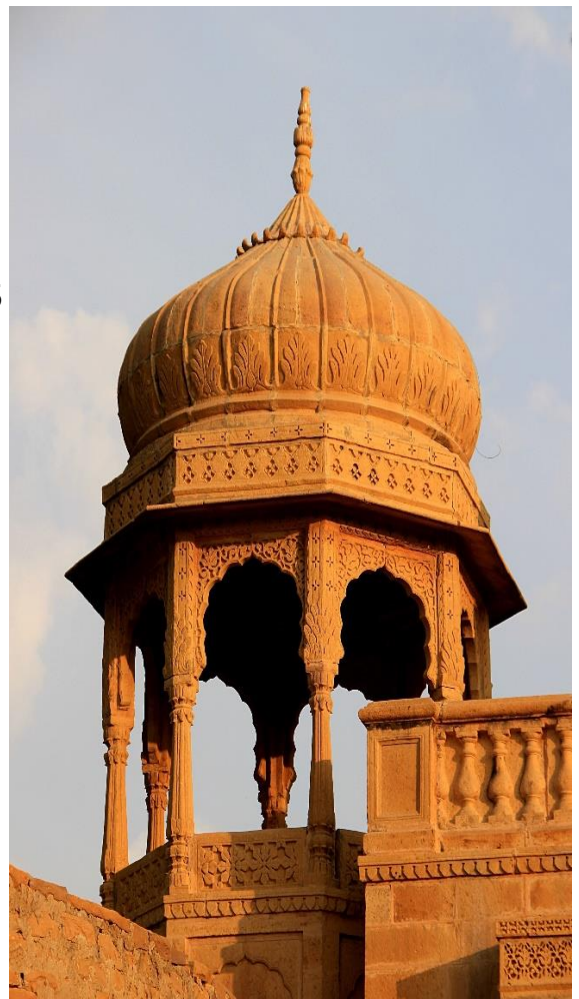


Corporate Update

Special Edition - February 2022

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PRELIMINARY REPORT ON INDIA'S BUDGET 2022-2023

GENERAL

BRIEF SYNOPSIS

The Government of India's Annual Budget for the year 2022-23 was presented by the Finance Minister, Government of India, on February 01, 2022.

The Finance Minister in her budget speech observed about the "sharp rebound and recovery of the economy", registering a GDP growth of 9.2% in the current financial year. The Indian Economy is expected to reach pre-pandemic level by the close of this Financial Year.

The fiscal deficit has also been reported to be 6.9% of GDP as against the estimate of 6.8%, only a minor variation.

The Finance Minister also noted buoyancy in tax revenue collections which resulted in controlling the revenue deficit to 3.8% only. She thanked the taxpayers in her speech for the same.

As in the preceding year, there is a huge emphasis in the announcements made by the Finance Minister, on increasing allocations towards public capital expenditure to provide a boost to the economy, industry and increase in employment opportunities.

Large financial outlay has been proposed on expansion of National Highways, Ports, Railways, Metros and digitalization.

Certain industry sectors which suffered heavily due to pandemic, like hospitality sector, are to be given necessary support by the Government.

In the telecom sector, it has been announced that 5G (Mobile Services) will be rolled out during the current year.

There is a big focus on expenditure on projects involving Renewable Energy like Solar Power, for which certain production linked incentives have been announced.

Special Economic Zones Act will be replaced with a new legislation for enhancing competitiveness in exports.

No new taxes have been introduced nor tax rates changed except a few changes in respect of Customs Duties.

It is proposed to introduce Digital Rupee, using blockchain and other technologies, to be issued by Reserve Bank of India.

BRIEF PARTICULARS OF PROPOSALS ON DIRECT TAXES AND INDIRECT TAXES

DIRECT TAXES

- There are no changes in the tax rates of any taxable entity.
- Applicable surcharge on long term capital gains on transfer of all assets by an individual has been reduced to 15%, at par with that on listed shares and equity oriented mutual funds, as against current applicable graded surcharge of 25% or 37%, as the case may be.
- Surcharge on income derived by an AOP (Consortium) has also been capped at 15% as against up to 37% presently applicable.
- Eligibility for availing the concessional tax rate of 15% by new manufacturing units

has now been extended to March 31, 2024.

- New start-ups will also be eligible for the prescribed incentive if incorporated before March 31, 2023.
- Any income arising from the transfer of "Virtual Digital Asset" ('VDA') is proposed to be covered under the tax net. This will cover cryptocurrencies such as Bitcoin under its scope. Such income would now be liable to tax at special rate of 30% plus applicable surcharge. The loss, if any, incurred on transfer of VDA shall not be allowed to be set off against any other income. The person responsible for payment of any consideration for transfer of a VDA to a resident shall withhold tax at 1% of the consideration.
- The scope of reassessment of escaped income till the period of 11 years from the date of the relevant financial year has been proposed to be enlarged to cover the situations where the escaped income represents any entry in the books of account or expenditure in respect of a transaction or in relation to any event.
- A person responsible for making payment to a non-resident is allowed to make a claim for refund before the tax officer where the tax is paid (borne) by him while making such payment to the non-resident where in his opinion the subject payment is not taxable in India. If the tax officer rejects his claim, the person can file appeal before the Commissioner (Appeals) in the normal course.
- A new provision has been introduced to allow a taxpayer to file 'updated' return of income belatedly till 3 years from the end of the relevant financial year, whether or not he has filed a return earlier. There are certain exceptions where updated return cannot be filed. Further, such

provision is not applicable to a situation where there is a loss or the updated return results in a loss or reduction in tax liability.

- A new section has been introduced to specify the time limit of filing modified return of income by the successor company in the case of merger or demerger with retrospective date. The modified return can be filed by the successor company, in the prescribed form and manner, within a period of six months from the end of the month in which the order of the adjudicating authority or the High Court is issued.
- Several procedural changes have been announced covering various aspects including reducing tax litigation, Voluntary Tax Compliance, Faceless Tax Assessment Scheme and other provisions.

All the proposed changes would come into effect on a date to be notified by the Government after approval of the Budget.

INDIRECT TAXES

A. GOODS AND SERVICES TAX (GST)

Some of the key amendments proposed in GST law are summarized herein as under:

- **Extension of time period for availing Input Tax credit (ITC), issuance of Credit notes and Rectification of errors in returns, to 30th November of subsequent financial year**

Amendments have been proposed to Section 16(4), Section 34(2), Section 37(3) and Section 39(9) of CGST Act, to extend the time period to 30th November of the subsequent

financial year for:

- Availing ITC in respect of invoices/debit notes pertaining to a financial year;
- For issuance of credit notes, relating to supply of goods/services pertaining to a financial year;
- To rectify errors in respect of details of outward supplies (GSTR 1) and GSTR 3B, furnished for a financial year.

The earlier time restriction for the above purposes was the due date of filing of September month return (i.e., 20th October) of the subsequent financial year.

- **ITC to be availed based upon Auto-populated statement (GSTR 2B) and subject to additional conditions, as laid down under substituted Section 38 of CGST.**

Section 38 has been proposed to be substituted to provide that ITC would be available based upon an auto-populated statement which would be made available to the recipient of goods/services on monthly basis. The statement would provide the details of ITC which can be availed.

The statement would also provide the details of ITC which cannot be availed of by the recipient on the grounds as under:

- **Registration status of supplier:** Conditions would be notified by Government in case of supplies received from newly registered Assessees.
- **Defaults in tax payments by**

supplier for a continuous period of time (period to be notified).

- **Short-payment of Tax by Supplier** wherein his liability paid in GSTR 3B is less than the liability declared in GSTR 1 (limits to be notified by Government).
- **Wrong availment of ITC by supplier.**
- **Restriction on payment of output tax liability through ITC:** In case where the supplier has defaulted in discharge of his tax liability as per Section 49(12). Section 49 (12) is proposed to be introduced to provide for restriction on quantum of payment of output tax liability through ITC in case of certain registered person.

As provided above, Government would notify the above restrictions in more detail, through circulars and notification, which are awaited. The above restrictions may make the whole process of claiming ITC a lot more cumbersome.

- **Transfer of funds from electronic cash ledger of one branch to another branch of same entity in different States:** Section 49 has been proposed to be amended to allow transfer of amount available in electronic cash ledger of a registered person to the electronic cash ledger of a distinct person, e.g., from one branch to another branch in different states.
- **Interest on wrong availment and utilisation of ITC:** Section 50(3) of the CGST Act is being substituted retrospectively, w.e.f. July 01, 2017,

so as to provide for levy of interest on input tax credit wrongly availed and utilized. In other words, mere wrong availment without utilisation of ITC would not suffer interest implication.

- **Rate of Interest:** Under Section 50(3) of CGST Act, w.e.f. July 01, 2017 (i.e., with retrospective effect) the Rate of Interest on delayed payment of tax has been notified as 18%.

The above changes would come into effect on a date to be notified by the Government, after approval of the Budget.

B. CUSTOMS LAW

Following important provisions have been proposed in the Customs Law besides various other changes:

- **Phasing out of concessional duty rates for Project Imports:** In order to provide a level playing field to local producers in the areas like coal mining projects, power generation transmission or distribution projects, railway and metro projects, Government has proposed to phase out the concessional rate of Customs duty in Capital goods and project imports gradually and levy a moderate tariff rate of 7.5%.

(Effective BCD rate on items (HSN 9801- Project Imports) would continue to be 'Nil / 2.5% / 5% (as applicable)' vide S. Nos. 597 to 606 of notification No. 50/2017- Customs till September 30, 2023 for the project imports registered till September 30, 2022. For other project imports 7.5% BCD will be applicable from October 01, 2022. All project imports will attract 7.5% BCD from September 30, 2023.

- **Changes in Customs Tariff Rates:**

To boost 'Make in India' initiative and promote domestic manufacturing, Customs duty rate on import of certain goods is being reduced w.e.f. February 02, 2022 such as import of certain inputs for manufacturing of mobile phones, chargers, adaptors, electronic wearable devices, hearable devises, electronic smart meters. Reduction of import duty on certain chemicals such as methyl alcohol and acetic acid. Reduction of import duty on certain agricultural produce, Cut and polished diamonds, Cut and polished natural gemstones etc.

- **Anti-Dumping Duty:** With effect from February 01, 2022, Anti-Dumping duty has been revoked on imports of Flat rolled product of steel, plated or coated with alloy of Aluminium or Zinc, originating in or exported from People's Republic of China, Vietnam and Republic of Korea.
- **Countervailing Duty:** With effect from February 01, 2022, Countervailing duty has been revoked on imports of Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products, originating in or exported from People's Republic of China.

Note:

We will deal in detail with these changes separately in our Special Budget Issue of Corporate Update.

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