ACUITY LAW

UNION BUDGET 2021-22

India Union Budget 2021-22 assumes unprecedented significance as it sets a clear tone for the Union Government's perspective on recognizing and managing the Covid-19 pandemic's economic impact on India's growth for the foreseeable future. In this pandemic budget, we see continued acknowledgment of the Union Government towards 'Make in India' and realization of 'AtmaNirbhar Bharat' with a push towards regulatory reforms, ease of doing business, reducing litigation and checking tax avoidance. The aim is to build a foundation for growth by incentivizing capital infusion in the economy. Six pillars of focus in this year's digital budget are:

(i) health and wellbeing
(ii) physical and financial capital, and infrastructure
(iii) inclusive development for aspirational India
(iv) reinvigorating human capital
(v) innovation, and research and development
(vi) minimum government and maximum governance

As expected, the budget emphasizes on a much-awaited boost to healthcare. Other relevant sectors in this year's budget are employment, insurance, securities market, infrastructure, and agriculture.

In this report on the India Union Budget, we discuss the above-mentioned sectors as well as key proposals related to direct and indirect taxation.

A) SECTORAL ANNOUNCEMENTS

1. **Employment**

- Employers who fail to deposit their contribution to statutory benefits (such as provident funds/ superannuation funds) within statutory timelines will not be able to consider such deposits as deductions.

- The government has emphasized the importance of the recent labor codes. Specifically, the budget discusses unification of social security benefits such as minimum wages and insurance, reduction of compliance burden for employers and inclusion of women in the workforce by opening night shifts for women in industries.

- An online portal will be launched to collect information on gig workers, and building and construction workers to facilitate schemes in relation to health, housing, insurance, credit etc.

- The One Nation One Ration Card Scheme which will allow migrant workers to get ration from any public distribution shop pan India will be implemented to benefit 690 million recipients. Further, tax exemption on notified affordable rental projects will be provided to promote supply of rental housing for migrant workers.

- To promote employment opportunities among the youth, the budget proposes amendment of the Apprenticeship Act 1961 and allocates INR 30 billion to realign the National Apprenticeship Training Scheme towards training apprentices who are engineering graduates and diploma holders.

- The government has proposed to undertake initiatives with other countries to enhance international collaboration for transfer of industrial and vocational skills, technique, and knowledge. One such initiative has been proposed in collaboration with United Arab Emirates.

2. **Insurance**

- A major liberalization and reform proposed in the insurance sector is the increase in the permissible foreign direct investment limit from 49% (forty-nine percent) to 74% (seventy-four percent) with certain safeguards. The insurance company will have to ensure that (i) majority of directors of the company and key management persons are resident Indians, (ii) majority directors are independent directors, and (iii) a specified percentage of its profits are maintained as general reserves. The change will require amendment of the Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000, the Insurance Companies (Foreign Investment) Rules, 2015, and the Insurance Regulatory and Development Authority guidelines dated 19 October 2015, on 'Indian owned and controlled'.

- Initial public offer for the Life Insurance Corporation of India will be undertaken in the coming financial year.

3. **Securities Market**

- Key securities markets legislations, that is the Securities and Exchange Board of India Act, 1992, Depositories Act, 1996, the Securities Contract Regulation Act, 1956 and Government Securities, Act 2007, will be rationalized into the 'Securities Market Code'. The simplified legal framework is expected to reduce compliance cost, reduce friction between the existing laws and enhance ease of doing business.

- An investor charter to protect investors across different financial products will be introduced.

- The government proposes to establish an entity which will be responsible for purchasing investment grade debt securities during stressed and normal times to promote confidence amongst participants in the bond market.

- In a boost to debt financing, foreign portfolio investors will be permitted to provide debt financing to Infrastructure investment trusts (**InVITs**) and Real estate investment trusts (**REITs**).

- Gold exchanges will be established. Securities and Exchange Board of India will be the main regulator. The Warehousing Development and Regulatory Authority which will be responsible for warehousing, vaulting, assaying and logistics.

- A fin-tech hub will be established at the GIFT-IFSC.

4. **Infrastructure**

4.1. ***Infrastructure Funding Initiatives***

- Funding for the National Infrastructure Pipeline will be sourced through government and the financial sector and by creating institutional structures, monetizing assets; and enhancing the share of capital expenditure in central and state budgets.

- To bridge the need for long term debt financing, Development Financial Institution will be established for infrastructure financing. The Development Financial Institution will be capitalized with INR 200 billion with targeted lending portfolio of at least INR 5 trillion within 3 years.

- Infrastructure debt funds, subject to certain eligibility criteria, will be allowed to raise funds by issuing tax efficient zero-coupon bonds.

- Public infrastructure assets will be monetized, through a 'National Monetization Pipeline' for brownfield infrastructure assets, to fund new infrastructure projects. Some existing public infrastructure assets which will be monetized are dedicated freight corridor assets, airports, sports stadiums, NHAI operational toll roads and oil and gas pipelines of GAIL, IOCL and HPCL.

4.2. ***Power Infrastructure***

- Distribution companies will be supported through a financial result driven reform scheme to create required support infrastructure such as pre-smart metering, feeder separation and systems upgradation. Another issue proposed to be addressed is the monopoly of distribution companies. Accordingly, a framework will be put in place to give consumers alternatives to choose from multiple distribution companies.

- Hydrogen Energy Mission will be launched in the year 2021-22 for generating hydrogen from green power sources.

- Local manufacturing of solar cells and solar panels will be incentivized by increasing duty on solar invertors and solar lanterns. Further, capital infusion of INR 10 billion and INR 15 billion is proposed to be made to Solar Energy Corporation of India and Indian Renewable Energy Development Agency, respectively.

4.3. ***Road and Highways***

- An enhanced outlay of INR 1,181.01 billion has been allotted to Ministry of Road Transport and Highways. An additional 8,500 kms of roads under the Bharatmala Pariyojana project and an additional 11,000 kms of national highway corridors will be awarded. More economic corridors will be planned.

4.4. ***Railway Infrastructure***

- The vision is to modernize Indian railways by 2030, increase passenger safety and reduce logistics costs by focusing on 'Make in India'. Other notable initiatives will be commissioning of western dedicated freight corridor and eastern dedicated freight corridor by June 2022.

4.5. ***Urban Infrastructure***

➢ The focus will be on metro lines and augmentation of bus transportation service. MetroLite and MetroNeo will be deployed in Tier-2 cities and peripheral areas of Tier-1 cities to provide metro rail systems at much lesser cost. A new scheme for public bus transport services will be started to facilitate private sector players to finance, acquire, operate and maintain public buses.

4.6. ***Ports, Shipping and Waterways***

➢ Seven major ports worth INR 20 billion will shift to a model of public private partnership where the private partner will manage the port's operational services in FY 2021-22.

➢ A scheme to promote flagging of merchant ships in India will be launched by providing subsidy support to Indian shipping companies in global tenders which will enable greater training and employment opportunities for Indian seafarers along with enhancing Indian companies' share in global shipping.

➢ The government proposes to increase recycling initiatives under the Recycling of Ships Act, 2019 and Hong Kong International Convention by bringing more ships to India from Europe and Japan and doubling recycling capacity by 2024.

5. **Agriculture**

➢ The SVAMITVA scheme, which had been introduced in April 2020, as a property validation solution for rural India by means of distribution of property cards to landowners as proof of ownership. Currently, the coverage of this scheme is limited to 7 states. It is proposed to implement the scheme across all states and union territories in the coming financial year. This will help bring financial stability to citizens in rural India by enabling them to use their property as a financial asset and reduce property related disputes.

- Although the budgetary outlay for the Ministry of Agriculture and Farmers Welfare has reduced marginally, the finance minister has reiterated its continued commitment towards welfare of the farmers. A major focus of the budgetary proposals is to continue paying the minimum support price to farmers and for strengthening the present mechanism for ensuring the payment of minimum support price. The agricultural credit target for financial year 21-22 has also been increased to INR 16.5 trillion.

- To increase transparency and competition, one thousand additional markets will be integrated with the National Agriculture Marketplace which is an online platform for trading in agriculture produce.

- The Agriculture Infrastructure Fund is proposed to be made available to state government-controlled marketing boards (i.e., the Agriculture Produce Market Committees) to enhance their infrastructure facilities. The Agriculture Produce Market Committees have been established at the state level to safeguard farmers from exploitation by large retailers.

- The allocation to the Rural Infrastructure Development Fund, which finances rural infrastructure projects carried out by state government and state-owned corporations, will be increased by INR 100 billion.

- The corpus of the Micro Irrigation Fund has also been proposed to be doubled to INR 100 billion. The objective of the fund is to facilitate the efforts of the state governments to expand coverage under the micro irrigation schemes of the government.

B) DIRECT TAX PROPOSALS

1. **Individuals**

- There are no changes proposed in the income tax rates, slabs, surcharge and cess.
- Interest accrued from Employees Provident Fund, to the extent it relates to employee's contribution exceeding INR 250,000 per annum, is now taxable.
- A new provision has been introduced to address mismatch in taxation of income from notified overseas retirement fund. It is applicable for individuals who are resident in India and have opened specified retirement fund accounts outside India, while being non-resident in India and resident in that country.
- Time limit to claim capital gains tax deduction by investment of net consideration from transfer of house property into start-ups, has been extended up to 31 March 2022.

2. **Corporate Tax**

- There are no changes proposed in the income tax rates, surcharge and cess.
- Tax holiday has been extended to eligible start-ups which are incorporated before 1 April 2022.
- It is clarified that employee's contribution to provident fund shall be allowed as a deduction only if such contribution is paid on or before the due date as specified under the provisions of the respective legislations and therefore the extended time limit to claim such deduction till the date of filing of return of income is not available.

- Enabling provisions have been introduced for computing book profits under Minimum Alternate Tax (**MAT**) of earlier years for Advance Pricing Agreement adjustments as well as for secondary adjustments, where past year's income is included in the current financial year.

- Adjustment to book profits is required to be made for dividend income earned by foreign companies on investments made in India, on which the tax rate opted is less than the MAT rate on account of a Double Tax Avoidance Agreement (**DTAA**).

- It has been clarified that goodwill, whether acquired or otherwise, will not be considered as a depreciable asset and therefore no depreciation will be available on such goodwill.

- The scope of slump sale transactions has been amended to specifically include all types of transfers —primarily intended to cover slump exchange transactions.

3. **Units located in International Financial Services Centre (IFSC)**

- For eligible investment funds and fund managers located in IFSC who have commenced operations on or before the 31 March 2024, conditions for "no business connection" to be further relaxed through a notification in the Official Gazette.

- Exemption has now been extended to the investment division of an offshore banking unit in IFSC.

- Exemption has now been extended to a non-resident for transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC.

- Royalty income from aircraft leasing which is paid by a unit of an IFSC will be exempt if such unit is eligible for tax holiday and has commenced operations on or before 31 March 2024.

- Tax neutrality provisions for relocation of funds into IFSC subject to satisfaction of certain conditions.

- Tax holiday to a unit in IFSC will be available if it is registered under the IFSC Authority Act, 2019 and has commenced operations on or before 31 March 2024.

4. **Tax Deducted at Source (TDS)**

- TDS will be applicable at 0.1 per cent (5 percent in absence of a Permanent Account Number) on purchase of goods from a resident buyer, where the payment exceeds or is likely to exceed INR 5 million in a financial year in the case of buyers whose gross turnover/ receipt exceeds INR 100 million in the preceding year.

- TDS exemption has been granted to dividends paid to REITs and InVITs.

- Withholding tax on dividend income paid to FPIs to be restricted to DTAA rates, where applicable.

5. **Compliances**

- Turnover threshold for conducting a tax audit has been increased to INR 100 million from the existing INR 50 million for those businesses with digital (non-cash) transactions in excess of 95%.

- It is proposed that the last date for filing belated and revised returns of income will be three months before the end of the relevant assessment year or before completion of the assessment, whichever is earlier.

6. **Assessments / Appellate Provisions**

- Adjustments on account of increase in income indicated in the tax audit report but not reflecting in the return of income, have been permitted while processing the return of income.
- Apart from the Assessing Officer, prescribed income-tax authority to be empowered to issue assessment notice to the assessee for submission of return.
- Faceless Income Tax Appellate Tribunal (**ITAT**) to be implemented for providing online resolution through electronic communication like video conferencing.
- In normal cases, the time limit for reassessment of Income-tax returns has been proposed to be reduced to three years from six years.
- In serious tax evasion cases, it can be reopened up to ten years, only when concealment of income is more than INR 5 million in a year subject to approval from the Principal Chief Commissioner.
- A completely new procedure for search assessment cases will be implemented to reduce litigation and to facilitate ease of doing business for taxpayers.

7. **Dispute Resolution**

- New dispute resolution mechanism to be established for resolving disputes, except relating to search and surveys of specified class of persons, where the income is up to INR 5 million and the disputed income is up to INR 1 million.

- Income-tax Settlement Commission (**ITSC**) to be discontinued with immediate effect and an Interim Board to be set up for settlement of pending cases.

8. **Equalisation levy**

- Equalisation levy will not apply if the consideration is chargeable to tax as royalty or fees for technical services.

- Scope of 'online sale of goods' and 'online provision of services' would include instances where one or more of the following activities are carried out online:

  - Acceptance of offer for sale;
  - Placing the purchase order;
  - Acceptance of the Purchase order;
  - Payment of consideration; or
  - Supply of goods or provision of services, partly or wholly

- Consideration to include value of sale of goods and provision of services, irrespective of the ownership status or facilitation by the e-commerce operator.

9. **Other amendments**

- Advance tax on dividend income (excluding deemed dividend under section 2(22)(e) of the Income Tax Act, 1961) shall be payable when such dividend is declared or paid.

- The Authority for Advance Rulings (**AAR**) shall be replaced by the Board of Advance Ruling (the **Board**), whose order shall be appealable before the High Court. Applications pending before the AAR shall be transferred to the Board.

- Relaxation in conditions (viz. prohibition on loans or borrowings, restriction on commercial activities, direct investment in entity owning infrastructure) for Sovereign Wealth Fund & Pension Fund.
- Government notified infrastructure debt funds are now eligible to issue zero coupon bonds.
- It is now proposed that the Assessing Officer can invoke provisional attachment of property during pendency of penalty proceedings for fake entries / invoice cases if the amount of penalty imposable is likely to exceed INR 20million.

C) KEY INDIRECT TAXES PROPOSALS

1. **Goods and Services Tax (GST) law**

- Retrospective amendment proposed in the definition of supply, to include – any activity for a consideration between a person (other than an individual) and its members, constituents, etc.
- GSTR audit report in Form GSTR-9C is proposed to be scrapped. Accordingly, certification from an independent (prescribed) professional will no longer be required. However, a self-certified reconciliation statement is proposed to be provided along with annual return in Form GSTR 9. It is likely that the format for annual return may also change. This will result in onerous responsibility on the taxpayer, prior to self-certifying the reconciliation statement.
- Input tax will be availed as a credit only after the invoices/debit notes have been furnished by the supplier in its GST return in Form GSTR-1 and such invoices / debit notes are reflecting in auto-populated Form GSTR-2A of the buyer. This is an important step towards achieving real-time matching of credits.
- Supplies to a Special Economic Zone (**SEZ**) would be treated as zero-rated supply only when such supplies have been made for authorized operations of the SEZ. Such distinction was not provided in the existing legislation. This will require the supplier of goods/ services to obtain confirmation (on the usage of such goods/ services) from the SEZ.

- The rebate scheme i.e., depositing GST on zero-rated supplies to claim a cash refund, is proposed to be made available only to notified taxpayers only. Currently, the rebate scheme is available to all taxpayers.

- Appeal provisions have been proposed against an order for detention or seizure of goods; such appeal can be filed only after a mandatory pre-deposit of 25% of the penalty levied. Recovery of tax of such detained/ seized goods will be through separate proceedings; correspondingly, the maximum penalty has been increased from 100% to 200% of the tax component.

- Proceedings can now be initiated if there is any mismatch in tax payable as per the self-assessed tax under GSTR - 1 and with the GST return submitted in Form GSTR - 3B.

- Currently, provisional attachment of property by revenue authorities is permitted only in select few cases. It is proposed to extent these powers even to cases involving assessments, inspections, search, demands, recovery, etc.

2. **Customs law**

- The Honorable Finance Minister has mentioned in the budget speech that approximately 400 exemptions under the customs law would be taken up for review. A revised (and possibly curtailed) exemption schedule will be issued by October 2021.

- With continued focus on Make in India, duty rates on certain parts of finished products have been increased to promote domestic manufacturing. Illustrative sectors/ industries with such duty rate changes are electronics, mobile phones, automobiles, etc. Also, these sectors/ industries have been identified for the 'production linked incentive scheme'.

- A new levy – Agriculture Infrastructure and Development Cess (**AIDC**) is proposed on import of specified goods. Similar levy is also introduced as a duty of Central Excise on domestically manufactured goods. It is expected that the overall impact will be neutral, as there is a corresponding reduction in basic customs duty and central excise duty on the specified good

- A time-limit of 2 years has been prescribed, within which a show cause notice must be issued from the date of initiation of audit, search, seizure or summons. This time limit shall apply to cases where the investigation has been initiated after enactment of the Finance Bill, 2021.

- Timelines for filing a bill of entry has been amended and advanced by 2 days; it is proposed that the bill of entry should be filed one day prior to the vessel, aircraft or vehicle arriving at the customs station. Powers have been extended to notify different class of importers, goods for which such timelines will be specified.

- All existing conditional exemption notifications shall remain effective only till 31 March 2023, unless they have an earlier prescribed end date or are expressly extended. All future conditional exemption notifications shall have an in-built sunset clause and shall remain valid until March 31 falling immediately after two years from the date of such exemption notification.

- Similar to GST, erstwhile VAT and Service Tax, a common portal has been proposed to be notified to facilitate registration, filings or making corrections to bills of entry or the shipping bill or for making payment of duty. It is also proposed that summons, notices, etc will be serviced by making them available on the common portal.

- Goods which are meant for export, can be confiscated by the customs authorities, if a wrongful claim of remission/ refund of any duty, tax, etc. has been made, including under any other law.

- Penalty (up to 5 times the refund claimed) is proposed to be levied under the customs law for claiming wrongful refund on export goods by utilizing input tax credit on invoices obtained through fraud, suppression, collusion, etc.

- As a trade facilitation measure, 100% job-work is now allowed on goods imported under specified exemptions. Currently, such exempted goods can be utilized only for manufacturing purposes in the importer’s own premises.

➢ Key changes to basic customs duty rates are as under:

Sr No	Description of goods	Up to Feb 1	From Feb 2
1	Safety glass, consisting of toughened (tempered) or laminated glass falling under heading 7007 (other than those used with motor vehicles)	10%	15%
2	Tunnel boring machines	NIL	7.5%
3	Parts and components for manufacturing tunnel boring machines	NIL	2.5%
4	Solar invertor	5%	20%
5	Parts of electrical lighting or signalling equipment, windscreen wipers, defrosters and demisters, of a kind used for motor vehicles	10%	15%
6	Parts and inputs used in manufacturing LED lights and fixtures, including LED lamps	5%	10%
7	Electrical cables, including insulated wires and cables (except for ignition wiring used in vehicles, USB cable and optical fibre cable)	7.5%	10%
8	Inputs or raw materials (other than PCBA and moulded plastics) for use in manufacturing charger or adapter of charging phones)	NIL	10%
9	PCBA of charger or adapter, and moulded plastics of charger or adapter	10%	15%
10	Inputs or parts of PCBA, and moulded plastics of charger or adapter of cellular mobile phones	NIL	10%
11	Inputs or raw materials (other than lithium-ion cell and PCBA) for use in manufacturing lithium-ion battery and battery pack	NIL	2.5%
12	Solar lanterns or solar lamps	5%	15%
13	Parts of electronic toys	5%	15%
14	Specified auto parts (other than bicycle parts and components)	10%	15%

15	Inputs or raw materials for use in manufacturing machines capable of connecting to an automatic data processing machine, ink cartridge and ink spray nozzle	NIL	2.5%

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