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Union Budget 2022

Tax Alert - Telecom sector

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Charting the path to evolution along with proliferation in the rural market

The Government recognizes telecom sector as an enabler of growth and employment opportunities with emphasis on nationwide 5G rollout and access of affordable services to rural and remote areas



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The telecom sector has been the backbone for various initiatives taken by the Government for transformation of the nation into a digital economy. With the Government's vision of enabling the entire country to have same access to e-services, communication facilities and digital resources, the sector has rightly been recognized as key enabler for growth and employment generation.

Budget 2022 charts the path to further evolution of the sector with key focus area being 5G and connecting remote areas. While the said proposals open new doors of opportunities, the same also warrant extensive investment in infrastructure. To fuel this outlay, the sector was anticipating relief measures such as liquidation of blocked working capital in form of GST credits and reduction of custom duty rates on import of telecom gear. Further, clarification on tax issues leading to litigation, such as eligibility of GST credit on passive infrastructure and non-levy of royalty-based taxation on telecom charges, in particular cross border payment of bandwidth and interconnect charges, was much awaited by the industry.

Though the above expectations did not find place in the budget announcements, Budget 2022 certainly reflects the commitment of Government to promote R&D and build a strong domestic ecosystem for 5G. The sector shall look forward to fine print of design-led manufacturing scheme and prospects created by 5G rollout.

How does the budget impact the Telecom sector?

Key amendments (Direct Tax)

- ▶ Last date for commencement of manufacturing/ production for availing concessional tax rate for new manufacturing companies, extended by one year i.e. from 31 March 2023 to 31 March 2024.
- ▶ Last date of incorporation for claiming start up incentives extended by one year i.e. up to 31 March 2023.
- ▶ Taxpayer allowed to file updated income tax return within two years from end of the relevant assessment year on payment of additional tax (25% or 50% as applicable) on tax and interest due on additional income. The updated ITR can also be filed even if original ITR was not filed.
- ▶ Retrospective amendment from AY 2005-06 to clarify that surcharge and cess are not allowable as business expenditure.
- ▶ TDS at the rate of 10% to apply on any benefit or perquisite provided to a resident, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident.
- ▶ Withdrawal of concessional tax rate of 15% on dividend earned by an Indian company from specified foreign company.
- ▶ Surcharge on tax on LTCG to be capped at 15%.
- ▶ Faceless proceedings before the TPO, DRP and ITAT deferred till 31 March 2024.
- ▶ Money received by an individual in respect of expenditure incurred on his or his family member's illness related to COVID-19, and money received up to INR10 lakh by family member of a deceased person owing to COVID-19 illness, not to be taxed with retrospective effect from AY 2020-21.
- ▶ Tax litigation by income tax department to be deferred where an identical question of law is pending in appeal before jurisdictional High Court or Supreme Court and till the same is decided.
- ▶ Successor entity to file modified return for the period between effective date of business re-organization and the date of order of competent authority.
- ▶ Provisions pertaining to bonus stripping and dividend stripping to be made applicable to securities and units.
- ▶ Expenditure relating to exempt income not to be allowed as deduction even if no exempt income is earned during the year.
- ▶ Application for refund of tax paid under tax protected contract can now be made to the income tax authority instead of appeal to Commissioner (Appeals) if no taxes were deductible by the payer.
- ▶ Cash credit provisions amended to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider unless the creditor is well regulated entity.
- ▶ New regime for taxation of VDA:
 - ▶ Income from transfer of VDA taxable at 30%.
 - ▶ No deduction to be allowed in computing income from transfer, except cost of acquisition.

- ▶ Loss arising from transfer of VDA can neither be set off nor carried forward.
- ▶ Tax withholding at the rate of 1% on payment made for transfer of VDA to resident buyer where sale consideration is INR50,000 or more (in case of specified payers) and INR10,000 (in case of other payers).
- ▶ Gift of VDA taxable in hands of recipient.

Key amendments (Indirect Tax)

Customs

- ▶ IGCR rules have been revised to make entire process digital and transparent.
- ▶ Officers of DRI, Audit and Preventive formation are included in the definition of proper officer. Further, specific amendment has been introduced to validate the earlier actions taken by such officers.
- ▶ Advance Ruling to be valid for a period of three years or till there is a change in law or facts.
- ▶ To give impetus to local manufacturing Phased Manufacturing Program introduced for certain products such as wrist wearable devices, hearable devices etc.
- ▶ Following changes have been introduced in the rate of BCD:

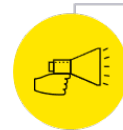
S. No.	Product	Earlier BCD rate	Effective BCD rate	Effective Date
1	Camera Lens used in manufacture of Camera Module of cellular mobile phones	15% / 10%	2.50%	02-02-2022
2	Parts of transformer used in manufacture of mobile phone chargers	15% / 10%	5%	02-02-2022

Goods and Service Tax

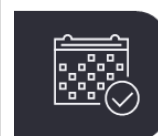
- ▶ Extension in timeline for availing ITC in respect of any invoice or debit note pertaining to a financial year till 30 November of following financial year.
- ▶ In case of non-payment of tax by the supplier, ITC shall be required to be reversed along with interest by the recipient. Such ITC can be reclaimed on subsequent tax payment by the supplier.
- ▶ Extension in timeline for issuance of credit notes to 30 November of the following financial year or the date of furnishing of the relevant annual return, whichever is earlier.
- ▶ The timeline for rectification of errors in statement of outward supplies has been extended till 30 November of the following financial year.
- ▶ Balance in cash ledger of CGST can be transferred to other ledgers within same GSTIN or to CGST/ IGST cash ledger of a distinct person.
- ▶ Retrospective amendment from 1 July 2017 to provide interest at 18% on ITC wrongly availed and utilized.

Highlights

Infrastructure status granted to Data Centers



Promoting Digital



2 months extension in various timelines

Transfer of cash balance to other tax heads and distinct persons



Policy Updates

- ▶ Spectrum auctions to be conducted in 2022 to facilitate roll out of 5G mobile services in FY 2022-23 by private telecom operators.
- ▶ Scheme for design-led manufacturing to be launched to build a strong ecosystem for 5G mobile services as a part of the Production Linked Incentive Scheme.
- ▶ Under the Bharatnet project, contracts for laying optical fibre in all villages, including remote areas to be awarded through PPP in 2022-23.
- ▶ Data centers included in the harmonized list of Infrastructure thereby bringing its development at par with other major sectors to avail long term credits.

Impact analysis

The Finance Minister while setting out the vision of India@100 mentioned that the overall, sharp rebound and recovery of the economy is reflective of our country's strong resilience. The telecom sector has played a vital role in upholding the momentum during the uncertainty posed worldwide due to the pandemic. The Budget 2022 while marking 'Azadi ka Amrit Mahotsav' aims at promoting digital economy, fintech and technology enabled development while setting the vision for 'Amrit Kaal'. This ensures ample growth opportunities for the telecom sector while contributing to the Government's vision to build a digital India.

The Government plans to conduct spectrum auctions to facilitate rollout of 5G mobile services within FY 2022-23 for private telecom players. The auction requires capital not only for bidding but also for laying down the 5G enabled physical infrastructure. Proposals for adjustment of GST paid on license fee, spectrum usage etc. with other statutory levies could have addressed some of the woes of the cash trapped industry.

The amendment introduced in customs aimed at inclusion of DRI officers as 'proper officer' shall render all the acts undertaken by such officers prior to introduction of the said amendment as 'valid' which may impact various telecom players who have undergone / currently undergoing a DRI audit / investigation. Further, restricting the validity of advance ruling to three years may expose the telecom players to litigation and uncertainty post expiry of prescribed period even in case an advance ruling has been obtained.

Budget 2022 has however reinforced the spirits of telecom players by announcing the Government's commitment towards digital economy. The Finance Minister has also proposed allocation of 5% of annual collections under USOF towards affordable broadband and mobile service proliferation in rural areas. This will promote R&D and commercialization of technologies and solutions.

Though the telecom sector was expecting a lot from the budget both in terms of fiscal incentives and tax policy initiatives, nonetheless, the overall budget reflects a positive momentum for the sector in terms of its focus on the digital economy and tapping the potential of the rural market. The telecom players would now need to focus on meeting the capital requirements to fuel the transition to the 5G era.

Glossary

AY - Assessment Year

FY - Financial Year

BCD - Basic Custom Duty

CGST - Central Goods and Services Tax

DRI - Directorate of Revenue Intelligence

GSTIN - Goods and Services Tax Identification Number

IGCR - Import of Goods at Concessional Rate of Duty Rules, 2017

ITC - Input Tax Credit

IGST - Integrated Goods and Services Tax

DRP - Dispute Resolution Panel

TPO - Transfer Pricing Officer

LTCG - Long term capital gains

VDA - Virtual Digital Assets

PPP - Public Private Partnership

USOF - Universal Service Obligation Fund



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