

1 February 2021

Union Budget 2021

Tax alerts – Macro-fiscal developments

Macro-Fiscal Developments

India's growth outlook

- ▶ Real and nominal GDP growth are estimated to contract by (-)7.8% and (-) 4.3% respectively in the pandemic-affected year of FY21.
- ▶ The Economic Survey projects a V-shaped recovery in real GDP growth to 11.0% in FY22.
- ▶ The nominal GDP growth, as per the Union Budget FY21 is expected to increase to 14.4% in FY22.

Budgetary push to growth: increasing capex

- ▶ The central government has substantially raised its fiscal deficit to GDP ratio to an unprecedented level of 9.5% in FY21 and 6.8% in FY22.
- ▶ Based on this additional borrowing, the government has proposed increasing its revenue expenditure by 28.1% and capital expenditure by 30.8% in FY21 (RE) over the actuals of FY20.
- ▶ The budgeted increase in revenue expenditure in FY21 may include an accounting adjustment by bringing on budget, the subsidies earlier given to the FCI through the NSSF.
- ▶ While this is a welcome move in the interest of transparency, it may not reflect any actual substantive increase in government's revenue expenditures.
- ▶ The thrust of the Budget is on increasing capital expenditure focused on expanding physical infrastructure in line with the already envisaged NIP. Increasing capital expenditure is desirable since it has high growth and employment multipliers.
- ▶ Capital expenditure relative to GDP is estimated to increase from 1.6% in FY20 to 2.3% in FY21 (RE) and further to 2.5% in FY22 (BE).
- ▶ In FY22, revenue expenditure is budgeted to contract by (-)2.7% but growth in capital expenditure is estimated to remain strong at 26.2%.

Highlights

14.4%

Nominal
GDP
growth rate
for FY22



9.5%

FY21



Fiscal deficit to
GDP ratios
estimated at
unprecedented
levels

6.8%

FY22



26%

Growth in
centre's capex in
FY22 (BE)

Resource mobilization

- ▶ Major initiatives are being undertaken for monetizing government and public sector owned assets and reinvigorating the disinvestment program.
- ▶ For asset monetization, a National Monetization Pipeline is being launched.
- ▶ Massive increase in disinvestment receipts has also been budgeted, raising its level to INR1.75 lakh crore in FY22 as compared to only INR32,000 crore in FY21 (RE).
- ▶ While any significant tax revenue changes have not been introduced, reliance has been based on normal GDP growth and buoyancy assumptions. Realizing an assumed nominal GDP growth of 14.4% and a buoyancy of 1.2 would be key to maintaining a fiscal deficit to GDP ratio of 6.8% in FY22. Slippage in these parameters may push up centre's fiscal deficit above 7% of GDP.

Recommendations of the 15th FC: key highlights

- ▶ The 15th FC, in its final report pertaining to the period FY22 to FY26, has not recommended any change in the vertical share of states which has been retained at 41%.
- ▶ There is a greater emphasis on augmenting resources for the states through grants-in-aid particularly revenue deficit grants. The volume of revenue deficit grants has been increased to INR 1,18,452 crores in FY22 as against INR 74,340 crores in FY21. The coverage has also been increased to 17 states from 14 states last year.
- ▶ Using higher grants as a means of fiscal transfers is preferred when it is difficult to forecast central tax revenues due to economic uncertainty.
- ▶ The fiscal consolidation paths of the central and state governments have been revised. For the central government, the FC has recommended a reduction in the fiscal deficit to GDP ratio from 9.5% in FY21 (RE) to 4.5% in FY26 in graduated steps. For the state governments, it recommended a reduction to 3% of GDP by FY26.
- ▶ The Commission has proposed the setting up of a High-Powered Intergovernmental Group to examine the debt and deficit sustainability framework and suggest a suitable amendment to the existing FRBM Act.

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Tax Alert – Corporate Tax

Key highlights

Key tax takeaways

Direct tax

- ▶ No changes to corporate tax rate
- ▶ Sunset date for incorporation of start-ups to be eligible for tax holiday will be extended from 31 March 2021 till 31 March 2022.
- ▶ Slump sale definition has been amended to include within its scope all types of transfers, i.e. sale, exchange, relinquishment of asset etc.
- ▶ Depreciation on goodwill (whether self-generated or acquired) will not be permitted. With respect to acquired goodwill on which depreciation has been claimed in past years, the written down value and capital gain shall be computed in the manner prescribed. Further, in other cases the cost of acquisition shall be actual purchase price or NIL in case of self-generated goodwill for the purpose of computing capital gains.
- ▶ Safe harbor of 10% in respect of difference between stamp duty value and actual sale consideration for the purposes of computation of business income will be increased to 20% in case of primary transfer of residential properties taking place between 12 November 2020 and 30 June 2021 provided the consideration for such transfer does not exceed INR20m. Corresponding increase made even in respect of the buyer or recipient of such property.
- ▶ Pursuant to strategic divestment plans of public sector undertakings, certain provisions of the ITL will be amended to relax the conditions of tax neutral demerger and carry forward of losses for disinvested public sector undertakings in amalgamation.
- ▶ New WHT provisions will be introduced with respect to purchase of goods subject to certain conditions at the rate of 0.1%.
- ▶ Withholding Tax exemption will be granted to dividends paid to Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)

Highlights



Tax Payment relaxation for dividend income



Tax audit threshold from INR 50m to INR 100m



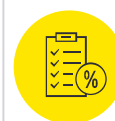
No deduction for late deposit of employee's contribution to PF



Extension in Tax holiday for affordable housing

- ▶ Tax treaty benefits with respect to dividend withholding will be available to payments made to Foreign Portfolio Investors (FPI)
- ▶ Penal provisions will be introduced whereby taxes will be required to be withheld/collected at double the existing rates or 5%, whichever is higher, in order to deal with taxpayers who have not filed return of income in past two years, subject to certain conditions.
- ▶ Threshold for tax audit will be increased to INR100m from existing INR 50m for taxpayers carrying on business, provided cash transaction is less than 5% in value.
- ▶ Time available for filing of revised and belated returns will be reduced by three months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier
- ▶ Delayed remittance of employee contribution to employee welfare funds will result in permanent disallowance of deduction
- ▶ Infrastructure debt funds will be permitted to issue zero coupon bonds

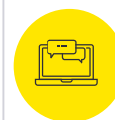
Highlights



LLP not eligible for presumptive tax for professionals



Quick processing of return and closure of revenue audit



Faceless dispute resolution for small taxpayers

Corporate tax

▶ Corporate tax rates

Description	Existing rate * (%)	Proposed rate * (%)	Difference + - =
A) Domestic company			
Regular tax			
Companies having turnover not exceeding INR4 billion in financial year 2019-20 (2018-19 for tax year 2020-21):			
▶ Total income ≤ INR10 million	26 ¹	26 ¹	No change
▶ Total income more than INR10 million to INR100 million	27.82 ²	27.82 ²	
▶ Total income > INR100 million	29.12 ³	29.12 ³	
Companies having turnover > INR4 billion in financial year 2019-20 (2018-19 for tax year 2020-21):			
▶ Total income ≤ INR10 million	31.2 ⁴	31.2 ⁴	No change
▶ Total income more than INR10 million to INR100 million	33.38 ⁵	33.38 ⁵	
▶ Total income > INR100 million	34.94 ⁶	34.94 ⁶	

¹ 25% plus 4% cess

² 25% plus 7% surcharge plus 4% cess on tax and surcharge

³ 25% plus 12% surcharge plus 4% cess on tax and surcharge

⁴ 30% plus 4% cess

⁵ 30% plus 7% surcharge plus 4% cess on tax and surcharge

⁶ 30% plus 12% surcharge plus 4% cess on tax and surcharge

New manufacturing companies set up and registered on or after 1 October 2019 not availing incentives (optional regime)	17.16 ⁷	17.16 ⁷	No change
Other domestic companies not availing incentives (optional regime)	25.17 ⁸	25.17 ⁸	No change
B) Minimum Alternate Tax (Refer Note 1)			
Regular			
▶ Total income ≤ INR10 million	15.6 ⁹	15.6 ⁹	No change
▶ Total income more than INR10 million to INR100 million	16.69 ¹⁰	16.69 ¹⁰	
▶ Total income > INR100 million	17.47 ¹¹	17.47 ¹¹	
International Financial Service Centre (IFSC)			
▶ Total income ≤ INR10 million	9.36 ¹²	9.36 ¹²	No change
▶ Total income more than INR10 million to INR100 million	10.02 ¹³	10.02 ¹³	
▶ Total income > INR100 million	10.48 ¹⁴	10.48 ¹⁴	
C) Foreign company			
Regular tax			
▶ Total income ≤ INR10 million	41.6 ¹⁵	41.6 ⁹	No change
▶ Total income more than INR 10 million to 100 million	42.43 ¹⁶	42.43 ¹⁰	
▶ Total income > INR 100 million	43.68 ¹⁷	43.68 ¹¹	

* These rates are inclusive of applicable surcharge.

Notes:

- MAT is not applicable to 15% CTR company and 22% CTR company. Presently, there is no MAT on foreign companies having no PE in India or having no registration requirement under any other law in India or foreign companies whose total income comprises solely of profits and gains from business or profession which are subject to presumptive basis of taxation under normal computation (shipping, aircraft, oil and gas, civil construction and turnkey power projects). If MAT is applicable to foreign companies, rates of surcharge will differ
- The treatment for MAT purposes with respect to income in the nature capital gains/FTS/royalty of foreign companies will now be extended to dividend income earned by foreign companies.

⁷ 15% plus 10% surcharge plus 4% cess on tax and surcharge

⁸ 22% plus 10% surcharge plus 4% cess on tax and surcharge

⁹ 15% plus 4% cess

¹⁰ 15% plus 7% surcharge plus 4% cess on tax and surcharge

¹¹ 15% plus 12% surcharge plus 4% cess on tax and surcharge

¹² 9% plus 4% cess

¹³ 9% plus 7% surcharge plus 4% cess on tax and surcharge

¹⁴ 9% plus 12% surcharge plus 4% cess on tax and surcharge

¹⁵ 40% plus 4% cess

¹⁶ 40% plus 2% surcharge plus 4% cess on tax and surcharge

¹⁷ 40% plus 5% surcharge plus 4% cess on tax and surcharge

- ▶ **Extending tax holiday provisions in respect of start-ups till 31 March 2022**
 - ▶ The existing provisions of ITL grant a 100% profit-linked deduction to eligible start-ups for income earned from eligible business¹⁸. The deduction is available at the option of the start-up taxpayer which is incorporated on or after 1 April 2016 and before 1 April 2021.
 - ▶ Further, the ITL also exempts any long-term capital gains earned by a Taxpayer from transfer of residential property on or before 31 March 2021 subject to utilization of net-consideration from such transfer towards subscription of equity shares in an eligible start-up.
 - ▶ These benefits are now extended for another year, up to 31 March 2022.
- ▶ **Extension of Incentives with respect to approved housing projects:**
 - ▶ The existing provisions of ITL provides for a 100% tax holiday on profits earned by real estate companies from developing and building housing projects which are approved by the concerned authority between the period 1 June 2016 and 31 March 2021.
 - ▶ FB 2021 now extends the due date of approval of the housing projects by one year, i.e., up to 31 March 2022.
 - ▶ Further, it is now proposed to allow tax holiday on profits earned by notified affordable **rental** housing projects.
- ▶ **Benefit of tax exemption extended to educational institutions and hospitals with annual receipts of INR50m**
 - ▶ Monetary threshold for annual receipts for educational institutions and hospitals to be eligible for exemption from tax is increased from INR10m to INR50m.
- ▶ **Slump sale to cover all types of transfers, including slump exchange**
 - ▶ Slump sale definition has been amended to include within its scope all types of transfers, such as sale, exchange, relinquishment of asset etc.
- ▶ **Goodwill not regarded as intangible asset eligible for depreciation**
 - ▶ The definition of intangible asset for the purpose of depreciation has been amended by FB 2021 to exclude goodwill from its ambit. Accordingly, depreciation will not be admissible on goodwill, whether self-generated or acquired goodwill.
 - ▶ In respect of acquired goodwill on which depreciation has been claimed in past years up till 31 March 2021, the written down value (i.e original cost less depreciation claimed in past) and capital gain shall be computed in the manner prescribed. Further, In other cases the cost of acquisition shall be actual purchase price or NIL in case of self-generated goodwill for the purpose of computing capital gains.
- ▶ **Increase in safe harbour limit in case of certain immovable properties from 10% to 20%**
 - ▶ Under the existing provisions of ITL, if consideration from transfer of land or building or both, is less than the stamp duty value and the difference between the two is less than 10% of actual consideration, then the actual sale consideration is deemed to be full value of consideration for the purposes of computation of business income. Further, the buyer or recipient of such property is also taxed on the same difference.
 - ▶ With effect from financial year 2021-22, the above safe harbor of difference in stamp duty value and actual consideration is increased to 20% in the hands of both transferor and transferee in case of primary transfer of residential properties taking place between 12 November 2020 and 30 June 2021 provided the consideration for such transfer does not exceed INR20m.

¹⁸ "eligible business" means a business carried out by an eligible start-up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation and for which the start-up holds a certificate from the Inter-Ministerial Board of Certification

- ▶ **Modifying existing scheme of capital gains taxation upon distribution of capital asset to partner upon dissolution or otherwise of firm**
 - ▶ ITL provides for capital gains taxation in hands of firm or association or person (AOP) or body of individuals (BOI) (collectively called 'specified entity' hereafter) on distribution of capital asset to partners on dissolution or otherwise. FMV of capital asset on the date of distribution is deemed as sale consideration in hands of specified entity.

- ▶ **Rationalization of provisions related to Sovereign Wealth Funds (SWF) and Pension Funds (PF)**
 - ▶ Finance Act, 2020 introduced an exemption on income arising to "specified person" in nature of dividend, interest and long term capital gains, if such income was from an investment made in India and if the investment met certain conditions. One such condition was investment in qualifying investee entities.
 - ▶ Further, "specified person" was defined to include, inter alia, a notified SWF and notified PF, subject to fulfilment of certain conditions
 - ▶ It has now been proposed to provide for the following amendments with respect to such exemption:
 - ▶ As regards to definition of "specified person"
 - ▶ The condition that notified SWF/ PF should not undertake any commercial activity in or outside India has been substituted with a liberal parameter – they should not participate in day to day operations of the qualifying investee entity;
 - ▶ The condition for notified PF is expanded to provide that even if it is liable to tax in foreign country of its establishment, then it should have its entire income exempt from tax in such country;
 - ▶ A blanket exclusion introduced – If a SWF or PF has loans or borrowings, directly or indirectly, for purposes of making India investment, then it is deemed to be not eligible for exemption. However, SWFs may have loans from its respective Government.
 - ▶ As regards to coverage of qualifying investee entities
 - ▶ Relaxation to Category I/ II Alternate Investment Funds (AIF): AIF shall be considered as an eligible investee entity if it has at least 50% investment in qualifying infrastructure entity from erstwhile condition of 100%. AIFs allowed to invest in Infrastructure Investment Trust as well.
 - ▶ Addition of following entities as qualifying investees:
 - ▶ Domestic company, set up and registered on or after 1 April, 2021, having minimum 75% investments in one or more of qualifying infrastructure entity;
 - ▶ Non-Banking Financial Companies (NBFCs) registered as Infrastructure Finance Company or Infrastructure Debt Fund as per Reserve Bank of India directions, having minimum 90% lending to qualifying infrastructure entity
 - ▶ For purpose of calculation of thresholds above - 50% investment for AIF, 75% for domestic companies and 90% for NBFCs – method of calculation shall be prescribed by the Central Government

Amendment is effective from assessment years 2021-22 and onwards.

- ▶ FB 2021 substitutes aforesaid provision and provides for capital gains taxation in the hands of specified entity, if a partner receives any of the following, at the time of dissolution or reconstitution of specified entity:

Scenarios	Sale consideration	Cost of acquisition
Scenario 1 - where a partner receives any capital asset representing his capital account balance in books of specified entity	FMV of capital asset on the date of such receipt	Cost of acquisition of capital asset in hands of specified entity
Scenario 2 - where a partner receives any money or other asset in excess of his capital account balance in books of specified entity	Value of any money or FMV of other asset on the date of such receipt	Partner's capital account balance at the time of dissolution or reconstitution

- ▶ For the above purpose, capital account balance is computed without taking into account increase due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

▶ **Tax neutrality provisions extended to conversion of urban co-operative banks into banking companies.**

- ▶ The extant provisions of the ITL, allocates deductions such as depreciation, preliminary expenses, between the predecessor and successor co-operative banks in the ratio of number of days before and after the reorganization.
- ▶ In line with the RBI permission for voluntary conversion of urban co-operative banks into banking companies, the ITL is now amended to extend applicability of the above proportional grant of deduction to urban co-operative banks reorganizing as banking companies.
- ▶ Further, such re-organization will now be capital gains tax neutral.
- ▶ These amendments will be effective from financial year 2020-21.

▶ **Facilitating strategic disinvestment of public sector companies**

In order to promote strategic disinvestment, following provisions are introduced under the ITL:

- ▶ Any divestment by the Central/State Government which results in reduction of its holding in a public sector company (PSC) to below 51% shall be regarded as tax neutral demerger if the reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company and the resultant company is a PSC on the appointed date as indicated in the scheme of demerger and fulfils such conditions as may be prescribed.
- ▶ Further, it is proposed to relax the condition regarding carry forward of loss for disinvested PSC in amalgamation.

▶ **Exemption from withholding tax (WHT) to business trusts in whose hands dividend is exempt**

- ▶ Any dividend paid to business trusts, being Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InvIT), or persons notified shall not be subject to withholding tax with retrospective effect from 1 April 2020. This benefit was previously made applicable to only specified insurance companies.

▶ **Rationalization of WHT on payment to Foreign Portfolio Investors (FPIs)**

- ▶ Under the existing provisions of ITL, payments to FPIs (other than interest on Rupee Denominated Bonds and Government Securities) attracts WHT at a flat rate of 20% without grant of any Treaty Benefits resulting in FPIs having to file refund claims under the ITL.
- ▶ With effect from financial year 2021-22, FPIs will be eligible to claim treaty benefits to lower the WHT, if applicable, subject to the FPI furnishing a Tax Residency Certificate to the payer.

- ▶ **Withholding obligations on buyer while making payment to resident for purchase of goods:**
 - ▶ A new tax withholding provision has been introduced wherein the buyer while making payment to resident for purchase of goods having value exceeding fifty lakh rupees in the previous year is required to withhold taxes at the rate of 0.1%.
 - ▶ The obligation to withhold arises only in cases where buyer's total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out.
 - ▶ The above provisions would not be applicable in cases where payment is already subject to Tax deduction at source or Tax collection of source obligation under other provisions of the ITL (except TCS provisions applicable on sale of goods w.e.f. 01 October 2020).
 - ▶ In case where buyer fails to furnish Permanent Account Number (PAN), then in such cases the rate of 5% would be applicable instead of rate 0.1%.
- ▶ **Penal TDS/TCS in case of non-filers of income tax return**
 - ▶ In order to ensure filing of return of income by persons who have suffered a reasonable amount of TDS/TCS, penal TDS/TCS rates have been introduced.
 - ▶ As per these provisions, any person making payment or receiving any sum from a specified person will be required to deduct/collect taxes at a rate twice the rate of tax deduction/collection at source or 5%, whichever is higher.
 - ▶ Specified person means any person who has not filed the return of income for last two years preceding the financial year in which tax is required to be deducted/collected, and the tax deducted/collected is INR 50,000 or more in each of the two preceding years
 - ▶ These provisions are not applicable to a non-resident not having a permanent establishment in India
 - ▶ Further, these provisions are not applicable when income is required to be deducted for payments in the nature of salary income, lottery or crossword puzzles, winnings from race-horses, investment in securitization trust and cash withdrawals in excess of specified limit.
- ▶ **Increase in threshold limit from INR50m to INR100m for tax audit cases for person carrying on business:**
 - ▶ The ITL currently provides relief from tax audit to taxpayer carrying on business and having total sales, turnover or gross receipts up to INR50m subject to cash receipts and payments not exceeding 5% of total receipts and payments respectively. FB 2021 now increases the threshold limit of INR50m to INR 100m.
- ▶ **Reduction in time limit to file belated return or revised return:**
 - ▶ Currently, one can file belated or revised return on or before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. This has been now reduced by three months, which means that belated/revised return should be filed within three months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. This amendment is effective from return filing for financial year 2020-21 onwards.
- ▶ **Rationalization of the provision relating to processing of returned income:**
 - ▶ ITL while processing return of income allows certain specified adjustments.
 - ▶ FB 2021 now provides for following adjustments while processing return of income being:
 - ▶ Tax department is allowed to make necessary adjustment of increase in income indicated in the audit report but not taken into account in computing the total income.
 - ▶ No income linked deduction would be allowed under ITL, where taxpayer has failed to file return of income on or before due date.
 - ▶ Time limit for sending intimation for processing of return is reduced from one year to nine months from the end of the financial year in which the return was furnished.
 - ▶ ITL provides for time limit of six months from the end of the financial year in which the return is furnished for selection of cases for scrutiny assessment. This time limit is now reduced to three months from the end of the financial year in which the return is furnished.

- ▶ **Relaxation of interest Levy on non-payment of advance tax instalments on dividend income**
 - ▶ There shall be no levy of interest for shortfall arising in respect of advance tax installments payable prior to distribution of dividend income, provided subsequent installments of advance tax with respect to dividend income are fully paid. The same is effective from financial year 2021-22.

- ▶ **Key amendments in relation to taxation of Charitable Trust and Institutions (CTI) (effective from 1 April 2022):**
 - ▶ Rationalization of provisions for taxation of CTI to eliminate possibility of double deduction while calculating application of income:
 - ▶ CTIs were claiming exemption for receipt of corpus donation but claiming application if such corpus funds were utilized for charitable purposes. Similarly, application from loan funds was claimed twice once as actual spending and again at the time of repayment of loan. To that extent, CTIs were enjoying double benefit. To overcome such situations of unintended double benefit, following amendments are proposed.
 - ▶ Any application out of corpus shall not be considered as application for charitable or religious purposes. However, if any amount is deposited or invested back in the corpus funds from out of income of any year, the same shall be regarded as application of that year.
 - ▶ Any application from loans or borrowings shall not be regarded as application for charitable or religious purposes. However, repayment of loan or borrowing from out of income of any year shall be regarded as application of income in the year of repayment.
 - ▶ One may have to examine impact of past transactions where application has already been claimed in past and corpus is restored or loan is repaid in the year/s post amendment.
 - ▶ CTIs shall not be allowed to set-off any past year's excess application against its income of current year for computing '85% of income' which is required to be applied for charitable purposes for claiming charity exemption. This may apply retroactively to brought forward deficit from past year/s.
 - ▶ Any corpus donation received by charitable trust is presently exempt from 85% application rule. Now, this exemption is allowed only if such corpus donation is specifically invested or deposited into any of the prescribed modes under the ITL.

- ▶ **Allowing "prescribed income-tax authority" for conduct of inquiry before assessment of taxpayers:**
 - ▶ ITL bestowed power upon Jurisdictional Tax Authority to issue notice to taxpayer for furnishing tax returns if not furnished within the prescribed time limit
 - ▶ In alignment of CG's policy to make all processes fully faceless and enable centralized issuance of notices in automated manner in dynamic jurisdiction, FB 2021 proposes to provide that 'prescribed income-tax authority' besides Jurisdictional Tax Authority is entitled to issue such notices.
 - ▶ The amendment is effective from 1 April 2021.

- ▶ **New scheme of faceless appeal proceedings before Income Tax Appellate Tribunal (ITAT):**
 - ▶ Similar to faceless assessment, appeal before Commissioner of Income-tax (Appeals) and penalty schemes, CG is empowered to formulate faceless scheme for conducting appeal proceedings before ITAT so as to impart greater efficiency, transparency and accountability by:
 - ▶ Eliminating the interface between ITAT and parties to the appeal to the extent technologically feasible
 - ▶ Optimizing utilization of resources through economies of scale and functional specialization
 - ▶ Introducing an appellate system with dynamic jurisdiction
 - ▶ The amendment is effective from 1 April 2021

▶ **Constitution of Dispute Resolution Committee (DRC) for small and medium taxpayers:**

- ▶ Central Government (CG) is empowered to introduce a new optional scheme to provide early tax certainty to small and medium taxpayers who fulfil specified conditions in respect of specified order to be specified.
- ▶ DRC will cover cases where returned income is INR 50 lacs or less and aggregate amount of proposed variation is less than INR 10 lacs.
- ▶ Powers retained to prescribe other conditions as well.
- ▶ DRC will have power to reduce/waive any penalty and grant immunity from prosecution under the Income Tax Laws (ITL)
- ▶ DRC will not apply to:
 - ▶ Orders passed pertaining cases of search proceedings, survey proceedings and proceedings from exchange of information provisions
 - ▶ A taxpayer against whom there is detention, prosecution or conviction under certain specified laws
- ▶ CG is also authorized to frame faceless scheme for conducting proceedings before DRC
- ▶ Consequent upon introduction of DRC, present provisions of Settlement Commission will be discontinued with effect from 1 February 2021 with pending cases if opted by applicant to be decided by an Interim Board to be constituted by CG.

▶ **Constitution of Board of Advance Ruling (BAR) for speedy disposal of applications before Authority for Advance Ruling (AAR)**

- ▶ In past, scheme of advance rulings was initiated to avoid dispute in tax matters and provide tax certainty, wherein rulings are pronounced by AAR once applications are made
- ▶ Functioning of AAR is hampered due to vacancy of the post of Chairman and Vice-Chairman due to non-availability of eligible persons
- ▶ FB 2021 proposes to constitute a new "Board of Advance Ruling" (BAR) having following features:
 - ▶ Existing AAR mechanism shall cease to operate from a notified date and all the powers of the AAR shall vest in BAR from such notified date;
 - ▶ Central Government (CG) to constitute one or more BARs;
 - ▶ BAR to have 2 members of ranking at or above Chief Commissioner of Income-tax;
 - ▶ Unlike in case of AAR, ruling given by BAR may not be binding on applicant or tax department and is appealable before High Court;
 - ▶ The appeal to High court is to be filed within 60 days from date of communication of the ruling in such manner/ form as may be prescribed;
 - ▶ A condonation period of 30 days may be allowed by High Court on existence of sufficient cause preventing filing of appeal in stipulated period;
 - ▶ In case where tax authority is aggrieved by the order of BAR, tax authority also can file appeal to HC. CG is empowered to make a scheme for filing of appeal by tax authorities (faceless scheme akin to one for assessment and appeals);
 - ▶ Pending applications with AAR before the notified date shall be transferred to BAR for adjudication and such transfer is automatic and not subject to an option of withdrawal for applicants of pending application.
 - ▶ CG is empowered to make a faceless scheme for purpose of giving advance ruling by BAR (faceless scheme akin to one for assessment and appeals).
- ▶ Amendment is effective from 1 April 2021

▶ **Reduction of time limit for completing assessment:**

- ▶ Due to advancement and computerization of assessment process including introduction of Faceless Assessment Scheme 2019, there is need to reduce period of limitation for conducting assessment proceedings

- ▶ In view thereof, the time limit for completion of assessment proceedings is reduced to 9 months (as against existing 12 months) from the end of the relevant assessment year in which income the income was first assessable.
- ▶ The amendment is effective for tax year 2020-21 and onwards.

- ▶ **Discontinuance of Income-Tax Settlement Commission (ITSC):**
 - ▶ FB 2021 proposes to discontinue ITSC w.e.f. 1 February 2021 (closure date) and constitute an Interim Board (IB) for settlement of pending cases having following features:
 - ▶ No application with ITSC shall be made on or after closure date;
 - ▶ CG to constitute one or more IBs (having 3 members of the rank of Chief Commissioner nominated by CBDT) for settlement of pending applications;
 - ▶ In case of difference of opinion between members of IBs, opinion shall move in favour of majority;
 - ▶ All powers of ITSC shall vest in IBs for purpose of settlement of pending applications from closure date;
 - ▶ Applicant shall be given an option to withdraw the pending application within 3 months from date of commencement of Finance Act 2021 and shall intimate jurisdictional Tax Authority about the withdrawal;
 - ▶ For such withdrawn applications, the respective Tax Authority with whom the proceedings had been stalled due to application to ITSC, shall dispose off the case in accordance with provisions of the ITL;
 - ▶ Tax Authority shall not be entitled to use the material and other information produced by taxpayer before ITSC or the result of inquiry/ evidence recorded by ITSC. This shall not apply if materials produced by any of income-tax authorities or inquiry made/evidence recorded by them.
 - ▶ CG is empowered to make faceless scheme for purposes of settlement of pending applications before IBs.
 - ▶ The amendment is effective from 1 February 2021.

- ▶ **Revamped procedure for conducting reassessment and search assessment proceedings:**
 - ▶ Due to advancement of technology, Tax Department receives relevant information on almost real time basis from various entities and other governmental agencies. Tax Department uses this information to verify the information declared by taxpayer in their tax return and to detect non-filers or those who have not disclosed the correct amount of total income. Largely, process is information driven. Therefore, there is need for complete reform of system of reassessment of income.
 - ▶ Under the new scheme, reassessment proceedings can be initiated by Tax Authority only where he has information which suggests that the income chargeable to tax has escaped assessment for relevant assessment year. New scheme provides specific circumstances defining source of information viz (a) information flagged in accordance with risk management strategy formulated by CBDT and largely done by computer based system (b) final objections raised by CAG that assessment of taxpayer has not been made in accordance with provisions of the ITL (c) Survey or search action on taxpayer on or after 1 April 2021 (d) money, bullion, jewellery or other valuable article or thing, books of account or documents seized or requisitioned in case of any other person on or after 1 April 2021 which belongs to or pertains to the taxpayer.
 - ▶ Prior approval of specified senior Tax Authority is to be obtained before issuance of notice for reassessment.
 - ▶ A new procedure is also prescribed for Tax Authority to conduct enquiries, if required and granting an opportunity to taxpayer before issuance of notice for reassessment except in cases of search or requisition.
 - ▶ Revised time limit for conducting reassessment proceedings:
 - ▶ In normal case – 3 years from the end of relevant assessment year
 - ▶ In cases where tax authority is in possession of evidence which reveals that income escaped assessment is more than INR 50 lacs – 10 years from the end of relevant assessment year
 - ▶ Reopening of past years as per existing provisions is grandfathered. Likewise, cases of search or requisitioned initiated before 31 March 2021 are excluded from the scope of new procedure.

- ▶ **Appeals pending before Settlement Commission to not be eligible for settlement under “The Direct Tax Vivad Se Vishwas Act 2020”**
 - ▶ An appeal or writ petition arising out of an order of Income-tax settlement commission and which is pending before any appellate forum is not eligible for settlement under “The Direct Tax Vivad Se Vishwas Act 2020”. The proposed amendment is retrospective and is effective from 17 March 2020.
- ▶ **Provisional Attachment of Property in cases involving falsification of books of accounts**
 - ▶ In order to curb the practice of claiming GST input tax credit from fake invoices, Finance Act 2020 introduced a penalty provision wherein penalty will be levied on taxpayer making false or omitted entry or any other person who causes such taxpayer to make the false or omitted entry.
 - ▶ With effect from financial year 2021-22, Tax Authority is now permitted to provisionally attach the Taxpayers property if necessary, during the course of pendency of proceedings regarding imposition of penalty in cases involving falsification/ omission of entries in books of accounts, provided the amount of penalty imposable is likely to exceed INR20m.
- ▶ **Delayed remittance of employee contribution to employee welfare funds to result in permanent disallowance of deduction**
 - ▶ Where an employer is required to deduct certain amount towards employee contribution to labour welfare funds (PF, ESI, etc.) from the employee’s pay and the same is not remitted to the respective fund within the “due date” specified in the relevant legislation, such amount shall not be allowed as a deduction in the hands of the employer, while the contribution at the time of deduction is regarded as income of the employer. Hitherto, there existed a controversy over whether an employer remitting the employee contribution post “due date” would be eligible to claim deduction on payment basis on lines similar to employer contribution under the ITL.
- ▶ **Infrastructure debt funds permitted to issue zero coupon bonds**
 - ▶ The definition of “zero coupon bond” (i.e. bonds in respect of which no payment and benefit is received or receivable before maturity or redemption) under the ITL eligible for capital gains treatment, was hitherto restricted to bonds issued by infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank. It is now extended even to bonds issued by infrastructure debt funds. Correspondingly, payment of such interest on maturity does not require any WHT. This amendment will be effective from financial year 2021-22.
- ▶ **Definition of the term ‘Liable to tax’:**
 - ▶ ITL uses the term ‘liable to tax’ in various provisions but same is not been defined in any provisions. The term ‘Liable to tax’ has been defined to mean, that there is a liability of tax on such person under any law for the time being in force in any country. Further, it includes a case where subsequent to imposition of tax liability, an exemption has been provided.
- ▶ **Rationalization of provisions related to Sovereign Wealth Funds (SWF) and Pension Funds (PF)**
 - ▶ Finance Act, 2020 introduced an exemption on income arising to “specified person” in nature of dividend, interest and long term capital gains, if such income was from an investment made in India and if the investment met certain conditions. One such condition was investment in qualifying investee entities.
 - ▶ Further, “specified person” was defined to include, inter alia, a notified SWF and notified PF, subject to fulfilment of certain conditions
 - ▶ It has now been proposed to provide for the following amendments with respect to such exemption:
 - ▶ As regards to definition of “specified person”
 - ▶ The condition that notified SWF/ PF should not undertake any commercial activity in or outside India has been substituted with a liberal parameter – they should not participate in day to day operations of the qualifying investee entity;
 - ▶ The condition for notified PF is expanded to provide that even if it is liable to tax in foreign country of its establishment, then it should have its entire income exempt from tax in such country;

- ▶ A blanket exclusion introduced – If a SWF or PF has loans or borrowings, directly or indirectly, for purposes of making India investment, then it is deemed to be not eligible for exemption. However, SWFs may have loans from its respective Government.
- ▶ As regards to coverage of qualifying investee entities
 - ▶ **Relaxation to Category I/ II Alternate Investment Funds (AIF):** AIF shall be considered as an eligible investee entity if it has atleast 50% investment in qualifying infrastructure entity from erstwhile condition of 100%. AIFs allowed to invest in Infrastructure Investment Trust as well.
 - ▶ **Addition of following entities as qualifying investees:**
 - ▶ Domestic company, set up and registered on or after 1 April, 2021, having minimum 75% investments in one or more of qualifying infrastructure entity;
 - ▶ Non-Banking Financial Companies (NBFCs) registered as Infrastructure Finance Company or Infrastructure Debt Fund as per Reserve Bank of India directions, having minimum 90% lending to qualifying infrastructure entity
- ▶ For purpose of calculation of thresholds above - 50% investment for AIF, 75% for domestic companies and 90% for NBFCs - method of calculation shall be prescribed by the Central Government
- ▶ Amendment is effective from assessment years 2021-22 and onwards.

1 February 2021

Union Budget 2021

Tax Alert - International Tax

Clarification on provisions related to Equalisation Levy and changes to the advance ruling process

Key tax takeaways

- ▶ Clarifications regarding applicability of Equalisation Levy (EL) to e-commerce transactions can be expected to reduce ambiguities on some aspects.
- ▶ In an effort to reduce the litigations and create non-adversarial regime for taxpayers, changes made to the AAR mechanism aims to further strengthen the mechanism for obtaining upfront certainty.

International tax

- ▶ **Rationalization of the provisions of EL**
 - ▶ The Finance Act (FA), 2016 introduced EL with effect from 1 June 2016. The EL, as introduced by the FA 2016, is levied at 6% on the gross consideration received by non-residents for online advertisement and related services from specified persons (Ad EL).
 - ▶ Further, the FA 2020 which came into effect from 1 April 2020 extended the scope of EL to charge a 2% levy on gross consideration received from online sale of goods or provision of services (including facilitation) by a non-resident operator of a digital facility or platform (e-com EL).
 - ▶ The Act provided for an exemption from income-tax where the amount was subject to EL.

Highlights



Rationalization of provisions related to equalization levy



Constitution of Board for Advance Ruling

- ▶ There was ambiguity on the scope and the intent of the provisions under certain situations.
- ▶ In this regard, the following amendments seek to address the ambiguities:
 - ▶ Taxation as royalty or fee for technical services under the income tax law would have priority over EL. This would also bring in certainty on application of EL provisions on income streams where both EL and withholding on royalty/ fee for technical services could potentially apply.
 - ▶ In order to be regarded as “online sale of goods” and “online provision of services” for e-commerce supply or service, one or more activities need to be undertaken online. These are, namely:
 - a) acceptance of offer for sale;
 - b) placing purchase order;
 - c) acceptance of purchase order;
 - d) payment of consideration or
 - e) supply of goods or provision of services, partly or wholly.
 - ▶ Consideration received/ receivable for sale of goods and provision of services will be included regardless of whether the e-commerce operator owns the goods or provides the service.
 - ▶ A transaction which is subject to EL is exempt from income tax under section 10(50).
 - ▶ Such an exemption provided to e-com EL had certain anomaly or mismatch in the date of applicability of the provision.
 - ▶ Accordingly, applicability of income-tax exemption for consideration covered by e-com EL will now be aligned with 1 April 2020 along with date of applicability of e-com EL.
 - ▶ The amendments will take effect retrospectively from financial year starting from 1 April 2020.

▶ **Changes to the advance ruling process**

- ▶ Under the Act, the AAR provides a mechanism for obtaining the rulings by non-residents/ residents which are binding on both the applicant and the revenue, but can be challenged under the constitutional remedies (such as writ petition to a High Court).
- ▶ The AAR consists of a Chairman and various Vice-Chairman, revenue members and law members. However, the bench of AAR cannot function if the post of either the Chairman or Vice-Chairman is vacant.
- ▶ The past experiences indicate that such posts have remained vacant for a long time in the absence of eligible persons. Therefore, in order to provide rulings to the taxpayer in a timely manner, the “Board for Advance Ruling” (Board) will be constituted:
 - ▶ The existing AAR will cease to operate with effect from date to be notified by the Central Government.
 - ▶ Constitution of one or more Boards for Advance Ruling will be notified. Every such Board will consist of two members, each being an officer not below the rank of Chief Commissioner.
 - ▶ The central Government will introduce a new scheme to impart great efficiency, transparency, accountability and to introduce dynamic jurisdiction.
 - ▶ Advance rulings issued by the Board will be appealable before the High Court.
 - ▶ The cases pending before the AAR on the notified date will be transferred to the Board.

- ▶ Corresponding amendments will be made to the relevant provisions with effect from 1 April 2021.

- ▶ **No specific amendments on “significant economic presence” criteria for business connection**

- ▶ As provided for by the FA 2020, the provision will be applicable from 1 April 2021.
- ▶ Under this provision, a non-resident could have a taxable presence by way of business connection in India based on value of transactions undertaken in India or by systematically engaging with prescribed number of users in India through digital means. The thresholds are yet to be prescribed for this purpose.

- ▶ **Definition for “liable to tax” will be introduced**

- ▶ The Act did not provide any specific definition of the term “liable to tax”
- ▶ The amendment proposes to define this term, in relation to any person as that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.

1 February 2021

Union Budget 2021

Tax alert – Transfer Pricing

Rationalization of Minimum Alternate Tax (MAT) provisions and revision of compliance timelines

Key tax takeaways

- ▶ Rationalization of the Minimum Alternate Tax (MAT) provisions to recompute past years book profits to reflect additional income on account of secondary adjustment or Advance Pricing Agreement (APA) entered by the taxpayer
- ▶ The time limit for completion of transfer pricing assessment proceedings for assessment year 2021-22 onwards is reduced by three months
- ▶ Appellate proceedings before Income Tax Appellate Tribunal made "faceless"

Transfer pricing

- ▶ **Rationalization of provisions of MAT**
 - ▶ **Background**
 - ▶ MAT at the rate of 15% (plus applicable surcharge and cess) of book profit is applicable in case tax on the total income of a company computed under normal provisions is less than the 15% (plus applicable surcharge and cess) of book profit
 - ▶ Under the provisions, the computation of book profit does not provide for any adjustment on account of additional income of past year(s) included in books of account of current year on account of secondary adjustment or APA entered by the taxpayer

Highlights



Rationalizing
MAT provision



3 months
reduction of
completing
assessment



Faceless ITAT

▶ **Amendment:**

- ▶ Where there is an increase in the book profit of the income of a financial year due income of past year(s) on account of secondary adjustment or APA entered by the taxpayer, the Assessing Officer shall re-compute the book profit and tax payable of the past years in the prescribed manner
- ▶ The taxpayer will have to make an application in this regard to the assessing officer
- ▶ The procedure and time periods applicable for "rectification proceedings" will be applicable
- ▶ This amendment will be effective from 1 April 2021

▶ **Reduction of time limit for assessment completion**

▶ **Background**

- ▶ The time limit for completion of assessment proceedings involving transfer pricing reference for Assessment year (AY) 2019-20 and onwards is 24 months from the end of the AY in which income was first assessable

▶ **Amendment:**

- ▶ The time limit for completion of assessment proceedings has been proposed to be reduced by three months
- ▶ Accordingly, for AY 2021-22 and onwards, time limit to complete assessments involving transfer pricing reference will be 21 months from the end of the relevant AY
- ▶ This amendment will be effective from 1 April 2021

1 February 2021

Union Budget 2021

Tax Alert – Personal Taxes

Ease of compliance for individual taxpayers with no increase in personal tax rates

Key tax takeaways

- ▶ No increase in personal tax rates/ surcharge
- ▶ Various measures proposed towards continuation of the reforms already taken so far to bring ease of compliance (faceless appellate proceedings) and reduce litigation (dispute resolution committee)
- ▶ Increase in taxability of interest on employee's contribution to specified provident fund schemes in excess of thresholds and maturity proceeds received from specified ULIPs
- ▶ In view of technological improvement, reduction in time limits for filing belated and revised returns and certain assessment proceedings

Personal tax

Exemption for LTC Cash Scheme

Legislative amendments introduced to give effect to the recently introduced LTC cash scheme subject to the fulfilment of the below conditions:

- ▶ Purchase of goods/ services between 12 October 2020 to 31 March 2021
- ▶ Goods/ services liable to GST of 12% or more and purchased/ procured from GST registered vendors/ service providers
- ▶ Amount of exemption shall not exceed INR 36,000 per person or one-third of the specified expenditure, whichever is less
- ▶ If an individual receives any amount for the LTC (as per terms of employment) which is more than the amount eligible for exemption (mentioned above), the exemption would be limited to INR 36,000 per person or one-third of the specified expenditure, whichever is less

Highlights

- ▶ Reduction in time period for initiation/ completed of assessment by 3 months
- ▶ Due date to file revised/ belated return reduced by 3 months
- ▶ Higher rate of TDS for return non-filers
- ▶ Faceless ITAT proceedings
- ▶ Exemption for LTC Cash Scheme

Affordable Housing

An additional deduction up to INR 1,50,000 will be continued to be provided for purchase of first residential house property covered under the definition of affordable housing, if the loan has been sanctioned upto 31 March 2022.

Relaxation from return filing for certain category of Resident senior citizens

Certain category of resident senior citizens of the age of 75 or more have been exempted from filing of return of income subject to fulfilment of below conditions:

- ▶ He/ she has pension income and no other income.
- ▶ In addition to such pension income he/ she may have also have interest income from the same specified bank in which he/ she is receiving the pension
- ▶ He/ she shall be required to furnish a declaration to the specified bank

Relief from double taxation of income from notified overseas retirement fund

In order to address the issue of mismatch of taxation of income from overseas retirement fund maintained in a notified country, a new provision has been introduced. 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

Higher rates of TDS/ TCS under for non-filer of return

Special provisions have been proposed for deduction of TDS/ TCS at higher rates under certain provisions for non-filers of tax returns for 2 consecutive tax years.

Advanced Tax instalment for dividend income

Interest for delay in payment of advance tax not to be levied on dividend income (not applicable on deemed dividend) for advance tax instalments prior to receipt/ declaration of dividend income

Taxation of proceeds from high premium ULIP

- ▶ Taxation of proceeds received on maturity of high premium unit linked insurance policies (ULIPs) issued on or after 01 February 2021, where the aggregate premium exceeds INR 2,50,000 per annum in any financial year during the policy term
- ▶ Such proceeds would be taxable as capital gains to be computed in the manner as may be prescribed
- ▶ However, the above provisions shall not apply to the proceeds received at the time of death of policy holder and the same shall remain tax exempt

Reduction in time limit for filing of returns

Currently the belated returns and revised returns can be filed before the end of the assessment year or the completion of the assessment whichever is earlier.

It has been proposed that the last date for filing of belated or revised return of income be reduced by three months. Thus, belated or revised returns could now be filed three months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Tax Treatment of employee's contribution towards various Provident Fund Schemes

Interest accruing on employee's contribution to specified provident fund schemes, on contributions in excess of INR 2,50,000 per annum made on or after 01 April 2021, will be taxable

Focus on concluding the process of the implementation of 4 new labour codes

While the Government is working on introducing the new labour codes (likely effective 01 April 2021), specific mention was made in the budget speech for Social security benefits to be extended to gig and platform workers (non-traditional workforce), reduction in compliance burden on employers, with single registration and online returns.

Extending faceless proceedings to The Income Tax Appellate Tribunal (ITAT) in jurisdiction less manner

In order to impart greater efficiency, transparency and accountability, faceless assessment scheme, faceless appeal scheme and faceless penalty scheme have already been introduced. In order to reduce the human interface to a larger extent, it has been proposed to introduce faceless ITAT proceedings.

Constitution of Dispute Resolution Committee for small and medium taxpayers

To reduce litigations and to resolve disputes for small taxpayers, a faceless dispute resolution committee has been proposed to be set up. Specified taxpayers with returned income up to INR 50 lakhs and disputed income up to INR 10 lakhs can approach the committee for resolution

Revision of time limits for initiation of Income escaping assessment

It has been proposed that the time period to issue Notice for income escaping assessment be reduced as below:

- ▶ Income escaping assessment, the time limit has been reduced to 3 years from 6 years
- ▶ In specified cases, can be reopened till 10 years

Reduction of time limit for initiation and completion of assessment

Time limit for initiation of scrutiny proceedings have been reduced from 6 months to 3 months from the end of the financial year in which return has been furnished.

Further, the time limit for completion of assessment proceedings have been reduced by 3 months. Accordingly, the assessment is proposed to be completed within 9 months from the end of the assessment year

1 February 2021

Union Budget 2021

Tax Alert – Indirect Tax

Budget proposals focus on promoting Indian manufacturing and strengthening anti-tax avoidance measures

Key tax takeaways

- ▶ Agriculture Infrastructure and Development Cess introduced. To be levied on import of specified goods and on manufacture of petrol and diesel
- ▶ Conditional exemptions given under customs shall have limited time frame
- ▶ Penal provisions have been strengthened to address tax leakage
- ▶ Provisions relating to zero-rated supplies under GST have been rationalized
- ▶ Benefit of Form C under CST plugged

Indirect tax

- ▶ **Customs**
 - ▶ As a measure to overhaul custom duty structure, sunset clause is introduced for all conditional exemptions which are currently in force. The same shall be valid till 31 March 2023 unless withdrawn earlier

Highlights

Customs

- ▶ Time limit for existing and new conditional exemptions
- ▶ Early filing of the Bill of Entry
- ▶ Countervailing and anti-dumping duty provisions modified

GST

- ▶ Zero-rating benefit to SEZ for authorized operations only
- ▶ GST Audit certification by professional not required
- ▶ Self-certified reconciliation statement
- ▶ Supply by clubs to its members is now taxable measures

Others

- ▶ New cess on goods imported
- ▶ Issuance of Form "C" - scope restricted

- ▶ New conditional exemptions shall be valid till 31 March immediately following two years from the date of grant or variation of such exemption (unless otherwise specified or rescinded earlier)
- ▶ Bill of entry for import of goods needs to be filed before the end of the preceding day of arrival of goods. However, the government can provide different time limit in certain cases, which shall not be later than the end of the day on which the goods have arrived
- ▶ Power has been granted to confiscate goods where the same have entered for exportation under wrongful claim of refund or remission of duty
- ▶ Penalty under customs to be levied in cases where ITC under GST is claimed basis fraudulent invoice and the same is utilized for payment of integrated tax on export. The penalty leviable can be up to five times the amount of refund. This penalty will be in addition to the penalty imposed under GST
- ▶ Any enquiry or investigation culminating into issuance of notice, has to be completed within two years from the date of initiation of audit, search, seizure or summons. Time limit can be extended by one more year by the Principal Commissioner / Commissioner subject to establishing sufficient cause
- ▶ The provision will not apply to ongoing investigations / inquiry already initiated prior to Finance Bill 2021 receiving the assent of the President
- ▶ Common customs electronic portal has been notified. The same will facilitate registration, service of orders, filing bill of entry, shipping bills and any other documents or forms prescribed
- ▶ Countervailing duty and Anti-dumping duty
 - ▶ In cases where the government is of the opinion that circumvention of such duties has taken place, it may levy the duties retrospectively from the date of initiation of inquiry.
 - ▶ Such duties shall not be applicable on imports by unit under SEZ or 100% export-oriented undertaking. However, if it is specifically made applicable in the relevant notification for such units or where such goods are cleared into domestic tariff area, the duties shall be imposed
 - ▶ In cases where such duties are revoked temporarily, the revocation shall not exceed one year at a time
 - ▶ On review of such duties, the government can now extend the imposition of duties for a period up to five years. Earlier, the extension was mandatorily for a fixed period of five years
 - ▶ In cases where the export price of a product is reduced in order to render such duties ineffective, government can modify the duty to counter the effect of such absorption
- ▶ Social Welfare surcharge has been rationalized. It shall be levied at the rate of 10% on all products

▶ **Goods and Services Tax**

- ▶ Benefit of zero-rated supplies made to SEZ unit/ developer has been now restricted only to supplies made for authorized operations of such SEZ unit/ developer
- ▶ The option of making zero-rated supply on payment of tax and claiming refund of the same shall be available only to notified class of taxpayers or supplies. Others have to mandatorily opt for non-payment of tax and refund of unutilized ITC
- ▶ The time limit to realize sale proceeds of goods exported without payment of tax has been linked to Foreign Exchange Management

Act, 1999. In case of non-realization of money within the stipulated time, the person has to deposit within 30 days, the refund claimed along with interest

- ▶ The transaction between a registered person (other than individual) and its members shall be treated as supply and taxed accordingly. Further, the said person and its member shall be deemed to be two separate persons. The provision will apply retrospectively from 1 July 2017. This seems to have been done to overcome the recent Supreme Court ruling in case of Calcutta Club Limited dealing with non-taxability due to principle of mutuality
- ▶ Consequently, para 7 of Schedule II to CGST Act has been omitted w.e.f. 1 July 2017
- ▶ CGST Act has been amended to allow ITC only in cases where the supplier furnished the statement of outward supplies in Form GSTR-1 and details of the same are communicated to the recipient. Currently, Rule 36(4) of Central Goods and Services Tax Rules, 2017 allows unmatched credit of up to 5% of the amount of matched credit
- ▶ GST law has been amended to give effect to interest liability on net tax payment, retrospectively from 1 July 2017. This was already clarified earlier by the government
- ▶ The provision mandating furnishing of reconciliation statement duly audited by specified professional has been removed. Post amendment, the registered person shall furnish the annual return which may include a self-certified reconciliation statement
- ▶ GST Council may exempt a class of taxpayers from the requirement of filing the annual return
- ▶ Mandatory pre-deposit (25% of penalty) is required for filing appeal before the Appellate Authority against detention or seizure order
- ▶ Conclusion of recovery proceeding will not absolve the person from paying penalty on account of seizure and confiscation of goods and conveyances in transit
- ▶ Provisional attachment provisions are extended to cover persons who retain the benefits and at whose instance the specified offences are committed. Earlier, penalty provisions were introduced for such persons
- ▶ Powers have been granted to Commissioner or an officer authorized by him to call for information relating to any matter in connection with CGST Act

Other indirect tax takeaways

- ▶ **Agriculture Infrastructure and Development Cess (AIDC)**
 - ▶ For the purpose of financing improvement in agriculture infrastructure and other development expenditure by the Government, a new cess called Agriculture Infrastructure and Development Cess (AIDC) is proposed to be introduced
 - ▶ AIDC shall be levied on import of specified goods as a duty of customs and shall not exceed the rate prescribed under First Schedule of Customs Tariff Act, 1975 (i.e., Basic Customs duty)
 - ▶ It shall be calculated on value of imported goods determined as per section 14 of the Customs Act, 1962
 - ▶ Further, to ensure that imposition of cess on import of specified items does not lead to additional burden on the consumer, basic customs duty on most of such items has been lowered

- ▶ The said Cess is also levied as an additional duty of excise on manufacture of petrol and high-speed diesel
- ▶ AIDC shall come into force w.e.f. 2 February 2021

▶ **Central sales tax (CST)**

- ▶ Provisions of section 8 of Central Sales Tax Act, 1956 has been amended to provide that Form "C" can be issued only in cases where the registered person either resells the goods so procured or uses the same in manufacture, processing and sale of only those goods which are currently covered under CST.
The goods covered under CST are petroleum crude, high speed diesel, petrol, natural gas, aviation turbine fuel and alcohol for human consumption

Glossary

BE - Budget Estimate

FC - Finance Commission

FCI - Food Corporation of India

FRBM Act - Fiscal Responsibility and Budget Management Act

NIP - National Infrastructure Pipeline

NSSF - National Small Savings Fund

RE - Revised Estimate

ITL - Income Tax Law

CG - Central Government

WHT - Withholding Tax

ITAT - Income Tax Appellate Tribunal

MAT - Minimum Alternative Tax

FMV - Fair Market Value

FB 2021 - Finance Bill 2021

RBI - Reserve Bank of India

HC - High Court

CAG - Comptroller and Auditor General of India

CBDT - Central Board of Direct Taxes

AAR - Authority for Advance Ruling

Act - Income-tax Act, 1961

Ad EL - Advertisement Equalisation Levy

Board - Board of Advance Ruling

e-com EL - e-commerce Equalisation Levy

EL - Equalisation Levy

FA - Finance Act

MAT - Minimum Alternate Tax

AY - Assessment Year

APA - Advance Pricing Agreement

ITAT - Income Tax Appellate Tribunal

ULIP - Unit Linked Insurance Policy

LTC - Leave Travel Concession

GST - Goods and Services Tax

ITAT - Income Tax Appellate Tribunal

AIDC - Agriculture Infrastructure and Development Cess

CGST Act - Central Goods and Services Tax Act, 2017

CST - Central Sales Tax

GST - Goods and Services Tax

ITC - Input tax credit

SEZ - Special Economic Zone



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