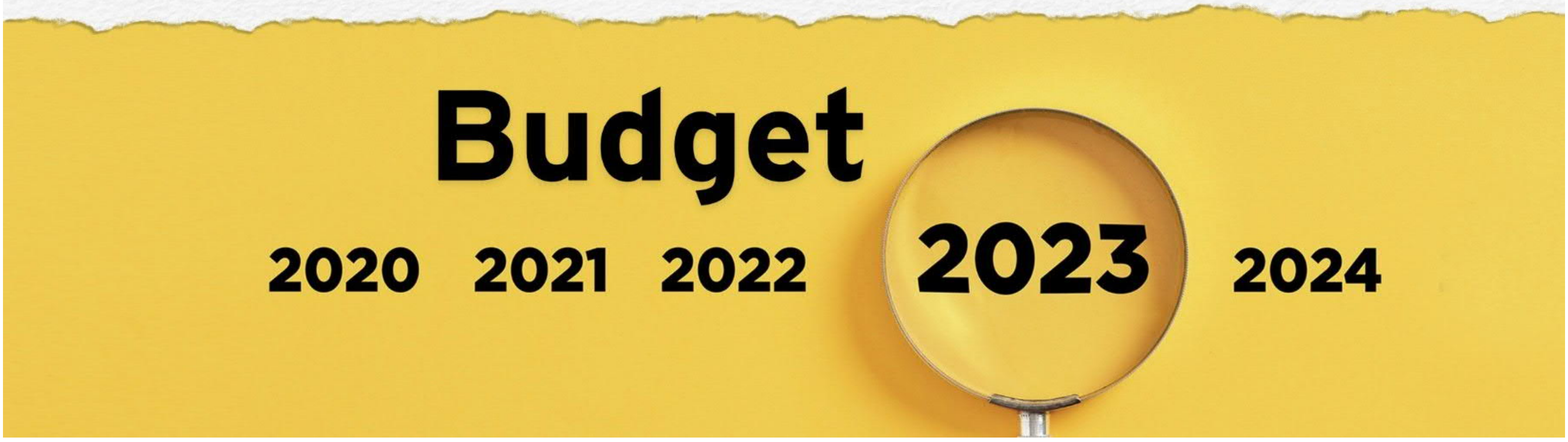
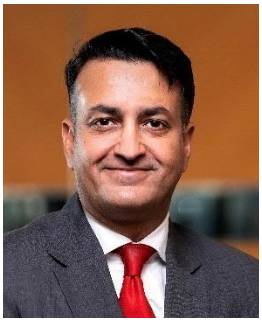


Focus on aligning existing tax provisions



Gaurav Karnik
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The real estate sector had several expectations from the Union Budget 2023 given that the past year had witnessed a significant recovery from the pandemic period and expectation was that long standing demands from a tax perspective would be addressed in the Budget so as to sustain the recovery in the sector.

On the policy front, outlay for PM Awas Yojana has been enhanced to INR 79,000 crores which demonstrates that the Government is cognizant of the need to increase investments for growth of affordable housing in the country.

Amendments introduced in the real estate sector seem to be with aligning the intent of the Government with the existing provisions. Although this should bring clarity to the tax authorities as well as taxpayers but the same has not met the expectations of the real estate sector. Especially, the change in taxation in Business Trust regime with respect to taxation of distributions by business trusts that do not suffer taxation either in the hands of business trusts or in the hands of unit holders, which could be negative for the growth of REITs in India.

How does the budget impact the real estate sector?

Key takeaway for a tax professional

- Restriction of capital gains tax exemption on re-investment of consideration in residential property to INR 10 crores
- Provisions related to distribution by business trust widened
- Definition of benefit and perquisite taxed as business income, expanded to include benefits/perquisite provided in cash
- Concessional tax rate on interest income to FPIs not extended
- Issue of shares to non-resident at value exceeding fair market value now taxable in the hands of issuing resident company

Highlights

Capital gains calculation and exemption now restricted for individuals

Issue of shares to non-residents at higher than FMV now taxable

Tax ambit widened for unit-holders of REIT

Key amendments

- Restricting capital gains exemption available to individual homebuyers
  - The ITA provides an exemption on long-term capital gains arising on transfer of capital asset in the hands of individual or HUF, where consideration received is re-invested in purchase/construction of residential house in India.
  - The exemption available will now be restricted to INR 10 crores.
  - This amendment will take effect from 1 April 2024.
- Cost of acquisition/improvement not to include certain amounts
  - Under the ITA, capital gains are computed, by deducting cost of acquisition of the asset and cost of any improvement thereto from sales consideration received or accruing as a result of transfer of capital asset.
  - Now, cost of acquisition or cost of improvement of capital asset shall not include the following:
    - Interest paid on borrowed capital for acquiring, renewing or reconstructing a property which has been claimed a deduction while computing income under the head ‘house property’
    - Deduction claimed in relation to house property under chapter VI-A.
  - This amendment will take effect from 1 April 2024.
- Value of sale consideration widened with respect to asset transfer under JDA
  - Under the ITA, sale consideration for computation of capital gains in the hands of individual or HUF on transfer of land or building under a joint development agreement is computed as follows:
    - Stamp duty value of share of individual/HUF as on the date of issue of completion certificate; and
    - Consideration received in cash by such individual/HUF.
  - The above provision did not include, consideration received by the individual/HUF in mode other than cash i.e., through banking channel or consideration received in kind.
  - Now, any consideration received by the individual through cheque or draft or by any other mode will also be included to arrive at the sales consideration.
  - This amendment will take effect from 1 April 2024.

- Taxable income in the hands of unitholders of business trust widened
  - Distribution from business trust (i.e., REITs/ InvITs) can be categorized in following categories
    - Dividend income;
    - Interest income;
    - Rental income in case of REITs;
    - Capital Gains and treasury income; and
    - Capital payment to unitholders
  - The ITA has specific provisions for taxation of all of the above-mentioned categories. However, there are certain distributions such as capital repayment or redemption of units which are not covered in the tax regime for business trusts.
  - Distributions by business trusts that do not suffer taxation either in the hands of business trusts or in the hands of unit holders, will now be taxed in the hands of unit holders as 'income from other sources'. The rate of tax on income from other sources is 30% (plus applicable surcharge and cess) for residents and 40% (plus applicable surcharge and cess) for non-residents.
  - Where such distribution is through redemption of units by business trust, then for the purpose of computation of income in the hands of unitholders, cost of acquisition will be allowed as deduction.
  - This amendment will take effect from 1 April 2024.
- Relief from withholding of taxes by business trusts on income distributed to taxpayers having no/ lower tax liability in India
  - Where income of a taxpayer is subject to WHT and its income is chargeable to lower tax rate, the payer can file an application for certificate for deduction at lower rate.
  - The list of incomes, for which a lower deduction certificate can be obtained, did not include income from units of a business trust.
  - Now, relief has been granted to taxpayers to obtain Nil/ lower withholding certificate, where income from business trusts is exempt or subject to lower rate of withholding taxes.
  - This amendment will take effect from 1 April 2024.
- Issue of shares to non-residents at premium
  - As per existing provisions, where a company, not being a company in which public is substantially interested, receives consideration for issue of shares, from any person being a resident, such consideration which exceeds fair market value of shares is chargeable to tax in the hands of company as 'Income from other sources'.
  - The above provisions are applicable only in case where consideration is received from resident investors. However, the said provisions are not applicable for consideration received from non-resident investors.
  - Now, provisions will also include consideration received from non-resident investors. Consideration received from non-resident investor for issue of shares in excess of fair market value of shares will be taxed in the hands of Indian company as income under the head 'Other Sources'.
  - This amendment will take effect from 1 April 2024.
- Concessional tax rate on interest on rupee denominated bonds to FPI
  - Interest income to FPIs on bonds and debentures is currently taxed at concessional tax rate of 5% (plus applicable surcharge and cess) where certain conditions are met. The concessional tax rate has a sunset clause and is available on interest payable before 1 July 2023.
  - It was anticipated that the sunset clause will be extended to a later date to provide relief to the FIIs. However, no such extension is notified.

- Value of benefit or perquisite taxable as business income, now widened
  - Business income includes value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession.
  - The Supreme Court of India, in the case of Mahindra and Mahindra, has held that cessation of loan liability is not taxable as business income as the same is in the nature of money/ cash receipt. As per the provisions benefit or perquisite which is not in the nature of money is taxable as business income.
  - Now, amendment has been introduced to include, in business income, value of benefit or perquisite in cash or in kind or partly in cash and partly in kind.
  - This amendment will take effect from 1 April 2024.
- Removal of exemption from TDS on payment of interest on listed debentures
  - Interest on listed debentures issued to a resident was exempt from WHT under the ITA.
  - To widen the reporting of income, the exemption is withdrawn. Taxes will be withheld at rates in force on payment of interest on listed debentures issued to a resident.
  - This amendment will take effect from 1 April 2024.

Glossary

ITA- Income-tax Act, 1961

HUF – Hindu Undivided Family

JDA – Joint Development Agreement

REITs – Real Estate Investment Trusts

InvITs – Infrastructure Investment Trusts

WHT- Withholding Tax

FPI – Foreign Portfolio Investor

TDS – Tax deducted at source

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