



BUDGET 2022

Key Tax Proposals

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Introduction

Finance Minister Nirmala Sitharaman on Tuesday presented a growth-oriented Budget which focused on 4 pillars – productivity, climate action, financing investments and PM Gati Shakti plan. The Budget stepped up the capital expenditure sharply by 35.4 per cent to Rs 7.50 lakh crore to attract more private investment and attract growth.

The Budget announcements have re-laid the emphasis of government on infrastructure and Capex expansion. For 2022-23, allocation of Rs 1 lakh crore is announced to assist the states in catalyzing overall investments in economy. These 50-year interest-free loans are over and above the normal borrowings allowed to states.

The Union Budget 2022-23, while continuing with the declared policy of stable and predictable tax regime, intends to bring more reforms that will take ahead the vision to establish a trustworthy tax regime.

On Direct Taxes front, the Finance Minister has proposed no changes in income tax slabs. It has been further proposed that both Centre & states government employees' tax deduction limit on NPS shall be increased from 10% to 14%. This move will help the social security benefits of state government employees and bring them at par with the Central government employees. It was also proposed to tax the transfer of any virtual digital asset at the rate of 30%.

In a remarkable step taken on the Indirect Tax front, the Union Budget has proposed that Customs administration in Special Economic Zones will be fully IT driven. The budget underlined review of customs exemptions and tariff simplification, with more than 350 exemptions proposed to be gradually phased out. Rationalization of exemptions on implements and tools for agri-sector manufactured in India will be a huge boost for the sector.



- Provision to file an Updated Return on payment of additional tax.
- Alternate Minimum Tax paid by cooperatives brought down from 18.5 per cent to 15 per cent.
- Parity in National Pension Scheme Contribution between Central Government employees and State Government employees.
- Rationalizing TDS Provisions on payments made to agents.
- Surcharge on cooperative societies reduced from 12 per cent to 7 per cent for those having total income of more than Rs 1 crore and up to Rs 10 crores.
- Incentives for Start-ups.
- Scheme for taxation of virtual digital assets.
- Tax incentives to IFSC.
- Rationalization of Surcharge for AOPs.
- Time limit to avail ITC under section 16(4) allowed up to 30th November of the subsequent financial year.
- ITC shall not be allowed on provisional basis. ITC shall be only available if the same is eligible as per GSTR-2B generated by the GSTN Portal.
- Rate of Interest for reversal of excess claimed Input Tax Credit has been notified @18%. No interest shall be levied if amount of excess claimed ITC availed but not utilized.
- Credit notes in respect of supply made in financial year can be issued by 30th November of subsequent financial year.
- Rectification of Invoices and credit notes in GSTR-1 can be done up to November 30th of the subsequent financial year
- Non-Resident Taxable Person shall furnish return by 13th of the subsequent month.
- Late fees has been prescribed for late filing of TCS return.



DIRECT TAX PROPOSALS

Reducing Litigation

Introducing new 'Updated return'

- The Finance Bill has proposed to introduce the concept of 'Updated' Return for taxpayers who wish to declare enhanced tax liability.
- As per this concept, an assessee can file his return within 24 months from the end of the relevant assessment year on payment of additional tax that shall range between 25% and 50% of tax and interest payable.

Litigation Management

- The Finance Bill has proposed to provide a procedure to reduce the amount of litigation & filing of appeal in cases where a question of law is common in the case of an assessee for any assessment year or in the case of any other assessee for an assessment year and where a decision of the jurisdictional High Court or Supreme Court is pending.
- In such a case, the Principal Commissioner may decide not to file an appeal till the time such an issue is pending before the Jurisdictional High Court or Supreme Court.
- For this purpose, a 'Collegium' shall be set-up that shall comprise of two or more Chief Commissioners or Principal Commissioners or Commissioners of Income-tax, as specified by the Board in this regard.

Clarification regarding treatment of cess and surcharge

- Recently, Rajasthan High Court and Bombay High Court have adjudicated that Health and Education Cess shall not be treated at par with tax u/s 40(a)(ii) and therefore, can be claimed as Business Expenditure.
- Now, to nullify the impact of judgements by the High Courts, the Finance Bill has proposed to introduce a retrospective clarification under section 40(a)(ii) of the Income Tax Act stating that for the purposes of this sub-clause, the term “tax” includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax.

Clarification in respect of disallowance u/s 14A

- Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to exempt income.
- To nullify the observations made by various courts that there cannot be any disallowance if no exempt income is earned during a specific year, the Finance Bill has proposed to introduce a retrospective clarification under section 14A stating that the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year and the expenditure has been incurred during the said previous year in relation to such exempt income.

Providing benefits prohibited under any other law cannot be claimed as Business Expenditure

- The Finance Bill has proposed to clarify that benefits or perquisites provided to any person, the acceptance of which is in violation of any law or rule or regulation or guideline, then the person providing such benefits or perquisites cannot claim the same as business expenditure.
- This shall have specific impact on the benefits provided to medical practitioners by some pharmaceutical companies in violation of MCI guidelines.

Conversion of Interest Liability into Loan is not 'Payment'

- Certain taxpayers are claiming deduction under section 43B on account of conversion of interest payable on an existing loan into a debenture on the ground that such conversion is a constructive discharge of interest liability and, therefore, amounted to actual payment which has been upheld by several Courts.
- Holding such an interpretation to be against the intent of legislation, the Finance Bill has proposed to amend explanations to section 43B to provide that conversion of interest payable under clause (d), clause (da), and clause (e) of section 43B, into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid.

Tax Incentives

Extension of sunset clause under section 115BAB

- Section 115BAB provides for an option of concessional rate of taxation @ 15 % for new domestic manufacturing companies provided that they do not avail of any specified incentives or deductions and fulfil certain other conditions.
- One of the condition for availing concessional tax rate is that the manufacturing or production should commence by 31-03-2023.
- The government has acknowledged that the cumulative impact of the persistence of the COVID-19 pandemic has resulted in some delay in setting up/registration of new domestic companies and the commencement of manufacturing or production by such companies, if they have been set up and registered and therefore, proposed to extend the time-line for commencement of production from 31-03-2023 to 31-03-2024.

Extension of date of incorporation for eligible Start up for exemption

- Section 80-IAC provides for a deduction of an amount equal to 100% of the profits derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years, beginning from the year of incorporation.
- Due to COVID pandemic there have been delays in setting up of such units. In order to factor in such delays and promote such eligible start-ups, the Finance Bill has proposed to amend the provisions of section 80-IAC of the Act to extend the period of incorporation of eligible start-ups to 31st March, 2023.

Reduction in Alternate Minimum Tax rate of Cooperative Societies

- Section 115JC of the Act, inter alia, provides for the alternate minimum tax (AMT) payable by co-operative societies, which is at the rate of 18.5%. However, vide the Taxation Laws (Amendment) Act, 2019, the Minimum Alternate Tax (MAT) rate for companies has been reduced to 15%.
- Therefore, in order to provide parity between co-operative societies and companies, it is proposed to modify sub-section (4) of section 115JC to reduce the AMT rate at which co-operative societies are liable to pay income-tax to 15%. Consequential amendment is also proposed in clause (b) of section 115JF in relation to the definition of “alternate minimum tax”.

Incentives of ‘NPS’ to State Government Employees

- Under the existing provisions of the Act, any contribution by the Central Government or any other employer to the account referred to in section 80CCD of the Act (NPS account), shall be allowed as a deduction to the assessee in the computation of his total income, if it does not exceed 14% of his salary where such contribution is made by the Central Government. This limit is presently 10% of his salary where such contribution is made by any other employer.
- In order to ensure that the State Government employees also get full deduction of the enhanced contribution by the State Government, it is proposed to increase the limit of deduction under section 80CCD of the Act from the existing 10% to 14% in respect of contribution made by the State Government to the account of its employee.

Tax Benefits to Disabled persons

- The existing provision of section 80DD provides that the deduction shall be allowed only if the payment of annuity or lump sum amount is made to the benefit of the dependent, in the event of the death of the individual or the member of the HUF in whose name subscription to the scheme has been made.
- In order to remove this genuine hardship, the Finance Bill has proposed to allow the deduction also during the lifetime, i.e., upon attaining age of 60 years or more of the individual or the member of the HUF in whose name subscription to the scheme has been made and where payment or deposit has been discontinued.
- Further, it is proposed that the amount shall also not be taxable in the hands of the person with disability which is received before his death, by way of annuity or lump sum by application of the condition referred to in the proposed amendment.

Exemption of amount received for medical treatment and on account of death due to COVID-19

- Earlier, The Finance Ministry has announced that income-tax shall not be charged on the amount received by a taxpayer for medical treatment from employer or from any person for treatment of COVID-19 during FY 2019-20 and subsequent years. It was further announced that in order to provide relief to the family members of such taxpayer, income-tax exemption shall be provided to ex-gratia payment received by family members of a person from the employer of such person or from other person on the death of the person on account of COVID-19 during FY 2019-20 and subsequent years.
- To give effect to the announcements, the Finance Bill has proposed retrospective amendments from 01-04-2020 u/s 56(2)(x), 17(2)

Widening & Deepening of Tax Base

Rationalization of provisions of Section 206AB & 206CCA

- In order to widen and deepen the tax-base and to nudge taxpayers to furnish their return of income, Finance Act, 2021 inserted sections 206AB and 206CCA in the Act. The said provisions are applicable on a person who has not filed the returns of income for both the two assessment years relevant to the two previous years immediately preceding the financial year in which tax is required to be deducted or collected, for which the time limit for filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is Rs. 50,000 or more in each of these two previous years.
- In order to ensure that all the persons in whose case significant amount of tax has been deducted do furnish their return of income, the Finance Bill has proposed to **reduce 2 years requirement to 1 year** by amending sections 206AB and 206CCA of the Act.
- Further, in order to reduce the additional burden on individual & HUF taxpayers covered under section 194-IA, 194-IB and 194M of the Act for whom simplified tax deduction system has been provided without requirement of TAN, section 206AB shall not be applicable.

Introduction of stamp duty value for deduction of 1% TDS

- The Finance Bill has proposed to amend section 194-IA to provide that for deduction of tax @ 1%, Stamp Duty Value of the property shall also be considered. For this, TDS shall be deducted @ 1% on amount paid or Stamp Duty Value, whichever is higher.
- Further, no TDS shall be deducted if stamp duty value as well as sale consideration are both less than Rs. 50 Lakh.

TDS on benefit or perquisite of a business or profession

- To capture the transactions covered u/s 28(iv), the Finance Bill has proposed to insert section 194R providing that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, 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.
- TDS under this section shall not be deducted if the value of the benefit or perquisite paid or likely to be paid does not exceed Rs. 20,000 during the financial year.

Bonus Stripping and Dividend Stripping to be made applicable to securities and units

- Section 94 of the Act contains anti avoidance provisions to deal with transactions in securities and units of mutual fund which, inter-alia, include dividend stripping and bonus stripping.
- The Finance Bill has proposed to make the provisions of Bonus Stripping so as to make the said provisions applicable to securities as well.
- Further, it is also proposed to modify the definition of 'unit', so as to include units of business trusts such as InvIT, REIT and AIF, within the definition of units.

Revenue Mobilization

Scheme for taxation of virtual digital assets

In recent times, virtual digital assets have gained tremendous popularity as the volumes of trading in such digital assets has increased substantially. Further, there is also emergence of a market where payment for the transfer of a virtual digital asset can be made through another such asset. Therefore, realizing the gravity of this, Union Budget has proposed a new scheme to provide for taxation of such virtual digital assets. The salient features of scheme are as follows:

➤ Applicability of Tax

- The income on transfer of such virtual digital assets shall be taxed as Capital Gains. Further, for transfer of such assets, tax rate of 30% has been proposed.
- No deduction in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed while calculating the capital gains. Further, any loss incurred on such a transaction shall also not be allowed to be carried forward to subsequent assessment years for set off.

➤ Withholding Tax

- Section 194S has been proposed to be introduced for deduction of TDS on such transactions.
- This section provides for deduction of TDS @ 1% on payments for transfer of virtual digital asset to a resident. Such TDS is to be deducted in respect of total consideration whether wholly in kind or in exchange of another virtual digital asset where there is no part in cash.

Rationalization Measures

Cash Credits u/s 68

- Vide Finance Act, 2012, it was provided that the nature and source of any sum, in the nature of share application money, share capital, share premium or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder.
- The Finance Bill has proposed amendments u/s 68 to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider.
- However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well-regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

Set off of loss in search cases

- The Finance Bill has proposed to insert a new section 79A to provide that no set off of any loss, whether brought forward or otherwise, or unabsorbed depreciation under sub-section (2) of section 32 shall be allowed to the assessee against any 'undisclosed income' consequent to a search initiated under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than under subsection (2A) of section 133A.



INDIRECT TAX PROPOSALS

Goods & Services Tax

New condition for entitlement of Input Tax Credit

- A new clause (ba) to sub-section (2) of the section 16 of the CGST Act is being inserted to provide that ITC which has been communicated to recipient should not be restricted.
- An auto –generated statement shall be introduced which would contain the details of input tax credit with following information:
 - 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 such credit cannot be availed, whether wholly or partly, by the recipient due to defaults on the part of supplier.

Changes in provisions relating to cancellation of registration

- The proposed amendment in clause (b) of section 29 provides that the registration of a Composite Taxpayer may be liable for cancellation if he does not furnish return (Form GSTR4) for a financial year beyond three months from the due date of furnishing the said return which is 30th April presently.
- The amendment proposed in clause (c) of section 29 provides that registration of a person other than composite taxpayer may be liable for cancellation if he does not furnish returns for such continuous tax period as may be prescribed. The amendment has given the power to the Government to prescribe the continuous tax period by way of Rules beyond which registration shall be liable for cancellation.

Changes in the return filing mechanism prescribed under GST Act

- The government may prescribe conditions and restrictions for furnishing the details of outward supply in Form GSTR-1.
- The government may also prescribe conditions and restrictions for communication of the details of such outward supplies to concerned recipients.
- The restriction from furnishing detail of outward supplies in Form GSTR-1 between 11th and 15th day of the following month has been done away with by deletion of first proviso to Section 37(1).
- The amendment does away with two-way communication process between supplier and recipient.
- The proposed amendment provides for substitution of Section 38 to prescribe the manner as well as conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an auto-generated statement and to do away with two-way communication process in return.
- The amendment provides for change in due date of furnishing of return by non-resident taxable person in Form GSTR-5 from 20th to 13th day following the end of the calendar month.

Extension of due date for taking ITC, issuing credit notes & doing amendments

- Amendments are proposed in section 16(4), 34(2), proviso to section 37(3) and proviso to section 39(9) interalia to extend the time-limits in respect of following:

Section	Particulars of Change	Earlier Due Date	Proposed Due date
16(4)	Due date of availment of ITC	20th October of next FY	30th November of next FY
34(2)	Time Limit for issue of credit notes	Filing of September month return of next FY	30th November of next FY
Proviso to Section 37(3)	Rectification of errors or omissions in GSTR-1	11th October of next FY	30th November of next FY
Proviso to Section 39(9)	Rectification of errors or omissions in GSTR-3B	20th October of next FY	30th November of next FY

Other changes

- Section 41 of the CGST Act is being substituted so as to do away with the concept of “claim” of ITC on a “provisional” basis.
- Section 47 of the CGST Act is being amended so as to provide for levy of late fee for delayed filing of TCS returns.
- Section 49 of the CGST Act is being amended so as to provide for restrictions for utilizing the amount available in the electronic credit ledger.
- Section 49 of the CGST Act is being amended so as to allow transfer of amount available in E- cash ledger of a registered person to the E- cash ledger of a distinct person.
- Section 49 of the CGST Act is being amended so as to provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger.
- Section 50(3) of the CGST Act is being substituted retrospectively, with effect from the 1st July 2017, so as to provide for levy of interest on input tax credit wrongly availed and utilized. (Meaning thereby Interest will not be levied if ITC is not utilized).
- Refund claim of any balance in the electronic cash ledger can be made.
- Rate of Interest for reversal of excess claimed Input Tax Credit has been notified @18%. No interest shall be levied if amount of excess claimed Input tax credit availed but not utilized.

Customs Act

Following changes have been proposed under Customs Law:

- To introduce end to end automation in the entire process, requirement of submitting all the necessary details electronically, through a common portal, is being brought out in the Rules itself.
- Standardizing and notifying the various forms in which details are to be submitted electronically.
- As the submissions will be made electronically, the need for any transaction-based permissions and intimations are all being done away with.
- The procedure to claim the notification benefit is being simplified and automated.
- Customs administration to be fully IT driven in SEZs
- Phasing out concessional rates in capital goods and project imports gradually and apply a moderate tariff of 7.5%.
- Review of Customs exemptions and tariff simplification.
- Customs Duty rates are being calibrated to provide a graded rate structure to facilitate domestic electronics manufacturing.
- Rationalization of exemptions on implementations and tools for agri-sector manufactured in India.
- Extension of customs duty exemption to steel scrap.
- Reduction of Duty on certain inputs required for shrimp aquaculture.
- Unblended fuel shall attract additional differential excise duty.

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