KPMG

India Union Budget 2023-24

Point of view

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Family office

Key announcements for the sector

- **Surcharge for highest tax bracket:** Under the new regime, surcharge on highest income bracket has been revised from 37% to 25% thereby reducing the effective tax rate from 42.74% to 39%
- **Deeming provision of Section 9:** In case of receipt of property under Section 56(2)(x) of the Income-Tax Act, 1961 (IT Act) from a person resident in India for no consideration or inadequate consideration, such income shall be deemed to accrue or arise in India in the hands of not ordinarily residents in addition to non-residents
- **Investment in Electronic Gold Receipt (EGR):** A new clause has been inserted for exempting transfer/ conversion of physical gold into EGR and EGR into gold. Hence, such conversion shall be exempt from capital gains

  The computation mechanism has also been laid out. Consequently,

  — Cost of acquisition of EGR shall be deemed to be the cost of gold in the hands of the person in whose name the EGR is issued. Similarly, the cost of acquisition of the gold released against an EGR shall be deemed to be the cost of acquisition of the EGR in the hands of such person

  — Period of holding for the assessee shall include the period for which gold was held prior to conversion into EGR issued. Similarly, the period of holding shall include the period for which EGR was held prior to conversion into gold released.
- **Extending angel tax to non-residents:** Earlier only residents were covered within the ambit of Section 56(2)(viib) of IT Act. The Finance Bill now proposes to include even investments by non-residents under this section. Accordingly, investment by any person (resident or non-resident) in a company in which the public are not substantially interested for issuance of shares exceeding the face value of shares, then such aggregate consideration received which exceeds fair market value of shares shall be taxable in the hands of the company under the head "Income from the other sources"
- **Capital gains on market linked debentures:** Market linked debentures (i.e. which has an underlying principal component in the form of a debt security and where the returns are linked to the market returns on other underlying securities or indices) shall now be taxed as short-term capital asset on transfer/ redemption/ maturity of such instrument. Full value of consideration reduced by cost of acquisition and expenditure wholly and exclusively incurred in this connection shall be deemed to be short-term capital gains
- **Limiting benefit for investing in residential property/ capital gains account scheme:** In case of capital gains arising to an individual or HUF on transfer of residential house (Section 54 of IT Act) and other long term capital asset (Section 54F of IT Act), the maximum deduction is now restricted to INR100 million

- **Limiting benefit for sum received under life insurance policy (other than a unit linked insurance policy):** The benefit of exemption for sum received in respect of a life insurance policy issued after 1 April 2023 shall not be available where the aggregate premium payable in any previous year exceed INR0.5 million. The sum received in excess of the aggregate premium paid during the term of such policy (and which is not claimed as a deduction elsewhere) shall be chargeable to income-tax under the head "Income from other sources"

  Exception has been provided for sum received on death of a person

- **Increasing rate of TCS for LRS remittances:** With effect from 1 July 2023, tax collected at source for remittances out of India for any purpose other than education, medical treatment and including overseas tourism package under the Liberalised Remittance Scheme has been increased from 5% to 20% and without any minimum threshold limit.

Implications for the sector

- The Government has continued with the existing tax regime, and has not gone down the path of introducing inheritance tax/estate duty
- Surcharge for the highest tax bracket has been capped at 25% under the new regime, and this would be treated as default unless an option has been exercised to be taxed under the old regime. In case of a private trust, the income is taxable at Maximum Marginal Rate with the highest surcharge rate. This brings about an interesting point on whether the surcharge on income (other than capital gains and dividends) of a private trust such as interest, rent, etc. would also be capped at 25% instead of 37% and effectively brings down the effective tax rate to 39% from 42.74%
- Provisions impacting investments by family offices and HNIs:
  - To encourage investment in electronic gold as an asset class, the IT Act has introduced new provisions in terms of not treating conversion of physical gold to EGR and vice-versa as transfer and exempting this from the ambit of capital gains. This should provide an impetus in monetising a traditional gold asset class and increase capital flows
  - Market linked securities being listed are currently taxed as long-term capital gains at 10% without indexation. The Finance Bill now proposes to tax these instruments as short-term capital gains given the hybrid nature. These instruments shall now be treated as a short-term capital asset and taxed as short-term capital gains at a higher rate irrespective of the period of holding
  - To bring parity, angel tax has now been extended to non-residents in addition to residents. In addition to complying with foreign exchange regulations, non-residents are now required to comply with income-tax provisions as well which may impact investments into India.
  - Capital gains tax rates remain unchanged, and have not been rationalised.
- The Finance Bill proposes to plug the loophole of HNIs investing in high value residential properties/ capital gains account scheme and claiming substantial deduction on long term capital gains on sale of shares, residential house and other long term capital assets. Irrespective of the value of the residential house, the deduction limit is now capped at INR10 crore and increases the overall effective tax rate. This may impact demand for high value properties
- Similarly, to plug misuse of the exemption of large sums received under life insurance policy, the Finance Bill proposes provide exemption only in such cases where the aggregate premium in a year does not exceed INR0.5 million and in case of death.

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