



UNION BUDGET 2022

INDIRECT TAX PROPOSALS Budget 2022

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01.

CUSTOMS LAW AND
PROCEDUREProposed legislative changes in
the Customs Act, 1962

- Vide the amendments proposed to various provisions pertaining to classes of officers and proper officers under customs law, the Finance Bill, 2022 seeks to legislatively overrule a judgment dated March 2021 of the Supreme Court of India in **Canon India Private Limited vs Commissioner of Customs**. [Refer Sections 85 - 87 of the Finance Bill, 2022]

Further, a validation section has also been proposed which provides for all actions taken prior to the date of this amendment, as being correct in law. [Refer Section 96 of the Finance Bill, 2022]

Simultaneously, a new section is proposed to be inserted in the Customs Act, 1962 vide which any inquiry, investigation or audit caused by an officer of customs pursuant to an allegation of evasion of customs duty, erroneous refund/ drawback or the like will be adjudicated and dealt with the **"the proper officer of customs"**. It is incumbent on the officer of customs causing an investigation, inquiry or audit to relay a report to such proper officer having jurisdiction over the importer/ export. [Refer Section 93 of the Finance Bill, 2022]

To recap, the Supreme Court in the aforementioned judgment held as follows:

- Officers of the Directorate of Revenue Intelligence (DRI) are not proper officers under the Customs Act, 1962. It was observed that a notification of 2012 which appointed officers of DRI as proper officer is *non-est* in law as it draws power from a definition provision, which is impermissible.
- The power to issue a show cause notice/ demand notice under Section 28 of the Customs Act, 1962 vests with **"the proper officer"**. This provision, being in essence a power of re-

assessment can only be exercised by the same officer who had initially caused the assessment and not a third authority. The usage of the word **"the"** as opposed to **"any"** or **"a"** similarly suggests that such power can only be exercised by the same officer who had caused assessment.

Comments: The proposed amendments seek to empower, retroactively, DRI officers to issue demand notices. While the intent and reasons for the proposed amendments is clear, there are a few grey areas which would be addressed by courts.

The proposition of law enunciated by the Supreme Court, viz., that show cause notices/ demand notices are a power of reassessment and should be exercised only by the assessing officer as sought to be annulled by insertion of a specification provision which allows for two officers of customs to concurrently exercise powers runs contrary to the amendment which provides that proceedings pursuant to investigation, audit or inquiry should only be conducted by the proper officer who has initially caused assessment, which per the explanatory notes to the Finance Bill, 2022 itself is an affirmation of the principle of **Canon India**.

In fact, various courts have commented that allowing multiple officers to exercise jurisdiction will lead to a chaotic and unintended situation and should be avoided. In this context, allowing multiple officers of customs to exercise jurisdiction is amenable to challenge as stated earlier. This provision remains amenable to challenge as on the one hand, the *ratio* of **Canon India** is sought to be followed in law, while on the other, rejected. This will result in additional litigation for taxpayers.

The amendment also entails civil and criminal penalties and therefore, retrospective effect would also be tested on the principles of criminal jurisprudence.

- An additional obligation is being imposed on importers, viz., to provide such additional evidence as notified along with



regular import documents to justify the value of imported goods. Such additional obligation will be imposed on specified classes of goods where generally the trend is of undervaluation. [Refer Section 88 of the Finance Bill, 2022]

Comments: This amendment has been proposed to introduce a control and check mechanism in those classes of goods which suffer from systemic undervaluation. The nature, scope and validity of additional obligations imposed depends on the notification so issued, which is pending as of date. It also remains to be seen how this provision will operate *apropos* acceptance and/ or rejection of transaction value as provided for in the customs valuation rules of 2007.

- Publication of information pertaining to classification and/ or valuation of import/export goods either electronically or otherwise, except where required by law is proposed to be a criminal offence, attracting an imprisonment term of six months as also a fine of Rupees fifty thousand. [Refer Section 94 of the Finance Bill, 2022].

Comments: This amendment is to protect confidential data of importers/ exporters submitted to the customs authorities which was hitherto being done by various private organizations for access to public at large. The practice of publishing daily lists by various customs formation was stopped in November 2016 itself.

- Amendments under advance ruling regime under the Customs Act, 1962 allows withdrawal of application at any time prior to orders being issued and restricts validity of an advance ruling for a period of three years or change in law or facts. [Refer Sections 89 - 92 of the Finance Bill, 2022]
- The Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 have been overhauled for providing procedural ease with automation and electronic processing through a common portal being the thrust. [Refer Notification No. 07/2022-Customs (NT)]

Comments: This is a welcome step and will significantly increase ease of doing business for importers. It is also particularly

important since various concessions/ exemptions in this budget are subject to compliance with these rules.

02.

CUSTOMS DUTY RATE MOVEMENTS

Customs Duty Rate Movements

Commodity	Movement
Edible products	↑
Mineral products & Fuels	↑
Chemicals	↑
Textile and clothing	↓
Gems & Jewelry	↓
IT, Electronics and Renewable	↑
Machinery & tools	↑
Solar	↑
MSME	↓
Projects	↑

*Please click [here](#) for movement in rates of customs duty.

[Refer Notification Nos. 02/2022-Cus to 15/2022-Cus all dated 1 February 2022, effective as prescribed in the notification]



03.

GOODS AND SERVICES TAX (GST)

Proposed Legislative Changes

Many of the proposed legislative changes in the Goods and Services Tax laws are in furtherance of the changes agreed in the 43rd GST Council Meeting held on 28 May 2021 and can be broadly classified under following categories:

- Restrictions on availment of Input Tax Credit
 - A new condition has been introduced in Section 16 of the Central Goods and Services Tax Act, 2017 (CGST Act) to provide that a registered tax person would be entitled to avail Input Tax Credit (ITC) subject to the restrictions introduced in Section 38 of the CGST Act.
 - In respect of the above, Section 38 of the CGST Act has been substituted to introduce the following:
 - An auto-generated statement (Statement) will be electronically made available to the recipient. The detailed format and manner will be notified separately.
 - The Statement will comprise of the details of inward supplies and available ITC.
 - Following restrictions have further been imposed on the availment and utilisation of ITC on supplies received from:
 - A newly registered taxpayer for a period of time, as may be prescribed;
 - A registered taxpayer who has defaulted in payment of tax and where such default has continued for a prescribed period of time;

- A registered taxpayer making prescribed short-payment of tax, for a prescribed period;
- A registered taxpayer availing the ITC more than the ITC available in the Statement, by such prescribed limit;
- A registered tax payer discharging the proportion of its output tax liability by utilising the ITC more than the proportion allowed in terms of Section 49 (12) of the CGST Act. (Note: A new sub-section 12 has been introduced in Section 49 of the CGST Act, whereby the Government has proposed to restrict the utilisation of ITC for discharging the output GST liability);
- Any other class of suppliers which may be prescribed.

- The above conditions and restrictions have been incorporated by way of incorporation of the expression "restrictions" in Section 37(1), first proviso to Section 39 (7), Section 41(1) and Section 49(10) of the CGST Act and other suitable amendments in Section 39(9), Section 48(2), Section 47(1), and Section 168(2) of the CGST Act.

- Further, in terms of amendment in Section 41(2) of the CGST Act, the registered recipient would be now required to reverse the ITC of the GST not deposited by the supplier to the government along with interest. The said ITC can be re-availed upon payment of tax by the supplier, subject to the conditions, which may be prescribed in due course.

Comments: The proposed amendment evidences the legislative intent to grant the benefit of ITC only for cases, where the amount has been realised by the government. Further, the restrictions are targeted towards plugging the tax leakage on account of wrongful or excess availment of ITC.



However, the subject restrictions are on account of non-compliances by the supplier. Thus, the said provisions can be argued to be in furtherance of Section 16(2)(c) of the CGST Act, which seeks to deny or recover the ITC from the recipient, equivalent to the amount not deposited by the supplier thereof. The constitutional validity of the aforesaid provision has been challenged by the taxpayers across various Indian High Courts, *inter alia* on the grounds of impossibility for the recipient to ensure compliance by the supplier. Accordingly, the proposed restrictions are likely to and can be contested on similar grounds and reasoning. Further, the taxpayers may also evaluate challenging the proposed amendments by amending the present writ petitions pending before the Courts.

- Removal of two-way communication in return filing process
 - Section 37(2) of the CGST Act has been omitted, whereby the registered recipient was required to accept or reject the particulars of supplies communicated by the supplier.
 - In this regard, Section 42, 43 and 43A of CGST Act pertaining to pertaining to the form and manner of matching of details of outward supplies with corresponding inward supplies, have been omitted. Accordingly, the reference to aforesaid provisions have been removed from Sections 16(2)(c), 37(3) and 49(2) of the CGST Act.

Comments: The system of two-way communication between the supplier and recipient to ensure matching of respective returns have been omitted.

The deletion of these provisions relating to matching of returns will strengthen the reasoning adopted by the department in disputes before various judicial and quasi-judicial forums apropos ITC (that GST is a self-assessment tax regime and hence the taxpayer is responsible for the tax positions adopted). Accordingly, the taxpayers now need to be diligent while submitting the returns and information, as they may not be allowed to correct the errors at a later date, post expiry of period allowed for such rectifications.

- Change in last date of filing of returns, availing ITC and correcting errors in returns to 30 November:
 - The last date for claiming the ITC in respect of a tax invoice, debit or credit note has been extended to 30 November of the following year or last date of filing the annual return for the year to which such document pertains. Previously the last date of filing GSTR 3B return for month of September or annual return of following year, was the cut-off date for aforementioned facilities leading to ambiguities in some cases.
 - In this regard, the corresponding amendment has been made in following provisions:
 - Section 34(2) of the CGST Act has been amended to allow issuance of debit or credit note up till 30 November of following year.
 - First proviso to Section 39 of the CGST Act has been amended to allow rectification of error or omission in respect of details furnished in GSTR 3B up till 30 November of the following year.
 - Proviso to Section 52(6) of the CGST Act has been amended to allow rectification of error or omission in respect of details furnished in GSTR 8 up till 30 November of the following year.

Comments: The proposed amendment provides a definite cut-off date for allowing change in particulars furnished in the returns. Further, the extensions granted for filing the returns which allowed an assessee to carry out amendments in previous filings stand withdrawn.

- Removal of facility to claim ITC on provisional basis
 - Section 41 of the CGST Act has been substituted to remove the facility of crediting the ITC in electronic credit ledger on provisional basis.

Comments: The proposed amendment abolishes the concept of 'claim' of eligible



ITC on provisional basis and buttresses arguments taken by the government regarding GST being a self-assessment regime.

amongst distinct persons i.e., across the registrations taken by an entity under the same Permanent Account Number (PAN) in different States.

- Cancellation of Registration
 - Section 29(2)(c) of the CGST Act has been amended to allow cancellation for more than 3months' delay in filing of GSTR 4 return by composition taxpayers.
 - Section 29(9)(d) of the CGST Act has been amended to remove the limit of non-filing of returns for continuous period 6 months to proceed for cancellation of registration of taxpayers other than the composition taxpayers. The prescribed time period is yet to be notified.

Comments: The proposed amendment seeks to expedite the initiation of proceedings against the defaulter taxpayers by way of an enabling provision for future rationalisation of timelines for cancelation of registration.

- Sequential filing of returns
 - Section 37(4) has been introduced to restrict filing of return of outward supplies for subsequent tax period, if the return has not been furnished for previous period, subject to certain exceptions which may be notified by the government.
 - Section 39(9) has been amended to provide that a taxpayer would be allowed to file the GSTR 3B return for a tax period, only upon filing the outward supplies statement under Section 37(1).

Comments: The proposed amendments seek to ensure clarity in the process of filing the returns. Further, the sequential filing is intended to ensure reduction of need to rectify particulars in previous filings.

- Introduction of facility to transfer amount available in electronic cash ledger of a distinct person
 - Section 49(10) of the CGST Act has been amended to allow transfer of amount in electronic cash ledger

Comments: The proposed amendment is a welcome change as it seeks to provide a facility for cross utilisation of the balance in electronic cash ledger to the taxpayers having multiple GST registrations. However, it does not address the concerns regarding the cross-utilisation of accumulated ITC across different registrations.

- Other amendments
 - Section 39(5) of the CGST Act has been amended to be provide that non-taxable person would be required to file its monthly returns by 13th day of next month, instead of 20 days after the end of calendar month.
 - Section 47 of the CGST Act has been amended to allow imposition of a late fee for delayed filing of return by tax deduction at source.
 - A retrospective amendment (with effect from 1 July 2017) has been introduced in Section 50(3) of the CGST Act to provide for levy of interest on the ITC wrongly availed and utilised.

Comments: The proposed amendment ratifies the position adopted by the industry that the interest would be applicable on wrongly availed ITC, only when utilised. Accordingly, it is a beneficial amendment.

- Proviso to Section 54(1) of the CGST Act has been amended. Prior to the amendment, any person claiming refund of balance in electronic cash ledger could claim the same by way of filing the return prescribed under Section 39 of the CGST Act. Clause 112(a) of the Finance Bill, 2022 has amended proviso to Section 54(1) with the words "*such form and*".

Comments: On account of the amended provision, any taxpayer will now have to follow the normal route for claiming of refund of balance lying in the electronic cash ledger as stipulated under Section 54 the CGST Act. The process of automatic claiming of refund by way of filing the



return is sought to be done away with. This may lead to an increase in litigation.

- Clause 112(b) of the Finance Bill, 2022 has amended Section 54(2) of the CGST Act. The time limit for filing of refund applications for specialized agencies have been increased from 6 months to 2 years.
- Section 54(10) of the CGST Act has been amended vide Clause 112(c) of the Finance Bill, 2022. Section 54(10) gave powers to the proper officer to withhold processing the refund due under Section 54(3) in case the registered person defaulted in furnishing any return. The words "due under sub-section (3)" has been omitted. The amended provision now states that if any refund is due to a registered person, the same may be withheld if the registered person has defaulted in furnishing the tax return.

Comments: The proposed amendment seeks to widen the ambit vis-à-vis withholding of refund. The same is henceforth not confined only to scenarios specified under Section 54(3) of the CGST Act.

- Explanation (ba) added to the explanations in Section 54 of the CGST Act. 'Relevant date' for the purposes of claiming refund of zero-rated supply of goods or services to a Special Economic Zone (SEZ) unit or a Special Economic Zone developer has been prescribed. The relevant date would be the date of furnishing the returns under Section 39 of the CGST Act.

Comments: The proposed amendment provides clarity regarding the relevant date for filing the refund claim in respect of supplies made to SEZ unit or developer.

- Snapshot of changes in various Central GST (CGST), Integrated GST (IGST) & Union Territory (UTGST) notifications:

Clause in Finance Bill, 2022	Notification Number	Proposed changes
114	Notification No. 9 / 2018 - CGST - GSR 58(E) dated 23.01.2018	Retrospectively amended from 22.06.2017. Provides for the website for filing of returns and generation of e-way bill.
115	Notification No. 13 / 2017 - CGST - GSR 661 (E) dated 28.06.2017	Rate of interest under Section 50(3) of the CGST Act reduced from 24% to 18% with effect from 1.07.2017
116	Notification No. 1 / 2017 - CGST - GSR 673 (E) dated 28.06.2017.	Supply of unintended waste generated during production of fish meal (except fish oil) not to be subjected to tax with effect from 1.07.2017 till 30.09.2019.
117	Notification No. 25 / 2019 - GSR 746 (E) dated 30.09.2019	Given a retrospective effect from 1.07.2017 vide which a service by way of grant of alcoholic liquor license by the State Government against license fee is neither a supply of goods nor a supply of services.
118	Notification No. 6 / 2017 - IGST - GSR 698 (E) dated 28.06.2017	Rate of interest under Section 20 of the IGST Act read with Section 50(3) of the CGST Act reduced from 24% to 18% with effect from 1.07.2017.
119	Notification No. 1 / 2017 - IGST - GSR 666 (E) dated 28.06.2017	Supply of unintended waste generated during production of fish meal (except fish oil) not to be subjected to tax with effect from 1.07.2017 till 30.09.2019.



120	Notification No. 24 / 2019 - IGST - GSR (E) 745 dated 30.09.2019	Given a retrospective effect from 1.07.2017, vide which a service by way of grant of alcoholic liquor license by the State Government against license fee is neither a supply of goods nor a supply of services.
121	Notification No. 10 / 2017 - UTGST - GSR 747 (E) dated 30.06.2017	Rate of interest under Section 21 of the UTGST Act read with Section 50(3) of the CGST Act reduced from 24% to 18% with effect from 1.07.2017.
122	Notification No. 1 / 2017 - UTGST (Rate) - GSR 710 (E) dated 28.06.2017	Supply of unintended waste generated during production of fish meal (except fish oil) not to be subjected to tax with effect from 1.07.2017 till 30.09.2019.
123	Notification No. 25 / 2019 - UTGST (Rate) - GSR 747 (E) dated 30.09.2019	Given a retrospective effect from 1.07.2017, vide which a service by way of grant of alcoholic liquor license by the State Government against license fee is neither a supply of goods nor a supply of services.

Tariff Item	Description of Goods	Rate of Duty
2710 12 43	E 12 Fuel conforming to standard IS 17586	14% + INR 15 per litre
2710 12 44	E 15 Fuel conforming to standard IS 17586	14% + INR 15 per litre

- An amendment has been made to the Seventh Schedule of the Finance Act, 2001, by substituting Central Excise tariff item 2709 20 00 with 2709 00 10 (i.e., petroleum crude).

- In order to promote blending of petrol with ethanol/methanol and blending of high speed diesel with bio-diesel, an additional basic excise duty of Indian INR 2 per litre on petrol and diesel, intended to be sold to retail customers without blending would be levied with effect from 1 October 2022.

For ease of reference, we have detailed the changes that have been made to Notification No. 11/2017-Central Excise dated 30 June 2017, which can be accessed on this [link](#).

- Notification No. 49/2008-Central Excise (N.T.) dated 24 December 2008, which provided for Retail Sale Price (RSP) based valuation for specified goods and prescribed an abatement as a percentage of retail sale price has been superseded by Notification No. 01/2022- Central Excise (N.T.) dated the 1 February 2022. The list of goods in the notification has been pruned to cover goods that are presently covered under Central Excise i.e., chewing tobacco, preparations containing chewing tobacco, jarda scented tobacco and pan masala containing tobacco.

Sl. No.	Tariff Item	Description of goods	Abatement as a percentage of retail sale price
1.	2403 99 10, 2403 99 20, 2403 99 30	All goods	55

04.

CENTRAL EXCISE

Proposed Changes

- Two new tariff items have been inserted in the Fourth Schedule to the Central Excise Act, 1944, conforming to the new Bureau of Indian Standards specifications (IS 17586). The description of these new items is as under:



2.	2403 99 90	Pan masala containing tobacco	55
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05.

KEY SECTOR SPECIFIC IMPACT AREAS

Metals and Mining

Notification No. 10 /1995-Customs dated 7 March 1995 prescribed concessional rate of customs duty on import inputs imported for manufacturing of Iron & Steel Intermediates has been rescinded as being obsolete.

'NIL' customs duty on scrap of iron or steel including stainless steel (Heading 72.04) that is applicable up to 31 March 2022 has been extended up to 31 March 2023 by amending S. No. 368 of notification No. 50/2017-Customs. The tariff rate of iron or steel scrap (Heading 72.04) has also been reduced to 2.5%. Hence, once the exemption from duty on such scrap expires, the customs duty rate shall be operational through tariff.

Certain notifications imposing anti-dumping duty and/or countervailing duty on certain products of steel have been revoked with effect from 1 February 2022.

By insertion of S. No. 464A in notification No. 50/2017-Customs, Basic Customs Duty (BCD) on S.G Ingot Castings (Tariff Item 73.25 10 00) for use in the manufacture of plastic processing machineries (Tariff Items 84.77 10 00, 84.77 20 00, 84.77 30 00) has been decreased from 10% to 7.5%.

Vide S. No. 391A of Notification No. 50/2017-Customs, BCD rate of 5% has been prescribed on cadmium unwrought/wrought/ powder, waste or scrap, falling under Tariff Items 8112 61 00 or 8112 69 00.

Various entries pertaining to concessional customs duty rates for items of metals under Notification No. 50/2017-Customs are now omitted with effect from 1 May 2022. Consequently, rates under the first schedule of Customs Tariff will apply with respect to referred goods. Detailed duty rate movements may be accessed on this [link](#).

Special Economic Zones (SEZs)

The proposal of introducing a new legislation to replace the existing SEZ scheme in this year's budget speech seems to be an outcome of the World Trade Organisation (WTO) 2019 order passed in a dispute raised by the US *apropos* the SEZ scheme wherein the SEZ scheme was held to be violative of the international trade norms on subsidies and countervailing measures. It is important to note that an expert committee led by Bharat Forge chairman Baba Kalyani was constituted with the objective to evaluate the SEZ policy and make it WTO compatible as soon as the dispute was referred to WTO by the US and was pending adjudication. The Baba Kalyani committee submitted its report in 2018, suggesting SEZs be converted into employment and economic enclaves with efficient transport infrastructure and uninterrupted water and power supply. It also favoured swift resolution of disputes through arbitration, flexibility in the dual-usage norms for non-processing areas in SEZs, an extension of the sunset clause, simplification of processes, tax benefits to the services sector, and extension of MSME schemes to these zones.

In view of the aforesaid suggestions, the commerce and industry ministry had pushed for new legislation for SEZs. The Hon'ble Finance Minister in her Union Budget 2022-23 Speech has mooted an overhaul of the SEZ Act. Further, to enable the ease of doing business in SEZ units, it has also been proposed that the government will undertake reforms in customs administration of SEZs and make it fully IT-driven and functional on the Customs National Portal with a focus on higher facilitation and with only risk-based checks. The rejigged law is likely to be implemented from 30 September 2022. Companies functioning in SEZs will need to undertake a detailed impact analysis once the new law comes into force.

Textile Sector

Customs Tariff Structure simplification

Until now, the importers in this sector used to refer to dual documents, viz. the concessional/exemption notifications for effective duty rates and the First Schedule of the Customs Tariff Act. To simply such a complicated Custom tariff structure for the



textile importers and to enable them to refer to one single document, it is proposed to reduce the Tariff rate for all textile items to the present effective rate, with effect from 1 May 2022, by moving the unconditional concessional rates from existing notifications to the First Schedule of Customs Tariff, Act. Hence, although the Tariff rate has changed, the effective duty remains the same.

Furthermore, effective BCD on upholstery and other than upholstery fabrics has now been equalised and a lower effective BCD on these items has been prescribed reducing the cost of import for such products in the hand of importers which would resultantly improve their margins.

Withdrawal of Social Welfare Surcharge Exemption:

The effective BCD on certain textile tariff items falling under Chapter headings 6001, 6101, 6102, 6103, 6104, 6201, 6202, 6203, 6204 used to be composite rates, with different rates of a specific duty. On a number of these items, the combination of specific and ad-valorem rates has been replaced by ad-valorem rates only. For the period from 2 February 2022 to 30 April 2022, the relevant notification has been amended to incorporate effective BCD so prescribed and from 1 May 2022 onwards these items Tariff Rate on these items shall be the applicable BCD. Since composite tariff for these items has been replaced by ad-valorem tariff only, Social Welfare Surcharge exemption for these items has been withdrawn with effect from 2 February 2022.

Phasing out Customs duty exemption on capital goods used in Textile Sector

The Customs duty rate structure on capital goods and project imports has been comprehensively reviewed and exemption on capital goods/ project imports has been phased out in a gradual manner. Accordingly, the BCD exemption which was previously available on certain machinery used in the textile sector has been phased out and withdrawn with effect from 1 April 2022 and 2023, thereby, increasing the cost of imports and supporting the 'Aatmanirbhar Bharat' mission.

Renewable Energy

Product Linked Scheme (PLI) for domestic solar cells, modules manufacturing enhanced to INR 24,000 Crores

In April 2021, the government had announced an INR 4,500 Crores PLI scheme to boost the domestic manufacturing capacity of solar PV modules. An additional allocation of INR 19,500 Crores to augment solar PV module manufacturing under the PLI scheme for manufacturing of high-efficiency solar modules to achieve India's 280 GW solar power goal by 2030 is proposed to be made.

The government has been trying to cut India's total projected carbon emission by 1 billion tonnes by 2030. With the increase in allocation to INR 24,000 Crores, the quantum of investments and domestic manufacturing capacity envisaged under the PLI scheme would further increase. This will open up employment opportunities and will take the country on a sustainable development path.

Revamp in Customs Duty rates

To promote 'Make in India':

- Customs duty on import of Solar modules and Solar cells is proposed to be increased
- In respect to project imports for Power Projects, including Nuclear and Solar Power which were registered till 30 September 2022 will continue to get lower rates of duty of 0%/2.5%/5% as applicable till 30th September 2023. New projects registered after 30 September 2022 will attract a concessional rate of 7.5%. After 30 September 2023, all projects registered under project imports will attract a 7.5% BCD rate.

Electric Vehicles

This budget has introduced a strong policy push aimed at increasing electric mobility solutions. To this end, urban areas will have special mobility zones with a zero fossil fuel policy. Similarly, and especially cognizant of the fact of space constraints in urban areas, a battery swapping policy will be issued in the near term with regulated inter-operability standards. This will undoubtedly provide a fillip and the much-needed impetus to this



burgeoning sector and the 'Battery or Energy as a Service' business model is set to thrive.

To meet these stated objectives, reforms have been introduced in indirect taxes *apropos* electric mobility solutions (*comprising of passenger cars, transport vehicles and two-wheelers*). The earlier concessional rates of customs duty were dependent on the existence of a pre-assembled or disassembled battery pack with pre-assembled attracting a higher rate and disassembled attracting a lower rate of customs duty. In this budget, however, such distinction has been done away with and replaced with a test of parts of EV being inter-connected and mounting on chassis/ body assembly. This will reduce costs on imports and provide a boost in the near term.

However, it would have been ideal if clarification was also issued as to whether EVs without battery packs fitted in, would also qualify for the concessional GST rate that is available to specified EVs - there have been conflicting advance rulings and the tax arbitrage is significant. A clarification on this point would have brought in the much-needed certainty of the tax position.

New-age and digital commerce (including crypto-assets)

With a specific focus on inclusive and sustainable growth and development, this budget seems to have offerings for all. For digital and new-age commerce, this budget presents a bouquet of offerings to aid its growth and address the challenges.

Few notable propositions are:

- To help improve the accessibility to the internet, which is key to this digital and new-age business, the budget has the following propositions to boost telecom infrastructure and services:
 - to conduct an auction of required spectrum for the rollout of 5G mobile services;
 - design-led manufacturing proposed to be boosted via Production Linked Incentive Scheme, to help build an eco-system for 5G technology;

- to enable affordable broadband and mobile service in rural and remote areas, the budget proposes allocation for Universal Services Obligation Fund; and
- to facilitate access to e-services, communication facilities and digital resources to villages, the budget proposes to award contracts for laying optical fibre network under the Bharatnet project, through PPP in 2022-23.
- Recognising the role and contribution of start-ups in the nation's growth, the budget has proposed to extend the due date for incorporation to 31 March 2022 to avail tax incentives. Though the move has been proposed as support in view of the pandemic, it will help the new start-ups too.
- All-encompassing approach proposed under the PM GatiShakti Plan is expected to help make the multimodal logistics efficient and efficacious. This is instrumental in enhancing the customer experience for these e-commerce companies.
- Proposal to create Audio Visual Gaming and Comic ("AVGC") Promotion Taskforce with all stakeholders is likely to bring certainty on a framework which in turn will significantly help the gaming and content industry.
- Similarly, the proposal to create an expert committee to examine and suggest measures to support Venture Capital and Private Equity investments is likely to scale up the investments in these new-age businesses.

Vis-a-vis crypto assets, the Finance Bill of 2022 proposes to include a definition of 'virtual digital asset' in the Income Tax Act, 1961 and levy tax on such transactions. The proposed definition is wide enough to cover crypto assets including non-fungible tokens but has specifically kept any currency out of its purview. This clearly indicates the Government's desire of discouraging the use of virtual digital assets as 'currency'.

Although there is no announcement in terms of applicability of GST, this definition is likely



to impact indirect tax implications as well – at the very least, it raises a question for all stakeholders in the crypto-ecosystem as to whether qualification as a ‘virtual digital asset’ under Income Tax laws leads to a conclusion that even under GST, cryptocurrencies/NFTs will qualify as ‘intangible goods’ and be liable

to GST accordingly. With clarity emerging under income tax, the next GST council meeting would be crucial to see if similar clarifications are announced for GST as well. Nonetheless, the budgetary announcements have certainly made it clear that crypto assets would not escape Indian taxation.

- KCO | Indirect Tax Team

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AMBITION STATEMENT

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