

UNION BUDGET 2022-23

Booster dose to the economy



UNION BUDGET 2022-23



Key Direct Tax Proposals

For Individuals

- Tax rates unchanged
- **Surcharge on long term capital gains on transfer of any asset capped at 15% as against current surcharge rate of 25% / 37% - Savings of 2.08% / 4.6%**

For Companies

- Tax rates unchanged

For Others

- AMT rate for co-operative societies reduced from 18.5% to 15% - in line with Companies
- Reduction in surcharge on co-operative societies for total income between INR 10 million and INR 100 million from 12% to 7%
- Surcharge on Association of Persons consisting of only companies as its members capped at 15%

Relief from Taxation – Amount received for medical treatment or on account of death from Covid – 19 (effective retrospectively from April 1, 2020 and onwards)

- Amounts received by an individual from any person towards medical expenses actually incurred on account illness related to Covid-19 to not be considered as income of such person
- Amounts received by family member of a deceased person on account of Covid related illness to not be considered as income of such person
 - If received from employer of deceased (no monetary limit)
 - If received from other persons – upto INR 1 mn (provided received within 12 months from date of death).

Key beneficial provisions

Tax incentives – Concessional tax regime

- Extension of last date for commencement of manufacturing or production from 31 March 2023 to 31 March 2024

Tax incentives – Start ups

- The last day for incorporating a startup eligible for claiming tax holiday extended to 31 March 2023

New provision for furnishing updated tax returns

New provision for voluntary compliance

- New provision for filing of **updated return** on payment of **additional tax** within 2 years from the end of relevant AY
- *Additional tax payable* shall be computed as under:

Where updated return is furnished	Additional tax
within a period of 1 year from end of relevant AY	25% of aggregate of original tax and interest payable
Between the period of 1 - 2 year from end of relevant AY	50% of aggregate of original tax and interest payable

- Updated return can be filed even in a scenario where no original return was furnished earlier
- New provision cannot be availed in specified circumstances like search, survey, assessment is pending/ completed for relevant AY, PMLA, etc.
- Assessment to be completed within nine months from the end of the FY in which updated return was furnished.

- Definition of 'virtual digital asset' inserted and included within term 'property' for deemed gift taxation
- Income from transfer of any virtual digital asset taxable @ 30%
 - No deduction or allowance allowed except for the cost of acquisition
 - Loss arising on transfer of virtual digital asset neither allowed to be set off against any other head of income
- TDS to be deducted @ 1% on payment to a resident towards purchase consideration for transfer of virtual digital asset, subject to prescribed monetary limits

Following payments to be not allowed as a business expenditure:

- Payments for any offence or prohibition under a foreign law
- Payments for providing benefit to any persons in violation of code of conduct for the time being in force (such as doctor freebies, etc.)
- Payments for compounding of offence whether under Indian or foreign law

Health and education cess

- Health and education cess is included in the definition of “tax” with retrospective effect from 1 April 2005
- Therefore, the same cannot be claimed as an allowable expenditure
 - Impact on penalty and interest?

Tax on dividend from foreign companies

- Benefit of reduced rate of 15% on dividend received by an Indian company from its foreign subsidiary/ associate (minimum 26% equity holding) is withdrawn
 - Tax treatment for dividend received from foreign subsidiary/ associate now at par with domestic subsidiary/ associate
 - Benefit of deduction for onward distribution to shareholder continues to be available

Succession and business re-organization

- Tax proceedings made on the predecessor entity during the ‘pendency’ of business reorganization (merger and demerger) shall be deemed to have been made on the successor entity
 - ‘Pendency’ means the period between the date of filing of application with NCLT and receipt of NCLT order by the tax authorities
 - Intended to get over legal precedents which held such proceedings on the predecessor as null and void
- In cases where the Business reorganisation is effective from an earlier date, enabling provision introduced to facilitate the successor entity to file modified return of income within 6 months from the date of NCLT order.

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- Bonus and dividend stripping provisions now applicable to following asset classes
 - Equity shares
 - Mutual Fund Units
 - REIT and InvIT Units
 - AIF Units (including shares or partnership interests)

- In case of loan or borrowing, onus on assessee to explain the nature and source of the person from whom it is received except where creditor/ lender is a regulated entity
- No set-off of any form of loss or unabsorbed depreciation permissible against undisclosed income

- No approval required before issue of notice where a speaking order is passed by AO holding it to be a fit case for reassessment
- Scope of 'information' widened for reopening assessment
 - Any audit objections (not just CAG audit objections),
 - Exchange of information under tax treaties
 - Scheme for faceless collection of information
 - Information requiring action pursuant to order of Tribunal or Court
- Reopening for period up to 10 years also allowed where escaped income is represented in form of:
 - Expenditure in relation to an transaction, event or occasion
 - entry in the books of account
- Controversy with regard to reassessment notices issued under old regime within the extended period continues

Withholding tax for international payments

Refund application in tax gross-up cases

- Existing process of claiming refund by filing an appeal (post deposit of tax) before CIT(A) is replaced
- Now the application for refund must be moved to AO – after depositing taxes
- AO to pass order in 6 months' time
- Appeal can be preferred before CIT(A) against the said order of AO

Tax Compliance & Dispute Resolution

Assessment to be considered valid even where procedure not followed

- Proposal to delete provision whereby the assessment was considered invalid/ non est for not following prescribed procedure under Faceless Assessment Scheme (retrospectively from 1 April 2021)

Litigation management for appeals filed by revenue on similar issues

- Applicability - where identical issue is pending before the Supreme Court or jurisdictional High Court (in any case)
- Impact – Senior revenue officials may decide to not file an appeal until such issue attains finality
- Move to substantially reduce litigation burden on recurring/ industry issues

Disallowance under section 14A

- Expenditure incurred in relation to exempt income to be disallowed even in absence of any exempt income earned / received during the year

Conversion of interest into debentures / shares

- Conversion of interest payable on loans from banks/ financial institutions, etc. into debenture or any other instrument by which liability to pay is deferred to a future date, shall not be deemed to have been actually paid for the purpose of section 43B.

Others

- Timeline for notification of faceless assessment scheme for transfer pricing assessments and Dispute Resolution Panel extended from March 31, 2022 to March 31, 2024

Scope of revision of orders by CIT extended

- Pr CIT/ CIT can now revise the order passed by TPO or cancel the order and direct passing of fresh order, if it is erroneous and prejudicial to the interest of revenue

Power to levy penalty granted to CIT(A)

- Penalty in respect of undisclosed income/expenditure, false entry in books of account, etc. can now be levied by the CIT(A) along with AO

Procedural and Other Changes

Higher TDS/ TCS in case of non-filing of ROI

- Exclusion provided for TDS provisions pertaining to:
 - Transfer of immovable property
 - Payment of rent to individuals or HUF
 - Payment of certain sums by an individual or HUF
- Higher TDS/ TCS applicable to taxpayers who have not filed ROI for preceding financial year (reduced from two years) and the time limit for filing such return has lapsed.

TDS provisions

- Transfer of a virtual digital asset liable to TDS at 1% from 1 July, 2022
- TDS at 10% on value of any benefit or perquisite arising from business or profession.
- Transferee liable to deduct tax at 1% on consideration amount paid to a resident or stamp duty value, whichever is higher
- Interest by an assessee in default (for TDS and TCS default) has to be paid in accordance with order of the AO
- Stringent punishment extended for persons who fails to deposit TCS for second and subsequent times
- Punishment not to be imposed if there is reasonable cause for non depositing TCS.

- Income arising to non-resident, from transfer of offshore derivative instruments or over-the-counter derivatives entered with an offshore banking unit of an IFSC
- Income arising to non-resident, from portfolio of securities or financial products or funds, managed by a IFSC based portfolio manager and in an account maintained with Offshore Banking Unit in IFSC
 - To the extent such income, accrues or arises outside India and is not deemed to accrue or arise in India
- Exemption from Angel Tax issue extended to investment made by Category I and II AIF regulated under the IFSC, Act
- Royalty income of a non-resident from lease of ships to unit in IFSC exempt
- Income from transfer of ship or engine of a ship leased by an IFSC unit to a person, prior to such transfer, shall be eligible for tax holiday

- Scope for cancellation of registration expanded
- Order for cancellation to be passed within 6 months from the end of the quarter in which inquiry is initiated
- Penalty for passing unreasonable benefits to Trustees/ Specified Persons in the range of 100 – 200% of the benefit
- Exit Tax provisions extended to 10(23C) institutions
- Taxability restricted to the amount of violation
 - To be taxed at 30%
- Provisions for section 10(23C) institutions and section 11 institutions aligned

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Key Indirect Tax Proposals

- Amendment related to eligibility to take credit u/s. 16 - Input tax Credit available to the extent not restricted u/s. 38 (Auto-populated statement in Annexure 2B) : to include the following
 - Details of inward supplies in respect of which credit of input tax may be available to the recipient
 - Details of supplies in respect of which credit cannot be availed by the recipient for supplies by a supplier
 - Within such period of taking registration as may be prescribed
 - Who has defaulted in payment of tax for a prescribed period
 - GSTR-1 liability exceeds the amount of tax paid by him in GSTR-3B (by a prescribed limit)
 - Who (during such period as may be prescribed) has availed excess credit
 - Who has defaulted in discharging tax liability in accordance with the provisions of Section 49(12) – provides for maximum output liability which can be paid through credit
 - Such other class of suppliers as may be prescribed

- Extension of time limit:
 - Time limit for taking credit extended until 30th November of the following financial year : Practically would mean returns for the month of October (either filed by 20th or delayed until 30th)
 - Time limit for issuance of credit note and amendment in outward return extended to 30th November of the following financial year
- Outward supply returns and its communication to the recipient will be subject to such conditions and restrictions as may be prescribed
- Provisions relating to matching of credit (Section 42/43 – which were not yet notified), now omitted
- Substantive provisions proposed to be introduced for restricting filing of outward returns (GSTR-1), if the same not filed for any previous tax period. GSTR 3B also cannot be filed if GSTR-1 not filed

- Section 41 (which earlier provided for provisional credit) proposed to be amended to provide that
 - Credit can be availed on a self-assessment basis (subject to conditions and restrictions as may be prescribed)
 - If tax has not been paid by the supplier shall be reversed with applicable interest – credit can be re-availed once tax paid
 - Section 50 proposed to be amended to provide for payment of interest only “where input tax credit has been wrongly availed and utilised”
- Section 49 (12) - Enabling provisions introduced in GST laws to limit the amount of input tax credit that can be used to pay output tax liability (as may be prescribed)
- Proposed provisions for transfer of cash in the electronic cash ledger
 - Within State – I,C,S
 - Inter State (distinct person) – I,C
- Cash cannot be transferred if there is unpaid liability

- Proposed provision providing for relevant date for claiming refund for supplies to SEZ developer or unit – relevant date will be date of filing GSTR-3B in which such supplies are reported
- Retrospective amendment (w.e.f. 01.07.2017) to notify rate of interest @18% u/s. 50
- Supply of service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee for the period 01.07.2017 to 30.09.2019 exempted from IGST subject to conditions

- Various amendments have been made to the Customs Law to counter the decision in Canon India Private Limited v. Commissioner of Customs, Civil Appeal No.1827 of 2018
 - Officers of DRI, Audit and preventive formation as officers of Customs included
 - Power of assignment of functions to officers of Customs by Board, Principal Commissioner or Commissioner
 - Whether Retrospective?
 - Validation to any action taken or functions performed before the date of commencement of the Finance Act, 2022
- Section 14 proposed to be amended to provide Rule making powers to the Board to address the issue of undervaluation in imports
 - Rules can provide for additional obligations of the importer in respect of imported goods where value has not been declared correctly, criteria for selection of such goods, and checks in respect of such goods

- Changes relating to Advance Ruling provisions
 - Application for Advance Ruling can be withdrawn anytime before a ruling is pronounced (currently could be done within 30 days from the date of filing)
 - Ruling is valid for a period of 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
 - Advance Rulings in force – three year period to be reckoned from the date on which finance bill received presidential assent
- Jurisdiction to vest in the proper officer who has originally done assessment or granted refund (original officer) - any subsequent inquiry, investigation, audit etc. by any other officer of customs to be transferred to such original officer for further action like re-assessment, adjudications etc.
- Publishing of information relating to import and export data submitted to Customs liable to fine [which may extend to INR 50,000/-and / or imprisonment [may extend up to 6 months]
- SEZ laws proposed to be replaced

- Scaling-up of **Production Linked Incentive (PLI)** Schemes:
 - Additional allocation of INR 19,500 crores to the PLI scheme for High Efficiency Solar PV Modules (introduced with an initial allocation of INR 4,500 crores)
 - New PLI Scheme announced for Design-led manufacturing of 5G equipment
- To promote domestic manufacturing, **customs duty increased** on:
 - Specific electronic items (like loudspeakers, headphones etc.) under the Phased Manufacturing Program (PMP)
 - Specific capital goods for textile, power, petroleum, leather, food processing sectors and under the Project Import Scheme
- Government contribution schemes in **research & development** in sunrise sectors like Artificial Intelligence, Drones, Semiconductor, Pharmaceuticals, Green Energy etc.

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Questions



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