



INDO-JAPAN CHAMBER OF COMMERCE & INDUSTRY

Union Budget 2024

by
Grant Thornton Bharat

PREFACE

Dear Readers,

Grant Thornton Bharat and Indo-Japan Chamber of Commerce and Industry conducted a Webinar on 'India Budget 2024' in Japanese language on 31st July for the benefit of Japanese business community. We are happy to present the content in English language to be used as a reference material. Hope our readers find it informative.

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Happy reading !

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Suguna Ramamoorthy
Secretary General, IJCCI

Union Budget 2024

Proposed Key Amendments to Income Tax Act, 1961, Goods & Service Act, 2017, Customs Act, 1962 and Customs Tariff Act, 1975 – Union Budget 2024

The Union Budget has focused on increasing domestic manufacturing and export competitiveness of India leading to new employment opportunities. On the Direct tax and Indirect Tax front, amendments are in lines with promoting ease of doing business, increasing the flow of investments, streamlining compliance & proceedings.

Background

- The Union Budget is set out in line with the interim budget which presented a detailed road map to the pursuit of ‘Viksit Bharat.’
- The budget proposals have focused on key areas including Manufacturing, Innovation, research & development.
- Amendments have been made in Income-tax Act, GST Act, Customs Act and Customs Tariff Act in line with the intention to enhance investments in India, ease of doing business, domestic manufacturing, deepen local value additions, promote export competitiveness, streamline proceedings and simplify taxation.

Amendments to Income-tax Act, 1961

- ***Change in taxation of buyback*** - Under the existing provisions, buyback is subject to tax in the hands of the company buying back the shares at a rate of 20% (plus surcharge and cess) on the amount of distributed income. Further, the shareholders were exempt from tax in respect of the buyback proceeds received. However, with effect from 1 October 2024, distribution on buyback of shares is proposed to be taxed as dividend income in the hands of the shareholders. There

would be no implications in the hands of the Company. The Company would be required to deduct tax at the rate of 10%. As per the India-Japan DTAA also, it is likely that the distribution under buyback is likely to be considered as dividend considering the wider definition of dividend.

- ***Abolition of Angel tax*** - Under the existing provisions, consideration received in excess of FMV on issue of shares by closely held companies is subject to tax in the hands of issuer company. It is proposed to abolish these provisions. This will facilitate fund raising by corporates, startups and reduce litigation.
- ***Removal of Equalisation levy 2.0*** - Under the existing provisions, e-commerce supply of goods or services is subject to Equalisation levy at the rate of 2%. Finance Act 2024 has proposed to remove this levy. Correspondingly, the exemption provided under Income-tax Act has also been removed, however, the e-commerce supply of goods or services would not be subject to tax in India unless non-resident has a PE or business connection in India, or such e-commerce supply of goods or services constitute royalty/ FTS.
- ***Reduction in tax rate of foreign companies*** - The tax rate applicable to foreign companies is proposed to be reduced to 35% from 40%.
- ***Increase in capital gains tax rate for foreign companies*** - Under the existing provisions, capital gains tax rate stands at 10% (without first and second proviso). Now, it has been proposed to increase this rate to 12.5%. Further, the tax rate for short-term capital gain under provisions of section 111A of the Act (on STT paid equity shares, units of equity oriented mutual fund and unit of a business trust) is proposed to be increased to 20% from the present rate of 15%.
- ***Rationalization of TDS rates*** - The withholding tax rates under section 194H for payment of commission or brokerage is proposed to be reduced

from 5% to 2% and the rate under section 194-O for payment of certain sums by e-commerce operator to e-commerce participant is proposed to be reduced from 1% to 0.1%.

- **Reassessment** - The time limit for issue of notice for reassessment proceedings reduced from 10 years to five years three months. The proposed amendment will apply from 1 September 2024.
- **Resurrection of Vivad se Vishwas Scheme (VsV Scheme)** - It is proposed to launch a new VsV Scheme, 2024 with a view to reduce the mounting pendency of appeals. Depending on the aging of the dispute and date of payment of the disputed taxes, the VsV Scheme, 2024 provides for waiver of interest and penalty related to such disputes. The scheme would not apply to cases of search, prosecution, foreign undisclosed income etc. The start and end dates of the scheme are proposed to be notified in due course. Various procedural amendments are proposed to give effect to the scheme.

Amendments to Transfer Pricing regulations under the Income Tax Act, 1961

- **Proposed expansion of safe harbour provisions** - To reduce transfer pricing ('TP') disputes and bring certainty in international taxation, there is a proposal in the budget speech to expand the scope of safe harbour rules. Hon'ble Finance Minister (FM) has clearly indicated that the SH would not only be expanded, but also made more attractive, with a specific SH for foreign mining companies selling raw diamonds in the country. At this stage no details about the proposed changes have been released yet. However, it would be interesting to see if the government would add few highly litigated international transactions for Japanese companies in India, like royalty, interest paid, availing of guarantee, inbound intra-group services, etc. as part of SH provisions.

- ***Extended powers of the Transfer Pricing Officers (TPOs) in respect of specified domestic transactions (SDTs) identified during audit proceedings*** - Presently, during the course of TP assessment proceedings, where the TPO identifies a new international transaction (whether or not furnished in the accountant's report in Form 3CEB), the TPO can proceed to determine the arm's length price (ALP) of such identified international transactions. However, similar power was not available to the TPO in respect of SDTs. This provision has now been extended to encompass SDTs as well, i.e., the TPO can determine the ALP of newly identified SDTs during the course of TP assessment/audit proceedings. This change may impact Japanese companies engaging in domestic related party transactions in India, which are considered as SDTs under Indian TP regulations.

Amendments to GST Act, 2017

- ***Widening Demand & Recovery*** - The existing provisions for demand and recovery under Sections 73 and 74 will apply to tax notices and demands until FY 2023-24. From FY 2024-25, a new Section 74A will govern demand and recovery, setting a common time limit for issuing notices and orders. The proposed time limit for issuing Show Cause Notices is 42 months from the due date of filing the Annual return for the relevant FY. Orders must be issued within 12 months with a possible 6-month extension, and the penalty benefit window is extended to 60 days.
- ***Waiver of Interest & Penalty*** - A new Section 128A is proposed to waive interest and penalty for non-fraud cases in FYs 2017-18 to 2019-20 upon full tax payment. This waiver also applies if a notice under fraud cases (Section 74) is reclassified as non-fraud (Section 73) due to lack of fraudulent intent. Exceptions include cases of erroneous refunds, pending appeals, and paid interest and penalties already.
- ***Time limit for availing ITC*** - The proposed retrospective amendment under Section 16 extends the time limit for claiming ITC for FYs 2017-18 to 2020-21 to 30 November 2021. Additionally, ITC can be claimed

from the date of cancellation of registration to the date of revocation, with conditions to be met.

- ***Refund Restrictions for Goods subject to Export Duty*** - Proposed Amendment in Sections 54 to restrict refunds for goods subject to export duty, even if exported with or without payment of taxes, including to SEZ developers or units for authorized operations.
- ***Regularizing Non-levy / Short-levy of GST*** - Proposed Section 11A allows the government to regularize non-levy or short-levy of GST due to common trade practices, granting exemptions to such supplies from whole or excess GST payable.
- ***Reduction in Pre-deposits*** - Proposed amendments in Sections 107 and 112 reduce pre-deposit amounts for appeals as per the below:
 - First appellate authority lowered maximum deposit to INR 20 crores from INR 25 crores for both CGST & SGST,
 - GSTAT deposit reduced to 10% from 20% with a cap of INR 20 crores for both CGST and SGST.
- ***Anti-profiteering Amendments*** - Amendment in Section 171 centralizes anti-profiteering cases at Principal Bench of Appellate Tribunal; sets a sunset clause to notify last date for the application date in relation to anti-profiteering cases.

Other Proposals

- Penalty under section 122(1B) limited to E-Commerce Operators (ECO) who are required to collect tax at source.
- Input Service Distributor (ISD) transitional credit permitted for input services received even pre-appointment date.
- Extra-Neutral Alcohol used in alcoholic liquor production exempted from GST.

- Amendment in Section 112 to allow three-month period before GSTAT appeals to start date to be notified.
- Schedule III expands to cover co-insurance, ceding & reinsurance commissions as not a supply.
- ITC blockage under Section 17(5) towards tax demands under fraud cases (Section 74) up to FY 2023-24.
- Amendments in Section 13 clarify the time of supply for RCM services.
- Amendment in Section 70 allows authorized representatives to appear for summoned persons.

Amendments to Customs Act, 1962

- ***Proof of Origin*** - The requirement of Certificate of Origin to claim preferential rate of duty has been amended as “Proof of Origin”. Hence, even a declaration (self-certification) issued in accordance with the trade agreement requirements would suffice. This amendment has been brought in order to align with the new trade agreements that have been entered in to.
- ***Power to prescribe activities not permitted under MOOWR*** - Powers have been provided to the Central Government to restrict class of goods from operations under MOOWR Scheme.
- In order to simplify and facilitate trade, the board will now have powers to take such measures or prescribe any procedure or documentation to any person. Earlier such measures were only directed to importers or exporters.

Amendments to Customs Tariff Act, 1975

- ***Omission of protective duties*** - As the Tariff Commission was wound up by resolution dated 01 June 2022, the Central Government’s power to levy protective duties upon recommendation made by the Tariff

Commission in certain cases for the protection of the interests of any industries in India has been omitted in the Act.

- ***Retrospective CC exemption for SEZ units*** - GST compensation cess (CC) payable on imports by SEZ units or developers for authorised operations is exempt with effect from 01 July, 2017.
- ***Review of Rate Structure*** - Comprehensive review of the rate structure has been proposed over the next six months to rationalise and simplify the structure for ease of trade, removal of duty inversion and reduction of disputes.
- Also sector specific amendments have been brought in through this budget, as below :
 - ***Medicine and medical equipment*** - Relief to cancer patients is provided by fully exempting additional three medicines from custom duties. Further, changes have been proposed in BCD on x-ray tubes & flat panel detectors used in medical x-ray machines under the Phased Manufacturing Programme, to synchronise them with domestic capacity addition.
 - ***Mobile Phone and Related Parts*** - To make the products competitive, it is proposed to reduce the BCD on mobile phone, mobile PCBA and mobile charger from 20 % to 15 %.
 - ***Solar energy*** - To support energy transition in India, it is proposed to expand the list of exempted capital goods for use in the manufacture of solar cells and panels. Further, due to sufficient domestic manufacturing capacity of solar glass and tinned copper interconnect, it was proposed not to extend the exemption of customs duties provided to them.
 - ***Precious Metals*** - To enhance domestic value addition in gold and precious metal jewellery in the country, it is proposed to reduce

customs duties on gold and silver to 6 % (earlier 15%) and that on platinum to 6.4% (earlier 15.4%). The India-UAE CEPA Tariff notification is being amended to give effect to these rate changes.

- ***Electronics*** - To increase value addition in the domestic electronics industry, it is proposed to remove BCD, subject to conditions, on oxygen free copper for manufacture of resistors. Further, it is also proposed to exempt certain parts for manufacture of connectors.
- ***Chemicals and Petrochemicals*** - To support existing and new capacities in the pipeline, it is proposed to increase the BCD on ammonium nitrate from 7.5 to 10%.
- **Telecommunication Equipment:** To incentivise domestic manufacturing, it is proposed to increase the BCD from 10 to 15% on PCBA of specified telecom equipment.
- ***Amendment in Rules*** - The Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 have been amended to insert a provision for New Shipper Review effective from 24.07.2024.
- Following changes have been introduced with effect from 24 July 2024 to facilitate trade :
 - Articles of foreign origin to be imported into India for repairs subject to their re-exportation within six months extendable to 1 year. Further, the duration for export in the case of aircraft and vessels imported for maintenance, repair and overhauling has been increased from 6 months to 1 year, further extendable by 1 year.
 - The time-period of duty free re-import of goods (other than those under export promotion schemes) exported from India under warranty has been increased from 3 years to 5 years, further extendable by 2 years.



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