

India Union Budget 2021-22

Point of view

Technology

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Despite huge industry expectations, there have been limited interventions for the technology sector in the Union Budget 2021.

Key announcements for the sector

Direct Taxes

- Equalisation Levy
 - Clarified that income-tax on 'Royalty' or 'Fees for Technical Services' and Equalisation Levy are mutually exclusive effective 1 April 2020. Equalisation Levy is not applicable on transactions which are taxable as 'Royalty' or 'Fees for Technical Services' in India under the domestic tax law/ tax treaties
 - Scope of Equalisation Levy broadened: 'online sale of goods' and 'online provision of service' to include one or more of activities of 'acceptance of offer for sale', or 'placing / acceptance of purchase order' or 'payment of consideration' or 'supply of goods or provision of services' taking place online.
- Start-ups
 - Sunset clause for deduction to eligible start-ups extended to those incorporated before 1 April 2022
 - Exemption of capital gains arising from transfer of residential property upon investment in start-up extended up to 31 March 2022.
- Dispute Resolution
 - Scheme for faceless appeal before Tax Tribunal to be introduced on the same lines as faceless appeal scheme currently before the Commissioner of Income-tax Appeals (Government to notify applicable rules)
 - Constitution of Dispute Resolution Committee for small and medium taxpayers (where returned income is less than INR5 Mn and adjustment to the income proposed is less than INR1 Mn)
 - Authority of Advance Ruling to be discontinued and to be replaced by Board of Advance Ruling (Government to notify applicable rules)
 - Income Tax Settlement Commission discontinued and Interim Board to be constituted for pending cases
- Goodwill arising out of business reorganisation not to be considered as a depreciable asset and accordingly, no tax depreciation will be allowed on such goodwill (including acquired goodwill)

In case of acquired goodwill, purchase price shall be considered as cost of acquisition for computation of capital gains. However, earlier depreciation claimed (if any) shall be reduced from purchase price.
- Slump Exchange transactions included within the scope of slump sale and to be taxed as capital gains.

- Book profits of past years for the purposes of Minimum Alternate Tax liability could be recomputed, upon application to the tax officer, to include effect of adjustment on account of Advance Pricing Arrangement or secondary adjustment.
- Changes proposed in TDS provisions
 - Tax Deduction at Source ['TDS']/Tax Collection at Source ['TCS'] applicable at higher rate of five per cent or twice the applicable rate vis-à-vis non-filers of income-tax returns for past two years. The provisions shall apply where aggregate TDS/TCS is INR50,000 or more in each of the two preceding years
 - The Budget proposes a TDS of 0.1% on the purchase of goods (5% in the absence of Permanent Account Number). This is to be imposed in cases where the turnover of buyers (who bear the burden of this compliance) exceeds INR100 Mn in the immediately preceding Financial Year ['FY'] and the value of goods being purchased from a seller is in excess of INR5 Mn. TCS will not be applicable where this TDS applies.
- Changes in certain time limits
 - Belated/revised return to be filed within December of the subsequent FY
 - Time-limit for issuance of notice for assessment proceedings reduced by 3 months – now notice to be issued within 15 months from the end of FY
 - Time-limit for re-opening of assessment reduced from earlier 5/7 years to 4 years from end of the relevant FY. Only where there is evidence of income escaping assessment represented in the form of asset exceeding INR5 Mn or more in a year can the assessment be opened up to 10 years after approval from Chief Commissioner
 - Time-limit for completion of assessment proceedings for FY 2020-21 and subsequent years reduced by 3 months (proceedings for FY 2020-21 to be completed within December 2022 for non-transfer pricing cases and December 2023 for transfer pricing cases)
- Threshold for exemption from tax audit requirement increased to INR100 Mn from INR50 Mn where cash transactions do not exceed 5%
- Dividend income to be considered for payment of quarterly advance income-tax only after the dividend is declared
- Delay in payment of employee contribution to a fund (including provident fund) after due date as per respective statute not allowed as a tax-deductible expenditure.

Goods and Services Tax

- GST credit can only be availed upon furnishing of proof of outward supply as reported in FORM GSTR-1 by the supplier
- Removal of mandatory requirement of getting GST Audit Report certified by a Chartered Accountant
- Provision for filing of reconciliation statement on self-certification basis
- Zero rating of supplies made to SEZ restricted to supplies made for use in authorised operations
- Refund sanctioned on export of goods to be recovered with interest on non-realisation of sales proceeds within timelines as prescribed under FEMA guidelines.

Customs

- Enabling provision created for 'Customs Common Electronic Portal'
- All conditional exemption notification will be valid till 31 March falling immediately after 2 years from the date of notification. This is subject to conditions prescribed
- Mandatory filing of Bill of Entry a day prior to arrival of goods

Implications for the sector

- **Direct taxes**
 - Applicability of withholding tax on software payments as 'royalty' is yet to be adjudicated by the Supreme Court. There could be adverse cash flow consequences where taxpayers may have to pay both income-tax and Equalisation Levy until a resolution is reached
 - A wide definition of 'online sale of goods' and 'online sale of services' in the context of Equalisation Levy could significantly expand its scope, liability and compliance for non-resident taxpayers
 - No guidance yet on provisions relating to Significant Economic Presence which are applicable from 1 April 2021
 - Industry demand not addressed: for extension of concessional tax regime to new units incorporated in SEZ, expansion of scope of utilisation of SEZ Investment Reserve for working capital requirements and allowability of tax exemption in Work from Home situation for easing out cash flow situation
 - The amendments relating to depreciation on goodwill would have a bearing on the M&A transactions, including those done in the past.
- **Indirect taxes**
 - The key features of the indirect tax proposals focus on ease of doing business, minimal government and maximum governance. Some of the changes that deserve special mention are pre-filled editable GST returns, validated Input Tax statement, omission of GST audit requirement, penalty and confiscation provisions for mis-declaration and wrongful claims of remission or refund on export of goods
 - However, certain amendments like restriction in availing rebate or restriction in claiming un-matched credit or increased Customs Duty incidence for several inputs may, have negative impact on the sector.

Overall, while there have been some positive clarifications announced in the budget, some of the critical sector expectations remain unaddressed. Given the pervasiveness of technology in the post pandemic era where digital is taking centre stage of not only our lives, in the ways we communicate, transact and behave, but also of boardroom strategies, the industry had huge expectations from Union Budget 2021 in terms of getting boost towards creation of digital infrastructure and adoption of emerging technologies. Given the criticality of the sector, to achieve the digital vision of the country, one hopes that post budget policy reliefs will be considered to provide the much-needed support to the sector.

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Access
Budget microsite

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