February 1, 2021

Union Budget Proposals, 2021

Introduction

When Hon'ble Finance Minister rose to present the Union Budget for the fiscal year 2021-22 ("**Budget**"), she had a humungous task at hand. An economy which was already crippled by a global slowdown, got further pushed into an unprecedented crisis due to COVID-19 and the lockdowns. While the Government did release stimulus packages to counter the resultant economic contraction, there were significant anticipations with the Budget to propel the economy back into the growth and hasten the recovery.

The Budget rests on six pillars, namely, health and well-being, physical and financial capital and infrastructure, inclusive development for aspirational India, reinvigorating human capital, innovation and R&D and minimum government and maximum governance. Tax proposals contained in the budget are in line with these objectives and give fillip to domestic manufacturing to meet the vision of '*Aaatmnirbhar Bharat*' and '*Make in India*'.

With no new tax or cess introduced to meet fiscal deficit and yet embarking on the ambitious capital outlay to achieve desired growth, the Finance Minister has taken a leap of faith in the India and its people.

Please find below a snapshot of some of the key tax proposals under the Budget.

DIRECT TAX

Personal Taxation

- No changes are proposed in the tax slabs. Same tax rates are proposed to be continued for the Financial Year ("**FY**") 2021-22.
- Amount received under a Unit Linked Insurance Policy ("**ULIP**") issued on or after February 1, 2021 and where premium (or aggregate premiums) exceeds INR 2.5 lacs in any of the years during the term of the policy are proposed to be subject to capital gains.
- Interest on Provident Fund ("**PF**") contribution made on or after April 1, 2021 in excess of INR 2.5 lacs per annum is proposed to be taxed in the hands of employee making such excess contribution to PF.
- Payment of quarterly installment of advance tax can be made in next installment without paying any penal interest, in case of certain incomes such as capital gains where estimation of advance tax liability was not possible when the initial installments were due. Similar relaxation is proposed in case of Dividend Income (except specified deemed dividends) as well.

- Additional deduction of INR 1.5 lacs towards interest paid by individual on loans taken for purchasing affordable residential house is proposed to be extended to loans sanctioned until March 31, 2022.
- It is proposed that Limited Liability Partnerships providing professional services are ineligible for provisions dealing with presumptive taxation of income of professionals.
- Specified Banks are proposed to be entrusted with the responsibility to deduct tax on pension and interest income of senior citizens (75 years old and above) who would not to be required to file their tax returns.
- Tax returns are proposed to be pre-filled with details regarding interest from banks and post offices and capital gains on listed securities.

Corporate Taxation

- Definition of 'Slump Sale' is proposed to be amended with effect from the Assessment Year ("**AY**") 2021-22 to include all modes of 'transfer(s)' apart from sale of a business undertaking.
- From FY 2020-21, Goodwill whether acquired or arising on amalgamation is proposed not to be eligible for depreciation while computing taxable income. Gains on sale of Goodwill, accordingly, would be subject to capital gains tax. If Goodwill is purchased, such purchase price would be considered as the cost of acquisition. If it is self-generated, cost of acquisition would be Nil. Depreciation, if any, obtained prior to AY 2021-22 would be reduced from the purchase price of the Goodwill.
- Provisions dealing with Minimum Alternate Tax ("**MAT**") are proposed to be amended from AY 2021-21 to provide:
  a) Exclusion of income of past year(s) on account of Advance Pricing Agreement or secondary adjustment to compute Book profits; and
  b) Exclusion of dividend income and related expenses to compute Book profits in case of Foreign companies.
- Employers depositing PF and other contributions received from employees are proposed not to be eligible to claim deduction for the same, if such sums are not deposited within the due date provided under the respective statutes. This is proposed to be made effective from AY 2021-22.
- Where partners of the firm or members of Association of Persons ("**AoP**")/Body of Individuals ("**BOI**") are in receipt of any assets pursuant to re-constitution/dissolution of the firm, AoP or BoI, the respective entities are proposed to be subject to capital gains tax on the difference between the fair value of the asset distributed as reduced by the capital balance (without considering revaluation of any assets/self-generated goodwill) in the account of the partner or member. This is proposed to be made effective from AY 2021-22.

Taxation of Start-Ups

- The tax holiday benefit available to eligible start-up is proposed to be extended to eligible start-up incorporated up to April 1, 2022, as against the previous outer limit of April 1, 2021 for the availability of such benefit.

- The exemption on capital gains, arising on transfer of a residential property and on investment of the consideration received on such transfer in an eligible start-up, is proposed to be extended for transfers of residential property up to March 31, 2022.

Taxation of Real Estate

- Deduction available to affordable housing project developers is proposed to be extended to projects approved by the Competent Authority up to March 31, 2022. It is also proposed to provide a similar deduction to rental housing project notified by the Central Government up to March 31, 2022 that comply with specified conditions.
- Purchaser of a residential unit (from builder by way of allotment) for a price less than stamp duty value, where purchase takes place within a specified window of November 12, 2020 and June 30, 2021, and where consideration does not exceed INR 2 crores, is proposed to be eligible for relaxed safe harbour conditions from 10% to 20% of the stamp duty value.

Taxation of Financial Services

- Key incentives and relaxations proposed to be granted in respect of International Financial Services Centre ("**IFSC**"), subject to specified conditions, are as follows:
  a) Income of a unit in IFSC from transfer or lease of aircrafts is proposed to be exempted.
  b) Gains on transfer of capital asset by an original fund to the resultant fund in IFSC is proposed to be exempted from capital gains tax where relocation takes place on or before March 31, 2023. Gains derived by the investor in the original fund upon transfer of share/unit/interest in the original fund in consideration for share/unit/interest in the resultant fund in IFSC are also proposed to be exempted.
  c) Capital gains on subsequent transfer of shares of a company resident in India by the resultant fund in IFSC too are proposed to be exempted if such gains would not have been chargeable to tax except for such relocation.
  d) Gains arising from the transfer of specified capital assets by the investment division of offshore banking unit located in IFSC are proposed to be exempted. Such division should have been granted registration as a Category III AIF and have commenced operation up to March 31, 2024.
  e) Income arising to a non-resident on the transfer of non-deliverable forward contracts entered with an offshore banking unit of an IFSC is proposed to be exempted.
- Infrastructure debt fund is proposed to be added as an eligible issuer of zero-coupon bonds.
- Withholding tax on payment of any income in respect of securities to a Foreign Institutional Investor (including Foreign Portfolio Investor), presently at 20%, is proposed to be made subject to a beneficial tax rate in the applicable Tax Treaty.
- Dividend income received by business trusts (Real Estate Investment Trust ("**ReIT**") and Infrastructure Investment Trusts ("**InVIT**")) from Special Purpose Vehicles is proposed to be exempted from Tax Deduction at Source with effect from AY 2021-22.

Taxation of Non-residents

- Following clarifications are proposed to be issued on equalization levy on e-commerce transactions:

a) Exemption of income chargeable to equalization levy to be applicable from April 1, 2020;

b) Income taxable as ‘royalty’ and ‘fees for technical services’ not to be subject to equalization levy;

c) Following activities are proposed to form part of the scope of online transactions in goods or service:

- Acceptance of offer for sale;
- Placing of purchase order;
- Acceptance of purchase order;
- Payment of consideration; and
- Supply of goods or provision of services.

- Definition of the term ‘liable to tax” in relation to a person is proposed to be introduced to mean that there would be a liability of tax on such person under any law of any country and would include a case where after imposition of such liability, exemption from taxation has been provided.

Significant Procedural Changes

- Threshold for compliance of tax audits in respect of such persons who carry on business where not more than 5% of their receipts and payments are in cash is proposed to be increased from INR 5 Crores to INR 10 Crores.
- Time limits for filing of belated or revised returns as well as completion of assessment are proposed to be reduced by three months.
- Dispute Resolution Committees (“**DRC**”) are proposed to be constituted for the resolution of disputes of small taxpayers. Cases eligible for such resolution mechanism are where:

  a) the aggregate quantum of variations proposed or made is at most INR 10 lacs;

  b) total income as per the return filed by such taxpayer is at most INR 50 lacs; and

  c) such order is not based on search/requisition/survey amongst others.

  Availability to opt-in for such dispute resolution mechanism is also proposed to be subject to the fulfillment of specified conditions.
- Board for Advance Rulings is proposed to be constituted in place of the Authority for Advance Rulings.
- Income-tax Settlement Commission is proposed to be discontinued. Interim Board is proposed to be constituted for settlement of the pending cases.
- Faceless scheme is proposed to be launched for appellate proceedings at Income Tax Appellate Tribunal (“**ITAT**”).
- Time limit for issuance of a notice of re-assessment of income is proposed to be reduced to 3 years from the end of relevant AY. In serious tax evasion cases, where income escaped from assessment is at least INR 50 lacs, the time limit for issuance of notice is proposed to be reduced to 10 years from the end of the relevant AY.
- Buyers, having sales / gross receipts/ turnover from the business in excess of INR 10 Crores in the previous year, are proposed to be required to withhold tax @0.1% on payment towards purchase of goods from any

resident seller for a value exceeding INR 50 lacs. Such withholding is proposed to be increased to 5% when PAN is not furnished.

- The rate for Tax Deduction at Source ("**TDS**") /Tax Collection at Source ("**TCS**") is proposed to be increased at the higher of 5% or twice of the applicable rates in case of deduction/collection of tax for taxpayers who have not filed income tax returns for two previous years prior to the year of deduction/collection.

INDIRECT TAX PROPOSALS

Goods and Services Tax

- Proposal to limit the option of effecting zero-rated supplies with payment of tax, only to a specified class of goods and services or taxpayers. Supply to SEZ unit or developer, to be zero-rated only when made for authorized operations.
- Assessee no longer required to furnish audited annual accounts and reconciliation statements in Form GSTR-9C. Annual Return in Form GSTR-9 to be furnished along with a self-certified reconciliation statement.
- Payment of interest on net cash liability given retrospective effect from July 1, 2017.
- Penalties for release of detained or seized goods / conveyances in transit enhanced up to two hundred percent of the tax payable. Pre-deposit of twenty-five per cent of penalty imposed, mandatory for filing of an Appeal against the adjudication order.

Customs

- 'Common Customs Electronic Portal' to be introduced to ease compliances such as registration, filing of documents such as bill of entry, shipping bill, etc., as well as to facilitate serving of communication, notices, orders by the Customs authorities.
- Time limit of two years prescribed for issuance of notice in case of inquiry or investigation arising on account of audits, search, seizure. This time limit can be extended by one year, on approval from the Principal Commissioner / Commissioner of Customs.
- Bill of entry to be filed one day prior to the day of arrival of aircraft / vessel carrying the goods, as against the earlier requirement of filing the same by the next day of arrival.
- Penalty extending up to five times the amount of refund claimed by an exporter, opting to export goods under payment of tax, where such tax has been paid by way of utilization of input tax credits on the basis of fake invoices.
- Keeping in line with the concept of 'Aatmanirbhar Bharat' and 'Make in India', the proposals on Customs duties in the Union Budget aim at boosting domestic manufacture in various sectors such as renewable energy, electronics, mobile phones, textiles and Agri products.
- More than 400 Customs duty exemptions currently available under multiple notifications to be reviewed and a revised Customs duty structure is proposed to be put in place with effect from October 1, 2021.

- High Speed Rail Projects made eligible for benefit under Project Imports Scheme at an effective basic Customs duty of 5%.
- Agriculture Infrastructure and Development Cess ("**AIDC**") to be levied as a duty of Customs on import of select goods. Key features of this levy are as under:
  a) Applicable on import of specified goods such as apples, peas, lentils, wines, fermented beverages, coal, cotton, silver, gold etc.
  b) To be computed at specified rates, on the transaction value of such imported goods. In order to prevent any additional burden on the importer, the basic customs duty applicable on such goods is reduced to the extent of AIDC.
  c) Social Welfare Surcharge to be computed on AIDC, except for gold and silver.
- AIDC also levied on domestic supply of petrol and diesel as an additional duty of excise. Existing rates of Excise duty reduced to the extent of AIDC imposed.

Central Sales Tax ("CST")

Benefit of concessional rate of CST on inter-state sales against issuance of Form-C now restricted only to transactions involving re-sale and manufacturing or processing of goods.

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