MOVE MAY HIT TECH IMPORTS

# Withholding tax on royalties to non-resident firms hiked to 20%

**Treaties may help in some cases, but compliance tough**

SURABHI & SWARAJ BAGGONKAR
New Delhi/Mumbai, March 24

THE GOVERNMENT HAS doubled the withholding tax rate on royalties and fees for technical services earned by non-resident companies to 20% from 10%. The change has been brought about through the amendments made to the Finance Bill, 2023 by finance minister Nirmala Sitharaman on Friday.

While many companies are covered by double taxation avoidance agreements, under which they would get the beneficial tax rate of 10-15%, experts said it would lead to a higher compliance burden, as they would still require the tax residency certificate and related documentation from the foreign firm to avail the tax benefit.

The withholding tax is usually paid by the Indian company and India Inc is still weighing out the impact of the move on their policies. "The rate under the Income Tax Act has been increased to 20%. However, under the tax treaty, the rate would continue to be 10%. There will not be any impact on the company," said a senior executive of an automobile firm.

The move has also puzzled experts who pointed out that the tax rate had been gradually reduced from 30% to 10% over the years.

Sandeep Jhunjhunwala, partner, Nangia Andersen LLP, said the maximum effective tax rate would now be at 21.84% including surcharge and cess. "Taxpayers can however continue to avail the beneficial rate, if any, under the respective tax treaties, subject to meeting the documentation requirements such as obtaining a valid TRC from the country of residence, furnishing of Form 10F which is made online with effect from April 1, 2023," he said.

Most tax treaties with India such as those of Singapore, France, Germany, Japan, Malaysia, Luxembourg and the UAE provide a 10% tax rate on royalty and fees on technical income streams from India, which if compared to the hitherto IT Act rate (effective rate of 10.92% including surcharge and cess), provided marginal relief. This made the treaty benefit less lucrative when viewed from the onerous documentation requirements to claim the benefit, he noted.

The move could also increase the cost of import of technology in cases where Indian companies are grossing up withholding taxes and treaty benefits are not available, said Gouri Puri, partner, Shardul Amarchand Mangaldas & Co. "Tax treaty benefits will become more critical now to avail a reduced withholding tax rate. Foreign entities will need to evaluate their commercial substance to be able to claim such treaty benefits," she said.

### WHAT LIES AHEAD


- Many firms are covered by double taxation avoidance agreements, under which they would get the beneficial tax rate of **10-15%**
- They would still require the tax residency certificate and related documentation from the foreign company to avail the tax benefit
- The withholding tax is usually paid by the Indian firm; India Inc is still weighing out the impact of the move on its policies



# FM FOCUSES ON A LEVEL PLA

## Bank FDs become more attractive...

**No incentive to hold debt mutual funds for more than 36 months**

SAIKAT NEOGI
New Delhi, March 24

DEBT MUTUAL FUNDS that do not have more than 35% invested in equity shares of domestic companies will no longer enjoy the long-term capital gains benefit. The amendments to the Finance Bill, 2023, passed by the Lok Sabha, have said such funds will now be taxed at the income tax slab level and will be treated as short-term capital gain at the taxpayer's slab rate, just like bank deposits.

As a result, bank fixed deposits will become more attractive, as both debt funds and bank fixed deposits will be subject to the same taxability of maturity proceeds. Even gold funds and international funds will lose the long-term capital gains tax benefits.

The new amendments will be applicable to funds acquired on or after April 1, 2023, and will not impact mutual funds acquired before April 1, 2023. Those funds will still be taxed as long-term capital gains if the holding period is more than 36 months.

At present, debt mutual funds held for more than three years are treated as long-term investments and taxed at the rate of 20% along with indexation benefits or 10% without indexation. If the holding period is less than three years, then they are taxed at the slab rate of the investor. This provided a tax arbitrage opportunity, allowing investors to pay a lower rate of tax if they held onto the investment for more than three years.

Neeraj Agarwala, partner, Nangia Andersen India, said there will be no incentive for a taxpayer to hold debt funds for a period of more than 36 months to avail of the benefit of indexation and lower tax rate. "Now, the taxation of debt funds will be the same irrespective of the holding period."

The change in debt taxation would meaningfully impact allocation decisions. Roopali Prabhu, chief investment officer & executive director, Private Wealth Group, JM Financial, said for the same expected return, investors will now have to take higher risk. "Assuming an investor's target return was post tax 7% per annum over three years, that is currently achievable by investing 100% in a target maturity fund that invested in AAA papers. Going forward, assuming yields don't change, the investor will have to invest over 25% in equities (assuming 13% equity return) to achieve the same target return."

Experts say as there is no change in short-term capital gains for debt funds (holding period less than three years), individuals can continue to invest in liquid funds to earn higher post-tax returns than parking money in savings bank accounts.

Harshad Chetanwala, co-founder, MyWealthGrowth.com, said, "Earlier, too, the tax on such investment was as per the tax slab and it continues to be the same. This will not affect the purpose of investing in debt funds from a short term perspective," he says.

"Investors are likely to find fixed deposits a more safe option considering the tax arbitrage is lost now. As a result, the banking sector can look at attracting the customers with higher interest rates on FDs," says Amit Maheshwari, tax partner, AKM Global

Adhil Shetty, CEO, Bankbazaar.com, says the changes in debt mutual funds should bring parity between fixed deposits and savings accounts, essentially by removing tax efficiency. "Without the tax efficiency, people may prefer to keep their money in bank deposits."

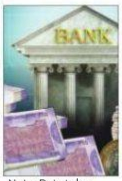
### RETURNS FROM DEBT MUTUAL FUNDS
(in %, CAGR)

| Category | 3-year | 5-year | 10-year |
|---|---|---|---|
| Long | 4.51 | 6.41 | 7.19 |
| Medium | 6.56 | 5.69 | 7.23 |
| Short | 6.29 | 5.82 | 7.04 |
| Money Market | 4.98 | 5.73 | 6.93 |
| Dynamic | 5.8 | 6.24 | 7.25 |
| Corp Bond | 6.17 | 6.48 | 7.2 |
| Credit Risk | 7.47 | 4.09 | 6.25 |
| Fixed Maturity | 4.04 | 4.91 | 6.46 |
| Gilt | 4.96 | 6.83 | 7.39 |

Data as on March 23 Source: Value Research

### FIXED DEPOSIT INTEREST RATES
(up to ₹1 crore), in %

| Bank | 3-5 years | Above 5 years |
|---|---|---|
| IDFC First Bank | 7-7.75 | 7.00 |
| IndusInd Bank | 7.25-7.75 | 7%-7.25 |
| DCB Bank | 7.60 | 7.60 |
| Axis Bank | 7.00 | 7.00 |
| HDFC Bank | 7.00 | 7.00 |
| ICICI Bank | 7.00 | 6.9%-7 |
| Bandhan Bank | 7.25 | 5.85 |
| YES Bank | 7.00 | 7.00 |
| State Bank of India | 6.50 | 6.50 |
| Union Bank of India | 6.7-7.30 | 6.70 |
| Bandhan Bank | 7.25 | 5.85 |
| Karur Vysya Bank | 6.25-7 | 6.25 |




Note: Data taken from respective bank's website as on March 23, 2023

Source: Bank Bazaar.com

# Nil tax for income a little over ₹7 lakh

## Tighter TDS provisions on online gaming

**SURABHI**
New Delhi, March 24


**CHANGE IN NORMS**

- TDS provision on online gaming brought forward to April 1
- Online gaming firms will have to re-orient processes to new change faster
- Higher limit of TCS for non-filers, lack of PAN restricted at 20%

**IN A MOVE** that could incentivise more taxpayers to move to the concessional income tax regime, the finance ministry has introduced a marginal relief for those earning just a little more than ₹7 lakh a year. This would ensure that their tax burden won't include paying any tax, like others below the ₹7-lakh income threshold.

The change has been introduced through the amendments to the Finance Bill, 2023 that was passed by the Lok Sabha on Friday. Individual taxpayers having borderline income will get a deduction of income tax payable in excess of the differential income above ₹7 lakh.

Experts pointed out that currently a person who has income up to ₹7 lakh in a year does not have to pay tax under the concessional income tax regime. But if the income is even slightly above this limit at about ₹7,00,100, the tax incidence is as high as ₹25,010.

The proposal would benefit those with income up to ₹7.27 lakh per year, said Sandeep Jhunjhunwala, Partner, Nangia Andersen LLP.

To make the concessional income tax regime more attractive, finance minister Nirmala Sitharaman had in the Union Budget 2023-24 proposed to increase the rebate limit to ₹7 lakh in the new tax regime. As a result, individuals with income up to this amount would not have to pay tax.

However, with online gaming maintaining its popularity, the Finance Bill has also advanced the provision for tax deduction at source to April 1, 2023 from the earlier proposed date of July 1, 2023. Further, the TDS on online gaming will also be deducted at the double rate, in case of non-compliance in return filing by the concerned deductee, where the TDS amount in the past year was more than ₹50,000.

The Union Budget presented in February had proposed to insert a new Section 194BA in the Income Tax Act, effective July 1, 2023, to provide for deduction of tax at source on net winnings in the user account at the end of the financial year. Obligation is cast upon the payer of winnings to deduct and deposit taxes on net winning at a 30% rate.

Jhunjhunwala noted that the preponement of the date appears to be a deviation from the norm and in an immediate reaction, could leave taxpayers in a state of disorder with very little time to make the necessary arrangements for achieving compliance. "However, taxpayers could breathe a sigh of relief as taxes are required to be deducted on the net winnings at the end of the fiscal year unless the accounts holder withdraws the winnings earlier," he said.

Amit Maheshwari, tax partner, AKM Global said the TDS provisions related to non-filers of income-tax return has been extended to the TDS on winnings from online games, which will help widen the tax base and improving the transparency in tax collections.

# Relief for taxpayers with income slightly over Rs 7L

**NEW DELHI: In a relief to taxpayers opting for the new tax regime, individuals earning a marginally higher income than no-tax ceiling of Rs 7 lakh will pay tax only on the differential income after the government amended the Finance Bill.**

The Finance Bill 2023, passed by the Lok Sabha on Friday, has proposed a marginal relief to taxpayers under the new tax regime.

Explaining the provision, the finance ministry said under the new tax regime with effect from April 1, if a taxpayer has an annual income of Rs 7 lakh s/he pays no tax. But if s/he has an income of Rs 7,00,100 s/he pays a tax of 25,010.

Thus an additional income of Rs 100 leads to a tax of Rs 25,010. Hence, marginal relief is proposed to that so that the tax that one pays should not be more than the income that exceeds Rs 7 lakh (Rs 100 in this case), the ministry said.

Nangia Andersen LLP Partner Sandeep Jhunjhunwala said the amendment to Finance Bill will provide marginal relief to taxpayers.

"Working out the math, an individual having income up to (approx.) INR 7,27,700 could stand to benefit from this marginal relief," Jhunjhunwala added.

More on P7

## 4% DA hike for Central employees, pensioners

NEW DELHI: The Union Cabinet on Friday increased the dearness allowance and dearness relief by 4 per cent to 42 per cent to benefit 47.58 lakh central government employees and 69.76 lakh pensioners. The impact on the exchequer on account of this will be Rs 12,815.60 crore per annum, I&B Minister Anurag Thakur said.

# Tax GIFT for non-resident investments in IFSC

SURABHI
New Delhi, March 24

**INDIA'S INTERNATIONAL FINANCIAL** Services Centre (IFSC) at GIFT City could become more attractive to investors with a slew of tax incentives brought in through the amendments to the Finance Bill, 2023 including extending a 100% tax holiday available to income of offshore banking units for a full 10-year period. At present, a 100% tax holiday is available for a five-year period and a 50% exemption is then available for the next five years.

"The amendment proposes that income received by non-residents from portfolio of securities in an account maintained with the Offshore Banking Unit in IFSC will be exempt to the extent such income accrues or arises outside India," said Gopal Bohra, partner, NA Shah Associates.

The amendments also introduced a beneficial withholding tax rate of 10% under Section 115A for dividends received by non-residents from IFSC units under Section 80LA. The move is expected to help incentivise investments from non-residents into IFSC.

### SOME GIVE, SOME TAKE

**MEASURE:** TCS of 20% on remittances under Liberalised Remittance Scheme even within India

**EFFECT:** To bring tax parity between LRS funds remitted out of India and from within the country to GIFT City

**MEASURE:** Withholding tax of 9%, against 5% now, on borrowing by foreign company from long-term bond or rupee denomi-nated bond listed on IFSC stock exchange

**EFFECT:** Likely to provide more funding options to Indian entities

**MEASURE:** Income from portfolio of securities received by non resident in account with OBU to be exempt

**EFFECT:** Will encourage more non-residents to invest in IFSC

However, there is one tightening of tax norms proposed in the amendments for levying of tax collected at source of 20% for remittances even within India. The move is aimed at bringing tax parity in treatment of funds remitted. At present, TCS is levied on funds remitted out of India through the Liberalised Remittance Scheme (LRS). But when money is remitted by a resident to Gift City, there is no TCS. Further, the benefit of Section 194LC has also been extended but at a higher withholding rate of 9% to long-term bonds or rupee-denominated bonds issued after July 1, 2023, which are listed on recognised stock exchanges in IFSC. This rate was earlier at 5%.

"The extension of the 194LC benefit was an anticipated amendment, which was initially missed out on in the Budget last month but has now been rectified. Despite the proposal for a higher withholding tax rate of 9%, this is a welcome move since the scope of the section is being expanded to include interest in certain bonds listed in stock exchanges located in IFSC. This may provide more funding options to Indian entities," said Rajesh Srinivasan, Partner, Deloitte India.

Sunil Gidwani, partner, Nangia Andersen LLP, said several significant changes have been brought about which can be termed as the "last mile" changes to remove remaining bottleneck in IFSC. "These measures will make IFSC difficult to ignore for any large financial markets player," he said.

While most of the exemptions required by foreign investors and aircraft lessors are in place for exemption for royalty and interest income, now it has also been extended to capital gains and dividend received by a company in IFSC which leases an aircraft through a step-down special purpose vehicle. This had been a key demand of the industry and will encourage investment into aircraft leasing in IFSC.

Further, the amendments have also proposed waiver of surcharge on capital gains earned by GIFT Category III from securities, which is also expected to boost investments.

The amendment has also introduced a provision for tax-neutral reallocation of any investment vehicle in which the Abu Dhabi Investment Authority is sole direct or indirect shareholder or unit holder to GIFT City.

# LS approves setting up of GST Appellate Tribunal

PTI / New Delhi

Lok Sabha on Friday cleared changes in the Finance Bill to pave the way for setting up of an appellate tribunal for resolution of disputes under GST.

Currently, taxpayers are filing writ petitions before high courts in the absence of the appellate tribunal. As per the amendments proposed in the Finance Bill 2023, which was passed by Lok Sabha on Friday, benches of the GST Appellate Tribunal would be set up in every state while there will be a principal bench in Delhi which will hear appeals related to 'place of supply'.

Even after more than five years of implementation of the Goods and Services Tax (GST), the appellate tribunal has not been set up. As a result, unresolved legal matters under GST have accumulated. Nangia Andersen India's Tanushree Roy, Director- Indirect Tax, said establishment of the appellate tribunal would result in lower burden on high courts, Supreme Court and at the same time, would also provide taxpayers the much needed reprieve.

"This is certainly a welcome and a positive move, ending the industry's long wait for establishment of the GST Appellate Tribunal," Roy said.

# Govt to scrap long-term tax benefit for debt MFs investing less than 35% assets in equity

**NEW DELHI:** Debt mutual funds are likely to be stripped of the long-term tax benefit if they invest less than 35 per cent of their assets in equities. They will attract short term capital gains tax. The government is likely to make such a proposal in the form of an amendment to the Finance Bill 2023 in the Parliament, sources said.

The Finance Bill 2023, which contains tax proposals for the fiscal year starting April 1, is to be taken up for approval in the Lok Sabha as early as on Friday.

Once the amendments to Finance Bill 2023 gets Parliament assent, holders of mutual fund schemes which invest up to 35 per cent of their assets in equity shares would be taxed as


per their slab rates.

The proposal will bring parity in taxation between a market-linked debenture and a mutual fund which invests majority of its funds in debts.

The finance ministry is likely to bring in amendments to the Finance Bill 2023, removing the long term capital gains tax (LTCG) benefits available to such specified MFs.

Currently, such mutual fund schemes attract 20 per cent LTCG with indexation benefits.

Nangia Andersen LLP Partner Vishwas Panjiar said the Finance Bill 2023 introduced special provisions for computing capital gains in case of transfer of a market-linked debenture. This provision is now expanded to cover specified mutual funds as well i.e. mutual funds where less than 35 per cent proceeds are invested in equity shares of domestic firms.

"Accordingly, in all cases, irrespective of the period for which the market-linked debenture and/or the specified mutual fund is held by the holder, gains arising from the transfer will be deemed to be short term capital gains," Panjiar said. PTI

# Lok Sabha okays setting up of appellate tribunal to resolve disputes under GST

*Even after more than five years of implementation of the Goods and Services Tax (GST), the appellate tribunal has not been set up*

**OUR CORRESPONDENT**

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EY Tax Partner Saurabh Agarwal said the amendment made in Section 109 of the CGST Act would help the government in setting up of the GST tribunal in a time-bound manner.

It would also enable the principal bench to take certain important decisions such as distribution of cases amongst the state benches, referring of case to other members if there is a difference in views within the same bench or otherwise. These would help in expediting the decision-making process, Agarwal added.

"Further, on the vexed issue with respect to place of supply, the power to hear the appeal should now vest with the principal bench which would likely aid in better decision making," Agarwal said.

Abhishek Jain, Partner, Indirect Tax at KPMG in India, said it will bring to an end the long wait by the industry and help streamline pending litigations.

Last month, the 49th GST Council meeting accepted the report of a panel of state ministers on appellate tribunals with some modifications.

Currently, taxpayers aggrieved with ruling of tax authorities are required to move high courts. The resolution process takes longer time as high courts are already burdened with backlog of cases and do not have a specialised bench to deal with GST cases.

Setting up of state and national level benches would pave the way for faster dispute resolution.

## Highlights

- Last month, the 49th GST Council meeting accepted report of a panel of state ministers on appellate tribunals with some modifications
- Currently, taxpayers aggrieved with ruling of tax authorities are required to move high courts
- The resolution process takes longer time as high courts are already burdened with backlog of cases and do not have a specialised bench to deal with GST cases

# Finance Bill passed. Lok Sabha passes Finance Bill 2023 after Minister moves over 60 amendments

March 24, 2023 - Updated 05:20 pm IST

**Debt MFs to lose their tax sheen; panel set up to improve NPS for government employees**

BY KR SRIVATS




Finance Minister Nirmala Sitharaman | Photo Credit: SAMUEL RAJKUMAR

The Finance Minister on Friday announced in the Lok Sabha that a committee under Finance Secretary T. V. Somanathan will be set up to look into further improvements in the National Pension System (NPS) for government employees.

"Representation have been received that NPS for government employees needs to be improved. I propose to set up a committee under Finance Secretary to look into this issue of pension and evolve an approach that addresses the needs of employees, while maintaining fiscal prudence to





International Financial Services Centres (Only Gift City in Gujarat for now).

One major change relates to the aircraft leasing industry. While most of the exemptions required by foreign investors and aircraft lessors are in place in terms of exemption for royalty and interest income, now the exemption also gets expanded to capital gains and dividend received by a company in IFSC, which leases an aircraft through a step-down Special Purpose Vehicle, explained Sunil Gidwani, Partner, Nangia Andersen LLP.

Further tax holiday for banking units in IFSC has been extended from 100 per cent in first 5 years and 50 per cent in next the five years to 100 per cent for the entire 10-year period.

Also any bonds issued by an IFSC unit and listed on an exchange there will enjoy a lower withholding tax of 9 per cent. "These measures will make IFSC difficult to ignore for any large financial markets player," Gidwani added.

## REITs and INVITs

The Finance Bill 2023 had sought to tax any distribution made by a business trust (REITs/INVITs) other than interest, dividend, rental income or capital gains, that is to say, any distribution which was not taxable either in the hands of the business trust or unit holders, as income of unit holders as 'income from other sources'.

In other words, the government sought to levy tax on any form of distribution which was christened as 'repayment of debt' and/ or 'amortisation of debt' in the hands of the investor irrespective if the initial investment was not fully recouped.

Vishwas Panjiar, Partner, Nangia Andersen LLP said the government has taken a pragmatic and more sensible approach to the issue of taxability in such cases. "It has now proposed that only the sum received in excess of the initial investment will be taxed as "Income from Other Sources". Also, the sum received will compulsorily reduce the cost base of the unit for the purpose of computing capital gains tax at the time when the unit holder ultimately sells the unit," Panjiar added.



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