

India Union Budget 2022-23

Point of view

Family Office



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Key announcements for the sector

- **Surcharge on capital gains:** Surcharge on gains for the following capital assets has been capped at 15%:
 - Short-term and long-term capital asset being equity shares in company or unit of equity-oriented funds or unit of business trust;
 - Any other long-term capital asset including units of RelTs, InvITs and immovable properties.
- **Taxation of virtual digital asset:** Finance Bill, 2022 has brought within its ambit taxation of virtual digital asset with effect from July 1, 2022.
 - Virtual digital asset has been defined as (a) any information, code, number or token generated through cryptographic means or otherwise having inherent value or functions as a store of value or a unit of account (b) non-fungible token or token of similar nature, (c) other notified digital asset.
 - Income from transfer of virtual digital asset shall be liable to tax at 30%*.
 - Only cost of acquisition is permitted to be deducted from sale consideration while determining the income. No other expenditure is allowed to be deducted. Additionally, set-off of losses is not permitted and such loss cannot be carried forward to subsequent years.
 - Receipt of virtual digital asset by way of gift or at inadequate consideration shall be liable to tax in the hands of the recipient under the head 'Income from other sources'.
 - Tax deducted at source (TDS) applicable at 1% on consideration (in cash or kind) payable to a resident. Threshold – for specified persons (being individual or HUF below certain thresholds) \geq INR 50,000 and for others \geq INR 10,000 during a financial year.
- **Updated return of income:** Currently, return of income is allowed to be revised before completion of the assessment year (AY) (period of 12 months immediately following the financial year in respect of which the original return of income is filed) and is permitted to be revised only if the original return is filed within the applicable due date. The Finance Bill proposes introduction of a new provision wherein an updated return of income may be furnished with two years from the end of the relevant AY. Any person shall be eligible to file such updated return, irrespective of whether a return has been filed earlier for such relevant AY.
Exceptions have been carved out and would not apply if updated return is a loss return, where total tax liability is reduced or in case of claiming refund or increasing the amount of refund. Additionally, updated return cannot be filed in cases where search is initiated or survey is conducted or requisition is made for two AYs preceding the relevant AY and in cases where updated return has already been filed or a proceeding for assessment, reassessment, recomputation or revision is either pending or completed or in case prosecution proceedings have already been initiated.

Additional tax at 25%*/ 50%* shall be payable on the tax and interest due on the additional income.

* excluding surcharge and cess

- **Set-off of losses:** In the case of undisclosed income arising from search, requisition or survey, brought forward loss and unabsorbed depreciation cannot be set off.
- **Sunset clause on receipt of foreign dividends:** An Indian company receiving dividends from a foreign company where it holds at least 26% stake is currently liable to pay tax on such income at 15%*. This beneficial tax rate shall not be available from FY 2022-23. Accordingly, such dividends will now be taxable at applicable rate of tax and expenses incurred in connection with earning of such dividend income will now be allowable as deduction. Further, if the recipient Indian company distributes such dividend amount onwards to its shareholders, it may be able to avail benefit under Section 80M of the IT Act.
- **Bonus and dividend stripping:** With effect from FY 2022-23, bonus/dividend stripping to be expanded and be made applicable to securities and units, including units of business trusts such as ReITs, InvITs and AIF.
- **Angel tax exemption to specified fund in IFSC (International Financial Services Centres):** Exemption on investment made in start-ups above fair market value has been extended to specified fund regulated under International Financial Services Centres Authority Act, 2019, with effect from FY 2022-23.
- **Exemption to non-residents:** Any income which accrues or arises outside India to non-residents from portfolio of securities or financial products or funds which is managed or administered by a portfolio manager on behalf of such non-resident in an account with an offshore banking unit in an IFSC, shall be exempt from tax.

Implications for the sector

- **Updated return of income:** The Finance Bill, 2022 has provided an opportunity to a taxpayer to rectify the total income by filing an updated return. This encourages voluntary disclosure of omitted/ incorrect income and eases the burden of potential litigation. Several exceptions have been carved out and it seems that the proposed provision seeks only an upward revision of income and does not apply to cases where there is a genuine refund or reduction in tax liability.
- **Surcharge on capital gains:** Capping surcharge on long term capital gains and specified short term gains is beneficial for private discretionary trusts which are currently taxed at Maximum Marginal Rate with a surcharge of 37%. Apart from the benefits of providing for automatic succession of wealth, segregation of ownership and control and ringfencing of assets, there is parity for private discretionary trusts with other holding vehicles in terms of taxability of capital gains as well.

Streams of income	Company	Limited Liability Partnership/ Partnership Firm	Discretionary Trust
STCG under Section 111A	17.16%	17.47%	17.94%
LTCG under Section 112A	11.44%	11.65%	11.96%
LTCG on sale of long-term capital asset under Section 112	22.88%	23.30%	23.92%

- **Investments:**
 - A key expectation in terms of taxability of digital assets has been addressed by the Finance Minister. The Government has cleared its stance in terms of regulating and not outright banning such digital assets. With family offices and HNIs actively exploring crypto and Nonfungible tokens as a viable asset class, clarity on its taxation is a welcome move. However, gains arising from transfer of virtual digital assets would be taxed at 30%*, irrespective of the period of holding. The benefit of lower tax rate on long term capital gains and set-off of related expenditure and losses is not available, which makes this an expensive investment asset class.
 - To bring parity in tax treatment of dividend from specified foreign companies with domestic dividends, the benefit of lower tax rate of 15% will be withdrawn with effect from FY 2022-23.
 - To encourage investments in IFSC, angel tax exemption has been extended to specified funds established in IFSC and to non-residents investing in securities or financial products or funds in IFSC.

* excluding surcharge and cess

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