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BUDGET INSIGHTS 2022

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POLICY HIGHLIGHTS

Policy highlights

Direct Tax

- Budget gives a blueprint to steer the Indian economy over the next 25 years, and has four key priority areas:
  - PM GatiShakti (a transformative approach for economic growth and sustainable development, which is driven by seven engines, namely, roads, railways, airports, ports, mass transport, waterways, and logistics infrastructure)
  - All-inclusive development
  - Productivity enhancement & investment, sunrise opportunities, energy transition, and climate action
  - Financing of investments
- Focuses on public capital investment for speedy and sustained economic revival and consolidation. Outlay for capital expenditure in the Union Budget stepped up by 35.4 per cent
- Government aims to promote ease of doing business. Impetus to digital education and banking.
- Key income tax highlights include setting out tax regime for digital assets, measures to improve voluntary compliance and minimize tax disputes, rationalization of corporate tax provisions and tax incentives for international financial service centres. No material changes in tax rates or international taxation

Indirect Tax

- From a trade and Exim laws perspective, a key change is to replace the existing SEZ laws with a new regulation which will have the states as more engaged stakeholders
- PLI scheme is proposed for high end solar module manufacturing and 5G technology
- Focus in GST has been to further tighten GST evasion by making input credit provisions more watertight

We have in the ensuing pages summarised key tax proposals announced in Budget 2022.

We hope you find it an interesting read.

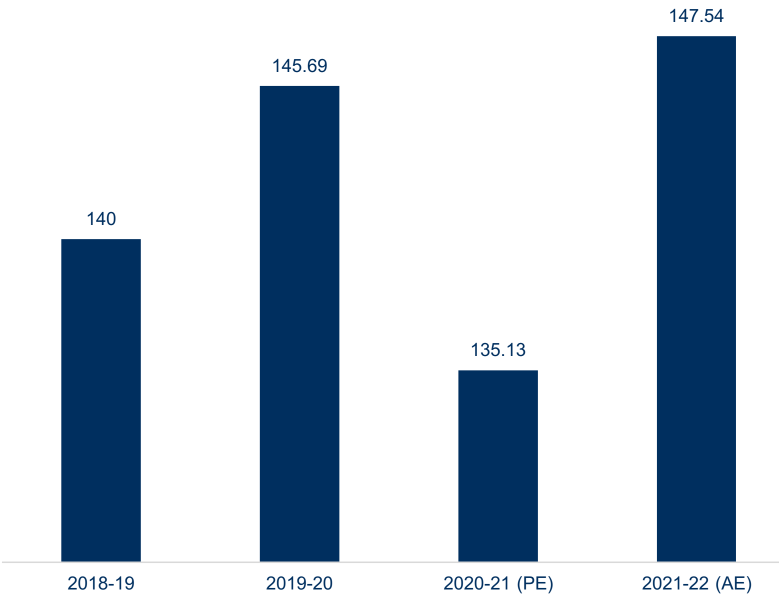
Shardul Amarchand Mangaldas & Co

ECONOMIC OUTLOOK

Macro Indicators

Gross Domestic Output

- Advance estimates suggest that GDP will record an expansion of 9.2 per cent in FY22. This implies that the level of real economic output will surpass the pre-COVID level of FY20.
- Total Private Consumption has reduced from 56 per cent of GDP in FY21 to 54.8 per cent in FY22 whereas, Government consumption has only marginally slipped from 11.7 per cent of the GDP to 11.6 per cent. As such, there is a clear need to boost private consumption to reach the advance estimated GDP of 9.2 per cent.
- Government consumption is estimated to grow by a strong 7.6 per cent surpassing pre-pandemic levels.
- Industrial sector is likely to grow at 11.8 per cent.
- Services sector expected to see 8.2 per cent growth in FY22



Source: National Accounts Statistics (NSO), MoSPI
Figures in INR (Trillions)

Macro Indicators

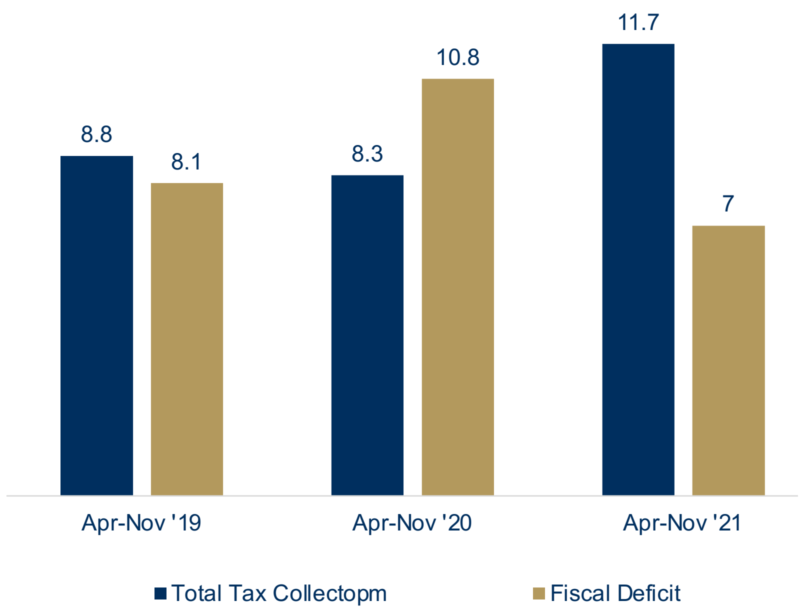
Fiscal Deficit

- Fiscal Deficit for April-November 2021 contained at 46.2 per cent of Budget Estimates (BE) due to a sustained revenue collection and a targeted expenditure policy by the Government of India.
- •This is nearly 1/3rd of the proportion reached during the same period of the previous two years (135.1 per cent of BE in April-November 2020 and 114.8 per cent of BE in April-November 2019)

Direct & Indirect tax collections

- The revenue receipts of the central government during April- November 2021 have gone up by 67.2 per cent (YoY), as against an estimated growth of 9.6 per cent in the 2021-22 Budget Estimates.
- The gross tax revenue has registered a growth of over 50 per cent in YoY terms

Tax Revenue collection vis-à-vis Fiscal Deficit



Source: Office of CGA
Figures are in INR (Trillions)

DIRECT TAX

Tax Rates

- No changes in tax rates
- Surcharge on income-tax capped to 15 per cent for Association of persons (AOP), that has companies as its members;
- Surcharge on income-tax capped to 15 per cent for long term capital gains for all taxpayers
- Surcharge on co-operative societies reduced from 12 per cent to 7 per cent for income exceeding INR 10 million but less than INR 100 million. In case income exceeds INR 100 million, surcharge at 12 per cent will apply
- Alternate minimum tax payable by co-operative societies reduced from 18.5 per cent to 15 per cent

Personal income tax

Covid related relief:

- Medical expenditure borne by the employer for employee and his family in relation to COVID-19 not taxable as perquisite
- Similarly, any payment received by an individual from any person to cover his or his family's COVID-19 related medical expense will not be taxed
- Any amounts received by the family of a deceased employee, who passed away because of COVID-19, from his employer, within twelve months of his passing, will be tax exempt. Any such payments received from any person (other than the employer) will also be tax exempt subject to a cap of INR 1 million.
- This amendment will take effect from 1 April, 2020.

Tax treatment of annuity for disabled person:

- Previously, amount paid by a taxpayer under a scheme to an insurer for maintaining a disabled dependent was tax deductible, subject to the condition that the scheme provided for payment of annuity or lump sum amount to the disabled dependent upon death of the taxpayer. The Bill now permits such deduction even in cases where the scheme provides for payment of sum to the disabled dependent during the lifetime of taxpayer (i.e. upon attaining the age of 60 years) and upon discontinuance of the payment or deposit to such scheme.

Corporate taxation

- **Deductibility of expenses incurred to earn exempt income:** Its clarified that no tax deduction will be allowed for expenses incurred to earn tax exempt income (this will be the case even where no tax exempt income was earned or received in the relevant tax year). This amendment will take effect from 1 April, 2022.
- **Deductibility of illegal expenses:** Its clarified that no tax deduction will be allowed for expenses incurred for any purpose, which is an offence under any law in or outside India. Similarly, no tax deduction will be permitted for expenses incurred on compounding any offence in or outside India. This amendment will take effect from 1 April, 2022.
- **Deductibility of interest expenses restructured into debt instruments:** Presently, interest payments to specified banks and financial instructions are tax deductable on payment (and not accrual). Its clarified that conversion of interest due into debenture or other instrument will not be treated as payment for tax deduction purposes
- **Tax assessments on succession of business:**
  - As per section 170 of the IT Act, a predecessor shall be assessed to tax in respect to the income of the FY in which succession took place up to the date of succession.
  - Reorganisation of entity usually requires court approvals. Since the ‘effective date of reorganisation’ can be a date prior to the date of the court order, courts have held the tax proceedings against the predecessor as illegal when the predecessor ceases to exist in the midst of such proceeding.
  - Vide insertion of section 170(2A) of the IT Act, it has been clarified that once the decision of the court for reorganisation is passed, the tax proceedings pending or completed against the predecessor shall be deemed to have been made on the successor and thus such proceedings cannot be held as illegal.

- A new section 170A has also been introduced to facilitate modification of return filing for the successor entity for the period between the effective date of reorganisation and the date of issuance of order by court.
- This amendment will take effect from 1 April, 2022.

- **Reduction of outstanding demand in IBC cases:**
  - Competent authorities under IBC may re-evaluate the entire liability of sick companies for revival.
  - Where a demand notice has already been issued under the IT Act against such a sick company, a newly inserted section 158A enables the tax authorities to modify the tax demands in conformity with the order of the competent authority.
  - This amendment will take effect from 1 April, 2022.

- **Liability of directors of a private company:**
  - Section 179 of the IT Act enables income tax authorities to recover tax due the directors of a private company, where such tax cannot be recovered from the company itself.
  - Since such liability of the directors is not conditional upon liquidation of the company, the heading of the section has been amended from "Liability of directors of private company in liquidation" to "Liability of directors of private company".
  - The change is important since its removes the scope of confusion with respect to a provision which can have a significant impact on senior management of a private company.
  - This amendment will take effect from 1 April, 2022.

- **Reduction of goodwill from block of assets is a transfer:** Goodwill of a business is not considered as a depreciable asset. It is proposed to clarify that for the purposes computing capital gains in respect of depreciable assets, reduction of the amount of goodwill of a business or profession, from the block of asset shall be deemed to be transfer and be subject to capital gains tax. This amendment is proposed to be retrospective and will accordingly apply to AY 2021-22.
- **Expansion of scope of dividend stripping and bonus stripping:**
  - Dividend stripping and bonus stripping is a strategy by investors to avail maximum tax benefits from an investment.
  - In case of dividend stripping, a shareholder/ unitholder buys securities/ units before the declaration of dividend, earns dividend income (which was erstwhile exempt), post which they sell the securities/units when its price falls below the purchase price in order to claim set off of capital loss.
  - Similarly, in case of bonus stripping, the unitholders acquire units of mutual fund before the mutual fund company makes a bonus issue. After they get allotted additional units, they sell the original units at a lower price to claim set off of capital loss.
  - Presently, the provisions for restriction on claim of capital loss in case of dividend stripping are applicable to securities and units of mutual funds. It is proposed to expand the term 'units' to include units of new pooled investment vehicles such as InvIT, REITs and AIFs.
  - The existing provisions for restriction on claim of capital loss in case of bonus stripping are only applicable to units of mutual funds. It is proposed to expand the term 'units' to include units of new pooled investment vehicles such as InvIT, REITs and AIFs. It is also proposed to expand the scope of applicability of bonus stripping to securities.

Tax incentives

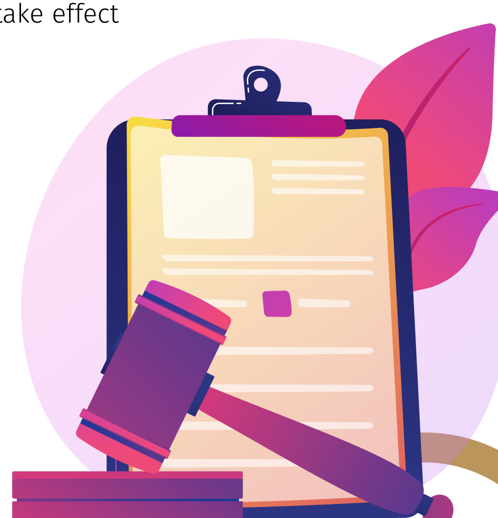
- **Extension in tax holiday for start-ups:** Eligible start-ups can now claim the tax holiday under Section 80-IAC of the IT Act if they are incorporated prior to 31 March 2023 (previously this date was 31 March 2022)
- **Extension in tax holidays for manufacturing companies:** Manufacturing companies can claim a lower corporate tax rate of 15 per cent (subject to conditions) if they commence production prior to 31 March 2024 (previously this date was 31 March 2023)
- **Tax incentives for International Financial Services Centre (IFSC)**
  - Tax exemption extended to a non-resident on income arising from transfer of offshore derivative instruments or over-the-counter derivatives entered into with an Offshore Banking Unit of an IFSC
  - Tax exemption extended to royalty and interest earned by a non-resident from lease of a ship to a unit of an IFSC (that has commenced its operations before 31 March 2024)
  - Tax exemption for non-residents on income earned from portfolio of securities or financial products or funds, managed by any portfolio manager in an account maintained with an Offshore Banking Unit in an IFSC, to the extent such income accrues outside India
  - Exemption from 'angel tax' to shares issuances by a venture capital company to Category I and Category II Alternative Investment Fund regulated under the International Financial Services Centres Authority Act, 2019
  - Income from the transfer of ships leased by a unit of the IFSC will be eligible for tax holiday under section 80LA of the IT Act, provided that the unit has commenced operations before the 31 March 2024.

Taxation of Virtual Digital Assets (VDA)

- Tax treatment for VDA introduced. Wide scope of VDA covers any information, code, number or token generated through cryptographic means and includes non-fungible tokens
- Income from transfer of VDA will be taxed at a flat rate of 30 per cent (plus applicable surcharge and cess). Only cost of acquisition allowed as a deductible expense.
- Losses on transfer of VDA cannot be set-off against any other income. Moreover, such losses cannot be carried forward to subsequent tax years;
- Gift of VDA will be taxed in the hands of the transferee as ordinary income;
- Person paying consideration for acquisition of VDA from an Indian resident will need to withhold tax at 1 per cent. If the consideration for acquisition of VDA is paid in kind (or partly in kind), the payer will need to ensure that requisite tax has been paid before such consideration is released Certain exceptions from withholding tax obligations have been set out for individuals and Hindu Undivided Family (HUF) that engage in low value transactions;
- The new provision will be applicable from FY 2022-23 onwards. However, the withholding tax provisions will be applicable with effect from 1 July, 2022.

Tax compliances & Dispute resolution

- **Updated tax return:**
  - The Bill provide taxpayers an opportunity to file an 'updated tax return' within twenty-four months from the end of the relevant AY subject to payment of an 'additional tax' and interest, irrespective of whether they have filed an earlier tax return or not.
  - The additional tax would be computed as 25 per cent or 50 per cent of the applicable amount of tax and interest, depending on whether the updated tax return is filed within 12 months or 24 months from the end of the relevant AY, respectively.
  - This amendment will take effect from 1 April, 2022.
- **Litigation management:** Enabling provisions have been introduced that allow the tax department to defer filing an appeal on a matter, where an identical question of law is pending in the jurisdictional High Court or the Supreme Court for the same or different taxpayer. Such deferral in filing an appeal requires the consent of the taxpayer. This amendment will take effect from 1 April, 2022.
- **Discouraging non-filers of income tax returns:**
  - The Finance Act, 2021 had introduced higher rate of TDS and TCS for non-filers of income tax returns for specified persons.
  - 'Specified person' was defined to mean a person who has not filed the returns of income for the two FYs 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 FYs.
  - It is proposed to reduce the condition of two financial years to one FY immediately preceding the FY in which tax is to be deducted or collected for non-filers of income tax returns.
  - This amendment will take effect from 1 April, 2022.



Countering tax evasion

- Setting of undisclosed income against losses: Undisclosed income discovered pursuant to search & seizures, surveys, conducted by the tax office cannot be set off against tax losses and unabsorbed depreciation. This amendment will take effect from 1 April, 2022.
- Unexplained cash credits: Presently, if a taxpayer's books are credited with any loan or borrowings and he is unable to explain the source and nature of such credits, such amounts are taxed in the hands of the taxpayer. The Bill proposes to cast a higher onus on the taxpayer, who will now have to explain the nature and source of such funds in the hands of the creditor as well (except where the creditor is a regulated entity). This amendment will take effect from 1 April, 2022.

Withholding tax (Tax Deducted at Source)

- **Stamp Duty Value to be considered for TDS on immovable property:** Presently, TDS is required to be deducted at the rate of 1 per cent on the amount of consideration paid by the transferee to the resident transferor of immovable property (other than agricultural land). It is proposed to clarify that TDS is to be deducted from the sum paid to the transferor or the stamp duty value of such property, whichever is higher. This amendment will take effect from 1 April, 2022.
- **Introduction of TDS on benefits or perquisites arising from business/ profession:** Presently, the value of any benefit or perquisite arising from business/ profession, whether convertible into money or not, is subject to tax under the business and profession head. However, since the recipients may tend to not report such income, it is proposed to introduce TDS obligation on the person responsible for providing such benefit at the rate of 10 per cent of the aggregate value of benefit subject to thresholds. This amendment will take effect from 1 July, 2022.
- **Recourse for refund on appeal by deductor:**
  - Under the existing provision, where tax is deductible on sum paid to a non-resident (other than interest income) and the deductor having agreed to bear the tax has paid taxes to the government, such deductor can appeal to Commissioner (Appeals) claiming that no tax was required to be deducted.
  - However, there is no recourse to obtain refund of such taxes by approaching the Assessing Officer. Thus, in order to enable the deductor to approach the Assessing Officer , it is proposed that no appeal shall be made under this section for any tax paid after 1 April, 2022.

  - It is proposed to insert a new section which provides the deductor to file an application to the Assessing Officer for refund of tax. The deductor can also file appeal against the order passed by the Assessing Officer.
  - This amendment will take effect from 1 April, 2022.

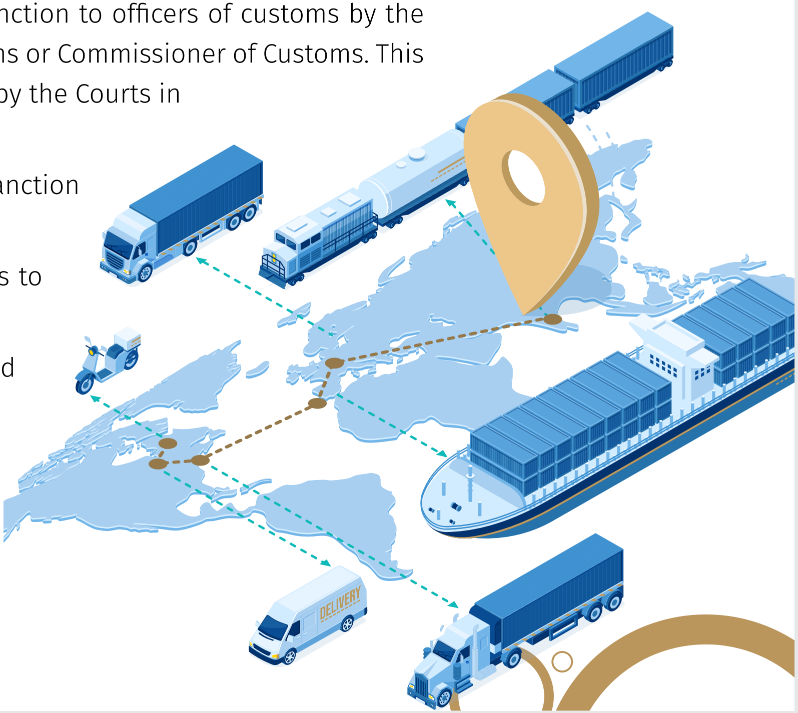
- **Penalties:** The penalty amount for various non-compliances such as filing of TDS return, furnishing of TDS certificate to the deductee, etc. has been increased from a sum of one hundred rupees to five hundred rupees for every day during which the failure continues. This amendment will take effect from 1 April, 2022.

INDIRECT TAX

Customs

Legislative Changes

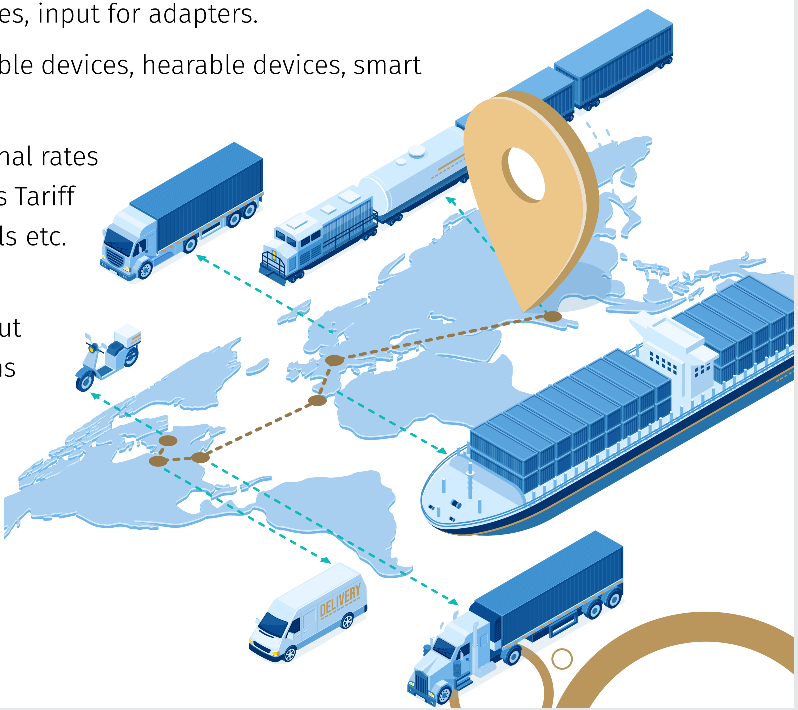
- Definition of 'proper officer' under the Customs Act amended. Officers of DRI, Audit and Preventive Formation(s) are now designated as 'proper officer' of Customs. Actions taken by 'proper officers' under the Customs Act, prior to amendment, deemed to be valid.
- Further, provisions inserted in the Customs Act for assignment of function to officers of customs by the Board or as the case may be, by the Principal Commissioner of Customs or Commissioner of Customs. This amendment has been necessitated to correct the infirmity observed by the Courts in recent judgements.
- Publication of import or export data, submitted to Customs, without sanction of law, is proposed to be made an offence under the Customs Act.
- Amendment made in the Customs Act to enable two or more officers to have concurrent powers, in situations such as faceless assessment.
- Board empowered to impose additional obligations on importer and checks introduced to prevent undervaluation of specified imported goods.
- Advance Ruling under Customs law to be valid till earlier of three years or change in law or facts, on the basis of which the advance ruling has been pronounced.



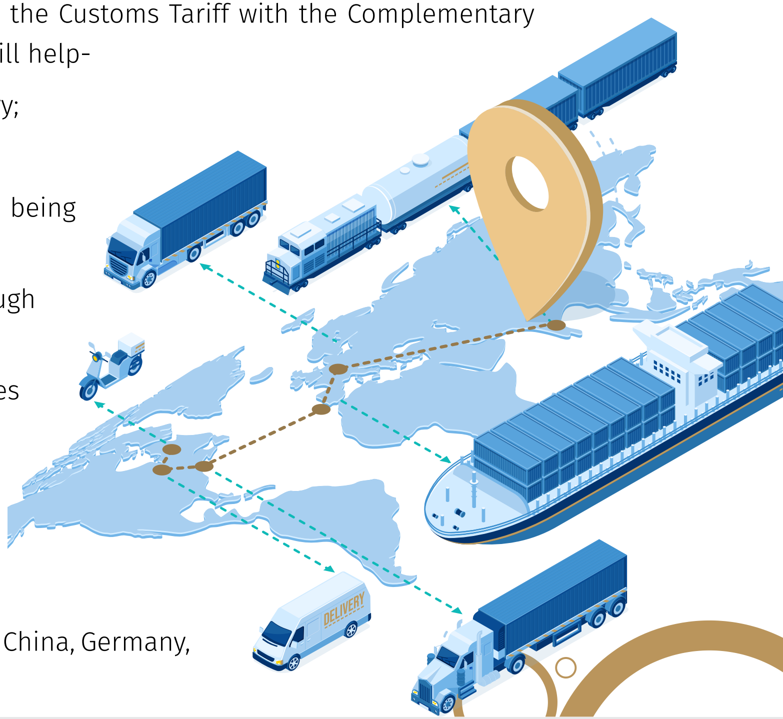
- Circular issued clarifying the applicability of social welfare surcharge on goods exempted from BCD.
- SEZ Act to be rescinded and new regulation introduced to integrate with Customs administration and national portal.

Tariff and Exemption related Changes

- Increase in BCD on imitation jewellery, specified solar cells and solar modules.
- Decrease in BCD on camera lenses for manufacture of camera modules, input for adapters.
- Phased Manufacturing Program introduced, to increase BCD on wearable devices, hearable devices, smart meters and their parts from 2022-23 till 2025-26.
- Custom tariff structure simplified by moving unconditional concessional rates from existing exemption notifications to the First Schedule of Customs Tariff Act. Applicable BCD rates in sectors such as textiles, chemicals, metals etc. will operate through the Customs Tariff, w.e.f. 1 May 2022.
- Comprehensive review of Customs duty exemptions undertaken. About 350 exemptions are being withdrawn. Post detailed review of customs duty exemptions on capital goods for textile, power, petroleum, leather, food packing sector, etc. more than 40 exemptions to be gradually phased out. Furthermore, miscellaneous exemption notifications which are obsolete or redundant rescinded. This includes notifications on exemptions on inputs imported for manufacturing of iron and steel intermediaries, specified chemicals, etc.



- Project Import Scheme to be phased out. Rationalized rate of 7.5 per cent to apply from 1 October 2022. Projects imports registered till 30 September 2022 to continue as per existing schedule.
- The IGCR Rules are being modified to provide duty free import of specified goods by bona exporters of handicraft, apparel, leather goods. Value added export goods manufactured to be exported with six months. Other IGCR Rules provisions to apply. Further, IGCR Rules have been amended to enable, end-to-end automation to be introduced in the entire process to enable compliance, notification benefit and payment of duty.
- Amendments have been proposed in the Finance Bill, 2022, to align the Customs Tariff with the Complementary Amendments to the HS-2022 published by WCO. These new entries will help-
  - to identify new categories of Fuels being introduced in the Country;
  - to give a fillip to identification and exports of Handicrafts;
  - to clarify the manner of determination of Fe content in iron ore being exported;
  - to provide greater clarity on the goods being exempted through different notifications of the Government
- Sunset date continued in respect of conditional exemption entries in applicable notifications. Certain exemptions emanating from international commitments such as FTA, ITA, concessions emanating from FTP like Advance Authorisation, and concessions under PMP however excluded from sunset.
- Anti Dumping Duty revoked on import of steel length bars, high speed steel and flat rolled steel products from specified countries like China, Germany, Vietnam and Korea.



Goods And Services Tax

Legislative Changes

- **Availment of input tax credit:** Substantive provision added to prescribe that no input tax credit shall be available to a recipient, if such credit has been restricted in the details communicated to the recipient.
- **Extension of time limit for rectification of errors, availment of input tax credit:** Changes proposed in time limit for raising of credit note and availment of input tax credit extended from 30 September to 30 November of the following financial year.
- **Furnishing details of outward and inward supplies:** Changes introduced in the reporting of details of outward and inward supply. The two-way communication process for return filing has been abolished. Tax period-wise sequential filing of details of outward supplies proposed to be introduced. Additionally, provisions introduced to provide for manner, time, conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an auto-generated statement, from the GST portal.
- **Return filing by NRTP:** NRTP shall furnish the return for a month by 13th of the following month or within seven days after the last day of the period of registration as specified under the GST laws.

- **Provisional availment of input tax credit abolished:** Input tax credit to be availed on self-assessment basis, subject to satisfaction of prescribed conditions. The credit of input tax availed by a registered person to be reversed along, with interest, if tax not paid by the supplier. The credit may subsequently be re-availed once the tax stands paid.
- **Transfer of cash balance between different GSTN of same PAN:** Facility introduced to enable the taxpayers to transfer GST cash balance from one GSTN to another GSTN of the same PAN irrespective of the location. This will give a much needed breather for taxpayers who have excess cash balance in one State for reasons such as TDS/TCS and have cash tax outflows in the other States.

Rate and exemption related changes

- Service of grant of alcoholic liquor license has been notified to be treated as neither a supply of goods or service, with retrospective effect, from 1 July 2017. However, the GST paid will not be refunded to the taxpayer.
- Rate of interest notified at the rate of 18 per cent on delayed payment. Further, any incorrect availment and utilization of input tax credit to trigger interest liability with a retrospective effect from 1 July 2017.

GLOSSARY

Glossary

Abbreviation	Definition
AY	Assessment Year
BCD	Basic Customs Duty
Bill	Finance Bill, 2022
Board	Central Board of Indirect Taxes
Customs Act	Customs Act, 1962
Customs Tariff Act	Customs Tariff Act, 1975
DRI	Directorate of Revenue Intelligence
FTA	Free Trade Agreement
FY	Financial Year
GST	Goods and Service Tax
IGCR Rules	The Import of Goods Concessional Rate of Duty Rules,2017
INR	Indian National Rupees
IT Act	Income-tax Act, 1961
ITA	International Trade Administration
NRTP	Non- resident taxable person
PMP	Phased Manufacturing Program
SEZ Act	Special Economic Zone Act, 2005
TCS	Tax collected at source
TDS	Tax deducted at source
WCO	*World Customs Organization*

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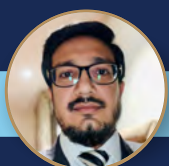

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