

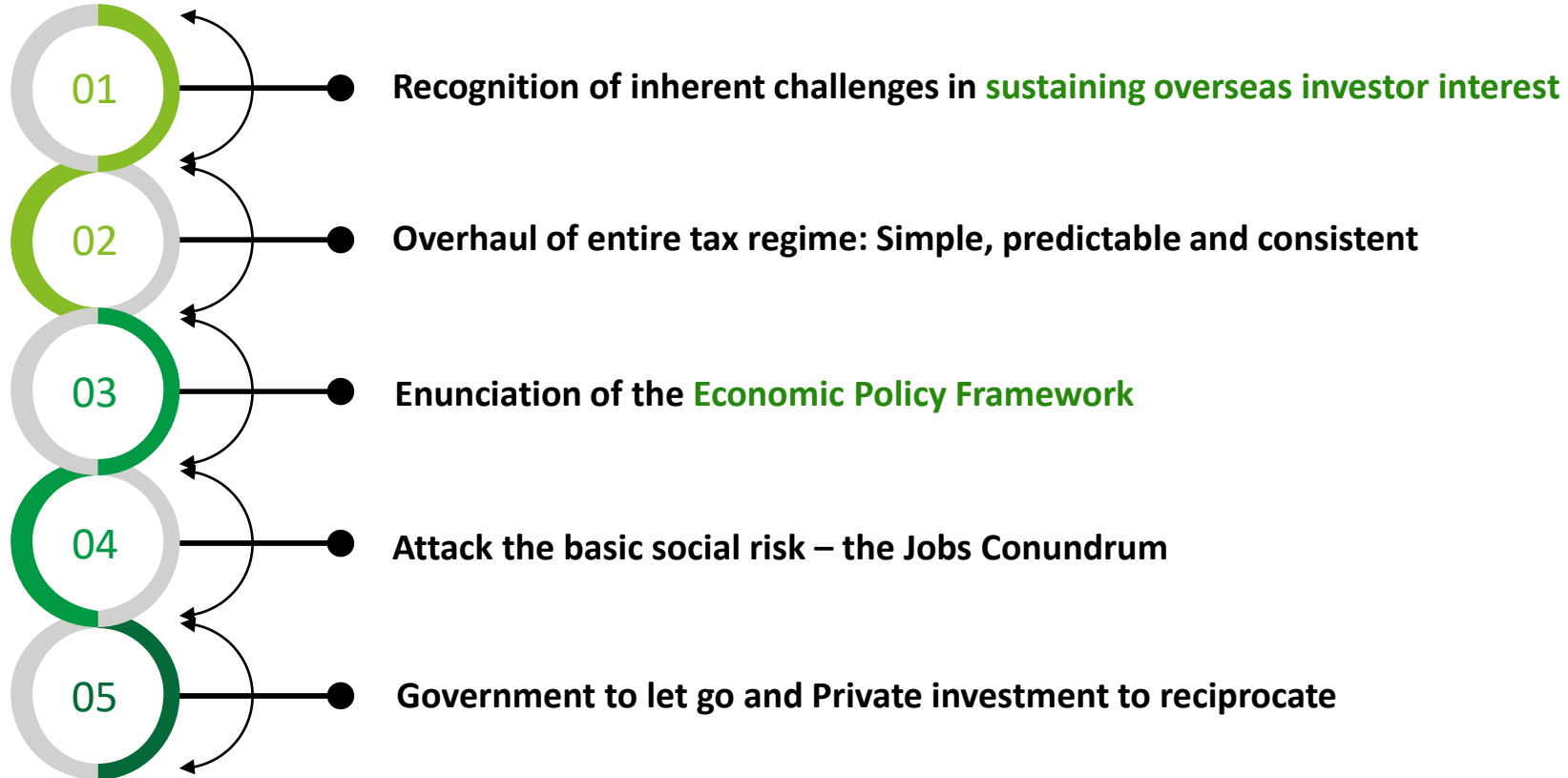


India Union Budget 2024 Key tax proposals relevant to FPIs and AIFs

Key economic indicators

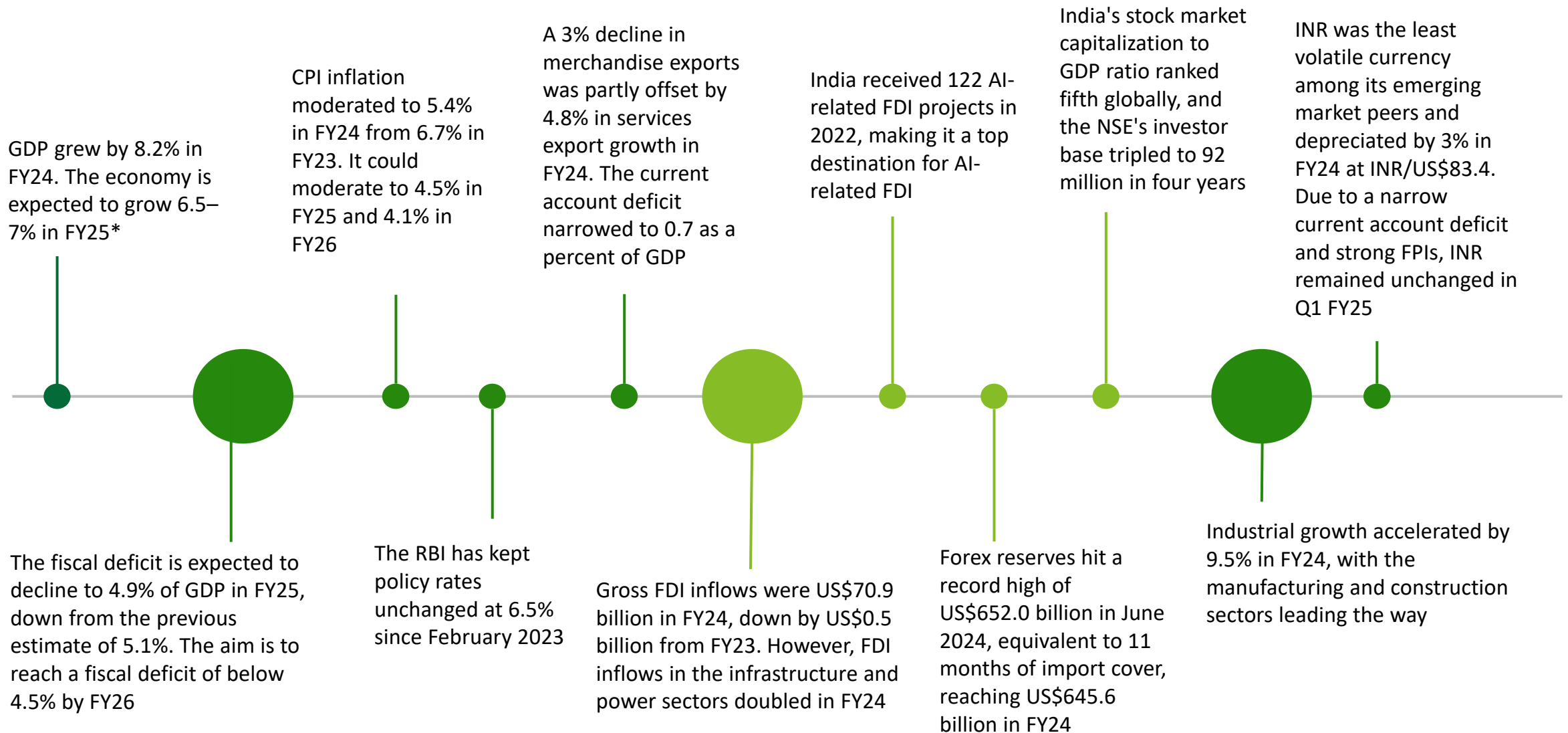
Budget 2024 tracked the Economic Survey

The 5 key themes



Economic Indicators

Fueling India's transformation



*Growth is measured on a year-over-year basis on fundamental values. The predicted numbers are per the Economic Survey released on 22 July 2024

Direct Tax

Portfolio Investments

Key budget highlights

Impact on portfolio investments

Increase in capital gains tax rate

Effective 23 July 2024, the capital gains tax rate on listed equity shares, equity-oriented mutual funds, and units of REITs/InvITs shall increase as under:

- STCG tax rate from **15% to 20%**
- LTCG tax rate from **10% to 12.5%**. However, exemption limit on LTCG would increase from INR 1 Lakh to INR 1.25 Lakh

Holding period threshold for long term vs short term classification

Effective 23 July 2024, the classification of capital gains into short-term and long-term categories has been streamlined into two holding periods, replacing the previous 12/24/36 months criteria:

- **12 month for all listed securities and units of equity oriented mutual fund-** Relief for unit holders of REITs/InvITs/Debt oriented mutual funds
- **24 months for other assets**

Increase in Securities Transaction Tax (STT) rates on futures & options

Effective 01 October 2024, the STT rates on sale of options or future contracts would be enhanced as under:

- **Futures-** Increased from 0.0125% to 0.02%
- **Options-** Increased from 0.0625% to 0.1%

Taxability of unlisted bonds and debentures

Effective 23 July 2024, capital gains from the transfer / redemption / maturity of an **unlisted bond** or an **unlisted debenture** shall be considered as **short-term capital gains** irrespective of period of holding and taxed at the rate of 30% for FPIs.

Angel tax abolished and Equalization levy withdrawn on certain payments

- Effective 01 April 2024, Angel tax for all classes of investors shall be abolished
- Effective 01 August 2024, equalization levy of 2% shall not be applicable

Reduction in corporate tax rates for foreign companies

Effective 01 April 2024, the corporate tax rate on foreign companies to be reduced from 40% to 35% to attract foreign capital.

Other amendments (1/3)

Taxability on buyback of shares

Current Provision

- Currently buyback of shares undertaken by an Indian company (made on or after 05 July 2019) is exempt in the hands of its shareholders. The Indian company is required to pay a buyback tax of 20% (plus applicable surcharge and cess) on the buyback proceeds

Proposed Amendment

- Effective 01 October 2024, buyback proceeds paid by an Indian company is proposed to be taxable in the hands of the shareholders as deemed dividend and be subject to tax at applicable rates (i.e., 20% plus applicable surcharge and cess for foreign investors)
- No deduction for expenses shall be available against such dividend income
- Upon transfer of shares under a buyback, the sale consideration is proposed to be deemed to be nil
- While the buyback proceeds is proposed to be taxed as deemed dividend, the cost of acquisition of such shares is proposed to be fully allowed as a deduction under the head 'Capital Gains' and such loss can be fully set off against gains arising from other transactions

Computation Mechanism

For example:	
100 shares bought in 2020	@INR 40/- per share
Total cost of acquisition	INR 4000/-
20 shares bought back in 2024	@INR 60/- per share
Income taxable as deemed dividend	INR 1200/-
Capital loss on such buyback (INR 40 * 20)	INR 800/-
50 Shares sold in 2025	INR 70 per share
Capital Gain (3500 – 2000)	INR 1500
Chargeable capital gain after set off (1500 – 800)	INR 700

Impact

- Tax on dividend is required to be paid upon buyback, however, set-off of capital loss shall be subject to availability of capital gains.
- Full proceeds of buyback shall be taxed at 20% as deemed dividend and cost treated as capital loss. Higher overall tax could be applicable if capital loss is long-term (since LTCG is taxable at 12.5%).
- Tax treaty benefits under dividend income article to be evaluated

Other amendments (2/3)

Classification of unlisted bonds/ debentures and definition of 'Specified Mutual Fund'

Unlisted bonds and unlisted debentures to be classified as short-term capital asset

- Effective 23 July 2024, it has been proposed to tax capital gains arising from the transfer / redemption / maturity of an **unlisted bond** or an **unlisted debenture** as **short-term capital gains** irrespective of the holding period of such asset.
- As per the current tax law, if an unlisted bond or unlisted debenture is held for more than 36 months, capital gains arising on the transfer / redemption / maturity of such assets is taxed at 10% (without indexation)
- However, with the introduction of the proposed amendment, all capital gains arising from these securities will now be taxable at the rate of 30% (plus applicable surcharge and cess).

Security Type	Date of purchase	Date of sale	Classification
MLD	Not relevant	On or after 01 April 2023	Short-term
Specified MF	Prior to 01 April 2023	Not relevant	As per normal holding period rules
	On or after 01 April 2023	On or after 01 April 2023	Short-term
Unlisted Bonds / Debentures	Not relevant	On or after 23 July 2024	Short-term

Amendment in the definition of the 'Specified Mutual Fund'

Current Provision

- The meaning of a 'Specified Mutual Fund' had been provided as a mutual fund wherein < **35%** of total proceeds are invested in the equity shares of domestic companies. The equity shareholding of the Mutual Fund is to be computed using the annual average of the daily closing figures.

Proposed Amendment

- Effective from 01 April 2025, the meaning of a 'Specified Mutual Fund' has been provided as:
 - mutual fund** wherein > **65%** of total proceeds are invested in the debt and money market instruments; or
 - fund** which invests \geq **65%** of its total proceeds in units of a fund referred in clause (a) above.

Impact

- Mutual Funds investing in gold/ commodities, Equity Oriented Fund of Funds, Offshore Mutual Funds and certain other Mutual Funds will get excluded from the definition of "Specified Mutual Fund".

Other amendments (3/3)

Other key amendments in relation to indexation and reducing tax litigation

- **Removal of indexation benefit on long term capital gains:**

With the rationalization of the tax rate on long-term capital gain rate to 12.5%, the benefit of indexation which is presently available for immovable property, gold and other unlisted assets is proposed to be removed. Thus, indexation benefit would not be available on long-term capital gains arising on transfer of such assets.

- **Returns filed after condonation of delay:**

It is proposed that in respect of returns filed after condonation of delay, the assessment can be made up to 12 months from the end of the financial year in which such return was furnished.

- **Introduction of Tax Amnesty Scheme:**

Keeping in view the success of the previous Vivad Se Vishwas Act, 2020 and the mounting pendency of appeals at various appellate levels, introduction of a Direct Tax Vivad se Vishwas Scheme, 2024 is proposed with the objective of providing a mechanism for settlement of disputed issues, thereby reducing litigation.

This Scheme shall come into force from the date to be notified by the Central Government.

- **Extended period of withholding the refund in assessment and reassessment cases:**

Presently, refunds due to a taxpayer are withheld by the tax authorities up to the date of assessment in certain cases. However, the demand for payment becomes due 30 days after the assessment. Therefore, it has been proposed to extend the period for withholding refunds to up to 60 days from the date of assessment or reassessment. This adjustment aims to ensure that the withholding period aligns with the timing of when the demand is legally enforceable.

- **Monetary limit for filing tax appeals**

Sr. No.	Particulars	Appeals in Income-tax Matters – Current provisions (INR)	Appeals in Income-tax Matters - Budget proposal (INR)
1	Before Appellate Tribunal	50,00,000	60,00,000
2	Before High Court	1,00,00,000	2,00,00,000
3	Before Supreme Court	2,00,00,000	5,00,00,000

Amendments in Re-assessment Proceedings

Time limit for notice w.e.f. 01 September 2024

Particulars	Current provision	Budget proposal
Issue of notice where income has escaped assessment	<ul style="list-style-type: none">• Within 3 years from the end of the relevant AY or• Within 10 years from the end of the relevant AY where income chargeable to tax is INR 50 lakhs or more	<ul style="list-style-type: none">• Within 3 years and 3 months from the end of the relevant AY or• Within 5 years and 3 months from the end of the relevant AY where income chargeable to tax is INR 50 lakhs or more
Conducting inquiry, providing opportunity before issue of notice	-	<ul style="list-style-type: none">• Within 3 years from the end of the relevant AY or• Within 5 years from the end of the relevant AY where income chargeable to tax is INR 50 lakhs or more
Appeals to the Appellate Tribunal	<ul style="list-style-type: none">• Within 60 days from the date on which the order is communicated	<ul style="list-style-type: none">• Within 2 months from the end of the month in which the order is communicated

Proposal to incentivize investment activity in IFSC

Benefits provided to Entities in IFSC

Exemption available to “Specified Fund” in IFSC extended to Retail Schemes and ETFs

Current Provision

Under the Income-tax Act, 1961, a “Specified Fund” enjoyed various tax exemptions such as capital gains tax exemption on the transfer of all non-equity securities, a lower tax rate on dividend and interest income, no tax on the income of the fund's investors, etc. A specified fund is defined to include a fund that has obtained registration as a Category III Alternative Investment Fund (AIF) and the investment division of an Offshore Banking Unit (OBU).

However, these exemptions are not available to Retail Schemes and Exchange-Traded Funds (ETFs) set up in the International Financial Services Centre (IFSC).

Budget Proposal

The definition of specified fund is expanded to include Retail Schemes and ETFs, thereby extending all the benefits available to Specified Fund.

Impact

Given that the exemptions were previously available only to Category III AIFs in the IFSC, there were not many Retail Schemes and ETFs set up in the IFSC. Now that the exemption has been extended to them, it is likely that more such funds will be established in the IFSC.

Exemption provided to Finance Company in IFSC from thin capitalization Rules

Current Provision

Section 94B provides certain limitation on deduction of interest expense from the business income earned by an Indian company or PE of a foreign company, subject to certain conditions (“Thin Capitalization Rules”). However, exemption has been provided from the applicability of said section to entities engaged in the business of banking, insurance or NBFCs notified by Central Government

Budget Proposal

The exemption from applicability of Thin Capitalization Rules has now been extended to Finance Company set-up in the IFSC. However, the exemption is not available to a Finance Unit (i.e., branch) set-up in the IFSC

Impact

This is a welcome move, as thin capitalization is a major concern for entities intending to set-up a Finance Company or Treasury Centre in the IFSC

Proposal to incentivize investment activity in IFSC

Other amendments

Exemption to Venture Capital Fund set-up in the IFSC

Current Provision

A Venture Capital Fund set-up under the relevant SEBI Regulations is exempted from any income earned by it from a Venture Capital Undertaking, provided that such Venture Capital Fund satisfies certain conditions. Such income is directly taxable in the hands of the Investors of the Venture Capital Fund.

Budget Proposal

The above exemption has been extended to Venture Capital Fund set-up under the International Financial Services Centres Authority (Fund Management) Regulations, 2022

Exemption to Core Settlement Guarantee Fund set-up by recognised clearing corporation

Current Provision

Exemption is provided on specified income earned by Core Settlement Guarantee Fund, set up by a recognised clearing corporation in accordance with the regulations.

Budget Proposal

The above exemption has been extended to Core Settlement Guarantee Fund set-up by recognised clearing corporation which have been set-up in accordance with the IFSCA (Market Infrastructure Institutions) Regulations, 2021

Operationalization of the VCC structure regime

- The Union Budget has announced that the Government will seek the required legislative approval for permitting setting-up of a 'Variable Company' structure
- This would provide an efficient and flexible mode for financing leasing of aircrafts and ships, and pooled Investment Funds such as AIFs
- A Variable Capital Company (VCC) structure combines the benefits of both traditional trust and corporate structures while addressing their limitations
- A VCC enables funds to operate within a globally preferred corporate framework, while at the same time offering effective segregation and ring-fencing of different asset pools
- Additionally, it allows for the issuance of various share classes
- This structure significantly reduces compliance requirements compared to traditional corporate structures, providing greater flexibility for pooling funds and repatriating profits
- Clarification would be required to determine whether this would be restricted only to IFSC or apply to mainland as well

Key misses in Budget 2024

FPI standpoint

- **Availability of exemption on relocation of Offshore Fund to IFSC:**

The Government has introduced various provisions under the Income-tax Act to provide tax neutrality on relocation of Offshore Funds to the GIFT IFSC. Such exemption is available if the relocation takes place prior to 31 March 2025. However, there has been no proposal to extend this date.

- **No extension of sunset date for Sovereign Wealth Fund ('SWF') / Pension Fund beyond March 31, 2025:**

The tax law exempts various income streams (interest, dividend, and capital gains) earned by SWF and notified Pension Funds from investments in infrastructure sector up to 31 March 2025. It was expected that the exemption would be further extended.

- **Taxability of Offshore Derivative Contracts (ODIs) issued by non-banking entities (such as AIFs and broker dealers) in GIFT IFSC:**

Recently, the IFSCA issued a Circular, allowing non-banking entities to issue ODIs against underlying Indian public market securities. The ODI issuer would be an entity or a fund setup in the GIFT City and registered as a FPI. To make the regime lucrative and in line with the exemption provided to ODIS issued by OBUs, the Government was expected to provide exemption to ODI subscribers from payment of taxes in India or seeking a tax registration in India similar to the exemption available to ODI contracts issued by offshore banking units in IFSC. However, no such exemption has been provided.

- **Rationalization of tax regime for Category III AIFs in India:**

While Category I and Category II AIFs enjoy tax pass through status, there is no specific tax regime governing Category III AIFs. Accordingly, such Category III AIFs have to rely on trust tax provisions under the Act to obtain a tax pass through which is complex. No provisions have been introduced to provide clarity to such Category III AIFs.

Glossary

AIF	Alternative Investment Fund	MLD	Market Linked Debenture
AY	Assessment Year	MF	Mutual Fund
CPI	Consumer Price Index	NBFC	Non-banking Financial Company
ETFs	Exchange-Traded Funds	NSE	National Stock Exchange
FPI	Foreign Portfolio Investor	OBU	Offshore Banking Unit
FDI	Foreign Direct Investment	RBI	Reserve Bank of India
FY	Financial Year	REITs	Real Estate Investment trusts
GDP	Gross Domestic Product	SC	Supreme Court
IFOS	Income from Other Sources	SEBI	Securities and Exchange Board of India
IFSC	International Financial Services Centre	STCG	Short-term Capital Gains
IFSCA	International Financial Services Centres Authority	STCL	Short-term Capital Losses
IRAS	Inland Revenue Authorities of Singapore	SOPs	Standard Operating Procedures
ITA/Act	Income-tax Act, 1961	STT	Securities Transaction Tax
INVITs	Infrastructure Investment Trust	UTI	Units of Unit Trust of India
LTCG	Long-term Capital Gains	VCC	Variable Capital Company
LTCL	Long-term Capital Losses	ZCB	Zero Coupon Bond



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