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BUDGET INSIGHTS 2021 

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PREFACE >>>

Budget Insights 2021

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Treading on the side of fiscal prudence, the Union Budget, 2021 maintains 'status quo' as it steers clear of any big bang tax breaks. Instead, the Government has opted for a detox of sorts - where its key focus has been to clean up existing tax provisions.

The Budget has revamped the entire tax assessment procedure and has considerably slashed the limitation period for re-opening tax assessments. The Settlement Commission and Authority of Advance Rulings have been abolished. A new advance ruling board is proposed to be set up, this time with the right to appeal before the High Court. For small taxpayers, a new dispute settlement committee is proposed and the Government has also announced its intent to make income tax appellate tribunal's proceedings faceless.

There is not much to cheer on the tax incentive front. The Government continues to offer tax sops to promote IFSCs. In addition, the existing tax holidays for startups and affordable housing projects have been extended by a year.

In the M&A space, Government's disallowance of tax depreciation on goodwill and taxation of slump sales, structured as an exchange

or carried on through a court approved scheme, are two key changes to watch out for. On the other hand, for foreign portfolio investors, the alignment of tax rates under the withholding tax provisions with tax treaty rates will be a major relief.

While the Government continues to overhaul the tax administration, only time will tell if it will help in a better experience for taxpayers.

We have in the ensuing pages summarised key tax proposals announced in Budget 2021.

We hope you find it an interesting read.

Shardul Amarchand Mangaldas & Co

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DIRECT TAX >>>

Extension of Due Dates & Tax Incentives

Extension of Due dates:

- Owing to the reduced time period required for completion of processes, due to technological updates of the tax department, the last dates for filing belated and revised returns has been reduced by three months (i.e., three months before the end of the relevant assessment year (“AY”) or completion of assessment).
- Further, the Finance Bill, 2021 (“**Bill**”) proposes to empower the CBDT to relax the conditions for considering a return of income as defective for a class of taxpayers in genuine cases.

Reduction in time limits for completion of assessment:

- Pursuant to the efficiency and efficacy of the Faceless Assessment Scheme 2019, the Bill proposes to reduce the time limit for completion of assessment from twelve months to nine months from the end of the relevant AY.

Incentives for affordable housing/affordable rental housing

- The sunset date for approval of an affordable housing project by the competent authority for claiming 100 per cent deduction by the developer is proposed to be extended from March 31, 2021 to March 31, 2022.
- Deduction will also be extended to such rental housing projects, which are notified by the Central Government and fulfil prescribed conditions, provided, such rental housing project is approved by competent authority before March 31, 2022.
- The sunset date for sanction of specified affordable housing loan by financial institutions for claiming deduction in respect of interest on such loans has been extended from March 31, 2021 to March 31, 2022.



Extension of benefits available to start-ups

- An eligible start-up is entitled for a deduction of 100 per cent of its business income, provided that it is incorporated on or after April 1, 2016 but before April 1, 2021, amongst others. Further, an exemption from long-term capital gain arising from the transfer of residential property before March 31, 2021 is available to eligible taxpayer if it utilizes the net consideration for subscription in the equity shares of an eligible start-up.
- In order to further incentivize start-ups, the Bill proposes to:
 - extend the outer date of incorporation of start-up to April 1, 2022.
 - extend the outer date for transfer of residential property to March 31, 2022.

Removing Difficulty Faced by Taxpayers

Increasing safe harbor limits for real estate developers and homebuyers

- In case a real estate developer sells land and/or building for a price less than the stamp duty value, such stamp duty value is considered for the purpose of determining the business income. Similarly, the buyer is taxed on the difference between the stamp duty value and actual purchase price. In order to provide relief to taxpayers, a safe harbor of 10 per cent is provided whereby the adverse tax consequences, as above, do not follow if the variance in actual sale/purchase price is within the 10 per cent range of the stamp duty value.
- In order to further boost the demand in real estate sector, the Bill proposes to enhance the above safe harbor limit of 10 per cent to 20 per cent, subject to certain conditions.

Addressing mismatch in taxation of income from notified overseas retirement fund

- At present, withdrawal from certain notified overseas retirement funds by residents, who had opened such fund when they were non-resident, are taxed on a receipt basis in such foreign countries, and on an accrual basis in India. In order to address this taxation mismatch and remove hardship, it is proposed that the income of a specified person, being an Indian resident who opened a specified account in a notified country while being a non-resident, from the retirement fund account opened in a notified country shall be taxed in the manner and in the year as prescribed by the Central Government

Exemption from TDS on dividend payments to business trusts

- Dividends paid by special purpose vehicles to business trusts will no longer be subject to TDS. This amendment is proposed to be applicable *retrospectively* from April 1, 2020.

Rationalisation Measures

Relaxation from payment of advance tax on dividend income

- Given the inherent nature of some incomes such as capital gains, lotteries, etc., where determination of advance tax liability is difficult, a relief from payment of penal interest is currently available in case advance tax is not paid on such income, provided that the taxpayer pays full tax in subsequent advance tax instalments upon accrual of income.
- The Bill also proposes to extend similar relief to dividend income (except deemed dividend).

Exclusion of LLPs from the provision of presumptive taxation for professionals

- It is proposed to exclude LLPs from the scope of the presumptive taxation scheme, which is applicable for professionals where under, taxpayers having receipts not exceeding INR 5 million have an option to pay tax treating 50 per cent of the gross receipts as taxable income.

Prohibiting depreciation on goodwill

- The existing provisions of the Income-tax Act, 1961 (“**Act**”) do not expressly provide for depreciation in respect of goodwill. Taxpayers have claimed depreciation on goodwill relying on judicial precedents. The Bill proposes to clarify that goodwill of a business or profession shall not be considered as a depreciable asset and hence no depreciation thereon shall be allowed in any case.
- However, the proposal clarifies that where goodwill was acquired for a price, such price shall continue to be considered as cost of acquisition for such goodwill, for the purpose of computing capital gains, subject to reduction of an amount equivalent to depreciation, if claimed on such goodwill prior to AY 2021-22.

Rationalization of the provision of slump sale

- There has been a debate as to whether provisions for ‘slump sale’ would also apply to cases where the undertaking is transferred in exchange of shares or other instrument (and not strictly a ‘sale’), also referred to as ‘slump exchange’. Judicial opinion on this issue is divided.
- In order to remove ambiguity and clarify the intent, the Bill proposes to amend the definition of ‘slump sale’ to expressly provide that all types of transfers shall be covered within its ambit.



Minimum Alternate Tax (MAT) on foreign companies

- While determining book profits for MAT purposes in case of a foreign company, currently the expenditure incurred in relation to income in the nature of capital gains, interest, royalty and fees for technical services is added back to the book profits, if such income is taxable at a rate lower than MAT, being 15 per cent of the book profits. The Bill now proposes to accord a similar treatment to the expenditure incurred in relation to dividend income earned by the foreign company, whereby expenditure in relation thereto shall also be added in computation of book profits, if such dividend income is taxable at a rate lower than MAT.
- The Bill also proposes that if book profits of a given year stand increased on account of an advance pricing arrangement or secondary transfer pricing adjustment pertaining to a past year, the Assessing Officer (“AO”) shall, on an application made by the taxpayer, rectify/re-compute the book profits and tax payable under the normal provisions of the Act, and apply MAT provisions accordingly.

Relaxing Tax audit requirement to promote digital transactions

- With a view to incentivize non-cash transactions and to promote digital economy, the Bill proposes to increase the turnover threshold limit, mandating a tax audit, from existing INR 50 million to INR 100 million, subject to the condition that cash transactions by a taxpayer do not exceed 5 per cent of its total transactions.

Deduction on payment by employer of employee contribution to a fund before due date

- Under the existing provisions of the Act, a taxpayer, being an employer, is required to deposit the employees' contribution to provident fund, superannuation fund or any other fund set up under ESI Act, on or before the due date, as stipulated for the purpose of relevant fund, failing which, such amount is added to the income of the taxpayer. So far as the employer's contribution towards the said funds is concerned, the law provides limited relief to the taxpayer in extending the due date for deposit upto the date of filing of return of income.
- The Bill now clarifies that the relief of extension of due date shall be limited to only the employer's contribution. As such, the employees' contribution, unless deposited within the due date for the said funds, is proposed to be treated as income for the employer.

Equalization Levy

- Currently an equalization levy ("**EL**") at the rate of 2 per cent is imposed on a foreign e-commerce operator on the consideration received by it for e-commerce supply or services, i.e., online sale of goods or online provision of services facilitated by it to an Indian resident buyers, a non-resident in prescribed circumstances and any person using an Indian IP address.
- In order to clarify on the scope of EL as well as the amount on which EL can be imposed, the Bill proposes the following changes with *retrospective* effect from AY 2020-21:
 - EL shall not be levied on such amounts that are taxable as royalty or Fee for Technical Services in India;
 - 'Online sale of goods' or 'online provision of services' shall include one or more of the following activities undertaken online:
 - a) Acceptance of offer for sale;
 - b) Placing the purchase order;
 - c) Acceptance of the purchase order;

- d) Payment of consideration; or
 - e) Supply of goods or provision of services, partly or wholly.
- Consideration from e-commerce supply or service shall include:
 - a) Consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and
 - b) Consideration for provision of services irrespective of whether the service is provided or facilitated by e-commerce operator.

Treaty benefit for withholding tax on payment made to FPI

- Income payable in respect of securities to FPI (other than interest which is eligible for concessional tax) is currently subject to withholding tax at the specific rate of 20 per cent. As the tax is to be withheld on the rate as specified, as opposed to 'rates in force', the beneficial tax treaty rate, if any, is not available at the time of tax withholding.
- The Bill proposes to extend the treaty benefit while withholding tax provided that the FPI furnishes a tax residency certificate to the payer.

Introduction of TDS obligation in respect of purchase of goods

- A new TDS provision is proposed whereby a buyer shall be liable to withhold tax at the rate of 0.1 per cent on any sum paid to a resident seller, subject to the following conditions:
 - Total sales, gross receipts or turnover from the business carried on by the buyer exceed INR 100 million during the immediately preceding financial year;
 - The purchase of goods by the buyer is of the value or aggregate of such value exceeding INR 5 million in any financial year.



- It is also proposed that the aforesaid TDS provisions shall not apply to:
 - Transaction which are already subject to tax withholding;
 - Transaction which are subject to TCS, with the exception that where tax is collectible at source by the seller for sale of goods, then such transaction would only be subject to the aforesaid TDS.
- The Bill further proposes that if the seller does not provide its PAN to the buyer, the tax shall be deducted at the rate of 5 per cent instead of 0.1 per cent.
- This amendment will take effect from July 1, 2021.

[Introduction of higher TDS/ TCS rate on non-filers of Income Tax Return](#)

- Presently, non-furnishing of PAN invites deduction/collection of TDS and TCS at higher rates, than otherwise provided under the relevant provisions.
- In order to discourage non-filers of income tax returns, the Bill now proposes that TDS or TCS be deducted or collected at higher of the following tax rates on sum paid/ payable/ credited by a person to a 'specified person' (for TDS) or received by a person from a 'specified person' (for TCS):
 - i) twice the rate specified in the relevant provision of the Act; or
 - ii) twice the rate or rates in force; or (only applicable for TDS)
 - iii) 5 per cent.
- 'Specified person' has been defined to mean a person who has not filed the returns of income for the two financial years immediately preceding the previous year in which tax is required to be deducted or collected, as the case may be, and further, the time limit for filing income tax return has expired for both the said financial years. It is further provided that specified person shall not include a non-resident who does not have a permanent establishment in India.

- The Bill also proposes that if the specified person is already liable for a higher rate of TDS or TCS under other provisions of the Act for non-furnishing of PAN, in addition to the proposed provision, the tax shall be deducted or collected at the higher of the two rates.
- This amendment will take effect from July 1, 2021.

Tax Administration

Re-assessment – rationalization measures:

- The Bill proposes new procedure of re-assessment of such cases with the expectation to reduce litigation and provide ease of doing business to taxpayers. The salient features of new procedure are:
 - i) The AO shall conduct enquiries, if required, after seeking requisite internal approvals and provide an opportunity of being heard to the taxpayer before issuance of a re-assessment notice. After considering his reply, the AO shall decide, by passing an order, whether it is a fit case for issuance of a re-assessment notice;
 - ii) Reduction of time limit for issue of notice for re-assessment of cases from 6 years to 3 years from the end of the relevant AY in normal cases;
 - iii) Further, notice can be issued beyond a period of 3 years upto 10 years from the end of the relevant AY in cases where the amount escaping assessment is INR 5 million or more;
 - iv) The AO will be empowered to assess, re-assess or re-compute any income escaping assessment that comes to his notice subsequently for the relevant AY;
 - v) Any information, which has been flagged in the case of the taxpayer for the relevant AY, in accordance with the risk management strategy formulated by CBDT, shall be considered as information available with the AO which suggests that the income chargeable to tax has escaped assessment;

- vi) A final objection raised by the CAG to the effect that the assessment in the case of the taxpayer for the relevant AY has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment;
- vii) In cases, where search, survey or requisition is initiated or made or conducted, on or after April 1, 2021, it shall be deemed that the AO has information which suggests that the income chargeable to tax has escaped assessment for three immediately preceding AYs;
- viii) The AO shall be required to take approval before conduct of such inquiry or issuance of notice for re-assessment from the Principal Commissioner in case three years or less have elapsed from the end of the relevant AY and from the Principal Chief Commissioner if more than three years have elapsed from the end of the relevant AY.

Provisional attachment of property

- The Bill proposes to expand the power of the AO for provisional attachment of any property of a taxpayer to protect the interest of the revenue. The AO would be now empowered to exercise power of provisional attachment during the pendency of penalty proceedings in fake invoice cases, if the amount or aggregate of amounts of penalty imposable is likely to exceed INR 20 million.

Clarification regarding scope of Vivad se Vishwas Act, 2020

- In order to remove ambiguity with regard to the legislative intent of the Vivad se Vishwas Act, 2020, the Bill proposes to make amendments to clarify that cases covered by an order of the Income-tax Settlement Commission, irrespective of whether they have attained finality or not, will not be covered.

Discontinuation of Income-tax Settlement Commission

- The Bill proposes to discontinue Income-tax Settlement Commission and to constitute Interim Board of Settlement for pending cases with effect from February 1, 2021. The taxpayers have a right to withdraw their pending applications within three months from the date of commencement of Finance Act 2021, failing which the applications shall be deemed to have been received by the Interim Board of Settlement.

Constitution of Board for Advance Ruling

- The Bill proposes to substitute the extant Authority for Advance Rulings (“**AAR**”) with a new Board for Advance Rulings (“**BAR**”) to be notified at a future date. Notable features of BAR are as follows:
 - BAR shall consist of two members, each being an officer not below the rank of Chief Commissioner;
 - Advance rulings rendered by BAR shall now be appealable before the High Court, within 60 days of the receipt of the advance ruling;
 - All pending applications, that are not adjudicated by the notified date shall be transferred to BAR;
 - Central government, by a notification in future, will make a scheme for the purpose of giving advance rulings by BAR

Faceless proceedings before Income Tax Appellate Tribunal

- The Bill proposes to introduce faceless interface for the proceedings before the Income-tax appellate tribunal (“**ITAT**”) on the same lines as assessments, penalty proceedings as well as appellate proceedings before Commissioner of Income-tax (Appeals).
- The scheme and underlying rules to give effect to the ‘faceless interface’ will be notified by Central Government in future.



INDIRECT TAX

Customs

- **Setting up of the Common Customs Electronic Portal:** It is proposed to set up a common portal under the provisions of the Customs Act, 1962 (“**Customs Act**”). The portal is proposed to be used for registration, filing of bills of entry, shipping bills, payment of duty *etc.* It is also proposed that summons, notices *etc.*, will be serviced by making them available on the common portal.
- **Validity of exemption notifications:** Any exemption granted subject to conditions are proposed to be in effect (unless varied, rescinded *etc.*, earlier) till March 31, falling immediately after two years from the date of grant or variation. It is proposed that the validity of the exemptions which are in effect as on date of the Bill, receiving assent, will be calculated from February 1, 2021.
- **Time bound investigation:** It is proposed that any inquiry or investigation (initiated after the date of the Bill, receiving assent), culminating in the issuance of notice under section 28 (1) or (4) of the Customs Act shall be completed by issuing such notice, within a period of 2 years from the date of initiation of audit, search, seizure or summons. This period may be extendable by a maximum period of 1 year upon reasons recorded in writing. Any period during which stay has been granted or period of seeking information from an overseas authority is proposed to be excluded. However, the Bill does not clarify the meaning of the term ‘*initiation of audit, search, seizure or summons*’.
- **Power to confiscate goods in cases where wrongful claim made:** Any goods which are entered for exportation under a wrongful claim of remission/refund of tax, levy or duty under provisions of Customs Act or any other law for the time being in force, are proposed to be held liable for confiscation.



- **Penalty for fraudulent utilization of input tax credit:** It is proposed to impose penalty not exceeding 5 times the refund claimed, in specific case where the person has obtained any invoice by fraud, collusion, wilful misstatement or suppression of facts, to utilise input tax credit on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of any duty or tax.
- **Anti-absorption provisions qua countervailing duty and anti-dumping duty:** Changes proposed in the Customs Tariff Act, 1975 to include provisions for anti- absorption, retrospective levy from the date of initiation of inquiry where imposition of countervailing duty or anti-dumping duty is rendered ineffective. Typically, such duty is not proposed to apply to hundred percent export oriented units or a unit in an Special Economic Zone (“SEZ”). It is also proposed that the countervailing duty will be imposed for a period not exceeding 5 years. _
- **Imposition of Agriculture Infrastructure and Development Cess (“AIDC”) on import of certain items:** It is proposed to impose the cess on certain specified goods with effect from February 2, 2021. The cess will be in addition to the other chargeable duties of customs.
- **Health Cess:** Exemption from the levy of Health Cess on medical devices and equipment when imported by specified international organisations and diplomatic missions w.e.f. February 2, 2021.
- **Trade facilitation measure:** Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, mandates an importer to utilise imported goods for manufacturing purposes in its own premises in order to avail notified exemptions from the applicable customs duty. This condition is now being relaxed to allow 100% job-work in respect of such imported goods. Separately, importers are also allowed to clear imported capital goods which have been used for the specified purposes, after seeking permission of the jurisdictional customs authority and on payment of differential duty along with interest, on the depreciated value.

Key changes in customs duty rate with effect from February 2, 2021:

Industry/Sector (Indicative list)	From	To
Electronic Goods <ul style="list-style-type: none">• PCBA, camera modules and connectors• Camera lens for mobile phones• Inputs used in manufacture of specified parts of mobile phones, such as battery cover, front cover, side cover, side key, sensor rubber case etc.• Compressor of a kind used in air-conditioning and refrigerating equipment	Nil Nil Nil 12.5%	2.5% Applicable BCD Applicable BCD 15%
Textiles <ul style="list-style-type: none">• Raw Silk (not thrown)• Cotton, not carded or combed• Nylon fibre and yarn	10% Nil 7.5%	15% 5%# 5%
Leather <ul style="list-style-type: none">• Wet blue chrome tanned leather, crust leather, finished leather of all kinds, including splits and sides of the aforesaid	Nil	10%
Renewable energy <ul style="list-style-type: none">• Solar inverters• Solar lantern / Solar lamp	5% 5%	20% 15%

Industry/Sector (Indicative list)	From	To
Automobiles		
<ul style="list-style-type: none">Specified parts of automobiles such as safety glass, windscreen wipers, defrosters and demisters etc.	10%	15%
<ul style="list-style-type: none">Ignition wiring sets of vehicles, aircrafts or ships.	10%	15%
<ul style="list-style-type: none">Lithium ion battery		
Iron and Steel		
<ul style="list-style-type: none">Iron and steel scrap	2.5%	Nil
<ul style="list-style-type: none">Copper scrap	5%	2.5%
<ul style="list-style-type: none">Screw, bolts, nuts, etc. of iron and steel	10%	15%

- AIDC shall be separately applicable at the rate of 5%

- High Speed Rail Projects:** All such projects have been brought under the ambit of Project Import scheme under Chapter 98.
- Anti-dumping Duty (ADD) and Countervailing Duty (CVD):** To counter the increase in the price of various types of steel and alloys in India (and to assist MSMEs and other local industries), the Government has temporarily revoked the applicable ADD and CVD for the period February 2, 2021 to September 30, 2021.

Goods and Services Tax

Following changes have been proposed in the Central Goods and Services Tax Act, 2017 (“**CGST Act**”):

- **Retrospective change in definition of supply:** Amendment proposed in the definition of supply to include any activity undertaken by a person other than an individual to its members or constituents or *vice versa*, for a consideration.
- **Input tax credit availment dependent on supplier:** An additional condition of the supplier uploading details of the invoice/debit note in the statement of outward supplies and sharing such details with the recipient, is proposed to be added.
- **Measures for ease of doing business:** It has been proposed to do away with the requirement of auditing of annual accounts and submission of certified reconciliation statements.
- **Interest liability to arise on net cash liability:** It is proposed to charge interest on the net cash liability.
- **Increase in scope of Section 83:** Scope of Section 83, i.e., Commissioner’s power to provisionally attach property, including bank account during pendency of proceedings have been widened to include property of any person specified under sub-section (1A) of Section 122 of the CGST Act.
- **Stringent provisions for detention, seizure and release of goods:** It is proposed to increase the penalty from 100 percent to 200 percent and provisions for provisional release have been done away with.
- **Pre-deposit of 25% of penalty before filing appeal against seizure:** Appeal to be filed against a seizure order only upon depositing 25% of the penalty amount.

Following changes have been proposed in the Integrated Goods and Services Tax Act, 2017 (“**IGST Act**”):

- **Condition of authorised operation aligned:** Zero rated supply for SEZ to mean supply of goods or services or both to an SEZ for its authorised operations.
- **Conditions prescribed to claim refund:** It is proposed to add the condition of realization of the sale proceeds within a period of 30 days from the expiry of the period prescribed under the Foreign Exchange Management Act, 1999. In the event, payment is not realised within such time period, the supplier will be liable to deposit the refund amount along with interest with the tax authorities. It is proposed to allow the Government the power to notify the class of taxpayers who may take zero rated supplies upon payment of tax and avail refund of the same

Proposed changes in GST laws will come into effect once the State/Union Territories make appropriate changes in respective State GST enactments.

Central Excise

Imposition of Agriculture Infrastructure and Development Cess on manufacture of certain items: It is proposed to impose the cess on petrol and high speed diesel with effect from February 2, 2021. The cess will be in addition to the other chargeable duties of excise.



Central Sales Tax Act, 1956

Concessional rate withdrawn on inter-state sale of certain goods: It is proposed to withdraw the concessional rate of tax earlier available on inter-state supply of goods used for telecommunications network, mining or in the generation or distribution of electricity or any other form of power.



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