India Union Budget 2021-22

Point of view

Telecommunication

#Budget2021 #KPMGBudgetLive

Key announcements for the sector

1. The Government expects a 60% year-on-year jump in revenue from the telecom sector at Rs 53,986.72 crore in FY'22 against a modest Rs 33,737 crore earned in the current fiscal year.
2. An outlay of INR 9,000 crores has been budgeted to make further progress in the on-going Bharat Net project:
   - by expanding the optical fiber network to more Gram Panchayats, installing more Wi-fi access points and Fiber to the Home ('FTTH') connections.
   - development of Comprehensive Telecom Development Plan for North East Region and several islands of India
3. Allocation of INR 5,200 cr. for setting up Optical Fiber based network for Defense Services

Direct Tax

1. The Finance Act, 2020 had widened the scope of Equalization Levy ('EL') to include a wide array of online transactions within its ambit. The legislation was subjected to conflicting interpretations. Budget 2021 proposes to clarify effective 1 April 2020 as follows:
   (a) EL shall be applicable to transactions which are even partially carried out online. These include online acceptance of an offer for sale, online placement/ acceptance of purchase order, online payment of consideration etc.
   (b) E-commerce operators shall be liable to EL in respect of the consideration for goods/ services facilitated by them even if they don't own those goods or services.
   (c) EL shall not include in its purview, transactions which are taxable as Royalty/Fee for Technical Services under the Income Tax Act, 1961 read with the relevant tax treaties.
2. Goodwill of a business or profession not to be considered as a depreciable asset and accordingly, no tax depreciation will be allowed on such goodwill (including acquired goodwill). In a case of acquired goodwill, purchase price shall be considered as cost of acquisition for computation of capital gains. However, earlier depreciation obtained (if any) shall be reduced from the purchase price.

   Slump sale to include transfer of an undertaking by any modes (including by way of slump exchange).
3. The re-opening of assessment proceedings and/or initiation of assessment proceedings after the completion of the normal time limits was 7 years from the end of concerned financial year. The government recognized that this was too long a time period and has therefore reduced it to 3 years. Only where there is evidence of concealment of income of INR 50 lakhs or more in a year can the assessment be opened up to 10 years after approval of the Chief Commissioner.

   Amendments have also been proposed in the back-end procedures for initiation of such assessments.

4. The Budget proposes a TDS of 0.1% on the purchase of goods (5% in the absence of PAN). This is to be levied in cases where the turnover of buyers (who bear the burden of this compliance) exceeds INR 10 crores in the immediately preceding financial year and the value of goods being purchased from a seller is in excess of INR 50 lakhs. In case of an overlap of TDS on sale of goods as introduced in this Budget and Tax Collection of Source ('TCS') on sale of goods as introduced in last year's Budget, the TDS on sale of goods shall prevail.
5. The Budget announced the faceless proceedings for Income Tax Appellate Tribunal ('ITAT'). This follows the roll out of the Faceless Assessment, Appeal and Penalty Schemes.
6. The Authority for Advance Ruling ('AAR') and the Income Tax Settlement Commission ('ITSC') has been proposed to be done away with. AAR has been proposed to be replaced with the Board for Advance Ruling ('BAR'). The BAR will consist of two members who are Retired Chief Commissioners of Income Tax ('CCIT'). The rulings of the BAR shall not be binding on the applicant or the Income Tax Department and the appeal against its orders shall lie before the High Courts.
7. Sunset clause for deduction to eligible startups extended to startups incorporated before April 1, 2022.
8. Relaxation from interest for default in advance tax payments provided for dividend income except specified deemed dividend transactions.
9. Employee contribution to a fund paid after due date under respective Acts shall not be allowed as deduction.
10. Changes in due dates for compliance procedures have been proposed as under:
    a) issuance of intimation pursuant to processing of return of income reduced to nine months from end of financial year in which return was furnished.
    b) issuance of scrutiny notice revised to three months from end of the financial year in which return was furnished.
11. Filing belated return and revised return reduced to earlier of three months before the end of relevant assessment year or before completion of assessment.
12. A higher rate of TDS (the higher of twice the applicable rate or 5%) for non-filing of Income-tax return is proposed to be levied.
13. The threshold for exemption from tax audit requirement is proposed to be increased to INR 100 million where cash transactions do not exceed 5 percent.

<u>Indirect tax</u>

Changes in the Customs Act

14. Section 25 of Customs Act amended to provide for sunset clause for all conditional based exemptions (unless otherwise specified) by 31 March 2023.
15. Change in BCD rates on inputs, parts, sub-parts and raw materials of following specified parts of cellular mobile phone is being increased from NIL to 2.5%:

    Printed circuit board assembly (PCBA), camera module, connectors, wired headset, USB cable, microwave and receiver, etc.
16. Inputs or raw materials (other than PCBA and moulded plastics) for use in manufacture of charger or adapter of cellular phone will attract 10% BCD. PCBA and moulded plastics of charger or adapter is being increased to 15%.
17. Populated PCBs of sub heading 8529 90 for transmission apparatus incorporating reception apparatus amended to incorporate 85177910 with increased BCD of 20%.
18. BCD on the following has been increased from NIL to 2.5%:

    Inputs or raw materials (other than Lithium-Ion Cell and PCBA) for use in manufacture of Lithium-Ion battery and battery pack; Inputs, parts or sub-parts for use in manufacture of PCBA of Lithium-Ion battery and battery pack;

Changes under Goods & Services Tax (GST)

19. Section 16 of Central Goods and Service Tax Act, 2017 ('CGST Act') proposed to be amended which restrict availment of input credit only when the invoice / debit note details are furnished by supplier in the statement of outward supplies (i.e. 'GSTR1') filed within the due date. It means, any delay in disclosing such invoice /debit note details in GSTR1 may lead to deferment of input credit to subsequent month. This amendment may make the input credit availment process (by way of matching with details of GSTR 2A) mentioned in Rule 36(4) of Central Goods and Services Tax Rules, 2017 ('CGST Rules') redundant.
20. Amendment in Section 35 and 44 of CGST Act proposed for withdrawing mandatory requirement of certification of GST Audit Report in Form 9C by Chartered Accountant. Assessee to file self-certified reconciliation statement may get included in the Annual Return format (i.e. in Form 9)
21. Section 16 of Integrated Goods and Services Act, 2017 ('IGST Act') proposed to be amended whereby Supply of goods or services made to SEZ developer / Unit shall be treated as Zero rated (thereby not subject to IGST), only if such supplies are used for Authorized operations
22. Option of Zero-rated supplies with payment of IGST (rebate option), proposed to be made applicable only to notified class of taxpayers or notified supplies of goods or services.
23. Linkage of foreign exchange remittance with exports of goods for claiming refund. In case, foreign exchange remittance is not received, exporter to pay back the refund with applicable interest.
24. Section 50 of CGST Act aligned to give retrospective effect from July 1, 2017 for payment of interest on net cash liability, which was recommended by GST Council and was affected by Notification issued in September 2020.
25. Pre deposit equivalent to 25% of the penalty mandatory for filing an appeal in case of goods or the conveyance carrying the goods is detained or confiscated.

Implications for the sector

1. The clarifications on the scope and applicability of EL may have wide ramifications for the sector and one needs to review applicability in the light of specific fact patterns.
2. The relaxation in the time limit for re-opening of assessment proceedings is a welcome move. However, the threshold of INR 50 lakhs appears is likely to breached with ease in the case of telecom sector.

Overall, despite huge expectations, the Union Budget 2021 has been muted towards the sector. While the spend allocation towards telecom infrastructure creation is a welcome move (given the vast gap in infrastructure funding requirement), significant investments would be further required both at private and public level to enable a robust future proof communication infrastructure. Further, with the spectrum auctions on the anvil, and debt laden financial health of the sector, there were significant industry expectations towards reduction of the regulatory and taxation levies on the sector. However, one hopes that keeping the long-term sector perspective in mind, the government will support the industry's growth by supportive post budget policies including favorable PLI guidelines and reduced spectrum auction pricing.

KPMG in India contacts

Satya Easwaran
Partner and Sector Lead
Technology, Media and Telecom
E: seaswaran@kpmg.com

Naveen Aggarwal
Partner
Tax
E: naveenaggarwal@kpmg.com

KG Purushothaman
Partner and Head
Telecommunication
E: purushothaman@kpmg.com

https://bit.ly/39nSSY6
Access Budget microsite

#KPMG josh

home.kpmg/in/socialmedia

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000.