



## UNION BUDGET 2022

Budget 2022

**DIRECT TAX PROPOSALS - INTERNATIONAL**



## BUDGET 2022 TOP HIGHLIGHTS

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**Bolstering Investment – Surcharge on all long-term capital gains capped at 15%**  
**Government to form an expert committee to help scale up and facilitate PE and VC investments**

**Major Infrastructure push – focus on highway construction, development of ropeways, cargo terminals, data centres**

**Boost for renewable energy – Additional allocation of INR 19,500 cr for PLI in solar module manufacturing**

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**Sovereign Green Bonds to be issued in FY23 to help mobilise resources for green projects**

**Digital Rupee – Digital Currency using blockchain technology to be issued by RBI in FY23**

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**Cryptocurrency specific tax measures – Transfer of virtual digital assets, including cryptocurrencies and NFTs, to be taxed at 30%, TDS at 1%; no deductions allowed, loss from such transfer cannot be set off or carried forward**

**GIFT City – International Arbitration Centre to be set up; Top global universities to be allowed to conduct courses in financial management, fintech, science, technology, engineering and mathematics; additional tax sops announced**

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**IBC – Necessary amendments to be carried out to facilitate cross-border resolutions; For tax purposes, status of taxpayer's demand to be modified in line with the order passed by the authorities under the IBC law.**



## 01.

## TAX RATES

The Finance Bill, 2022 (Bill) has not proposed any changes in the base tax rates and the income slabs under the Income-tax Act, 1961 (Tax Act). Base corporate tax rate for foreign companies is retained at 40% (special rates for specified income streams). Notably, the surcharge rate for long term capital gains (LTCG) earned by non-corporate taxpayers has been capped at 15%, meaning thereby that the current rates of surcharge of 25% and 37% on income exceeding INR 20 million and INR 50 million respectively would not be applicable. Currently, in case of capital gains, the said cap of 15% surcharge is restricted only to LTCG and short-term capital gain from the transfer of listed shares on a recognised stock exchange (subject to certain conditions).

This is a positive development impacting individuals (essentially HNIs) and non-resident non-corporate investors (other than a company, co-operative society and partnership taxed as such under Indian law). This relief would significantly lower the effective tax rate applicable on sale of investments such as unlisted shares (including start-up investments), off-market transfer of listed securities, transfer of immovable properties etc. In terms of impact, the maximum effective tax rate on LTCG would now be reduced from:

- 14.25% to 11.96% (where the applicable base tax rate is 10%, say in case of off-market transfer of listed shares, transfer of unlisted shares by non-residents, offshore share transfer involving India indirect transfer tax)
- 28.5% to 23.92% (where the applicable base tax rate is 20%, say in case of transfer of unlisted shares by residents, transfer of immoveable property etc).

## 02.

## SPECIFIC REGIME FOR TAXATION OF VIRTUAL DIGITAL ASSETS (VDAs)

The most awaited tax proposals specific to taxation of VDAs have been announced for the first time, as discussed below:

- The Bill defines VDAs broadly to cover *inter alia* (a) any information, code, number, or token generated through cryptographic means or otherwise; (b) to be

notified non-fungible tokens; or (c) other to be notified digital assets. Given the wide definition, it needs to be examined whether assets or benefits like digital gift cards, loyalty or cash back points on cards and similar assets could be covered here.

- The income arising from transfer of VDAs taxable at 30% (plus applicable surcharge and cess).
- Except for the cost incurred in acquiring the VDAs, no deduction of expenses or set-off of any loss is available against the income arising from transfer of the VDAs.
- Any losses arising on transfer of the VDAs is not available to be set-off against any other income.
- The receipt of VDAs by a person for nil or inadequate consideration, shall be taxable in the hands of the recipient, unless it falls within the list of specified exceptions (such as receipts from relatives). However, in the absence of any specific valuation rules, there is lack of clarity on the manner of valuation of VDAs for this purpose. The government may address this in due course.
- Persons making payments to Indian residents towards the transfer of a VDA, to withhold tax at 1% on such sum. Where tax is withheld, any other provision requiring tax withholding or collection is not attracted. In the case of payments to non-residents, no special withholding tax rate is prescribed (the general principles of taxability subject to situs/source rules and consequent withholding would be relevant).
- If the consideration payable is wholly or partly non-cash, then the payer must ensure that tax is paid in respect of such transaction, before paying the consideration. From a withholding tax compliance perspective, there may be certain practical challenges such as payment of tax when consideration is in kind, and the availability of details regarding identity/tax residence of sellers, which may need to be closely evaluated.
- In case if this new provision as well as section 194-O (i.e., for e-commerce operators) are both applicable to a transaction, then this new provision will prevail.



# 03.

## THE GIFT THAT KEEPS GIVING | IFSC INCENTIVES

Keeping with the Government's objective of promoting the International Financial Services Centre (IFSC) ie GIFT city, the Bill has proposed certain additional incentives for IFSC units and for transactions undertaken with IFSC units. These include:

- Exemption to non-residents with respect to income arising on transfer of offshore derivative instruments or over-the-counter derivatives entered into with an IFSC banking unit.
- Exemption to non-residents with respect to income received from a portfolio of securities/financial products/funds, managed or administered by a portfolio manager (as defined under the relevant IFSC regulations) in an account maintained in an IFSC

banking unit (to the extent such income accrues or arises or is deemed to accrue or arise outside India, and therefore, the exemption seems clarificatory).

- Incentives provided to aircraft leasing business in the previous Budget 2021 for certain income streams (i.e., royalty and interest earned by non-residents and income on transfer of aircraft earned by an IFSC unit) also extended to ship leasing business.
- Exemption from angel tax (i.e., tax applicable to a closely held Indian company on the issuance of shares to a resident at a premium in excess of fair value) to an Indian company in relation to the issuance of shares to an alternative investment fund regulated under the prescribed IFSC regulations.

Such tax incentives along with other proposed measures, such as setting up of an International Arbitration Centre in GIFT city and opening of world-class foreign universities and institutions in GIFT city with an aim of facilitating the availability of high-end human resources, should be expected to further boost the development of IFSC in India.

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