Tax Snippets

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India Budget 2023 – A Macro Perspective

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Background & Economic indicators

After a challenging period due to COVID; 2022 was a good year for India wherein, despite global headwinds, it is expected to achieve a respectable GDP growth rate of 7%. Indian economy seems to have return to normalcy and the Government's focus continues to be on building more resilience. In this backdrop, on February 1, 2023, Finance Minister Ms. Nirmala Sitharaman presented, what would be the last full budget for current government[1].

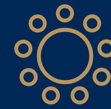
Considering the global macro-economic uncertainty and inflationary pressures, Indian Government continues to be cautious and conservative in its approach. For the most part, Budget 2023 has been on expected lines wherein the Finance Minister has continued focus on the key reforms that Modi Government has embarked upon in the last few years. From an economic growth perspective, Government continues to follow expansionary fiscal policies with capital expenditure commitments of 3.3% of the GDP. This marks a 33% increase from the last year and amounts to a staggering USD 122 billion. India's economic growth is forecasted to be between 6 to 6.8%, which under the current global scenario would be a formidable outcome. Tax collections for 2022 have been encouraging, with the direct tax collections being 25% higher than the previous year and GST collections exceeding the budgetary estimates. Government expects such buoyancy on tax collections to continue in 2023.

Amongst others, one of the key initiatives by the Government has been to transform the Indian economy from a services setup to become the manufacturing powerhouse of the world. "China plus one" strategy adopted by many global MNCs has provided a unique opportunity for India to lure such corporates to invest more in India. Focus on building world class infrastructure and providing fiscal incentives (under the various Production Linked Incentive schemes) have been the cornerstone of the India playbook to make most of the current global supply chain revamps.

Key Corporate, Regulatory and Tax Amendments

India continues to be obsessed with its desire to move up the ranks on *"ease of doing business"* ratings and has been implementing various measures in this regard. Changes in the Corporate laws, Insolvency Code, liberalization of exchange control rules and in the Competition Law, are all intended to shed the image of being a rather difficult jurisdiction to do business in. On the tax front, reforms such as adoption of unified GST, reduction in corporate tax rates, and abolition of dividend distribution tax have been the notable contributions by the current government in last few years. While these changes are significant in their own right, the most transformational and all-pervasive reform has been in relation to adoption of technology and digitalisation of the legal and regulatory set-up. Even though it would be premature to state that such a transformation is complete,

1 India is scheduled to have its federal elections in 2024.



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it is worth a mention that digitalisation is changing (in most cases for the good) the way corporates interact with various agencies for their compliances, approvals and even in case of disputes.

Finance Minister noted, during her budget speech, that India has reduced more than 39,000 compliances and 3,400 legal provisions have been decriminalised. Initiatives like National Single Window System have greatly assisted corporates and have garnered more than 430,000 visitors. Further, it is proposed that the Permanent Account Number (akin to a tax identification number) will act as a common identifier to further promote ease of doing business in India. Jan Vishwas Bill *(loosely translated – People's Trust Bill)* which seeks to amend 42 Central Acts is also an example of more work being done in this regard. On the commercial disputes, the Government seeks to bring in certain schemes which would provide relief to MSMEs and other parties while dealing with the Government agencies. In India, Government is one of the biggest litigator and initiatives to resolve disputes should establish more trust in foreign corporates to collaborate with the Indian Government.

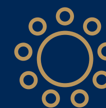
Indian Government has reiterated its vision to make India the financial hub for the region and the Budget mentions additionals reforms to make the GIFT city more attractive for financial institutions. The Government has further empowered the International Financial Services Centres Authority (IFSCA) and proposed setting up of a single window IT system for registration and approval from IFSCA, SEZ authorities, GSTN, RBI, SEBI and IRDAI. Currently, tax neutral treatment is offered to the relocation of offshore funds to IFSC, if the relocation is before March 31, 2023. This timeline has been extended to March 31, 2025. Further, the Budget has rationalised double taxation of any income on offshore derivative instruments, by an IFSC offshore banking unit, subject to certain prescribed conditions.

Personal income tax slabs have been rationalised for the lower end of the taxable income and surprisingly marginal tax relief has also been provided to high net worth individuals. Corporate income tax rates, however, remain the same. The concessional tax rate of 15% has been extended to Cooperatives commencing manufacturing activities till March 31, 2024. The timeline for incorporation of start-ups to avail the current income tax benefits has been extended to March 31, 2024. Also, period allowed to carry forward of losses for set-off by start-ups has been increased to 10 years from 7 years.

Other key amendments on direct taxes include:

- Amendments to presumptive taxation scheme for non-resident taxpayers (engaged in activities in connection with extraction or production of mineral oils and turnkey power projects) to restrict set-off of unabsorbed depreciation and brought forward loss in the year of profits and gains.
- Taxation of consideration received from non-resident investors from issue of shares, exceeding the fair market value of the shares.
- Taxation of repayment of debt made by business trusts to unit holders.
- Rationalisation of the process for claiming tax deduction on amortization of preliminary expenses.
- Clarification that the cost of acquisition of intangible assets or rights shall be 'Nil' while computing capital gains, where no consideration has been paid for such acquisition.
- Applicability of lower withholding tax rate (as per the treaty) for payments in respect of units of a Mutual Fund to a non-resident (upon furnishing of tax residency certificate).
- Allowance of credit of tax deducted at source to taxpayers where deductions have been made in a subsequent financial year.
- A person who is not required to furnish the return of income, not be subjected to a higher rate of TDS / TCS, as may be applicable.
- Exclusion of non-banking financial companies from the purview of thin capitalization provisions.
- Additional 100 Joint Commissioners to be assigned to dispose pending appeals before Commissioner of Income Tax (Appeals).

Various other procedural amendments have been proposed in relation to provisions for filing of appeals, time limits for completion of



assessments, clarifications on reassessment procedures, clarifications on filing of modified return, assessment and reassessment in case of business reorganization, search and seizure provisions, and revision of time limit for submission of transfer pricing documentation.

Like on the direct tax front, indirect taxes (customs, excise and GST) also have a sizable list of amendments. Most of these amendments, though, are in relation to specific tax rates and compliances. Few announcements that are noteworthy are as follows:

- Under the Indian customs laws, any exemption from custom duty is generally valid for a two-year period. In the Budget, it is proposed that certain class of exemption notifications (those granted under the multilateral or bilateral trade agreements, obligations under international agreements, schemes under Foreign Trade Policy etc.) shall not automatically expire after the two-year window.
- On the GST front, a new penal provision has been introduced for e-commerce operators, which penalises the operator in case it allows certain categories of persons (such as an unregistered person who is liable to seek registration or a person not eligible to make inter-state supply) to transaction on its platform. The quantum of penalty proposed is the value equivalent to the tax amount due or USD 120 whichever is higher.
- To facilitate information exchange of GST transaction data withing different authorities, a "consent-based information" system shall be established.
- Under the GST laws, OIDAR[2] regulations cover a certain class of transactions wherein information technology / internet is used to provide / render services. Currently non-resident OIDAR service providers are required to obtain GST registration in India in certain scenarios. Amendments are proposed in the definition of OIDAR services (with deletion of terms 'essentially automated' and 'involving human intervention') to potentially enhance the scope of its coverage.
- It is proposed to decriminalise provisions under the GST regulations relating to (a) obstructing an officer in discharge of duties (b) tampering/destruction of evidence and (c) failure to supply information or supply of false information. Further, the threshold limit for launching prosecution (in most cases) has now been increased from USD 120,000 to USD 240,000.

Conclusion

While the Budget 2023 carries forward the reform agenda of the Government, there have been no big-ticket announcements on the taxation. Few notable misses are in relation to additional tax incentives for manufacturing sector, new measures to reduce tax disputes, roadmap for adoption of OECD Pillar 2 guidance. While the global tax community would have liked to see a change in India's position in relation to unilateral measures such as Equalisation Levy, it was neither expected nor delivered in the current Budget.

2 Online information and database access or retrieval services

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