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Union Budget 2021

Tax Alert - Key amendments impacting the technology sector

Recognizing digital capabilities for long-term sustainable development



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“Faith is the bird that feels the light and sings when the dawn is still dark”. This quote by Rabindranath Tagore was aptly mentioned by the hon’ble FM in her speech and echoes the current state of the Indian technology sector. The sector has demonstrated resilience during the pandemic and is the backbone for digital adoption across various initiatives in the country.

In the past 12 months, several significant structural reforms have been undertaken to drive innovation, technology adoption and efficiency in the sector, including relaxation of OSP Terms & Conditions by Department of Telecommunications to enable work from anywhere.

Technology is at the core of a plethora of policy measures announced in Budget 2021. It is proposed to leverage information technology for National Language Translation Mission and National Digital Educational Architecture to disseminate governance-education and policy related knowledge. Government will also launch data analytics, artificial intelligence, machine learning driven MCA21 Version 3.0 to have additional modules for e-scrutiny, e-adjudication, e-consultation and compliance management.

This budget will also be a growth accelerator for the FinTech industry as it provides a strong impetus to promoting the digital economy, artificial intelligence and development of a world class FinTech hub.

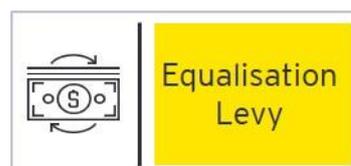
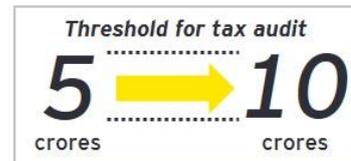


How does the budget impact the technology sector?

Key amendments

- ▶ **Rationalization of the provisions of Equalisation Levy (EL)**
 - ▶ Ambiguity that existed on inter-play of equalization levy and royalty/ fees for technical services provisions for AY 2021-22 has now been clarified
 - ▶ Exemption from income-tax will apply from AY 2021-22 onwards, subject to the transaction not being in the nature of royalty or fees for technical services under the Act or tax treaty, whichever is beneficial to the taxpayer
 - ▶ The term “online sale of goods” and “online sale of services”, for the purpose of e-commerce supply or service, has been clarified to include one or more of the following online activities:
 - ▶ Acceptance of offer for sale
 - ▶ Placing the purchase order
 - ▶ Acceptance of the purchase order
 - ▶ Payment of consideration
 - ▶ Supply of goods or provision of services, partly or wholly
 - ▶ Consideration from e-commerce supply or services to include:
 - ▶ Consideration for sale of goods irrespective of whether the e-commerce operator owns the goods
 - ▶ Consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator
- ▶ **Clarification on depreciation on goodwill**
 - ▶ It has now been proposed that goodwill of a business or profession will not be considered as depreciable asset and no depreciation to be allowed in any situation. Towards this, it is proposed:
 - ▶ Block of assets shall not include goodwill for depreciation purposes
 - ▶ If goodwill is forming part of block of asset as on AY beginning on 1 April 2020 and depreciation has been claimed, WDV and short-term capital gain to be computed in a manner to be prescribed
 - ▶ If goodwill is purchased, such purchase price would be the cost of acquisition. However, depreciation obtained prior to AY 2021-22 shall be reduced from the purchase price of the goodwill
- ▶ **Tax deducted at source on purchase of goods**
 - ▶ The government has widened scope of TDS by levying tax @ 0.1% on a purchase transaction exceeding INR50 lakhs in a year
 - ▶ Further, only persons with turnover exceeding INR10 crores are liable to withhold taxes
 - ▶ Where seller does not have a PAN, tax deduction would apply @ 5%

Highlights



Goodwill
No Depreciation



- ▶ **Rationalization of minimum alternate tax provisions**
 - ▶ Where book profits of current year include income of past year(s) on account of Advance Pricing Agreement or secondary adjustment, taxpayer can make an application to Assessing Officer to recompute book profits of such past year(s) and tax payable under MAT for current year
 - ▶ In case of foreign companies, currently income from capital gains on transfer of securities, interest, royalty, fees for technical services and related expenses are adjusted while computing book profits; the provisions are now proposed to be extended to dividend income and related expenses as well
- ▶ **Rationalization of slump sale provisions**
 - ▶ Earlier, the definition of "slump sale" included transfer of one or more undertaking as a result of "sale" for a lump sum consideration
 - ▶ Certain judicial precedents had interpreted that other means of "transfer" such as exchange, relinquishment and extinguishment were excluded from the definition of "slump sale"
 - ▶ The definition of "slump sale" has now been amended to include all types of "transfer"
- ▶ **Liberalization of conditions for availing tax holiday for start-ups**
 - ▶ Currently, start-ups incorporated between 1 April 2016 and 31 March 2021, with turnover less than or equal to INR100 crores, are eligible to claim 100% tax deduction in 3 consecutive years out of 10 years
 - ▶ Tax deduction is now extended for start-ups incorporated up to 31 March 2022
- ▶ **Payment by employer of "employee contribution" to a fund on or before the due date**
 - ▶ In order to ensure timely deposit of employees' contribution to the welfare funds of the employees by the employers, the government has clarified that the late deposit of employees' contribution shall not be allowed as deduction to the employer
- ▶ **Faceless ITAT**
 - ▶ Faceless scheme for ITAT proceedings to be launched on same lines as faceless appeal
 - ▶ Detailed directions in this regard to be issued on or before 31 March 2023
- ▶ **Board for Advance Rulings to be constituted to replace Authority for Advance Rulings**
 - ▶ The Authority of Advance Rulings shall cease to exist effective from a notified date and would be replaced by the Board for Advance Rulings
 - ▶ The Board for Advance Rulings shall consist of two officers not below the rank of Chief Commissioner
 - ▶ Advance rulings issued by the Board for Advance Rulings shall not be binding on the taxpayer or the department and can be appealed before the High Court within 60 days of the order
- ▶ **Revision of time limits for assessments**
 - ▶ To improve the efficiency of the income tax department and to give effect to the computerization of the process under the Act, the time limit for completion of assessments under Section 143 and section 144 of the Act has been amended to nine months for the assessment year 2021-22 and onwards

Highlights



Faceless ITAT proceeding



Reduction in time limit for assessment proceeding



MCA 21 Version 3.0



Tax holiday for the start ups

TDS
Applicability
(Purchase of goods)

Highlights



Requirement of furnishing GSTR 9C has been removed



Custom duty revamp with a plan to review all old exemption notifications



Changes in zero-rating provisions under GST needs to be analysed

- ▶ In order to reduce compliance burden, the time-limit for re-opening of assessment is being reduced to three years from the current six years from the end of the relevant assessment year
- ▶ Re-opening up to 10 years is proposed to be allowed only if there is evidence of undisclosed income of INR50 lakh or more for a year. Further, it is proposed to completely remove discretion in re-opening and henceforth re-opening shall be made only in cases flagged by system on the basis of data analytics, objection of C&AG and in search/survey cases
- ▶ **Time limit for filing belated/ revised return**
 - ▶ The time limit for filing belated/ revised return has been proposed to be amended to three months before end of the relevant assessment year or before completion of assessment whichever is earlier
- ▶ **Increase in threshold of tax audit for non-cash payments**
 - ▶ Tax audit threshold increased to INR10 crores as against INR5 crores for businesses where aggregate of all cash receipts/ payments in a year does not exceed 5% of the such receipts/ payments
- ▶ **Other policy related changes**
 - ▶ To boost the role that technology enabled education can play in leapfrogging the nation, the government will set up a National Digital Education Architecture
 - ▶ Re-enforcing the government's focus on new age technologies such as data analytics, artificial intelligence, machine learning, the Government has launched MCA21 Version 3.0 with additional modules for e-scrutiny, e-adjudication, e-consultation and compliance management
 - ▶ Government has embarked INR1,500 crores for a proposed scheme that will provide financial incentive to promote digital payments in India

Indirect tax

- ▶ **Requirement of furnishing GST Audit report in Form 9C has been removed.**
 - ▶ Requirement of furnishing annual return in Form 9 to be replaced with a self-certified reconciliation statement
 - ▶ Requirement of Input Tax Credit reconciliation with the invoice statement uploaded by supplier inserted in the CGST Act
- ▶ **Changes in zero-rating provisions under GST**
 - ▶ Zero-rating benefit in case of supplies made to SEZ units and developers to be curtailed only in cases where supplies used for authorized operations
 - ▶ Government to notify cases where refund of output tax on zero-rated supplies can be filed
 - ▶ Linking of the foreign exchange remittance in case of export of goods with refund
- ▶ **The provision for charging interest on net-cash liability (inserted by the Finance Act 2019) has been retrospectively made applicable from 01 July 2017**
- ▶ **A revised customs duty structure is proposed with a plan to review of more than 400 old custom exemptions**

- ▶ **Customs Act amended to provide that anti-dumping duty on imports by SEZ units is exempt other than in cases where imports are meant for supplies to DTA or used in manufacture of goods to be supplied to DTA or when specifically notified**

Impact analysis

Without tinkering with corporate tax rates, Budget 2021 introduces various proposals which have an impact on the sector. With the increase in e-commerce transactions, it has been clarified that income taxable as royalty or fee for technical services shall not be subject to EL. To provide clarity on quantum of consideration for EL, the Budget has specified different sub-activities which shall be covered within “online sale of goods”, or “online provision for services” and consideration received or receivable from e-commerce supply or services. In the current form the levy is deemed to be widely worded and needs to be fine-tuned. The extension of the tax holiday and exemption of capital gains will continue to offer tech start-ups tailwinds to early-stage funding. An important point to be noted in the fine print is that depreciation on goodwill will no longer be tax deductible. This may impact the effective tax rates of companies that had capitalised goodwill.

On the indirect tax front, discontinuance of GST audit is a welcome step for the industry as the same would reduce the compliance burden. However, a reconciliation statement will need to be furnished on self-certification basis. This puts the onus on stakeholders to ensure that returns are true and correct. Zero-rating benefit in case of supplies made to SEZ units and developers is proposed to be allowed only in cases where supplies are used for authorised operations. This would need to be analysed in detail.

Under the current scenario work from anywhere is the seen as the future of work for the sector and accordingly suitable enabling provisions in section 10AA of the IT Act for availability of tax holiday and employee allowance/ perquisites was the desired ask. This aspect seems to be a miss and it will auger well for the sector to get clarity from the regulators. Overall, the budget proposals represent a degree of stability and policy making, with a focus on capital expenditures, long term development and sustainable growth.

Glossary

FM - Finance Minister

OSP - Other Service Provider

MCA - Ministry of Corporate Affairs

IT Act - Income Tax Act, 1961

TDS - Tax Deducted at Source

PAN - Permanent Account Number

MAT - Minimum Alternate Tax

WDV - Written Down Value

FTS - Fees for Technical Services

ITAT - Income Tax Appellate Tribunal

C&AG - Comptroller and Auditor General of India

APA - Advance Pricing Agreement

GST - Goods and Services Tax

SEZ - Special Economic Zone

DTA - Domestic Tariff Area



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