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Union Budget 2022

Tax Alert - Technology sector

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Technology: Harnessing the Digital World



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Technology sector continues its upward growth trajectory and once again proved its resilience to current global scenario and contributed to the next wave of growth of the Indian economy. In the current landscape digital adoption has been accelerated across industries with new focus on hybrid work from home model and heavy reliance on technology led solutions. A plethora of policy and legislative changes proposed in the Union Budget 2022 has ushered positive measures in the field of technology which will give a boost to the sector.

Government's intention to promote "Sunrise Opportunities" like artificial intelligence, blockchain and growth of digital payments across core sectors of the economy will generate new job opportunities for the millennials, promote business opportunities and help in value creation.

Introduction of 'Digital Rupee' by Reserve Bank of India using blockchain technology sends a strong message about India being at the forefront of technology adoption and enhancement. It is also indicative of an increasing acceptance by the government of digital currencies within the economic framework. Taxation of virtual digital assets at 30% is as expected.

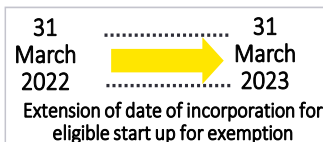
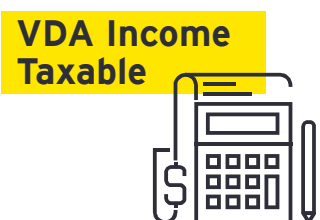
The thrust on digitization and fintech is evident in the budget, especially with the setting up 75 digital banking units in 75 districts in the country. Marking the *Azadi ka Mahotsav* this is a confident and forward-looking budget which promises to bring to fore inclusive policies and framework for the technological ecosystem in line with the Prime Minister's vision of India@100.

How does the budget impact the technology sector?

Key amendments

- ▶ **SEZ Proposals**
 - ▶ SEZ Act to be replaced by new legislation to enable states to become partners in 'Development of Enterprise and Service Hubs'.
 - ▶ This will ensure all large existing and new industrial enclaves to optimally utilize available infrastructure and enhance competitiveness of exports.
 - ▶ Reforms in Customs Administration of SEZs announced along with fully IT driven functionality on the Customs National Portal to promote ease doing business by SEZ units with effect from 30 September 2022.
- ▶ **Data Centre**
 - ▶ Data Centers included in harmonized list of infrastructures which will facilitate credit availability for digital infrastructure and clean energy storage.
- ▶ **Taxation of virtual digital assets**
 - ▶ VDA means code or number or token (not being Indian or foreign currency) generated through cryptographic means or otherwise. It includes non-fungible tokens or any other token of similar nature.
 - ▶ Income from VDA is taxable @30% subject to following:
 - ▶ Cost of acquisition will be allowed as a deduction.
 - ▶ No other deduction of expenses will be allowed.
 - ▶ Loss on transfer of VDA shall not be allowed to be set off or carry forward.
 - ▶ These provisions shall take effect from AY 2023-24.
 - ▶ Gifts of VDA will be taxable in the hands of the recipient.
 - ▶ TDS provisions have been introduced to deduct tax @ 1% on transfer of VDAs and will not apply where the aggregate of such transaction does not exceed INR 50,000 in case of specified persons or INR 10,000 in other cases.
- ▶ **Extension of date of incorporation for eligible start up for exemption**
 - ▶ Profit-linked tax exemption for eligible start-ups extended by another year.
 - ▶ The start-ups incorporated up to 31 March 2023 will now be eligible for exemption.
- ▶ **Filing of updated return**
 - ▶ The taxpayers can file updated return of income within 24 months from end of the relevant assessment year on payment of additional tax.
 - ▶ If updated return is filed within 12 months - the additional tax payable @ 25% of aggregate of tax and interest payable.

Highlights



- ▶ If updated return is filed in the subsequent 12 months - the additional tax payable @ 50% of aggregate of tax and interest payable.
- ▶ The option to file an updated return of income cannot be availed by taxpayers in certain circumstances.
- ▶ **Reducing multiplicity of appeals before the High Court and Tribunal**
 - ▶ The revenue authorities can now defer filing an appeal before the High Court and Tribunal, if an identical question of law is pending before the jurisdictional High Court or the Supreme Court including in case of another taxpayer.
 - ▶ The application for deferral to be filed only on receipt of acceptance from the taxpayer.
 - ▶ This amendment is applicable from 1 April 2022.
- ▶ **Rationalization of TDS/ TCS provisions on payments to non-filers of income tax returns**
 - ▶ The Finance Act 2021 had introduced higher rates of TDS/ TCS for payments to persons who have not filed tax returns for last 2 years.
 - ▶ The 2-year requirement has now been reduced to 1 year i.e., higher TDS/ TCS rates shall apply even in case of persons who have not filed tax return in the immediately preceding year.
 - ▶ This amendment will take effect from 1 April 2022.
- ▶ **Window for filing modified return by successor entity**
 - ▶ The modified return can be filed by the successor in case of business reorganization for the period between the appointed date and date of the final order of the competent authority.
 - ▶ Such modified tax return needs to be filed within six months from the end of the month in which the competent authority issues the order.
 - ▶ This amendment will be effective from 1 April 2022.
- ▶ **Validity of proceedings made on the predecessor during pendency of reorganization**
 - ▶ The Proceedings pending or completed on the predecessor during the pendency of application for business reorganization shall deemed to be applicable to the successor.
 - ▶ This amendment will be effective from AY 2023-24.
- ▶ **Clarification on treatment of cess and surcharge**
 - ▶ The explanation has been included to clarify that the term tax includes and has always included surcharge and cess and such payments are not a deductible business expenditure.
 - ▶ The amendment is applicable retrospectively with effect from 1 April 2005.
- ▶ **Withdrawal of concessional rate of taxation on dividend income received from specified foreign company**
 - ▶ The dividend received by an Indian company from specified foreign company is taxable at concessional tax rate of 15%.
 - ▶ This concessional tax rate stands withdrawn, and the amendment will be effective from AY 2023-24.

Highlights



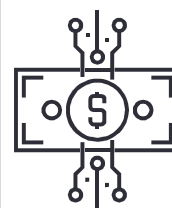
▶ Other policy related changes

- ▶ Digital ecosystem for skilling and livelihood - **DESH-Stack e-portal** to be launched – to empower citizens to skill, reskill through online training.
- ▶ Foreign universities and institutions to be allowed in GIFT City to offer certain courses free from domestic regulations.
- ▶ An International Arbitration Centre to be set up in GIFT City for timely settlement of disputes under international jurisprudence.
- ▶ Introduction of Central Bank Digital Currency to boost digital economy.
- ▶ Start-ups to facilitate 'drone shakti' for promotion of drone usage.
- ▶ For delivery of digital and hi-tech services to farmers, a new scheme to be launched. Use of kisan drones to be promoted for crop assessment, digitization of land records, spraying of insecticides, nutrients etc.
- ▶ Issuance of e-passports with futuristic tech to be rolled out in 2022-23.
- ▶ It is proposed to set up an AVGC promotion task force to recommend ways to build domestic capacity for animation, visual effects, gaming, and comic (AVGC) sector.

Indirect tax

- ▶ Time limit for availment of input tax credit, issuance of credit notes and amendment to returns has been extended from existing September limit to 30 November of the subsequent year.
- ▶ Retrospective amendment w.e.f. 1 July 2017 introduced to provide levy of interest on Input tax credit wrongly availed and utilized @ 18%.
- ▶ Changes with respect to Input Tax Credit:
 - ▶ A new clause inserted under section 16(2) of CGST Act to provide that input tax credit with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the registered person in auto generated statement.
 - ▶ Manner and conditions / restrictions for communication of details of inward supplies and input tax credit to the recipient by means of auto-generated statement is being amended.
 - ▶ Manner to be prescribed for availment of input tax credit on self-assessment basis (process for claiming credit on provisional basis withdrawn).
- ▶ Late fee introduced for delay in filing of TCS returns.
- ▶ Transfer of balance in Electronic cash ledger allowed within different registrations of distinct persons.
- ▶ Specific provision inserted to provide maximum proportion of output tax liability which may be discharged through electronic credit ledger, as may be prescribed.
- ▶ Time limit for claiming refund in respect of supplies made to SEZ units has been explicitly inserted as two years from the date of filing monthly return.

Highlights



RBI to issue digital currency using block chain technology



Foreign University allowed in Gift City



Drone Shakti



E-Passport

- ▶ Concessional rate for project imports and capital goods to be phased out gradually and tariff rate of 7.5% to be introduced.
- ▶ More than 350 old customs exemptions have been proposed to be gradually phased out including removal of exemption on items which are or can be domestically manufactured in India to promote 'AatmaNirbhar Bharat' movement.
- ▶ Retrospective amendments in definition of 'proper officer' under Customs act to provide clarity on the powers of DRI officers and nullify the impact of Cannon judgement and other ongoing litigations in this respect.
- ▶ The Customs (Import of goods at concessional rate of duty) Rules, 2017 are being amended to simplify and automate the process including Standardizing of processes and electronic filings.

Impact analysis

"Information technology and business are becoming inextricably interwoven. I do not think anybody can talk meaningfully about one without talking about the other" is a notable remark by Bill Gates. Budget 2022 recognizes this ethos, and the reforms aim to provide digital initiatives which are economical and friendly to use.

The replacement of the Special Economic Zones Act with a new legislation that will enable the states to become partners in 'Development of Enterprise and Service Hubs' is a welcome step for increasing exports for the IT/ ITES sector which constitute approx. 67% of the SEZ units operating in the country.

In a bid to boost the Data Centres and Energy Storage Systems, the Government has granted it infrastructure status. This grant would help build world class data centre ecosystem by attracting investments from domestic and global players and would nurture localization of the Data centre industry. This decision would also enable data centre companies to access funds at a cheaper rate and consequently benefit the economy in the long run.

Continuing the thrust on start-ups to be growth drivers, government has extended threshold of incorporation from 31 March 2022 to 31 March 2023 for claiming tax holiday. In addition, capping of surcharge on long term capital gains at 15% will benefit the entrepreneur.

While the taxation regime introduced for virtual digital assets provides much needed clarity on cryptocurrency, it appears to be stringent considering the tax rate of 30% with no provision for deduction of expenses or setoff or carry forward of losses arising on transfer of virtual digital asset.

Reforms in Customs Administration of SEZs have been announced along with fully IT driven functionality on the Customs National Portal to promote ease doing business by SEZ units. Further, more than 350 old customs exemptions are proposed to be gradually phased out to promote AatmaNirbhar Bharat and ease of doing business.

Budget 2022 also proposes a plethora of policy changes. One of the key changes is introduction of Central Bank Digital Currency and promotion of digital banks which will provide further impetus to the digital payment system in India. E-passports are also proposed to be rolled out which will be a welcome technology driven move aimed at facilitating smooth immigration with increased security.

Under the current scenario, work from anywhere is 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, Budget 2022 appears to support innovation and drive business resilience by leveraging new age technologies.

Glossary

SEZ - Special Economic Zone

AY - Assessment Year

TDS - Tax Deduction at Source

TCS - Tax Collected at Source

IT/ ITES - Information Technology/ Information Technology Enabled Services

DRI - Department of Revenue and Intelligent

APA - Advance Pricing Agreement

GST - Goods and Services Tax

VDA - Virtual Digital Asset

CGST - Central Goods and Services Tax



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