section 44AD applies mutatis mutandis to Section 44ADA.

7. Miscellaneous

- a. Angel Tax under Section 56(2)(viib) is proposed to be levied on a company irrespective of the residency status of the investor. Therefore, post 1st April, 2024 investment by a non- resident will also attract this section.
- b. The definition of eligible startup under Section 80-IAC has been amended to include a startup incorporated till 31st March 2024
- c. A new Section 50AA is proposed to be introduced for taxation of capital gains on sale of Market Linked Debentures excluding the STT paid pursuant to such transfer.
- d. It is proposed to introduce a new clause (h) to Section 43B to disallow deduction under this Section for any amounts paid beyond the time-limit stipulated under Section 15 of the MSME Act, 2006. The said section contemplates payments to the supplier by the buyer within a certain time frame and if the payment is not made within the allotted time, the deduction under Section 43B will not be allowed.

Case Laws

1

Mukesh Padamchand Sogani V/s Assistant Commissioner of Income Tax [2023] 147 taxmann.com 24 (Pune - Trib.) [30-01-2023]

Section: 199 read with section 143(1) of the Income Tax Act 1961

Facts: The assessee is an individual and is a Chief Operating Officer of a private limited company. Such company pays the assessee salary and deducts therefrom tax at source (TDS).

The assessee filed his return of income for the relevant year and the same was processed under section 143(1) of the Income Tax Act, 1961 thereby allowing credit of TDS at a lesser amount than what was claimed in the return of income citing the reasons mismatch.

The assessee filed an appeal before Commissioner of Income Tax (Appeals) argued before the same as the employer has deducted TDS from his salary and hence the credit of TDS deducted should be allowed. But Ld. CIT(A) passed an order against the assessee.

Aggrieved by the order passed by the Ld. CIT(A) the assessee filed an appeal before Hon. ITAT.

Held: Hon. ITAT held that, Section 199, read with section 143(1), of the Income-tax Act, 1961 -Deduction of tax at source - Credit for tax deducted (Conditions precedent) - Assessment year 2019-20 - Whether credit for amount of tax deducted at source is not dependent upon its subsequent deposit by deductor, hence, requirement for allowing credit is only of amount of tax deducted at source and not amount eventually getting

deposited with Government after deduction - Held, yes - Whether once there is deduction of tax at source, benefit of such tax deduction has to be allowed in hands of deductee under section 143(1) irrespective of its subsequent deposit or non-deposit by deductor - Held, yes - Whether where a sum was duly deducted at source by employer from salaries credited/paid to assessee for year under consideration, benefit of such tax deducted at source had to be allowed in intimation under section 143(1), notwithstanding fact that it was not deposited.

In Favour of: The Assessee.

2

Google LLC V/s Joint Commissioner of Income-Tax [2023] 147 taxmann.com 428 (Bengaluru - Trib)

Section: 9 read with Articles 12 and 16 of India-USA DTAA

Facts: The assessee is a foreign company incorporated in USA. The Ld. Assessing Officer had passed draft assessment order against the assessee by adding an amount to the income as fees for technical services (FTS) which is reimbursed by Google India Private Limited (GIPL) to the assessee for the payment made by GIPL to the seconded employees of the assessee.

Aggrieved by the draft assessment order passed by the Ld. Assessing Officer the assessee filed objections before the Hon. Dispute Resolution Panel (DRP) but the Hon. DRP rejected the same.

Against the directions of the Hon. DRP the assessee filed an appeal the ITAT.

Held: Where assessee, a US based company, received payments for seconding its employees to GIPL, its Indian AE and as per assignment letters issued to seconded employees it was noted that during secondment period, they were solely working for GIPL, since assessee merely facilitated payment of salary which was actually reimbursed by GIPL, payments made to assessee with respect to seconded employees would not come within FIS/FTS under section 9 or India-USA DTAA

In Favour of: The Assessee

3

**TiVo Tech (P.) Ltd. V/s Deputy
Commissioner of Income Tax
[2023] 146 taxmann.com 545
(Bangalore - Trib.)**

Section: 92C of the Income Tax Act, 1961

Facts: The assessee company is a wholly owned subsidiary of Veveo Inc., USA. Subsequent to the acquisition of Veveo Inc. USA by Rovi Corporation, the assessee also forms part of Rovi Group. It provides IT, ITES and MSS services to Associated Enterprise [AE] offered by Rovi Group. The assessee filed its return of income for the relevant year. The case was selected for scrutiny through CASS and a notice u/s.143(2) was duly served on the assessee. In view of the large international transaction carried out by the assessee, a reference was made to the Transfer Pricing Office (TPO). The TPO aggregated the ITE services rendered by the Assessee along with its SWD services and determined a TP adjustment towards the SWD segment. TPO also included the companies which have higher turnover than the assessee.

Against the draft assessment order passed the assessee filed objections before Dispute Resolution Panel (DRP) which rejected the objections and directed the Ld. Assessing Officer to pass the final assessment order.

Aggrieved by the final assessment order the assessee filed an appeal before the Hon. Tribunal.

Held: High turnover is ground for excluding companies as not comparable with company that has low turnover

In Favour of: The Assessee

Circulars & Notifications February 2023

A.Circulars:

Finance Act, 2022 - Explanatory Notes
- Corrigendum To Circular No.
23/2022, Dated 3-11-2022

<https://incometaxindia.gov.in/communications/circular/circular-2-2023.pdf>

B.Notifications:

Centralised Processing Of
Equalisation Levy Statement Scheme,
2023

<https://incometaxindia.gov.in/communications/notification/notification-3-2023.pdf>

Substitution Of Forms ITR-1 Sahaj, ITR-2, ITR-3, ITR-4 Sugam, ITR-5, ITR-6, ITR-V And Indian Income Tax Return Acknowledgement

<https://incometaxindia.gov.in/communications/notification/notification-4-2023.pdf>

Substitution OF FORM ITR-7

<https://incometaxindia.gov.in/communications/notification/notification-5-2023.pdf>

CBDT notifies new audit reports to be furnished by charitable or religious trusts and other institutions

<https://incometaxindia.gov.in/communications/notification/notification-7-2023.pdf>

C.Press Release:

CBDT notifies Income Tax Return Forms for Assessment Year 2023-24 well in advance

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1899362>

Direct Tax Collections for F.Y. 2022-23 at ₹15.67 lakh crore - 24.09% higher than gross collections for corresponding period of last year as on 10.02.2023

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1898233>

Tax Compliance March 2023

2 March 2023

Due date for furnishing of challan-cum statement in respect of tax deducted under section 194-IA/194-IB /194M in the month of January, 2023

7 March 2023

Due date for deposit of Tax deducted/collected for the month of February, 2023.

15 March 2023

Fourth installment of advance tax for the Assessment Year 2023-2024.

Due date for payment of whole amount of advance tax in respect of assessment year 2023-24 for assessee covered under presumptive scheme of section 44AD / 44ADA

Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of February, 2023 has been paid without the production of a challan

31 March 2023

Country-By-Country Report in Form No. 3CEAD for the previous year 2021-22 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group

Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2021 to March 31, 2022) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

Uploading of statement [Form 67], of foreign income offered to tax and tax deducted or paid on such income in previous year 2021-22, to claim foreign tax credit [if return of income has been furnished within the time specified under section 139(1) or section 139(4)]

17 March 2023

Due date for issue of TDS Certificate for tax deducted under section 194-IA/194-IB /194M in the month of January, 2023

30 March 2023

Due date for furnishing of challan-cum statement in respect of tax deducted under section 194-IA/194-IB /194M in the month of February, 2023

Tax News from around the World



<https://www.oecd.org/tax/beps/public-comments-received-on-compliance-and-tax-certainty-aspects-of-global-minimum-tax.htm>

<https://www.oecd.org/tax/beps/public-comments-received-on-compliance-and-tax-certainty-aspects-of-global-minimum-tax.htm>

Italy blocks sale of tax credits stemming from home renovations

<https://www.reuters.com/markets/europe/italy-blocks-sale-tax-credits-stemming-home-renovations-2023-02-16/>

Turkey Expands Tax Return and Payment Deadline Relief Following Earthquake to Additional Areas

<https://www.orbitax.com/news/archive.php/Turkey-Expands-Tax-Return-and--52107>

U.S. IRS and Treasury Provide Interim Guidance for Insurance Providers on Alternative Minimum Tax

<https://www.orbitax.com/news/archive.php/US-IRS-and-Treasury-Provide--52109>

UN Secretary-General Invites Written Input for Report on Promotion of Inclusive and Effective Tax Cooperation

<https://www.orbitax.com/news/archive.php/UN-Secretary-General-Invites-W-52108>

U.S. IRS and Treasury Provide Interim Guidance for Insurance Providers on Alternative Minimum Tax

<https://www.orbitax.com/news/archive.php/OECD-Publishes-Comments-Receive-52105>

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