
UNION
BUDGET
2022

About the Firm

Phoenix Legal is a full-service law firm offering regulatory, advisory, transactional and dispute resolution services in different sectors of the economy. The Firm advises a diverse clientele which includes companies, banks and financial institutions, funds, promoter groups, public sector undertakings and individuals, both in India and overseas.

The Firm has its offices in New Delhi and Mumbai. The Firm has the capability to provide seamless services across India. The Firm's offices and all lawyers are equipped with state-of-the-art technology and equipment which enables us to ensure efficient and uninterrupted services to our clients.

Our Philosophy

We are committed to developing strong client relationships, engaging capable and dedicated professionals and investing in technology. Enthusiasm, energy and drive for excellence influence the way we work. We invest time in understanding our client's business which enables us to provide commercially oriented and innovative legal solutions to achieve the client's goals.

We believe that our lawyers are our greatest resource and our philosophy is to attract and retain quality professionals. We encourage entrepreneurship to enable our people to fully realise their potential. Our belief is that our clients will benefit with the success of our people.

A few characteristics which set us apart from a conventional firm are: a high degree of partner involvement and availability; top quality commercially oriented legal advice; attention to detail; and responsiveness.

UNION BUDGET 2022

Set out below is a summary of key tax proposals announced in the Union Budget 2022.

I. INDIRECT TAX

1. CUSTOMS LAW

1.1. Appointment Of Officers

(a) "Proper officer" to be appointed by Board or Principal Commissioner of Customs or Commissioner of Customs in terms of power conferred upon them under Section 5 of the Customs Act.

(b) Officers of DRI, Audit and Preventive formation are to be included in "Class of officers of Customs".

(c) CBIC or the Principal Commissioner/Commissioner of Customs to be empowered to assign functions to Custom officers.

(d) Whenever a function performed by an officer of competent jurisdiction is questioned / subjected to an inquiry, investigation, audit or any other specified purpose by another Customs officer, then after the completion of such inquiry, investigation, audit or any other purpose the officer, who originally exercised such jurisdiction shall have the sole authority to exercise jurisdiction for further action like reassessment, adjudications.

1.2. Faceless Assessment

(a) Criteria such as territory, class of persons, class of goods etc. to be considered by CBIC while assigning functions to the Customs officer.

(b) For the proper management of work, two or more officers of customs, can concurrently exercise powers and functions (for example in the case of faceless assessment).

1.3. Valuation of imported goods

(a) Additional obligations on the importer in case the Board has reason to believe that the imported goods are being undervalued / if the value of imported goods is not being declared accurately by the importer.

1.4. Advance Rulings

(a) Advance Ruling is made valid for a period of three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier.

(b) Existing Advance Rulings will be in force for 3 years from the date on which the President gives assent to the Finance Bill, 2022.

1.5. Publishing of data

(a) Publication of import and export data submitted by importers or exporters, unless published by or on behalf of the Central Government will be considered as an offence under the Customs Act, 1962. Proposed under new Section 135AA.

1.6. Anti-Dumping Duty (ADD)/ Countervailing Duty (CVD)

(a) ADD on Straight Length Bards and Rods of alloy-steel, High Speed Steel of Non-Cobalt Grade, Flat rolled product of steel, plated or coated with alloy of Aluminium or Zinc is rescinded from February 1, 2022.

(b) CVD imposed on imports of "Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products" originating in or exported from China PR is rescinded from February1,2022.

1.7. Amendment to Customs (Import of goods at concessional rate of duty) Rules (IGCR Rules), 2017 w.e.f from 02.02.2022 vide Notification No. 07/2022- Customs (N.T.) dated 01.01.2022

(a) Importer to provide one time information on the common portal in Form IGCR-1 and on acceptance of the information an Import of Goods at Concessional Rate Identification Number (IIN) shall be generated.

(b) The importer who intends to avail the benefit of an exemption notification has to mention the IIN and continuity bond number while filing the Bill of Entry.

(c) The importer has to maintain records of the goods and submit a monthly statement on the common portal in the Form IGCR-3 by the tenth day of following month.

(d) A scheme is proposed to be introduced for duty free imports, for use in the manufacture of goods exported within a period of six months, based on end use under the IGCR Rules, 2017.

(e) Conditional exemptions have been provided for certain raw materials used in manufacture of textile, handicraft products, leather or synthetic footwears meant for exports.

2. **GST**

2.1. Input tax credit

(a) An additional condition for availing the ITC is proposed to be introduced under clause (ba) to Section 16(2) of the CGST Act, to provide that ITC would not be available if the same is restricted in the details provided in GSTR 2B under Section 38 of the CGST Act.

(b) Time limit for availing ITC with respect to any invoice or debit note for supply of goods or services or both to be increased up to 30th November of the following financial year.

2.2. Registration

(a) Cancellation of registration by proper officer has been proposed to be amended whereby:

(i) **Person paying tax under Composition scheme:** Cancellation of registration may trigger in case of failure to file returns for three consecutive tax periods.

(ii) **Other taxpayers:** Cancellation of registration may trigger as may be prescribed

2.3. Yearly adjustments by issuance of credit notes

(a) The limit for issuance of credit note is proposed to be amended to extend the time limit to 30th November following the end of the FY or the date of furnishing of the relevant annual return, whichever is earlier.

2.4. Returns

(a) The time limit for making amendment in GSTR-1 is proposed to extend the time limit to 30th November of the following financial year.

(b) If GSTR-1 of any tax period is pending then the GSTR-1 for any subsequent tax period cannot be filed. Further by way of a notification, a registered person or a class of registered person may be exempted from such restriction.

(c) The availment of the ITC to the recipient will now be on the basis of auto generated statement containing the details of ITC. Also, the auto generated statement would include the communication as to whether ITC would be available to the recipient or not.

(d) Option to the taxpayer to pay either the self-assessed tax or an amount that may be prescribed.

(e) The last date for rectification of errors of return filed under Section 39 of the CGST Act has been proposed to be extended up to 30th November following the end of the FY or the date of furnishing of annual return, whichever is earlier.

(f) Unless the return of outward supplies (i.e., GSTR-1) is not furnished, GSTR-3B for the said tax period also cannot be furnished.

(g) The recipient subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit, as self-assessed, in his return. In case, the tax for the said credit has not been paid by its supplier then the recipient shall have to reverse the credit along with interest

(h) Levy of late fee is proposed for delayed filing of return under section 52 (i.e., the return to be filed for TDS by Electronic Commerce Operator)

(i) Interest on ITC wrongly availed and utilised is proposed to be amended retrospectively from 01.07.2017 at the rate of 18%.

(j) The last date for rectification of errors of return filed under Section 52(6) of the CGST Act which deals with collection of tax at source is proposed to be extended up to 30th November of the following financial year.

(k) Unutilized balance of CGST and IGST in electronic cash ledger to be transferred between distinct persons (entities having same PAN but registered in different states) without opting for refund procedure.

(l) The Government to prescribe the maximum portion of output tax liability which can be discharged through electronic credit ledger by such registered person or class of registered person as may be notified.

(m) Extend the restriction as regards withholding of refund or adjustment of unpaid tax from refund due for all types of refund claims. At present, such restriction is applicable only to refund claim on account of zero- rated supplies and inverted duty structure.

(n) The relevant date for filing refund claim of tax paid in respect of supplies made to SEZ developer/unit or inputs or input services used in such supplies will be the due date of furnishing the return under Section 39.

(o) Application for grant of alcoholic liquor license against consideration in the form of license fee or application fee shall neither be treated as supply of goods nor supply of services retrospectively from July 1, 2017.

3. **CENTRAL EXCISE**

(a) Additional basic excise duty of Rs 2 per litre with effect from the 1st day of October per would be levied on Motor Spirit (commonly known as Petrol) with ethanol/methanol and blending of High-Speed Diesel with biodiesel intended to be sold to retail consumer. (Effective from 01.10.2022 issued vide Notification No. 01/2022 -Central Excise).

(b) Two new tariff items 2710 12 43 and 2710 12 44 under sub-heading 2710 12 in Chapter 27 relating to E12 and E15 fuel blends have been inserted in order to align the Fourth Schedule to the Central Excise Act with the similar proposed amendment in the sub-heading 2710 12 in the First Schedule to the Customs Tariff Act, 1975. (Effective from the date of enactment of Finance Bill, 2022).

4. **CUSTOM TARIFF**

4.1. Rate Changes

(a) The Government has done a comprehensive review of the Customs duty structure and as a result around 350 exemptions are withdrawn. Additionally, more than 40 exemptions relating to capital goods and project imports are proposed to be gradually phased out. Miscellaneous exemption notifications that are obsolete or redundant are to be rescinded.

(b) Custom tariff structure is being simplified by moving the unconditional concessional rates from existing exemption notifications to the First Schedule of the Customs Tariff Act. In this process, certain tariff items have also been rationalised.

(c) Custom Duty in a graded structure on wearable devices, hearable devices and electronic smart meters is being notified to facilitate domestic manufacturing.

(d) BCD exemption on lifesaving drugs/medicines including their salt, diagnostic kits have been proposed to be rationalized and accordingly 35 items will be removed from List III of Entry 166 and 36 items will be removed from List IV of Entry 158 of Notification No 50/2017. Certain items falling under Chapter 38 will be shifted from List IV to List III.

4.2. Project Imports

(a) The Government has proposed to reduce BCD on Project imports under Tariff Heading 9801 from 10% to 7.5%. However, effective BCD rate would continue to be 'Nil / 2.5% / 5% (as applicable)' till September 30, 2023 for the projects registered till September 30, 2022. For projects registered after September 30, 2022, BCD rate of 7.5% will be applicable. All project imports will attract BCD rate of 7.5% after September 30, 2023.

4.3. Social Welfare Surcharge

(a) The Government has clarified vide Circular No 3/2022 dated February 1, 2022 that SWS will be 'Nil' in case where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted.

(b) The Government has withdrawn SWS exemption on certain textile items and added certain items in the SWS exemption vide in Notification No. 03/2022-Customs dated 01-02-2022 w.e.f. 02-02-2022.

5. **SPECIAL ECONOMIC ZONES**

(a) The Government has proposed that the Special Economic Zones Act, 2005 will be replaced with a new legislation that will enable the states to become partners in 'Development of Enterprise and Service Hubs'. This in turn will help all large existing and new industrial enclaves to optimally utilize available infrastructure and enhance competitiveness of exports.

(b) Customs administration of SEZ to function to move on the Customs National Portal with effect from September 30, 2022.

6. **MSMEs**

(a) The Government has proposed the following incentives for the MSME Sector.

(b) Udyam, e-shram, NCS and ASEEM portals to be interlinked.

(c) Emergency Credit Linked Guarantee Scheme (ECLGS) to be extended up to March 2023 and 130 lakhs MSMEs to be provided additional credit under ECLGS.

(d) Additional credit of INR 2 lakh crore for MSME to be provided under Credit Guarantee Trust for Micro and Small Enterprises (CGTMSE).

(e) INR 6000 crores will be rolled out under the Raising and Accelerating MSME performance (RAMP) programme.

II. DIRECT TAX

1. An updated income-tax return can be filed by any person, within 2 years from the end of relevant assessment year (**AY**), irrespective of whether a return was filed or not in the past with a requirement to pay an additional tax of 25% (if updated return is filed within 12 months from the end of relevant AY) or 50% (if updated return is filed after 12 months but before 24 months from the end of relevant AY).

2. To bring parity between central government and state government employees, the tax deduction limit on employer's contribution to the national pension scheme raised from 10% to 14%.

3. Date of establishment for claiming the concessional 15% income tax rate by new manufacturing domestic companies extended from 31 March 2023 to 31 March 2024.

4. For individuals and HUF with taxable income in excess of INR 2 crores, surcharge on long term capital gains from transfer of any capital asset capped at 15%.

5. Date of incorporation for claiming the tax incentive by start-ups extended from 1 April 2022 to 1 April 2023.

6. Surcharge on income-tax paid by the co-operative societies having income above INR 1 crore and less that INR 10 crores reduced from 12% to 7%.

7. To bring parity between cooperative societies and companies, alternate minimum tax payable by co-operative societies reduced from 18.5% to 15%.

8. To address certain court decisions on this issue, it has been clarified that surcharge or cess cannot be deducted as business expenditure retrospectively from AY 2005-06.

9. To incentivize operations from International Financial Services Centre (**IFSC**), the following income exempted from tax: (a) income of a non-resident from transfer of offshore derivative instruments or over the counter derivatives issued by offshore banking units; (b) income of a non-resident from royalty and interest on account of lease of ship by a unit in the IFSC; (c) income earned by a non-resident from portfolio management services account with a offshore banking unit in the IFSC; and (d) income from transfer of a ship leased by a unit in the IFSC that has established operations before 31 March 2024.

10. With the increase in transactions in virtual digital assets (**VDA**): (a) definition of VDA has been inserted in the income tax act with the purpose of taxing VDA related transactions; (b) income from transfer of VDA to be taxed at the rate of 30% plus surcharge and cess; (c) deduction for expenditure (except for cost of acquisition) or set off of losses not allowed while computing such income; (d) loss arising from transfer of VDA cannot be set off against any other income or be carried forward; (e) purchaser of VDA from a resident seller to withhold tax at the rate of 1% from the transfer consideration; and (f) recipient of a VDA by gift to pay tax on such gift.

11. To reduce tax litigation in India, the tax department to not file appeals before the appellate tribunal or High Court on a question of law, where an appeal on such question of law is pending before the High Court or Supreme Court.

12. As against the current provision allowing deduction of annuity or lump sum payment received under an insurance policy, purchased by the parent/ guardian for differently abled person, upon death of the parent/guardian, deduction now allowed during the lifetime of the parents/ guardian upon attaining the age of 60.

13. Tax to be withheld at the rate of 1% on transfer of immoveable property, to be on higher of sales consideration or stamp duty value of such property, as against the earlier provision requiring withholding on the sales consideration.

14. Concessional 15% income tax rate on dividends received by Indian companies from specified foreign companies withdrawn.

15. In view of COVID-19, following income to be exempt from tax retrospectively from financial year 2019-2020: (a) reimbursement received for expenses incurred by any individual for medical treatment of himself/ family members for illness related to COVID-19; and (b) monetary compensation, upto INR 10 lakhs, received by family member of the deceased person, within 12 months of death due to COVID-19 or related illness.

16. To address certain court decisions on this issue, successor entity in a business reorganisation (amalgamation, merger, demerger) to be bound by any pending or completed assessment against the predecessor. The successor entity to file income tax return within 6 months from the order of relevant authority confirming business reorganisation.

17. To address certain court decisions and to clarify legislative intent, bonus stripping and dividend stripping provisions have been extended to cover units of infrastructure investment trust and real estate investment trust, AIF and securities.

Abhishek Saxena
Co – founding Partner

Professional Experience

Abhishek is a partner based in the Delhi office of Phoenix Legal. Abhishek has over two decades of experience advising on a variety of cross border deals and has been closely associated with a number of complex and prestigious projects in diverse sectors including power, IT, oil & gas, financial services, industrial, hotels and aviation sectors.

His areas of practice include corporate/ M&A, projects, energy and infrastructure, direct and indirect taxation and project finance. He represents large and reputed Indian companies, foreign investors and multinational corporations (including Fortune 100 companies) in various sectors.

Jatin Arora
Partner

Professional Experience

Jatin is a qualified lawyer in India and has over 22 years of wide-ranging experience in indirect tax including GST, Customs, Excise, Service Tax and VAT laws. Jatin started his career as an independent counsel in the High Courts and various tribunals and thereafter worked with Big 4 consulting firms like PwC and Deloitte. He has been working with both Indian and foreign multinational companies across sectors viz., healthcare and pharmaceuticals, hospitality, manufacturing, oil & gas, power, auto OEMs and component manufacturers, telecom, IT & ITeS, consumer, retail and wholesale, real estate, infrastructure, and EPC etc.

Jatin has extensively worked on the GST regime and advised various companies on their transition to the GST regime; structured global supply chains considering local and global trade aspects; helped set up businesses in various parts of India by undertaking locational analyses. He has worked with industry associations on matters involving industry specific ramifications and advised on representations to the Government and GST Council. He has handled multiple Special Valuation Branch investigations, matters before Directorate of Revenue intelligence, notices issued by Director General of GST, Anti Profiteering investigations besides handling adjudication and appellate matters and routine notices issued by the authorities at various levels.

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