

# Infrastructure Sector Expectations from Union Budget 2023

Jan 25, 2023



## Dhiren Shah

Vice President - Structuring & Strategy (Taxation), Adani Enterprises Limited

COVID-19 pandemic had significantly slowed down the growth of the economy and the Government's thrust on infrastructure development brought the economy on the cusp of revival. Amid global uncertainties, India is considered as a bright spot for growth and in order to continue to lead the global growth, the infrastructure sector is expected to be the highlight of the Budget 2023. On the policy side, the ongoing programs such as Smart City, PMAY, etc. will need continuous budgetary allocations. Apart from budgetary allocations, below are certain key expectations pertaining to direct tax from the Union Budget 2023.

### **1. To include Infrastructure companies within ambit of section 115BAB of the Act**

Historically, infrastructure sector enjoyed a profit-linked tax holiday. Gradually, all direct tax related benefits have been done away with. Government has taken several measures like DESH bill, SMART City program, Pradhan Mantri Aawas Yojna, etc. In addition to various government schemes, tax incentive will boost growth of infrastructure sector.

Budget 2023 could cover entities engaged in developing and/ or maintaining infrastructure facility (road, highway, bridge, airport, port, rail system, water supply project, irrigation project, sewerage system, etc.) within the ambit of Section 115BAB of the Income-tax Act, 1961 ("the Act"). The concessional tax rate of 15% under section 115BAB will help in stepping up the private capital expenditure and attract FDI.

Alternatively, profit-linked tax holiday should be provided to entities that are engaged in maintaining and developing Infrastructure facility. Further, relaxation should also be extended under Minimum Alternate Tax ('MAT') provisions.

### **2. To include infrastructure facility within the ambit of Section 72A of the Act**

Currently, section 72A of the Act allows carry forward and set off of accumulated losses and allowance of unabsorbed depreciation in case of amalgamation of de-merger of a company upon fulfillment of certain conditions. Section 72A of the Act inter-alia includes amalgamation of a company owing an industrial undertaking or a ship or a hotel with another company. However, it does not cover company developing and/ or maintaining infrastructure facility.

Budget 2023 could cover company developing and/ or maintaining infrastructure facility within ambit of Section 72A of the Act. It will make M&A attractive and help in stepping up the private capital expenditure in the infrastructure sector.

### **3. To include Data Centers within the ambit of Section 35AD of the Act**

With the rapid digitization, the need for data centers is increasing. The data centers will strengthen the IT infrastructure of the country and will help in advancing towards dream of "Digital India".

Currently, section 35AD of the Act provides for allowance of capital expenditure incurred wholly and

exclusively for the purpose of any specified business in the year in which such expenditure is incurred by him upon fulfillment of certain conditions.

We expect the budget to include business of owning / operating and maintaining of data centers within the definition of specified business u/s 35AD of the Act.

Alternatively, profit-linked tax holiday should be provided to entities that are engaged in business of owning / operating and maintaining of data centers. Further, relaxation should also be extended under MAT provisions.

#### **4. Allowance of depreciation on development of road / highways under BOT agreements**

Currently, CBDT vide circular no. 9 of 2014 clarified that expenditure incurred on an infrastructure project for development of road / highways under Build-Operate-Transfer ('BOT') basis is eligible for amortization over a period of concession agreement.

We expect the budget to consider the expenditure incurred on development of road / highways on BOT basis should be classified as an intangible asset and be eligible for depreciation. This is because the expenditure incurred on such development is pursuant to the concession right obtained from the government and hence, the same can be regarded as 'business or commercial right' eligible for depreciation. This will give boost to infrastructure project and will help in attracting private investment in this sector.

Further, clarity on expenditure incurred on Hybrid Annuity Model (HAM) project will also be a step in right direction.

#### **5. Depreciation on leasehold land:**

For various infrastructure projects, leasehold land is granted by government to carry out development and maintenance of infrastructure facility for long duration typically 99 years. For availing such leasehold rights, the lessor has to pay upfront lease premium in addition to annual lease payment. Various judicial precedents have held that such land lease premium is not allowable under the Act, since at the end of tenure the lessee must return the land back to the Government authority.

We expect the budget to consider the right over the land held by lessee should be classified as intangible assets and be eligible for depreciation. This will help in making infrastructure sector more attractive and will promote ease of doing business.

#### **6. Extension of sunset date u/s 194LC of the Act**

Currently, payment of interest by Indian companies and business trust to non-resident on money borrowed via long-term bonds including long-term infrastructure bond issued prior to July 1, 2023 or under an loan agreement prior to July 1, 2023 is eligible for TDS @ 5%.

In order to ease fund raising for infrastructure projects, we expect the budget to consider the extension of sunset date of July 1, 2023 as mentioned in Section 194LC of the Act, by another 3 years.

#### **7. Deduction in respect of subscription to long-term infrastructure bonds:**

Section 80CCF of the Act, provided deduction of an amount not exceeding Rs. 20,000 (twenty thousand) to individuals and HUF on subscription of long-term infrastructure bonds for the AY 11-12 and AY 12-13.

In order to increase the participation of individuals and HUFs into infrastructure sector, we expect the budget to consider reinstatement of such deduction, and limit of deduction should be increased to INR 1 lacs. This will help in enabling the participation of small investors and households in Infrastructure sector.

If the above suggestions are implemented in the Budget, the same shall alter the landscape of Indian infrastructure sector from long term perspective and accelerate the achievement of the Government's goal of USD 5 trillion economy.

