



**UNION  
BUDGET 2022  
TAX INSIGHTS**



S & A Law Offices

The Hon'ble Finance Minister Ms. Nirmala Sitharaman presented the Finance Bill, 2022 ("the Finance Bill") on February 1, 2022 in the Parliament. We are enumerating key policy initiatives and changes under the specified Indirect and Direct Tax Laws.

# INDIRECT TAX

## 1. Amendment in Goods & Services Tax

### 1.1 The Central Goods and Services Tax Act, 2017 (CGST Act)

#### ► Changes in relation to input tax credit (ITC)

- Auto generated inward statement to be referred for availing ITC under the CGST Act which will include details of available and restricted ITC basis the details furnished by the supplier.
- ITC liable to be reversed wherein the supplier has not paid the tax. Such ITC can be re-availed on payment of tax by the supplier.
- Interest@18% to be levied on ITC wrongly availed and utilized with effect from July 1, 2017.

Impact - This provision casts undue responsibility on the recipient to determine the compliance status of its vendors even to the extent of discharging tax liability correctly and correct claim of ITC.

Impact – More stringent proposal towards availment of ITC leading to working capital blockage and increase in compliance burden.

Impact – Litigation around levy of interest on ITC wrongly availed laid to rest. Similar changes have been proposed in the IGST Act and the UGST Act.

#### ► Key change in GST compliance:

- Time limit for year-end compliances pertaining to previous financial year extended to November 30 of the following financial year for the following:
  - Availment of ITC
  - Issuance of Credit notes
  - Rectification in GST returns including TCS return
- Any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger of a registered person can be transferred to its distinct person's electronic cash ledger as integrated or central tax.

Impact – More time to businesses to reconcile its GST returns and take corrective measures.

Impact – Free flow of blocked working capital and give synergy in business.

## ▶ Other changes in GST compliance:

- Two-way communication process in return filing removed.
- GSTR-1 cannot be filed without filing GSTR-1 of previous period, however subject to certain exceptions.
- Due date for filing of GST return by non-resident person revised from 20th of the following month to 13th of the following month.
- Late fee applicable on delayed filing of Tax Collection at Source (TCS) return.

Impact – Relaxation in some compliances along with measures to provide timely filing of returns leading to compliance driven business.

## ▶ GST registration to be cancelled in the following cases:

- For Composite taxpayers – After expiry of three months from due date of furnishing GST return / where the return has not been furnished for a financial year beyond three months from the due date of furnishing the said return; and
- For taxpayers other than Composite taxpayers- After the expiry of such continuous period as may be notified later from due date of furnishing GST return / where the return has not been furnished for a financial year beyond such continuous period as may be notified later.

Impact – Measures introduced to deter non-compliance in filing of returns by the taxpayers.

## ▶ Changes in refund provisions:

- Scope of withholding of refund and recovery of tax from refund due extended to cover all types of GST refund application.
- Relevant date for filing of refund application by SEZ developer or SEZ unit clarified to be the due date for furnishing the GST return.
- Period of claiming refund by a specialised agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under United Nations (Privileges and Immunities) Act, 1947, extended from six months to two years from the last day of the quarter in which the inward supplies were received.

Impact – More powers to the tax department to recover tax dues from refund claims.

## ▶ Sections inserted to validate Rule 86B of the Central Goods and Service Tax Rules, 2017 and QRMP Scheme:

- Restriction on use of amount available in electronic credit ledger
- Quarterly return filers to have an option to either pay self-assessed tax or an amount that may be prescribed

Impact – To mitigate litigation around validity of these provisions.

(The above changes will come into effect from enactment of the Finance Bill)

## 2. Amendment in Customs

### 2.1 The Customs Act, 1962 (the Customs Act)

- Officers of Directorate of Revenue Intelligence (DRI), Audit and Preventive included as 'class of officers' under Section 5 of the Customs Act.
- Definition of 'proper officer' under Section 2(34) of the Customs Act linked with Section 5 thereof.
- The CBIC can adopt different criteria while imposing limitations or conditions on the functions of proper officers.
- The CBIC may by way of notification assign two or more officers of customs to concurrently exercise powers and functions for proper management of work.
- In order to address the issue of undervaluation in case of import, the CBIC empowered to specify additional obligations for importer of goods whose value has not been being declared correctly, criteria of selection of such goods and checks for the purpose valuation.
- Application for advance ruling can be withdrawn at any time before a ruling is pronounced.
- Advance ruling to be valid for a period of three years from the date on which the Finance Bill, 2022 receives assent of the President or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier.

The proposed amendment has effectively negated the implication pursuant to the Canon India judgement which gave breather to litigants for time being.

- In case an officer of Customs subsequent to inquiry, investigation, audit as the case may be, has reason to believe that there has been short levy of duty, excessive refund or non-charging of interest, drawback erroneously refunded, then he/she shall transfer relevant documents along with report in writing to:
  - Proper officer having jurisdiction in respect of assessment of duty/officer who allowed such refund or drawback.
  - Specified officer of Customs in case of multiple jurisdictions.
- Any person who publishes any information related to value or classification or quantity of goods entered for export or import or details of exporter or importer of such goods, unless required to do so, punishable with imprisonment for a term extended to six months or with fine up to INR 50,000/- or with both.
- Action or functions which has been performed by DRI/ Audit and Preventive formation to remain valid even before the date of commencement of the Finance Act, 2022.

(The above changes will come into effect from enactment of the Finance Bill)

## 2.2 The Customs Tariff Act, 1975 ('the Customs Tariff Act')

### 1. Changes in rate of Custom Duty

S. No.	Heading,/ sub- heading tariff item	Commodity/ Description	Existing Rate	Revised rate	Rate Move- ment
<b>Electrical and electronic items (w.e.f. February 2, 2022)</b>					
1.	8518 21 , 8518 22 , 8518 29	Single or multiple loudspeakers, whether or not mounted in their enclosures (applicable for hearable devices covered under Phased M a n u f a c t u r i n g Program ('PMP'))	15%	20%	↑

2.	8518 30	Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers (applicable for hearable devices covered under PMP.	15%	20%	↑
3.	9028 30 10	Smart Meters (15% rate of Duty till March 31, 2022)	15%	25%	↑
4.	9028 90 10	Printed Circuit Board Assembly of Smart Meters (Effective rate of duty @7.5% applicable till March 31, 2022)	10%	20%	↑
5.	3920 99 99, 9002 11 00	Camera lens for use in manufacture of Camera Module for Cellular Mobile Phone	10%/15%	2.5%	↓
6.	Specific heading	Specified parts for use in manufacture of transformers of chargers/adapters	10%/15%	5%	↓
Solar Energy Sector (w.e.f. February 2, 2022)					
7.	8541 42 00	Solar Cells (other than those exclusively used with ITA-1 items) (Effective rate of duty is Nil applicable till March 31, 2022)	20%	25%	↑
8.	8541 43 00	Solar Modules (other than those exclusively used with ITA-1 items) (Nil rate of Duty till March 31, 2022)	20%	40%	↑
MSME Sector(w.e.f. February 2, 2022)					
9.	6601	Umbrellas	10%	20%	↑
Coal Sector (w.e.f. May 1, 2022)					

10.	2701, 2702,2703	Coal, Lignite and Peat	10%	5%	↓
Iron and Steel Sector (w.e.f. May 1, 2022)					
11.	7204	Ferrous waste and Scrap (Effective rate of duty is Nil applicable till March 31, 2023)	15%	2.5%	↓
Project Imports (w.e.f. May 1, 2022)					
12.	9801	Project Imports (Nil/2.5%/5% rate of Duty, as the case may be, till September 30, 2023 for project imports registered till September 30, 2022 and 7.5% applicable for other project import w.e.f. October 1, 2022)	10%	7.5%	↓
Health Sector (w.e.f. February 2, 2022)					
13.	9018 32 10	Surgical needles imported for manufacture of Surgical sutures	Health Cess @5%	Health Cess @ Nil	↓

## 2. Other Legislative Changes

- Rate of Duty on specified goods through respective exemption notifications to be omitted w.e.f. May 1, 2022 as same would operate through the Customs Tariff Act, 1975 without any change in effective rates of Duty.
- New entries inserted in first schedule to the Customs Tariff Act to align with Harmonized System of Nomenclature ('HS 2022') for specified goods w.e.f. May 1, 2022.
- Exemption from payment of Social Welfare Surcharge on import of specified goods and exemption on specified goods withdrawn w.e.f. February 2, 2022.
- Various notifications rescinded in relation to import of specified goods w.e.f. February 2, 2022/May 1, 2022.
- Customs (Import of Goods at Concessional rate of Duty) Rules, 2017 amended to facilitate exporters to export specified goods w.e.f. March 1, 2022.
- Exemption from payment of Duty on specified goods in case importer has adopted Customs (Import of Goods at Concessional rate of Duty) Rules, 2017 subject to specified conditions.

- Exemption from payment of Agriculture Cess, Road and Infrastructure Cess and Development Cess on import of specified goods.
- Concessional rate of customs duty on items relating to import of raw materials and parts for use in manufacture of electronic items withdrawn on specified goods.
- Concessional rate of customs duty on items relating to import of capital goods for manufacture of electronic items to be applicable till March 31, 2024.

### 3. Certain changes in Levy of Countervailing Duty and Anti-dumping Duty

- Revocation of Anti-Dumping Duty on import of the following:
  - Straight Length Bars and Rods of alloy-steel, originating in or exported from People's Republic of China
  - High Speed Steel of Non-Cobalt Grade, originating in or exported from Brazil, People's Republic of China and Germany.
- 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 Korea RP, imposed
- Countervailing Duty permanently revoked on import of Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products, originating in or exported from People's Republic of China.

## DIRECT TAX

### 1. Amendment in the Income Tax Act (IT Act)

- Section 206AB and 206CCA of the IT Act deals with special provision of deduction and collection of tax at higher rate in case of "specified person" who failed to file income tax return for two assessment years. This time period of two years is now reduced to one year.
- TDS@1% to be deducted from the sum paid or credited towards sale of property or the stamp duty value of such property, whichever is higher.
- Provision inserted for refund of tax paid when the same was not required to be paid in view of Section 248 of the IT Act.
- Provision inserted for prosecution in case there is a failure to pay tax collected at source in line with TDS provisions.
- The existing procedure of faceless assessment prescribed under Section 144B of the IT Act substituted to streamline the process.
- Amendment in penalty provisions to enable the Commissioner (Appeals) to levy penalty pertaining to undisclosed income, unexplained credits or expenditure, or deliberate falsification or omission in books of accounts.



- Insertion of new provision to disallow the adjustment of any loss and unabsorbed depreciation, from the undisclosed income consequent to the search initiated on the assessee.
- Existing procedure of faceless assessment prescribed under Section 144B of the IT Act substituted to streamline the process.
- No set off allowed of brought forward loss or unabsorbed depreciation against undisclosed income unearthed during the course of search or survey.
- Provisions related to reopening of assessment under Section 147 to 151 of the IT Act to be simplified.
- New provision introduced to file updated income tax return upon payment of additional tax within 2 years from the end of the relevant assessment year.
- Commencement of manufacturing date extended to March 31, 2024, for newly incorporated domestic manufacturing companies where beneficial rate of 15% has been provided.
- Provision amended to extend the period of incorporation of eligible start-ups to March 31, 2023.
- In case of succession (mergers / amalgamations), any proceeding under the IT Act on the date of business re-organization, shall deemed to have been made on the successor.
- Expenses pertaining to offence/penalty under any law, even outside India, shall not be allowed as business expenditure. Further, benefit or perquisite to any person in violation of any law or rule or regulation or guidelines shall also be disallowed.

**(Changes coming into force w.e.f April 1, 2022)**

## **2. Taxation of “Virtual Digital Assets”**

- Virtual Digital Assets defined as any information or code or number or token generated through cryptographic means or otherwise, providing a digital representation of value with the promise or representation of having inherent value and includes non-fungible token.
- Income Tax @30% to be levied on income from transfer of any Virtual Digital Assets.
- Income from sale of Virtual Digital Assets shall be computed after deducting cost of acquisition only. No deduction in respect of any expenditure or allowance of set off any loss shall be allowed.
- No set off of losses arising from transfer of Virtual Digital Assets shall be allowed and such loss shall not be allowed to be carried forward to subsequent assessment years.
- TDS@1% to be deducted from the consideration paid for transfer of Virtual Digital Assets.
- Gift of Virtual Digital Assets shall be taxed in the hand of the recipient.

### **3. Additional tax incentives to International Financial Services Centre (IFSC)**

- Exemption to non-resident on income from transfer of offshore derivative instruments or over the counter derivatives.
- Exemption to non-resident from royalty or interest arising on account of leasing of ship also.
- Exemption to any income received by a non-resident from portfolio of securities or financial products or funds, in an account maintained with an Offshore Banking Unit, in any International Financial Services Centre.
- Exemption on income arising from transfer of ships leased by the unit of IFSC.

### **4. Other changes**

- Reduced rate of surcharge from 12% to 7% (in case where total income exceeds INR 1 Cr but does not exceed INR 10 Cr) and AMT from 18.5% to 15%.
- Deletion of Section 115BBD of the IT Act which levied tax on dividend received by a domestic company from a foreign company.
- Conversion of interest payable on loan into debentures is not an actual payment of interest, hence, cannot be claimed as deduction.

#### **(Changes coming into force w.e.f April 1, 2022)**

- Incentive to the employee of State government by enhancing the limit in National Pension Scheme from 10% to 14% of the employee's salary w.e.f. April 1, 2020.
- Amount received for medical treatment and on account of death due to COVID-19 shall be exempted from perquisite and gift taxation subject to threshold prescribed w.e.f. April 1, 2020.
- Surcharge and Cess cannot be claimed as business expenditure by Assessee w.e.f April 1, 2005
- Deduction claimed by donor with respect to donation given to any research association, university, college, or other institution or company shall be disallowed in case where research association, university, college, or other institution or company fails to file the statement of donations w.e.f April 1, 2021.

#### **(Changes coming into effect retrospectively)**

- TDS@10% to be deducted from the value of such benefit or perquisites arising out of a business or profession by any person providing any benefit or perquisites to resident wef July 1, 2022.
- Surcharge on long term capital gain arising on transfer of any type of assets capped at 15%.
- Surcharge on Association of Persons consisting of only companies as its members capped at 15%.
- Where any question of law is pending before the Supreme Court, appeal on the same question of law shall not be allowed to be proceeded by department for another assessment year in case of same assessee.
- Rationalization of the provisions of Charitable Trust and Institutions.



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