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# Union Budget 2022

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Budget 2022 has been undertaken in circumstances like never before where the global economy is already in throes of a slowdown and being pushed into an unprecedented contraction.

Marking Azadi ka Amrit Mahotsav, the country has entered into Amrit Kaal, the 25-year-long lead up to India@100 which the Hon'ble Prime Minister in his Independence Day address had set-out. This Budget seeks to lay the foundation and give a blueprint to steer the economy over the Amrit Kaal of the next 25 years, from India at 75 to India at 100.

The Productivity Linked Incentive ("PLI" Scheme) in 14 (fourteen) sectors under the AtmaNirbhar Bharat campaign is projected to create 60 (sixty) lakh new jobs and an additional production of INR 30 lakh (thirty) Crore during next 5 (five) years.

**Projected 60 lakh new jobs;**  
and

**Estimated INR 30 lakh Crore**  
additional production over the next 5 years

Budget 2022 continues to provide impetus for growth. It lays a parallel track of a blueprint for the Amrit Kaal, which will directly benefit our youth, women, farmers, the Scheduled Castes and the Scheduled Tribes as well as big public investment for modern infrastructure, readying for India at 100.

Moving forward, on this parallel track, Budget 2022 lays the following 4 (four) priorities: (i) PM GatiShakti; (ii) inclusive development; (iii) productivity enhancement & investment, sunrise opportunities, energy transition, and climate action; and (iv) financing of investments.

In the light of the above, key proposals, tabled by the Hon'ble Finance Minister with regard to direct and indirect taxes, have been discussed in this update.

## Key changes in direct tax (“Income-tax Act 1961” or the “Act”)

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1. No change in basic exemption limit, income slabs and tax rates for financial year 2022-23;
2. Taxpayers can file an updated return on payment of additional tax, subject to certain conditions, whether or not he has furnished a return. This updated return can be filed within 2 (two) years from the end of the relevant assessment year. However, the provision shall not apply, if the updated return, is a return of loss or has the effect of decreasing the total tax liability or results in refund or increases the refund due;
3. Alternate Minimum Tax (“**AMT**”) for co-operative societies have been reduced to 15% (fifteen per cent) from the existing 18.5% (eighteen and a half *per cent*);
4. In the case of co-operative societies, surcharge shall be reduced from 12% (twelve *per cent*) to the rate of 7% (seven *per cent*) of such income-tax, in case the total income of a cooperative society exceeds INR 1 Crore (Indian Rupees One Crore) but does not exceed INR 10 Crores (Indian Rupees Ten Crores). Thereafter, surcharge at the rate of 12% (twelve *per cent*) of such income-tax shall continue to be levied in case of a co-operative society having a total income exceeding INR 10 Crores (Indian Rupees Ten Crores);
5. Income on transfer of any Virtual Digital Asset (“**VDA**”) shall be taxed at the rate of 30% (thirty *per cent*). However, no deduction in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee. Further, no set off of any loss arising from transfer of VDA shall be allowed against any income computed under any other provision of the Act and such loss shall not be allowed to be carried forward to subsequent assessment years. Also VDA transferred as gift shall be taxed in the hands of recipient;

**VDA has been legalized as an asset** and transfer of VDA shall attract tax at the rate of 30%

## Key changes in direct tax (Cont.)

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6. Further it is proposed to provide for deduction of tax (“**TDS**”) on payment for transfer of virtual digital asset to a resident at the rate of 1% (one *per cent*) of such sum. It is also proposed to provide that in case of a transaction where tax is deductible under S 194-O of the Act along with the proposed S 194S of the Act, then the tax shall be deducted under S 194S and not S 194-O of the Act;
7. Tax deduction limit in National Pension Scheme (“**NPS**”) to be increased from 10 % (ten *per cent*) to 14% (fourteen *per cent*) to help the social security benefits of State Government employees to provide equal treatment at par with the Central Government employees *w.e.f* 01-04-2020 and will accordingly apply in relation to the assessment year 2020-21 and subsequent assessment years so as to ensure no additional tax liability arises on any contribution made in excess of 10% (ten *per cent*) during such time. Relaxation from interest for default in advance tax payments provided for dividend income except specified deemed dividend transactions;
8. In order to remove inconsistency, it is proposed to amend S 194-IA of the Act to provide that in case of transfer of an immovable property (other than agricultural land), TDS is to be deducted at the rate of 1% (one *per cent*) of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher. However, in case the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than INR 50 lakhs (Indian Rupees Fifty Lakhs), then no tax is to be deducted under S 194-IA of the Act;

**Tax deduction limit in NPS to be increased to 14% for State Government employees**

## Key changes in direct tax (Cont.)

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9. Eligible start-ups established before 31-3-2022 had been provided a tax incentive for 3 (three) consecutive years out of 10 (ten) years from incorporation. In view of the Covid pandemic, the Government has extended the period of incorporation of the eligible start-up by 1 (one) more year, that is, up to 31-03-2023 for providing such tax incentive;
10. TDS at the rate of 10% (ten *per cent*), w.e.f. 01-07-2022, of the value or aggregate of value of the benefit or perquisite provided by a person to a resident, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, where the value or aggregate value of the benefit or perquisite paid or likely to be paid to a resident exceeds INR 20,000 (Indian Rupees Twenty Thousand) during the financial year. However, the provisions shall not apply to an individual or a Hindu Undivided Family, whose total sales, gross receipts or turnover does not exceed INR 1 Crores (Indian Rupees One Crores) in case of business or INR 50 Lakhs (Indian Rupees Fifty Lakh) in case of profession;
11. In order to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies vis-a-vis dividend received from domestic companies, particularly after the abolition of dividend distribution tax in Finance Act 2020, the concessional rate of taxation of 15% (fifteen *per cent*) on dividend income received by the Indian company has been withdrawn from 01-04-2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years;

**TDS at the rate of 10% for benefit or perquisite paid by a person to a resident exceeding INR 20,000**

## Key changes in direct tax (Cont.)

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12. Income of a non-resident from offshore derivative instruments, or over the counter derivatives issued by an offshore banking unit, income from royalty and interest on account of lease of ship and income received from portfolio management services in International Financial Services Centre (“**IFSC**”) shall be exempt from tax, subject to certain conditions;
13. The position of the legislation was clarified with respect to cess and surcharge that ‘tax’ includes and shall be deemed to have always included any surcharge or cess and the amendment is made retrospectively from 01-04-2005, irrespective of the circular dated 18-05-1967 issued by CBDT, and will accordingly apply in relation to the assessment year 2005-06 and subsequent assessment years;
14. It is proposed to extend the last date for commencement of manufacturing or production under S 115BAB of the Act by one more year i.e. from 31-03-2023 to 31-03-2024;
15. It is proposed to introduce S 158 AB of the Act to provide that where the income tax department is of the view that an the subject question of law is identical to a question of law raised in case of the assessee or another assessee, which is pending in appeal before a jurisdictional High Court and Supreme Court, the filing of further appeal by the department, in the case of this assessee shall be the deferred till such a question of law, is decided by the jurisdictional High Court or the Supreme Court. Such deferment will be subject to acceptance of the assessee that the question of law is identical to the case;
16. S 43B of the Act is amended to provide that conversion of interest payable on an existing loan to debentures cannot be considered as paid for the purposes of S 43B of the Act;

**Exemption of income of non resident** by way of income from offshore derivative instruments, royalty, interest, portfolio management services

## Key changes in direct tax (Cont.)

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17. It is proposed to amend S 56 of the Act to provide that in case of any reimbursement of expenses incurred for treatment of COVID-19, received by a person shall not be considered as income. Further, In case of death of an employee due to COVID-19, amount to the extent of INR 10 lakhs (Indian Rupees Ten Lakhs) received by the family of the employee within 12 (twelve) months of the death of the employee, shall not be considered as income;
18. Proposal to amend provisions of S 201 and S 206C of the Act to provide that the interest payable by any person who defaults on deduction/ collection of taxes, shall be as per the order made by the Assessing Officer in this regard;
19. In order to ensure that all the persons in whose case significant amount of tax has been deducted do furnish their return of income, it is proposed to reduce 2 (two) years requirement to 1 (one) year by amending S 206AB and 206CCA of the Act to provide that “specified person” to mean as a person who has not filed its return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected, as the case may be, and the amount of tax collected and deducted at source is INR 50,000 (Indian Rupees Fifty Thousand) or more in the said previous year;
20. S 248 of the Act allows a person to file an appeal before the Commissioner Income Tax (Appeals) [**CIT (A)**] for a declaration that no tax was deductible on the income of the non-resident.  
To obtain a refund of the tax deducted and paid by a person, where it was not deductible, as per the provisions of S 248 of the Act, a taxpayer has no recourse to approach the Assessing Officer with such request.  
Now vide the new section, the Assessing Officer can be approached and an application for refund may be filed. If the assessee is not satisfied, then an appeal may be filed with the CIT (A) under the regular provisions of S 246A of the Act;

**Reduction of goodwill** from block of assets to be considered as transfer

## Key changes in direct tax (Cont.)

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21. For clarification purposes it is proposed to amend the provisions of S 263 of the Act so as to provide that, the Principal Chief Commissioner of Income Tax or the Chief Commissioner of Income Tax or the Principal Commissioner of Income Tax or Commissioner who is assigned the jurisdiction of transfer pricing may call for and examine the record of any proceeding under this Act and if he considers that any order passed by the Transfer Price Officer (“TPO”), working under his jurisdiction, to be erroneous in so far as it is prejudicial to the interests of income tax department, he may pass an order directing revision of the order of TPO.

Consequential changes are also be made in the provisions of S 153 of the Act *inter alia* to provide 2 (two) months’ time to the Assessing Officer to give effect to the order of TPO consequent to the directions in the revision order;

22. Reduction of goodwill from block of assets to be considered as ‘transfer’ from the assessment year 2021-22 retrospectively. Goodwill of a business or profession is not considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. It is proposed to clarify that for the purposes of S 50 of the Act, reduction of the amount of goodwill of a business or profession, from the block of asset shall be deemed to be transfer;

23. Penalty for failure to answer questions on the subject of the assessment, sign statements, furnish information, returns or statements, allow inspections, etc. has been increased from INR 100 (Indian Rupees One Hundred) per day to INR 500 (Indian Rupees Five Hundred) per day;

**Increase in penalty to INR 500 per day for failure to answer questions, furnish information, etc.**

## Key changes in direct tax (Cont.)

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**Expansion the scope of the term “information that suggest that income has escaped assessment to include audit objection information received under an agreement referred to in S 90 or S 90A of the Act etc.**

24. Rationalization of provisions relating to assessment and reassessment

It is proposed to amend S 148 of the Act to enable the Assessing Officer to issue notice under S 148 of the Act without taking prior approval of the specified authority if the Assessing Officer has already obtained prior approval of specified authority.

It is proposed to expand the scope of the term “information that suggest that income has escaped assessment” to include the following:

- ▶ any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act;
- ▶ any information received under an agreement referred to in S 90 or S 90A of the Act;
- ▶ any information made available to the Assessing Officer under the scheme notified under S 135A;
- ▶ any information which requires action in consequence of the order of a Tribunal or a Court.

*Unless otherwise mentioned, all the amendments above shall be coming into force on 01-04-2022*

## Key changes in indirect taxes - GST

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1. The communication of details of inward supplies and Input Tax Credit (“**ITC**”) shall be done through an auto-generated statement containing the details of ITC available/not available to the recipient. The ITC in respect to a supply can only be availed if such ITC has not been restricted in the auto-generated statement;
2. The time limit for availing ITC in respect of any invoice or debit note pertaining to a financial year has been extended till the 30<sup>th</sup> day of November of the following financial year or filing of GST Audit, whichever is earlier. Earlier this period was up to the 30<sup>th</sup> day of September of the following year financial year;
3. Further, the time limit for issuance of a credit note in respect of outward supplies pertaining to a financial year has also been extended up to the 30<sup>th</sup> day of November of the following financial year instead of the 30<sup>th</sup> day of September of the following year financial year;
4. The concept of claiming eligible ITC on a provisional basis has been done away with. Now, the recipient shall avail of the ITC on a self-assessed basis;
5. The ITC in respect of supplies on which the tax has not been paid shall be reversed along with interest and re-availed when the supplier makes payment of the tax;
6. The two-way communication process in return filing (being outward and inward supplies) initially envisaged under GST Law has been done away with;
7. Any rectification of an error in GSTR-1/GSTR-3B is now permitted till the 30<sup>th</sup> day of November of the next financial year instead of the 30<sup>th</sup> day of September of the next financial year;

**Time limit for availing ITC has been extended till the 30th day of November**

## Key changes in indirect taxes – GST (Cont.)

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8. The details of outward supplies shall have to be done tax period-wise sequentially. If the GSTR-1 of a particular month is not filed, the registered person shall not be able to file GSTR-1 of the subsequent month;
9. Late fee of INR 100 (Indian Rupees One Hundred) per day, subject to a maximum of INR 5000 (Indian Rupees Five Thousand) shall now be applicable on delayed filing of GST-Tax Collected at Source return;
10. Any rectification in Tax Collected at Source details uploaded by the operator can now be filed till the 30<sup>th</sup> day of November of the next financial year instead 30<sup>th</sup> of September of the next financial year;
11. The process to claim the refund of any balance in the electronic cash ledger shall be prescribed through subsequent notifications;
12. The refund of tax paid on inward supplies by Unique Identification Number (“**UIN**”) holders can now be filed up to 2 (two) years from the last day of the quarter in which such supply was received. Earlier, such period was restricted to 6 (six) months;
13. The scope of withholding/recovering refunds has been widened and made applicable for all types of refunds. Earlier, such powers could be exercised only in case of a refund of unutilized ITC where zero-rated supplies were made without payment of tax and refund of accumulated ITC on account of inverted duty structure;
14. Interest at the rate of 18% (eighteen *per cent*) shall be applicable where the ITC has been wrongly availed and utilized retrospectively *w.e.f.* 01-07-2017;

**Interest at the rate of 18% to be applied retrospectively on wrongly availed and utilized ITC**

## Key changes in indirect taxes – GST (Cont.)

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**Service by way of grant of alcoholic liquor license by State Government has been declared as neither supply of goods or services with retrospective effect from 01-07-2017**

15. GST Compensation Cess to be extended and would be applicable only till the 30-06-2022;
16. The due date for filing returns by a non-resident taxable person is prescribed as the 30<sup>th</sup> day of the following month;
17. Amendment to allow transfer of amount available in electronic cash ledger between GST registrations under the same PAN i.e. between distinct persons;
18. The GST on supply of unintended waste generated during the production of fish meal (under HSN 2301) with the exception of fish oil, has been exempted from 1<sup>st</sup> July 2017 up to 30<sup>th</sup> September 2019. However, the tax which has already been collected would not be eligible for a refund;
19. Service by way of grant of alcoholic liquor license, against consideration by State Government has been declared as neither supply of goods or services *w.e.f.* 01-07-2017. However, the tax which has already been collected would not be eligible for a refund;
20. The registration of a composite dealer shall be liable for cancellation where the return of a financial year has not been furnished beyond three months from the date of furnishing such return.

*Unless otherwise mentioned, all the amendments above shall be coming into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*

## Key changes in indirect taxes - Customs

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**The Advance Ruling shall remain valid upto 3 (three) years from the date of pronouncement or till the change of law on which advance ruling has been received, whichever is earlier**

1. Provisions pertaining to valuation of goods has been amended to provide for rules enabling the Central Board of Indirect Taxes and Customs to specify additional obligations of the importers and checks to be exercised in respect of class of imported goods whose value has not been declared correctly. This amendment has been brought in to curb the issue of undervaluation in imports;
2. Presently, advance ruling application can be withdrawn within 30 (thirty) days from the date of application. The budget has provided flexibility to the applicant that the Advance Ruling application can be withdrawn at any time before the ruling is pronounced;
3. The Advance Ruling shall remain valid upto 3 (three) years from the date of pronouncement or till the change of law on which advance ruling has been received, whichever is earlier. Currently, the rulings are valid until the there is a change in law or facts on the basis of which advance rulings has been pronounced;
4. Legislative changes are being made to the powers and functions of an officer of customs so as to counter the Supreme Court ruling in the case of Canon India reported in TS-75-SC-2021-Cust. which held officers of the Director of Revenue Intelligence as not to be proper officers to undertake customs proceedings;
5. Publishing of information submitted by importers and exporters before officers under customs law has now been made an offence under the customs law with an intent to protect such data;

## Key changes in indirect taxes – Customs (Cont.)

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6. New projects registered after 30-09-2022 under project imports will attract 7.5% (seven and half *per cent*) Basic Customs Duty (“**BCD**”) rate;
7. Projects registered till 30-09-2022 under project imports will continue to get lower rates of duty till 30-09-2023;
8. With effect from 30-09-2023, all projects registered under project imports will attract 7.5% (seven and half *per cent*) BCD rate;
9. To encourage paperless processing, it is proposed to use a common customs portal to serve notices, orders, etc., and act as a one-point digital interface for trade to interact with customs;
10. Customs tariff rates for import of textiles, chemicals and metal are being simplified by aligning the tariff rates with the existing exemption notifications, leading to withdrawal of such exemption notifications;
11. Import duty on certain inputs for manufacture of mobile phones, chargers and adapters is being reduced to boost domestic manufacture of mobile phones;
12. BCD on cut and polished diamonds and cut and polished natural gemstones has been being decreased from 7.5% (seven and half *per cent*) to 5% (five *per cent*);
13. A phased manufacturing plan is being introduced for granting exemptions on import of certain inputs for use in the manufacture of wrist wearable devices, hearable devices and smart meters;

**BCD on cut and polished diamonds and cut and polished natural gemstones has been decreased to 5% from 7.5%**

## Key changes in indirect taxes – Customs (Cont.)

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14. Anti-dumping duties and CVD on certain steel products are being revoked considering the high cost of steel;
15. Customs (Import of goods at concessional rate of duty) Rules, 2017 are being amended to provide the following facilities:
  - ▶ 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;
  - ▶ Leveraging the advantage of such submissions electronically, the need for any transaction-based permissions and intimations are all being done away with. Consequently, the procedure to claim the notification benefit is being simplified and automated;
  - ▶ For effective monitoring of the use of goods for the intended purposes, a Monthly Statement is being proposed which is to be submitted by the importer on the common portal;
  - ▶ An option for voluntary payment of the necessary duties and interest, through the Common Portal is being provided to the importer.

**Anti-dumping duties and CVD on certain steel products are being revoked considering the high cost of steel**

# Key changes in indirect taxes – Excise and SEZ

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**SEZ Act to be replaced with a new legislation** to be partners in the development of the SEZ sector.

1. Unblended fuel to be subjected to incremental excise duty of INR 2 (Indian Rupees Two) per litre to encourage use of blended fuel;
2. Special Economic Zone (“**SEZ**”) Act to be replaced with a new legislation which will enable states to be partners in the development of the SEZ sector. The new legislation would focus on optimal utilisation of available infrastructure and augmentation of exports.

*Unless otherwise stated, all changes in the rate of duty will take effect from 1st February, 2022. The remaining legislative changes would come into effect only upon enactment of the Finance Bill, 2022 or from 1st May, 2022.*

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