RESOURCE PAPER 38

INDO-JAPAN CHAMBER OF COMMERCE & INDUSTRY

Union Budget 2022-23

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PREFACE

The Indian economy is on an accelerated growth path. The last two years, the country has witnessed a total digital transformation, resulting in global business entering India. Despite the pandemic situation, India's consumption prospects remain robust. Consumer income is projected to grow, and so is the spending power of Indian consumers today. This trend is also being passed on to Tier-2 and Tier-3 markets. The internet user base from 622 million in 2020 is expected to touch 900 million by 2025.

Innovation is on the increase. It is reported, grant of 28,000 patents, registration of 2.5 lakh trademarks and over 16,000 copyrights, all set to accelerate the growth engine of the Indian economy.

I am happy to present the Union Budget 2022 to our readers. The author Mr. Kaushik Balaji is an Associate Director of Grant Thornton Bharat LLP, with over 13 years of experience in tax and regulatory consulting and litigation. He is primarily involved in International Tax and Investment Advisory, specializing in Outbound investment and Intellectual Property migration structuring in varied sectors of industry.

Hope our readers would find the content of the Resource Paper informative and I am sure it will serve as a ready reckoner for foreign investors.

February 2022

Suguna Ramamoorthy
Secretary General IJCCI

Union Budget 2022-23 - Key Proposals

This year's budget focuses on long-term growth and building a strong economy with a strong emphasis on domestic manufacturing, digitisation, rural upliftment and planned urbanisation. The Hon'ble Finance Minister has highlighted fiscal deficit consolidation in the near future, based on strong economic recovery, robust forex reserves, and growth in exports and revenue collections.

Overall policy framework gives importance to addressing both supply and demand side constraints and adopting an agile policy response to the unprecedented challenges posed by the ongoing pandemic for sustainable development and job creation.

Status quo has been maintained on the tax rates for most taxpayers. The introduction of tax on virtual digital assets is expected to shape a new taxation regime around cryptocurrencies and similar investments. Largely, the tax proposals are based on principles of consistency, with measures to reduce protracted litigation and rationalisation of customs regime.

▶ Economic Overview

World economic growth

- Despite resurgence of the pandemic, recovery of global economy is continuing.
- As per the IMF, growth projection for the global economy is 5.9%, 4.4% and 3.8% in 2021, 2022 and 2023, respectively.
- Supply disruptions, rising inflation driven by fuel and energy prices, slower-than-expected consumption growth and changing pandemic dynamics are going to be the major challenges.

Country wise GDP estimates (USD trillion)

Country	2020	2021
USA	20.89	22.06
China	14.72	19.92
Japan	5.06	5.14
Germany	3.85	3.95
India	2.78	3.27
UK	2.76	2.96
France	2.63	2.80

- India is expected to play an increasingly important role as one of the major growth engines.
- India's GDP doubled in a period of only seven years, growing to USD 2 trillion in 2014 from USD 1 trillion in 2007.
- According to first advance estimate of GDP in 2021, India's GDP is valued at USD 3.27 trillion (converted on the basis of 2019 IMF estimates). Economic growth in India Quarterly GDP (y-o-y growth rate)
- GDP growth rebounded sharply in 2021 and is poised to grow at 9.2% in 2021 according to the first advance estimate of the government, which is 1.26% higher than pre-pandemic level (2019).
- Y-o-y GDP in the first and second quarter of 2021 continued to grow at a healthy pace due to easing of supply restrictions and rapid immunisation in the country.
- Starting from a very low base in 2020, GDP growth in the first and second quarter of 2021 reached 20.1% and 8.4%, respectively.

Economic growth in India: Recovery

- Industrial Production Index recovered sharply after the first and second wave, showing resilience of the industrial sector to shocks and the potential of quick recovery.

- The third wave of the pandemic has interrupted the recovery process, though it does not seem to be as severe as compared to the earlier waves.

Fiscal deficit (Gross fiscal deficit as a % of GDP)

- The revised estimate of fiscal deficit for FY 2021-22 is 6.9% of the GDP as against 6.8% budgeted estimate.
- The fiscal deficit for FY 2022-23 has been budgeted at 6.4% of the GDP.

Tax GDP ratio (Tax receipts as a percentage of GDP)

- Tax receipts as a percentage of GDP, which was declining since 2017-18, has increased to 11.4% due to high revenue collection in the current year.

Projected tax revenues (in %)

- It is estimated that in FY 2022-23, GST would account for 28.28% of total major tax revenues.
- Collection from corporate taxes is projected at 26.11% of the gross tax revenue.
- Income tax is estimated to contribute about 25.38% of the total gross tax revenue.

Inflation

- The increasing trend of CPI inflation in recent months, driven by sharply increasing prices of fuel and power and primary commodities along with slower growth in private consumption may be a cause of concern.
- Despite these challenges, India is looking to remain one of the fastest growing economies in the world.

▶ Key changes in individual taxation

No change in individual slab rates

Exemption of amount received on account of COVID-19:

- Sum received for medical treatment

    - Any sum received from employer or any other person towards medical treatment of self or family member will not be considered as a taxable perquisite or income from other sources.
- Sum received by family of deceased person where death was due to COVID-19 or related illness
    - Entire ex-gratia received from employer is tax exempt.
    - Amount up to INR 10 lakh received from any person other than employer would be tax exempt.
- Tax exemption is subject to receiving amount within 12 months of death and fulfillment of other conditions as may be notified.

Relief to taxpayers for maintenance of dependent with disability

- Currently, deduction is allowed to the taxpayer (parent/guardian) for an amount paid as premium towards a scheme for maintenance of disabled dependent where such dependent is eligible to receive lumpsum or annuity upon the taxpayer's death.
- It is proposed to extend the deduction even if disabled dependent receives lumpsum or annuity during taxpayer's lifetime on their attaining the age of 60 years and deposit to such scheme has been discontinued.

Enhanced deduction for employer's contribution to NPS for state government employees.

- Deduction of employer's contribution to NPS for state government employees was restricted to 10%. This limit has been increased to 14% with effect from 1 April 2019 to bring parity with central government employees.
- Exemption limit for employer's contribution to NPS for private sector employees remains at 10%.

▶ Key changes in corporate taxation

Deduction on conversion of interest payable into financial instruments

Conversion of interest payable to financial institutions/NBFCs/scheduled bank or a co-operative bank, into debenture or any other financial instruments by which liability to pay is deferred shall not be regarded as actual payment and hence no deduction shall be allowed on such conversion.

Expenses not allowable as tax deduction

- No deduction shall be allowed on business expenditure incurred for:
- Any purpose which is an offence, or which is prohibited by any law both within or outside India.
- Providing benefit to any person, if acceptance of such benefit violates any law/rule/regulation/guidelines governing the conduct of such person.
- Compounding of offence both within and outside India.

Tax deductibility of surcharge or cess

- It has been clarified that no deduction shall be allowed for surcharge or cess while computing business income.
- This is a clarificatory amendment which is applicable retrospectively from AY 2005-06.

Deductibility of expenditure incurred in connection with earning exempt income

- Currently, taxpayers are considering the expenditure incurred for earning exempt income as non-deductible only if such exempt income has accrued, arisen or received during the year.
- The amendment proposes to consider such expenditure as non-deductible even if the related exempt income has not accrued or arisen or received during the year.

Date extensions for claiming certain tax reliefs

- 15% corporate tax rate for new domestic manufacturing companies: The last date for commencement of manufacturing or production of article or thing is proposed to be extended by one year to 31 March 2024.
- Tax holiday to ‘eligible start-ups’: The last date of incorporation of an ‘eligible start-up’ has been extended by one year to 31 March 2023.

Deduction for donations made for specified research

- To correct an inadvertent drafting error in FA 2020, a retrospective amendment has been proposed to allow deduction for donations made to research associations, universities, colleges or other institutions, only if such institutions file a statement of donations with the Income tax authorities and furnish a certificate to the donor.
- The above proposed amendment will take effect retrospectively from 1st April 2021.

Withdrawal of concessional dividend tax rate

- Foreign dividends will be taxed at normal tax rates and the concessional rate of 15% has been withdrawn.

▶ Transfer pricing

Deferment of faceless assessment/appeal

- Period for notifying scheme for faceless assessments before TPO and for disposal of objections before DRP is extended to 31 March 2024.
- Similar extension is also proposed for appeal filing and proceedings before the ITAT.

Revisionary powers enhanced to cover TP matters

- Scope of revisionary powers in respect of orders prejudicial to revenue proposed to be extended to orders passed by the TPO.
- Revisionary powers include power to modify or cancel the order.

Taxation of virtual digital assets

- Income from transfer of virtual digital assets taxable at the rate of 30%.
- Only cost of acquisition to be allowed as deduction. No deduction in respect of any other expenditure/loss allowed for computing such income.
- Loss on transfer of virtual digital assets can neither be carried forward nor be set off against any other income.
- Receipt of virtual digital asset for a value less than the deemed fair market value taxable in the hands of the receiver.

- TDS on payment made for transfer of virtual digital asset at the rate of 1% effective from 1 July 2022.
- TDS not applicable in the following cases:-
  - Payee is a non-resident; or
  - Consideration is less than INR 50,000 in a FY and the payer is:
    - Individual/HUF, having income other than business or professional income; or
    - Individual/HUF whose total sales/gross receipts or turnover does not exceed INR 1 crore (in case of business) or INR 50 lakh (in case of profession)

  during the FY immediately preceding the FY in which such virtual digital asset is transferred.
- Consideration is less than INR 10,000 in other cases.

▶ Assessment/Reassessment proceedings

Faceless Assessment Scheme

- Existing procedure of the Faceless Assessment Scheme has been amended to streamline the process and resolve various issues. Key changes are:
- This scheme will be applicable to reassessment proceedings.
- 15 days time limit to file a reply to initial notice changed to date specified in the notice.
- Power to initiate special audit granted.
- Prior approval not required for personal hearing through video conferencing/video telephony.

Reassessment proceedings

It is proposed to rationalise the reassessment provisions further:

- To issue a notice under reassessment, AO is not required to take prior approval of specified authority.

- Reassessment orders to be passed with the approval of higher tax authorities only in the cases of survey, search and similar action.
- Time limit for completion of assessment, re-assessment and recomputation now also covers transfer pricing orders.
- Exclusion of period from the initiation of search till the date when search material is handed over to the jurisdictional AO. This amendment is retrospectively applicable from 1 April 2021.
- Scope of income escaping assessment now also includes:
- Expenditure in respect of a transaction or an event or occasion.
- Entries in the books of accounts.
- Notice is supposed to be issued for each year where income has escaped assessment.
- Notices issued for AYs prior to AY 2021-22 to be invalid.

Announcements to promote IFSC

- To encourage OBUs setup in IFSC, tax exemption is proposed on income earned by non-residents on transfer of offshore derivative instruments or over-the-counter derivatives entered into with an OBU.
- In furtherance of the government's intention to attract fund management activities from IFSC, it is proposed that tax exemption be accorded to income earned by non-residents from investments in overseas securities/financial products/funds, managed by the portfolio manager in IFSC.
- Tax exemption is proposed for royalty/interest income earned by non-residents from leasing of ships to units in IFSC.
- Similarly, income arising from transfer of an asset, being a ship, which was leased by a unit in IFSC to any person shall be eligible for a tax holiday for a period of 10 years.

Issue of shares at premium

- Current exemption from applicability of anti-abuse provisions in respect of closely held companies on issue of shares at premium to

Category I and II AIFs regulated by SEBI is now proposed to be extended to AIFs which are regulated by IFSCA.

Tax deduction at source

TDS on benefit or perquisite arising in course of business or profession

- It is proposed that benefits or perquisites arising from business or profession provided to resident shall be subject to TDS at the rate of 10%.
- No deduction shall, however, be required where the value does not exceed INR 20,000.
- This is effective from 1 July 2022.

Rationalisation of TDS provisions applicable to non-filers of tax return

- Currently, taxpayers who have not filed tax returns for preceding two years are subject to a higher rate of TDS/TCS. This criteria is now proposed to be reduced to one year.

Rationalisation of TDS mechanism on sale of immovable property

- Currently, a buyer of an immovable property is required to withhold tax at the rate of 1% on the consideration paid (provided the consideration is INR 50 lakh or more).
- It is now proposed that tax shall be required to be deducted on the higher of:
  - Consideration received; or
  - Stamp duty value of the property.
- Further, tax shall not be required to be deducted where the consideration and stamp duty value of property is less than INR 50 lakh.

Trusts and cooperative societies

Rationalisation of provisions of charitable trust and institutions

In order to rationalise the provisions relating to trusts and institutions by ensuring effective monitoring and implementation, bringing consistency and providing clarity on taxation, certain amendments have been proposed.

- Mandatory requirement to maintain the books of accounts in the prescribed format and manner.
- Penal provisions to discourage the misuse of funds of the trust and institution.
- Uniform applicability of the conditions relating to accumulated income and taxability in case of non-application.
- Taxability in the hands of trusts and institutions in case any income or property of the trust or institution has been applied unreasonably for the benefit of specified trustee or persons.
- Uniformity of provisions in case of dissolution/ voluntary wind up/merger of a charitable trust and institution.
- Mandatory filing of return in order to claim deductions.
- Allowability of expenses in case exemptions are denied due to prescribed violations.
- Clarity on application of income.
- Continuity of exemption in case of specified defaults.
- Taxability of income not covered under exemption (specified income).
- Treatment of voluntary contribution for renovation/ repair of notified places.
- Clarification on the process of approval or cancellation of trust and institution where the PCIT/CIT may, after affording a reasonable opportunity of being heard, cancel the registration of the trust/ institution if it has committed any of the specified violation. Such order can be passed in writing within six months from the end of the quarter in which first notice has been issued.

Cooperative societies

- It is proposed to reduce the rate of AMT applicable on cooperative societies from 18.5% to 15%.

- Surcharge applicable to cooperative societies having income of INR 1 crore to INR 10 crore is proposed to be reduced to 7% from existing 12%. The reduced rate will also apply for computing TDS on payments made to non-resident cooperative societies.

▶ Other key proposals

Option to file updated tax return:

- The budget proposes to allow a taxpayer to file an updated tax return within two years from the end of the relevant AY where any income has been under reported on payment of additional tax at:
  - 25% of aggregate tax and interest if the updated return is filed within 12 months.
  - 50% of aggregate tax and interest, if updated return is filed beyond 12 months.
- Updated return cannot be filed in following cases:
  - If updated return already filed for the same AY.
  - If assessment/reassessment/revision/re-computation is pending or has been completed for the same AY.
  - Where search has been initiated or survey has been conducted for the relevant AY or two years preceding the relevant AY.
  - Information available with the AO under specified laws or on account of India's tax treaty agreements and the same has been communicated to the taxpayer prior to filing the updated return.
  - Prosecution proceedings have been initiated prior to filing of updated return.
  - Such person as may be notified.

Goodwill:

Reduction of goodwill from block of assets to be considered as transfer, applicable retrospectively from 1 April 2021.

Litigation management:

Filing of departmental appeal in a particular case shall be deferred if an appeal is pending on an identical question of law before jurisdictional High Court or the Supreme Court.

- Decision to defer will be subject to taxpayer's acceptance.
- Procedure to be adopted in such cases shall be announced in due course.

Widening ambit of bonus/dividend stripping:

Currently, anti-avoidance provision relating to bonus/dividend stripping is applicable to units of mutual fund/UTI. The applicability of said provision is proposed to be widened to bring within its ambit stocks, shares, units of InvITs, REITs and AIFs.

Status of ongoing proceedings in case of business reorganisation

- Proceedings on the predecessor entity shall be deemed to have been made on the successor in the event of a business reorganisation.
- Modified returns can be filed within six months by such successor entity to give effect to the final order of the competent authority. Such return can be filed for the period between the date of effective date of order to the date of issuance of final order.

No set-off of loss allowed against undisclosed income

Brought forward loss or unabsorbed depreciation cannot be set-off against undisclosed income detected during search or survey proceedings.

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