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Union Budget 2022

Tax Alert - Media & Entertainment sector

'Digital asset tax' introduced



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- ▶ Media & Entertainment ("M&E") business has redefined itself fuelled by growth of digital infrastructure, digital media adoption and digital assets. M&E companies too adopted to the opportunity to reinvent themselves by opening up platforms facilitating buy and sell of digital assets. Gamification on e-commerce apps, were some of the many strategic shifts that were seen in 2021.
- ▶ The M&E sector in India is expected to grow at a CAGR of 13-14% till 2023. This impressive growth factors various opportunities for Indian media businesses with an aim to make a healthy contribution towards India's US\$ 10 trillion aspiration by 2030.
- ▶ However, the M&E sector was reeling under the effects of the pandemic. Thus, the industry had high expectations in terms of reduction in high GST rates levied on live entertainment and theatre tickets, clarity on levy of EQL, pursuant to the agreement reached by OECD/ G20 Inclusive framework. However, there are no expected reliefs for the M&E industry in the Budget.
- ▶ The Budget introduces proposals for the M&E industry to provide for a stable and predictable tax regime on virtual digital assets and expand the scope of reporting for certain "specified activities".



How does the budget impact the Media & Entertainment sector?

Key policy announcements

Financial Inclusion

- ▶ Introduction of taxation of virtual digital assets including non fungible tokens at 30% on transfer of such assets and also subject the transfers to withholding tax at 1%.
- ▶ Additional compliance burden on persons engaged in “specified activities” for reporting all payments over INR50,000, similar to reporting by producers of cinematographic films.

Key amendments

Taxation of Virtual Digital Assets (“VDA”)

- ▶ Now a new section is introduced to tax any income from transfer of VDA @ 30%.
- ▶ VDA will mean any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means and includes non fungible token or tokens, of similar nature.
- ▶ No deduction in respect of any expenditure, other than the cost of acquisition will be allowed for computing the income from VDA.
- ▶ Losses arising on account of VDA will not be allowed to be set off against any head of income or carried forward to any future years.
- ▶ Any gift of VDA will be taxable in the hands of recipients.
- ▶ The amendment will be effective from 1 April 2023.
- ▶ Introduction of this section will do away with the uncertainties around taxation of VDA.

Withholding tax on transfer of VDA

- ▶ Now a new section is introduced to cover withholding tax at 1% on the sum credited for transfer of VDA to a resident (excluding specified persons).
- ▶ Wherein the consideration for transfer of VDA is wholly or partly in cash or in kind, the person responsible for paying such consideration to ensure that the tax has been paid in respect of such transfer of VDA.
- ▶ No withholding tax to be deducted wherein the consideration payable:
 - ▶ By a specified person during the financial year does not exceed INR50,000; and
 - ▶ Other than specified person does not exceed INR10,000.
- ▶ The section also clarifies that wherein tax will be deductible in accordance with this section, no taxes will be deducted under any other provisions of the Income-tax Act, 1961 for the said transaction.
- ▶ The amendment will be effective from 1 July 2022.

Highlights



Widening of the scope of reporting by producers of cinematograph films or persons engaged in “specified activities”

- ▶ “Specified activities” will include event management, documentary production, sports event management, production of programs for telecasting on television or over the top platforms or any other similar activity, as will be specified by the Government.
- ▶ Producer of cinematographic films or engaged in “specified activities” will be obliged to furnish particulars of all payments over INR50,000 made by him to each person engaged by him in the production or specified activity.
- ▶ Such details will be required to be furnished within a prescribed period to be notified separately.
- ▶ This will cast additional reporting compliance burden on the persons engaged in “specified activities”.
- ▶ The amendment will be effective from 1 April 2022.

Changes in Customs Duty on certain products

- ▶ Customs Duty increased from existing 15% to 20% on import of loudspeaker, headphone and earphones into India from 1 April 2022.
- ▶ Customs Duty likely to levied on import of parts or components for use in manufacture of populated printed circuit board of digital video recorder, network video recorder, CCTV camera, reception apparatus for television (not designed to incorporate a video display) from 1 April 2024 at the rate 20%.
- ▶ Customs duty levied at the rate 2.5% effective 2 February 2022 on recovered (waste and scrap) paper or paperboard imported for manufacture of paper, paperboard or newsprint.

Changes in provisions pertaining to availment of GST input tax credits

- ▶ The existing procedure of two-way communication as envisaged between the supplier and recipient for GST input tax credits matching has been done away with.
- ▶ Auto-generated statement containing details of input tax credits will be communicated to the recipient. The statement will also contain details of supplies in respect of which GST input tax credit is restricted. The recipient will be eligible to claim GST input tax credits only if the same is not restricted as per the above details communicated to him.
- ▶ Taxpayer will be eligible to avail input tax credits on self-assessment basis, subject to prescribed conditions and restrictions. If the tax is not paid by the supplier, recipient needs to reverse credit along with applicable interest. GST input tax credit can be re-availed once the tax is paid by the supplier.

Impact analysis

VDAs have gained tremendous popularity recently and volumes of trading in VDA has increased substantially. However, India did not have a clear policy on either regulating or taxing such asset classes which have gained traction globally over the last couple of years. Meeting demands of the various stakeholders of the digital asset industry, the Government has walked the talk in providing a stable and predictable tax regime for taxation of VDA. The clarity is a welcome move and will provide much needed certainty on taxation of digital asset industry. Further, the announcement of the Government to set up an AVGC promotion task force will enable growth of gaming industry, propel innovation and led to IP creation.

However, the M&E industry, which was one of the most impacted by pandemic, has again been left stranded in terms of obtaining "infrastructure" status to obtain financial credits and availing tax incentives from the Government.

Also, pursuant to the agreement reached by OECD/ G20 Inclusive Framework (which includes India) on the two-pillar approach to dealing with tax challenges arising on account of digitalization and the agreement reached by India and US on a transitional approach for e-commerce equalization levy, it was widely anticipated that the Government may provide much needed clarity on Government's position to withdraw equalisation levy (which was introduced through a unilateral measure) and propose amendments in the domestic tax law. Interestingly, there were no proposal or statements made by the Government and it seems the Government continues to follow a wait-and-watch approach to taxing digital businesses until the final details of the Pillar 1 and Pillar 2 are agreed globally.

From indirect tax perspective, levy of customs duty / increase of customs duty on certain products could increase cost for certain players in M&E sector. The businesses should evaluate such increased cost and its impact on the business margins. Additionally, amendments in the process pertaining to claiming input tax credits may require the businesses to communicate with their vendors to file timely returns along with timely payment of taxes. This could also entail changes in the contract entered with various existing and prospective vendors.

Glossary

VDA - Virtual Digital Asset

AVGC - Animation, visual effects and gaming and comics

GST - Goods and Services Tax

Budget - Union Budget 2022

EQL - Equalization levy



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