

TAX PROPOSALS UNDER BUDGET 2022 - HIGHLIGHTS

KEY DIRECT TAX PROPOSALS

1. No changes in corporate and other tax rates - The Budget does not bring about any changes in the tax rates or taxation regime applicable to companies as well as other categories of taxpayers. However, it does provide marginal relief to all taxpayers by capping the maximum applicable surcharge (37% in some cases) on long-term capital gains income on transfer of any type of capital assets to 15%. Earlier, this relief was available only on capital gains arising from transfer of listed equity shares and equity-oriented mutual fund units.

2. Taxation of virtual digital assets

- I. The term “digital virtual asset” (DVA) has been defined to include the likes of cryptocurrencies and non-fungible tokens (NFTs)
- II. The transfer of a DVA will attract income-tax @ 30% (plus applicable surcharge and cess). The income chargeable to tax shall be computed as sale consideration less cost of acquisition. No other deductions/ allowances shall be permitted
- III. Loss, if any, arising from transferring DVA shall not be allowed for set-off or carry forward
- IV. Any DVA received by a person as a gift or without any consideration shall be taxable for that person

Further, any person paying another person any consideration in lieu of transfer of DVA shall be liable to withhold tax @ 1% from the consideration payable to the transferee (subject to certain exemption limits). This provision shall take effect from July 1, 2022. There is lack of clarity on how the withholding tax provisions would apply in cases where the DVAs are traded through an exchange.

3. Introduction of ‘updated tax return’ facility upto 3 years from the end of the relevant financial year - Currently, taxpayers can file belated tax returns within 3 months from the end of the relevant assessment year, or where an original tax return has been filed, they can revise their tax return within 3 months from the end of the relevant assessment year. To facilitate

more voluntary compliance from taxpayers, the law now proposes to introduce the concept of an “updated return”, which can be filed within 3 years from the end of the relevant financial year, irrespective of whether an original tax return was filed or not. However, an updated return cannot be filed in certain cases such as in search cases or where audit proceedings are initiated, etc.

Further, an updated return must be accompanied with proof of payment of applicable tax and interest along with later return filing fees and “**additional tax**”. Additional tax shall be 25% of the aggregate tax and interest (as per the updated return) if the updated return is filed within 2 years from the end of the financial year, and shall be 50% of the aggregate tax and interest (as per the updated return) if the updated return is filed within 3 years from the end of the financial year. Interest will also be payable on the tax as per the updated return. Relief from prosecution proceedings shall be provided for taxpayers filing updated returns.

4. Extension of sunset for start-up related tax holiday and newly incorporated manufacturing companies taxable @ 15%

- I. Under the existing tax law, eligible start-ups incorporated on or before March 31, 2022 have been provided a tax holiday for any 3 consecutive years out of the first 10 years of operation. It is proposed to extend such cut-off to March 31, 2023.
- II. Currently, manufacturing companies set-up on or before March 31, 2023 are eligible to avail reduced corporate tax rate of 15% (subject to certain conditions). It is proposed to extend such cut-off to March 31, 2024 for eligible new manufacturing companies to avail this benefit of 15% tax rate.

5. Tax incentives to units set up in International Financial Services Centre (IFSC) - In addition to the existing incentives available to units set up in IFSC, the following incentives are proposed:

- I. Exemption to income accrued or arisen to or received by a non-resident as a result of transfer of offshore derivative instruments or over-the-counter derivatives (P Notes / TRS etc.) entered into with an Offshore Banking Unit of an IFSC
- II. Exemption for income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an Offshore Banking Unit, in any IFSC to the extent such income accrues or arises outside India i.e. to the extent of income arising from investment in non-Indian securities.
- III. Exemption for income of a non-resident by way of royalty or interest, on account of lease of a ship in a previous year, paid by a unit of an IFSC which has commenced operations on or before March 31, 2024
- IV. In addition to income arising from transfer of aircrafts, income arising from the transfer of ships, which was leased by a unit of the IFSC to any person shall also be eligible for deduction under section 80LA of the Income-tax Act, 1961 (Act) subject to the condition that the unit has commenced operation on or before the March 31, 2024.

6. Other changes

- a) **Allowability of tax deduction for education cess:** Over the past year, there has been significant debate on the allowability of deduction as business expenditure for education cess paid by a taxpayer, with multiple contradictory court rulings. This controversy has now been put to rest, and it is now clarified by way of an amendment that education cess (like income-tax and surcharge) shall not be allowed as an allowable deduction while computing business income. Further, it has been clarified that this was always the intention of the law, and accordingly, this amendment shall be effective retrospectively from April 1, 2005 onwards.
- b) **Restriction on tax authorities to appeal against taxpayers** - To reduce litigation, it is proposed that in case any taxpayer has received a favorable order from the Commissioner Appeals or Income-tax Appellate Tribunal (ITAT), and such order pertains to a question

of law, which is identical to a question of law pertaining to the same taxpayer in another assessment or to any other taxpayer, which is pending adjudication before a jurisdictional ITAT, jurisdictional High Court or the Supreme Court, the tax department shall not file an appeal for such question of law until the matter is adjudicated by the relevant ITAT, High Court or Supreme Court subject to consent received from the taxpayer. In case the verdict of the ITAT, High Court or Supreme Court is against the findings of the Commissioner Appeals or ITAT, the tax department may file an appeal to pursue the same.

- c) **Expenditure in relation to exempt income** - Currently, expenses incurred by a taxpayer, which pertain to earning exempt income are not allowable as deduction while computing taxable income. In this regard, there was an ongoing controversy on whether any expenditure pertaining to exempt income can be disallowed if the taxpayer has not earned any exempt income in the relevant assessment year. Multiple courts have adjudicated this matter with different conclusions. To put this debate to rest, the law is now proposed to be amended to include that irrespective of whether the taxpayer has actually earned exempt income in the relevant year, any expense incurred for the purpose of the earning exempt income shall be disallowed.
- d) **Withholding tax on non-cash benefit or perquisite of a business or profession** - It is proposed to insert a new provision wherein a person responsible for providing to a resident, any benefit or perquisite exceeding USD 265, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident shall ensure that tax has been deducted in respect of such benefit or perquisite at the rate of 10% of the value or aggregate of value of such benefit or perquisite, before providing the same to such resident. The inclusion of the above shall be effective from July 1, 2022.
- e) **Disallowance of certain expenses** – Expenses incurred pursuant to an offence under a law in India or outside India, to provide any benefit in violation of any law or rule or to compound an offence under any law will not be allowed as a deductible expense

- f) **Interest expenses** - It is clarified that interest on borrowings, which is subsequently converted to debentures or any other instrument, shall not be construed as payment of such interest and deduction shall not be allowed on such conversion.

- g) **COVID-19** - Amendments have been made to various tax provisions to state that any sums received by a person (from another person or employer) for meeting the actual costs of treatment of self or family member for COVID-19 shall not be taxable. Further, where any family member of a deceased person (where the cause of death is COVID-19) receives any sum from the employer of the deceased person or any from any other person, within 12 months of date of death, such sum shall not be taxable in the hands of the recipient (subject to a limit of ~ USD 13,350). These amendments are in line with the Finance Ministry's press release from June 2021.

- h) **Bonus and dividend stripping** - It is proposed to include units of Infrastructure Investment Trust (InvIT) or Real Estate Investment Trust (REIT) or Alternative Investment Funds (AIFs) within the definition of "units" to which the provisions of bonus stripping and dividend stripping apply. Further, it is also proposed to include 'securities' within the provisions dealing with bonus stripping as a result of which bonus stripping rules will apply to equity shares as well.

- i) **Tax administration** - Amendments have been proposed to further streamline procedural aspects relating to faceless audits as well as re-audit related provisions

The above proposed amendments will become enacted law once approved by both the houses of the Parliament and signed by the President of India. This is expected in the next few weeks.

KEY INDIRECT TAX PROPOSALS

1. GST Update

a. Input tax credit related changes

- As announced by the Council, Section 50(3) is being retrospectively amended to provide for interest recovery only in cases where input tax credit has been wrongly **availed and utilized**. Rate of interest to be capped at 18%. With the above amendment, it put rest to the long pending dispute on applicability of interest on only availment of input tax credit. Also, importantly the rate of interest has been capped to 18%, wherein at ground level it was a dispute and tax authorities were demanding 24%.
- Credit availment timeline of September of next financial year is being extended to 30 November of next financial year, thereby giving an additional time of two months for credit availment in relation to invoices of a particular financial year. Similar amendment to Section 34(2) to allow credit notes to be raised till 30 November of next financial year. With the above, taxpayers would now be eligible to claim input tax credit upto November 30 of the next financial year. This amendment provides an additional two months' time to reconcile and avail the credits.
- As on date, Section 16(2) provides for credit to be availed provided tax has been remitted by the supplier. Now, Section 41 of the CGST Act is being substituted to provide for credit reversal along with interest where the supplier has not remitted the output tax. Re-availment would be allowed on payment of tax by supplier.
- A new clause (ba) to Section 16(2) of the CGST Act is being inserted to provide that input tax credit with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38. Effectively, the credit should not be appearing as ineligible credit in GSTR-2B. With this amendment, input tax credit should be appearing in 2B to be eligible for the credit.

- Section 41 of the CGST Act is being substituted so as to do away with the concept of “claim” of eligible input tax credit on a “provisional” basis and to provide for availment of self-assessed input tax credit subject to such conditions and restrictions as may be prescribed. This is aligned to the changes in GST returns where credit has to be availed basis matching with GSTR-2B on a one to one basis.
 - With the amendments made to Section 16 and substitution of Section 38, the two-way communication process in return filing has also now been done away with. To this extent, sections 42, 43 and 43A of the CGST Act are also being omitted. Effectively, GSTR-2 and 3 are removed from the GST legislation.
 - Section 49 is being amended to provide for (a) restriction in utilizing balance in credit ledger; and (b) maximum liability that can be discharged through credit ledger. This would be aligned to the current rule requiring 1% tax payment in cash in specific scenarios.
- b. Cancellation of registration for the following taxpayers
- Composite dealers who have not furnished the return for a financial year beyond (3) months from the due date of furnishing of the said return.
 - For other than composite dealers, please note that the earlier provided lapse of filing returns for a continuous 6 month period has been replaced with “for such continuous tax period as maybe prescribed”
- c. GST returns
- Extended time up-to (30th) of November of the following financial year, for rectification of errors in the return furnished under section 37 and 39;
 - A registered person shall not be allowed to furnish the details of outward supplies (GSTR-1), if the details of outward supplies for any of the previous tax periods has not been furnished by him. This is aligned to the GST rules.

- Section 39 of the CGST Act is being amended so as to provide that the non-resident taxable person shall furnish the return for a month by 13th day of the following month;
- Section 39 of CGST Act is being amended to link filing of GSTR-3B with GSTR-1 by making filing of GSTR-1 as pre-condition.

d. Electronic cash ledger

- Allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person. This is aligned to the announcement of the GST council. With this amendment, Taxpayer would be able to transfer cash balance available in one state to another state.

e. Refund

- Section 54(1) is being amended to provide for refund of any balance in cash ledger. This should put an end to the dispute around TCS and TDS refund from cash ledger. With this amendment, taxpayer would now be able to file refund claim of TDS and TCS credits available in cash ledger. The time limit for claiming refund of tax paid on inward supplies of goods or services or both (made by specified agencies notified by the Government on the recommendation of the Council) **shall be two years from the last day of the quarter** in which the said supply was received.
- **Relevant date** for filing refund claim of input tax credit **now includes supplies made to a Special Economic Zone developer or a Special Economic Zone unit**. Relevant date would be the due date of filing of return in GSTR-3B for the period in which supplies is made.

f. Late fee - Amendment to provide for levy of late fee for delayed filing of GSTR-8 (*i.e. TCS return*)

2. Customs updates

a. Key Legislative Changes

- The definition of the proper officer has been amended to include the Officers of DRI, Audit and Preventive Formation in the class of officers of Customs to perform various functions under the Customs Act and the rules made thereunder. Also, clause 96 of the Finance Bill, 2022 intends to validate actions taken under the Customs Act, 1962. Effectively, this would nullify the ruling of the Supreme Court in case of Canon India which held that DRI officers are not proper officers under the Customs Act, 1962.
- Explicit provision has been made to delineate jurisdiction on cases involving short levy/payment of duty or erroneous refund and to provide concurrent exercise of powers;
- Procedures with respect to the Advance Ruling has been rationalised allowing applicant to withdraw the application till ruling is issued. The Advance ruling to be valid for three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier.
- Section 135AA is being inserted to make unauthorised publication of import or export data, an offence punishable with imprisonment for a term of six months or with fine which may extend to fifty thousand rupees, or both.
- Section 14 of the Customs Act is being amended so as to empower the Central Government to make rules enabling the CBIC to specify the **additional obligations of the importer in respect of a class of imported goods, whose value is not being declared correctly**, the criteria of selection of such goods, and the checks, including the circumstances and manner of exercise of such checks, in respect of such goods.

b. Tariff related highlights

- A comprehensive review of Customs duty exemptions has been undertaken through a process involving crowd sourcing and inputs from various ministries. In this context, about 350 exemptions are being withdrawn.
- Further, after a detailed review of customs duty exemptions on capital goods and project imports, more than 40 exemptions relating thereto are proposed to be gradually phased out.
- Certain exemptions are being introduced for duty free import of specified goods by bonafide exporters of items like handicraft, apparel, leather goods. The value added export goods shall be exported in six months and exporter shall follow IGCR Rules.
- Circular No. 03/2022-Customs dated 1st February, 2022 is being issued clarifying the applicability of social welfare surcharge on goods exempted from Basic Customs Duty.