

FIDC

Finance Industry Development Council

(A Representative Body of NBFCs in India)

101/103, Sunflower, 1st Floor, Rajawadi Road No.2, Ghatkopar (East), Mumbai – 400 077

Tel: 022 21029898/9820035553 • E-mail: directorgeneral@fidcindia.org.in



www.fidcindia.org.in

15th March, 2023

Smt. Nirmala Sitharaman ji

Minister of Finance
North Block
Government of India
New Delhi 110 001

Hon'ble Finance Minister Madam,

SUB: POST-BUDGET MEMORANDUM (2023-24) – CONCERNS & SUGGESTIONS FOR AN ENHANCED ROLE OF NBFCs

Finance Industry Development Council (FIDC) is a Representative Body of NBFCs registered with the Reserve Bank of India. FIDC was formed 18 years ago and is the recognized face of the NBFC sector. Almost all the leading NBFCs and a large number of small and medium sized NBFCs are our members.

We would like to convey our sincere appreciation for a path breaking budget which is destined to propel our economy to the targeted 5 Trillion USD mark. The continued impetus on infrastructure shall certainly be the engine for our growth. We at FIDC, stand committed to work towards a healthy growth of the NBFC sector, so as to cater to the increased demand for credit, especially, for the unbanked and underbanked segment of the society, including MSMEs.

A. Union Budget 2023-24 – Proposed Changes in the Provisions of the Income Tax Act

We would like to draw your kind attention to a couple of changes announced to the Income Tax provisions which shall act as impediments to our growth and go against the Govt.'s agenda for enhanced Ease of Doing Business.

1. Removal of Exemption from TDS on Payment of Interest on Listed Debentures to a Resident – Request to Restore Status Quo

This proposal may have widespread impact:

- a) It is an accepted fact that the bond market in India needs to be deepened and promoted in a big way to enable fund raising by corporates, especially, financial institutions. Government of India and RBI have been working in this direction. RBI has been nudging NBFCs to tap the capital market for raising funds as the key to diversify funding sources and reduce their over dependence on banks. In this scenario, this may be a retrograde step that may go against the efforts towards developing the bond market.



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- b) Further, NBFCs offer the investors the option for periodic payment of interest on monthly / quarterly basis. In such cases it shall be a mammoth task of deducting TDS on every interest payment made to thousands of investors and depositing the same to the Govt's account. This shall not only be an operational nightmare but also go against the Govt's agenda to increase the Ease of Doing Business.
- c) The Memorandum to the Union budget mentions that there has been under reporting of interest income by the investors. To check this, we suggest that NBFCs can share the list of all such investors who are eligible for TDS deduction with the department as part of their reporting by way of AIR.
- d) For a Common Man, there would be mis-match in the Income amount reported in AIR vs Income reported in ITR, leading to multiple discrepancies in ITR. Currently, the person purchasing the shares at Cum-Interest reduces the purchase cost on the receipt of Interest Income and offers the balance amount as Interest Income, while filling its ITR, which is correct as per accounting principle / Income Tax Principle as well.

With the introduction of this TDS Provision, if TDS is deducted on the entire Interest Income, then non-reporting of the entire Interest Income in ITR would lead to discrepancies at the time of Return processing.

Request:

In the light of the facts explained above, we request you to kindly restore status quo and allow exemption from TDS on payment of interest on listed debentures

2. Request to Amend Section 194LD and Section 194LC of The Income Tax Act – Need to Remove the Ambiguity

There seems to be some ambiguity in the existing provisions under the above sections on the cost of borrowings from FIIs and QFIs related to concessional rate of withholding tax. Since these provisions are extended from time to time, probably this ambiguity was not noticed earlier. There is a case to take the matter on priority; else withholding tax on all the borrowings from FIIs and QFIs will increase from current 5% to 10% or 15% based on country specific DTAA (Double Taxation Avoidance Agreement) agreement.

Sections 194LD and 194LC provide for concessional rates of tax deduction at source (TDS) in respect of some interests payable on monies borrowed from non-residents.



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- Section 194LD deals with borrowings from Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs) and
- 194LC deals with borrowings from non-residents and foreign companies.

Both these provisions have been operational since 2013 with sunset clauses; however sunset dates being deferred from time to time. In the current budget there is further extension of sunset clause defined. Therefore, the applicable sunset clauses are as below:

- Under section 194LD it was phrased so that the interests must be payable on or before July 1, 2023, irrespective of when the monies were borrowed.
- Whereas under section 194LC it was phrased so that the monies must be borrowed on or before July 1, 2023.

This has the unintended consequence for the borrowers from FIIs and QFIs at a relatively disadvantageous position when compared to other foreign investors. This is because even where borrowings have been made from FIIs and QFIs **before** July 1, 2023, interests thereon will be liable to the full rate of tax after that date; however, interests on borrowings made before that date from foreign investors other than FIIs and QFIs will be entitled to the concessional rate of TDS **even after** July 1, 2023 so long it is borrowed before July 1, 2023. This does not appear to properly reflect the intent of the legislation. This will have a direct implication of increased borrowing cost on NBFC borrowing from FIIs & QFIs from July 1, 2023.

Request:

This issue may be resolved in one of the following two ways:

- **Amend the provisions so as to bring the sunset clause of section 194LD in line with that of section 194LC, to provide that the concessional rates will not be available in respect of interests on borrowings made from FIIs/ QFIs on or after July 1, 2023.**

OR

- **amend the provisions so as to bring interest payable after July 1, 2023 on borrowings made from FIIs/ QFIs before July 1, 2023 within the scope of section 194LC.**



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B. Loan Amount Threshold for Enforcing Security Interest under The SARFAESI Act to be Reduced From Rs. 20 Lakhs To Rs. 1 Lakh For NBFCs

RBI being the common regulator for banks and NBFCs has harmonized the regulations, especially the Prudential Norms for NBFCs with that for banks. In such a scenario, it is natural to expect similar harmonization of recovery tools available to NBFCs with that for banks. Unfortunately, our request for the same is still pending.

It was requested to allow NBFCs to allow recovery proceedings under SARFAESI Act for loans above Rs. 1 lakh. This will not only harmonize the various frameworks but will also help in bringing litigation cost of NBFCs which will help providing financing to small MSME borrowers at a competitive cost. NBFCs have faced challenges due to this limit being set at Rs. 20 lakhs as it takes abnormally longer time for resolution of stressed account in absence of SARFAESI which goes as high as 5 years which not only increases the number of stressed accounts on NBFCs balance sheet but also increases the legal and litigation cost of NBFCs. This cost gets unnecessarily gets loaded on the good MSME borrowers which are standard and making timely servicing.

The RBI has vide its notification dated November 12, 2021 implemented a key change of recognising delinquencies on a daily basis instead of on a monthly basis, irrespective of the loan size. This would have a significant impact on the level of systemic NPAs reported by the NBFCs. The recognition norms are thus harmonised across banks and NBFCs. Provision of speedier and effective recovery mechanism in the form of SARFAESI Act is critical to manage this additional burden.

Over time, the RBI has also been harmonising various norms such as income recognition, NPA and SMA reporting and so on across banks and NBFCs. We welcome this trend and submit that similar harmonisation be also implemented in terms of recovery and other enabling mechanisms to enable a level playing field and to remove any regulatory arbitrage across NBFCs and banks.

It may be relevant to mention here that the average size of loans sanctioned by NBFCs is far lower at about Rs 5 lakhs, implying that most of the customers of NBFCs are out of the present threshold of Rs 20 lakhs. This effectively places the NBFCs at a disadvantage by preventing NBFCs from usage of a legally valid recovery tool available to banks, creating a piquant situation that in respect of the same customer a bank may resort to the provisions of the SARFAESI Act, while an NBFC cannot. There would be another dichotomy in the case of co-lending and it is not clear as to whether the participating bank can invoke the SARFAESI Act for its own share but the partner NBFC is not permitted to do so.



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NBFCs are also subject to a fair practice code and other safeguards to prevent misuse of such provisions to harass customers. NBFC ombudsmen have also been appointed to address any customer grievance in this matter, thus minimising risk of recalcitration.

Request:

In view of the above submissions, the said threshold should be reduced from Rs. 20 lakhs to Rs. 1 lakh in order to bring NBFCs at par with HFCs, Banks, SFBs and other financial institutions.

We hope that our requests shall receive a favourable consideration.

Thanking you in anticipation.

Yours faithfully,

For **FINANCE INDUSTRY DEVELOPMENT COUNCIL**

MAHESH THAKKAR
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