



UNION BUDGET HIGHLIGHTS 2022



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Budget 2022 has brought in some significant changes to the law, alongside the announcement of various policy initiatives which are aimed towards the development and promotion of a modern economy. In this short guide, Team TCLF aims to highlight some of these important changes and policy decisions.

Direct Tax Highlights

- Budget 2022 has inserted Section 2(47A) to the Income Tax Act (referred to as the “Act”) in order to define “virtual digital assets” and bring them within the tax net of the government. The definition of virtual digital assets has been extended to any non-currency which is ‘any information or code or number or token’, along with non-fungible tokens. Moreover, subsection (c) of the said section further empowers the government to bring ‘any other digital asset’ within its scope. These virtual digital assets will be taxed at the rate of 30% under Section 155BBI along with a deduction of TDS at the rate of 1%, but the disallowance of any losses incurred from the transfer of such assets.
- While the Government amended Section 10 of the Act in order to provide exemption from taxation for remuneration, fee and income for individuals who undertook duties with respect to any programme or consultancy project between the Indian government and a foreign State; on the other hand, the Government abolished the exemption enjoyed by pharmaceutical companies under Section 37 wherein the companies would claim expenditure incurred to provide gifts or benefits to the medical fraternity as tax-deductible business expenditure.
- Moreover, the government has also clarified via amendment of Section 40 to state that tax shall include ‘any surcharge or cess’, thus, the health & education cess shall not be treated as a tax-deductible expenditure and will form part and parcel of the taxation regime. The amendment has been made effective in a retrospective manner, from April 01, 2005. The clarification on cess being under the purview of tax was necessitated in light of several judgments, such as Sesa Goa Limited v. JCIT delivered by the Hon’ble Bombay High Court.

- The Government has amended Section 56 to include exemptions for expenditure incurred for medical treatment of an individual or his family member pertaining to COVID-19. The exemption has been applied retrospectively from the period of the first wave, i.e., April 2020.
- The Government has provided itself with extra time with respect to assessment procedures for issues related to determination of arm's length price in matters of transfer pricing and international taxation, as the consultations with Ministry of Law & Justice are yet to fructify in the said scheme. The extension has been provided till 31.03.2024. The scheme is sought to be effective as faceless assessment scheme with the aim of providing efficiency, transparency and accountability, akin to the system put in place by Section 144B & 144C. The extension has also been extended to incentives provided to start-ups under Section 80IAC for the period until 01.04.2023; along with domestic manufacturing companies which may commence its operations in order to avail the 15% concession by amending Section 115BAB to last until 31.03.2024. The move seems to be in consonance with the agenda of the Government to encourage domestic manufacturing industry while boosting the startups which are recovering from the setbacks of COVID-19.
- Section 139 has been amended with insertion of sub-section (8A) which will provide the taxpayers with an opportunity to file an updated income return within a time period of 2 years beginning from the end of the relevant assessment year. The filing of updated return will be subject to levy of 25% penalty if the update is provided within 1 year, otherwise the penalty will be increased to 50% for the next year. Moreover, the option of filing updated tax returns will not be available to those seeking a reduction in their tax liability or increase in the refund. The move of the government is appreciated as it extends a lifeline to the assesses and encourages tax compliance, but, the arbitrary penalty may inadvertently discourage the taxpayers from filing the updated return, thus, defeating the purpose of the amendment.

- Section 170 has been amended in order to insert a deeming provision and extend the pending tax liability of the predecessor onward to the successor in cases of business reorganization. In consonance with modification of tax liabilities, the Government has also modified Section 156 whereby the demand payable for a company under the process of IBC can be modified to be in conformity with the orders passed by Adjudicating Authority under IBC. The amendment of Section 156 was necessitated due to the issue of non-uniformity between the two legislations to deal with cases where such demand was modified due to restructuring.
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Indirect Tax Highlights

Customs

- The Finance Bill proposes to retrospectively amend Section 2(34) of the Customs Act containing definition of the term “Proper Officer”, Section 3 to include officers of Directorate of Revenue Intelligence (DRI) in the ‘classes of officers’ and Section 5 to empower the Board to assign function to officers of Customs. The amendment comes in the light of the Supreme Court judgment in Canon India Pvt. Ltd. v Commissioner of Customs wherein it was held that Officers of DRI are not ‘proper officers’ under the Customs Act. Further the court reasoned that the power to issue a show cause notice, being in nature of reassessment, should only be exercised by the same officer who initially caused the assessment.
- The amendment seeks to empower DRI officers to issue demand notices and facilitate their investigation. However, it has failed to address the court’s reasoning in the impugned case. Various courts in the past have also commented that multiple officers exercising jurisdiction in a particular case shall lead to unintended chaotic consequences. Retrospective effect to amendment can also be questioned on the grounds of criminal penalties entailed in the provisions.

- The Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 have been overhauled to introduce end-to-end automation. Significant amendments include electronically submitting details, standardized forms, filing of monthly statements and option of making payment of duties and interest by the importer through a common portal. This is a welcome step by the government and shall substantially increase the ease of doing business for importers. It is also important since various concessions/exemptions offered in the budget are also subject to compliance with these rules.

GST

- The two-way communication adopted in the return filing process is proposed to be removed. Section 37(2) of the Central GST Act has been omitted to give effect to this change. Further, Sections 42, 43, and 43A concerning the procedure with respect to two-way communication have also been omitted. The two-way communication b/w the supplier and recipient ensured matching of respective returns. With this amendment, the department has strengthened its reasoning that GST is a self-assessment tax regime and hence, the taxpayer is responsible for the tax positions adopted. The amendment shall pertain to greater diligence on the part of taxpayers.
- The last date for filing of returns to avail Input Tax Credit (ITC) has been extended to 30 November of the following year or the last date of filing the annual return from the previous September or an annual return of the following year. Sections 34(2), Section 39, and Section 52(6) have been amended in this regard. The present amendment is desirable as provides a definite cut-off date for allowing change in particulars furnished in the returns.

- An amendment in Section 49(10) of the CGST Act has been proposed to allow transfer of amount in electronic cash ledger amongst different persons, i.e., across registrations taken by an entity under the same Permanent Account Number (PAN). The change seeks to provide a facility for cross utilisation of the balance in electronic ledger to the taxpayers having multiple GST registrations and shall ease regime for such taxpayers. However, concerns regarding cross-utilisation of accumulated ITC across different registrations remain unaddressed.
- An amendment in Section 39(5) of the CGST Act stipulates that non-taxable person would be required to file their monthly returns by 13th day of next month, instead of 20 days after the end of calendar month.

Note: It is to be noted that many proposed changes in the GST laws have already been agreed to by the GST Council in its 43rd Meeting. As such, the legislations won't need any further approval by the GST Council for them to become effective. This shall ensure a faster implementation of these laws.

Central Excise

- To encourage the blending of petrol with ethanol/methanol and high-speed diesel with bio-diesel, an additional basic excise charge of INR 2 per litre will be imposed on fuel and diesel delivered to retail consumers without blending, beginning October 1, 2022.

Other Corporate and Commercial Highlights

Insolvency and Bankruptcy:

- The 2016 Insolvency and Bankruptcy Code is expected to undergo amendments to enhance the efficacy of the resolution process by introduction of the fixed 30-Days timeline at the stage of approval and rejection of the resolution plan by the adjudicating authority. Though the intent seems to be apt, as delays in the process ultimately translates into value erosion, it would be interesting to see how this will pan out in light of the ongoing debate of judicial interference over commercial wisdom and the expected enactment of a code of conduct. Moreover, amendments like this in addition to the recent proposals of the standing committee shall surely reform the code for better.
- Another effort at reducing the time of the process is expected by way of limiting the reliance to only the information utilities furnished by the creditors for concluding default over debt. This seems to align the code with the guidelines issued in the landmark Innoventive Industries case. Expected amendments also talk about the introduction of a cross-border insolvency framework inspired by the UNICITRAL Model Law on cross border insolvency to better cater to the situations like the one in the case of Jet Airways. This shall also open avenues for easier coordination between the Indian stakeholders and their foreign counterparts. Finance minister also proclaimed the need to streamline the provisions relating to improper trading and avoidable transactions by allowing them to continue post approval of the plan in case of irregularities.

Banking and Finance:

- Finance Minister announced the introduction of Country's own digital currency with the aim to promote digital economy and save some costs incurred while currency management. The Central Bank shall be launching it as 'Digital Rupee' based on blockchain and other technologies. Considering RBI would be storing this currency in digital format for the public, assuming the roles of the banks, the prolonged impact on the banking industry is feared in terms of reduction of deposits with the banks, instability in the debt market, fluctuations in lending rates, creation of credit and interest margins owing to the impact on the quantum of deposits. Furthermore, how exactly this will be implemented in the retail and wholesale segment, considering the uniqueness of both the segments would also be a point of concern. The regulation in this segment of the market shall also serve as an attractive alternative as against the instable and heavily taxed (after the newly introduced taxes) alternatives of digital currency.
- Finance minister also assured continued finances for the encouragement of digital payments in the country, in addition to introducing financial incentives to boost digital payments further.

Corporate Laws:

- Measures have been introduced to accelerate corporate exits from the currently required 2 years to less than 6 months. A Centre for Processing Accelerated Corporate Exit (C-PACE) with process re-engineering is proposed to be established to attain accelerated exits. This welcoming move shall bring in time and cost-based benefits thereby facilitating the ease of doing business.

Infrastructure:

- Certain amendments with respect to Special Economic Zones (SEZ's) were pronounced. Proposal to repeal the existing SEZ Act and rewrite it to make it more inclusive towards large industrial enclaves was amongst the most interesting ones. The introduction of completely IT-driven Customs National Portal focussing on higher facilitation is also a welcoming move that shall contribute to the ease of doing business.

Electric Vehicles:

- To facilitate quick and seamless adoption of electric mobility, the budget has introduced reforms customs duty imported. Concessions in the customs duty were, until recently, varied on the basis of a pre-assembled or disassembled battery pack. Such distinction has been done away with and replaced with a test of parts being interconnected and mounting on chassis.

Establishment of Arbitration Centre/s

- The Finance Minister also announced the setting up of an international arbitration centre at the GIFT City – a planned business district in Gujarat – for timely resolution of disputes under international jurisprudence.

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