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India Budget 2021 **Key Direct tax and Indirect tax proposals**

Indian Finance Minister Mrs. Nirmala Sitaraman presented Economic Survey 2020-21 in the Parliament on January 29, 2021 and Union Budget 2021 on February 1, 2021.

In this article we have discussed the highlights of economic survey and key direct tax and indirect tax proposals for the FY 2021-22.

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Economic Survey 2020-21

Economic Survey 2020-21

Macro Economic analysis

The key highlights of Economic Survey are:

- Due to Covid-19 pandemic, India's GDP is estimated to contract by 7.7% for FY 2020-21.
- India's real GDP and nominal GDP are projected to record a growth of 11% and 15.4% respectively for FY 2021-22 - highest since independence.
- India's foreign exchange reserve rose to all time high of USD 586.1 Billion as on January 8, 2021.

As per IMF India to become fastest growing economy in next 2 years

Key direct tax proposals

Individual taxation

Individual tax rate card

No change in individual tax rates, surcharge and Health Education Cess. Tax rates for FY 2021-22 are as below:

In case of Individual	Option I	Option II*
Upto 0.25 Million ("Mn")	Nil	Nil
>0.25 Mn to 0.5 Mn	5%	5%
>0.5 Mn to 0.75 Mn	20%	10%
>0.75 Mn to 1 Mn	20%	15%
>1 Mn to 1.25 Mn	30%	20%
>1.25 Mn to 1.5 Mn	30%	25%
>1.5 Mn	30%	30%

*Under Option II taxpayer has to forgo some tax benefits like standard deduction, etc.

Surcharge in case of Individual	Rate
Upto 5 Mn	Nil
>5 Mn to 10 Mn	10%
>10 Mn to 20 Mn	15%
>20 Mn to 50 Mn	25%
>50 Mn	37%

Health and Education Cess
Health and Education cess @ 4% applies on tax and surcharge

Corporate taxation

Corporate tax rate card

No change in corporate tax rates, MAT, surcharge and Health and Education Cess. Tax rates for domestic companies for FY 2021-22 are as below:

Particulars	Under Section 115BAB and 115BAA		Under First Schedule to Finance Act	
	(A)	(B)	(C)	(D)
Tax Rate	15%*	22%	25%	30%
Surcharge	10%	10%	<ul style="list-style-type: none"> • Nil, if income is up to INR 10 Mn • 7%, if income is more than INR 10 Mn but up to INR 100 Mn • 12%, if income exceeds INR 100 Mn 	
Health and Education Cess	4%	4%	4%	4%
Subject to conditions	Total income of the company should be computed without claiming specified deductions, incentives, exemptions and additional depreciation available		Where turnover or gross receipts of the company in FY 2018-19 does not exceed INR 4000 Mn	Where conditions referred to under (C) are not met

* For claiming reduced tax rate of 15% the company should be incorporated in India on or after October 1, 2019 and start manufacturing before March 31, 2023.

Tax rate for foreign companies for FY 2021-22 is 40%. Surcharge and Cess are as below:

Surcharge in case of Foreign companies	
Upto 10 Mn	Nil
>10 Mn to 100 Mn	2%
>100 Mn	5%
Health and Education Cess	
	4%

Corporate Taxation

No Depreciation on Goodwill

- Goodwill of a business or a profession has not been specifically provided as an assets to claim depreciation in the tax laws. However, the Supreme Court has considered the Goodwill of a business or profession as a depreciable asset.
- The actual calculation of depreciation on goodwill is required to be carried out in accordance with various provisions of the law. In some cases (like that of acquisition of goodwill by purchase) there could be a valid claim of depreciation on goodwill based on court rulings. In other situations (like that of business reorganization) there could be no depreciation on account of actual cost being zero and the written down value of that assets in the hand of predecessor/amalgamating company being zero.
- Government has proposed that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill in any situation.
- In case of acquired goodwill, purchase price shall be available as cost of acquisition for the purpose of computing capital gains.
- In case any depreciation already claimed by the taxpayer for the period up to FY 2019-20, the cost of acquisition of goodwill shall be the purchase price as reduced by depreciation so claimed.

Other Amendments

Reduction in timeline for filing return of income

- Time limit for filing of belated return and revised return is proposed to be reduced by 3 months. Now the belated or revised return can be filed on or before December 31st following the end of the relevant tax year or before the completion of the assessment, whichever is earlier.
- Example:

Financial Year	Earlier Time Line	Revised Time line
FY 2021-22	March 31, 2023	December 31, 2022

- There is no change in due dates for filing of income tax return and forms for FY 2021-22. Original return due dates for FY 2021-22:

Class of Taxpayer	Due Date
Individual Taxpayer	July 31, 2022
Taxpayer whose accounts are required to be audited	October 31, 2022
Taxpayer having international transactions	November 30, 2022
Filing of transfer pricing report in Form 3CEB	October 31, 2022

- Henceforth, in transfer pricing cases, taxpayers will have only one month to revised tax return.

Other amendments

Time limit to process the return and initiating assessment proceedings

- Earlier income tax authorities could process the return within 12 months from the end of financial year in which return is furnished.
- The time limit to process the return is proposed to be reduced to 9 months
 - December 31st following the end of financial year in which return is furnished.
- Earlier income tax authorities could issue notice for initiating scrutiny assessment proceedings within 6 months from the end of financial year in which return is furnished.
- The time limit to issue notice for initiating scrutiny assessment proceedings is proposed to be reduced to 3 months
 - June 30th following the end of financial year in which return is furnished.

Other Amendments

Time limit to complete the assessment proceedings

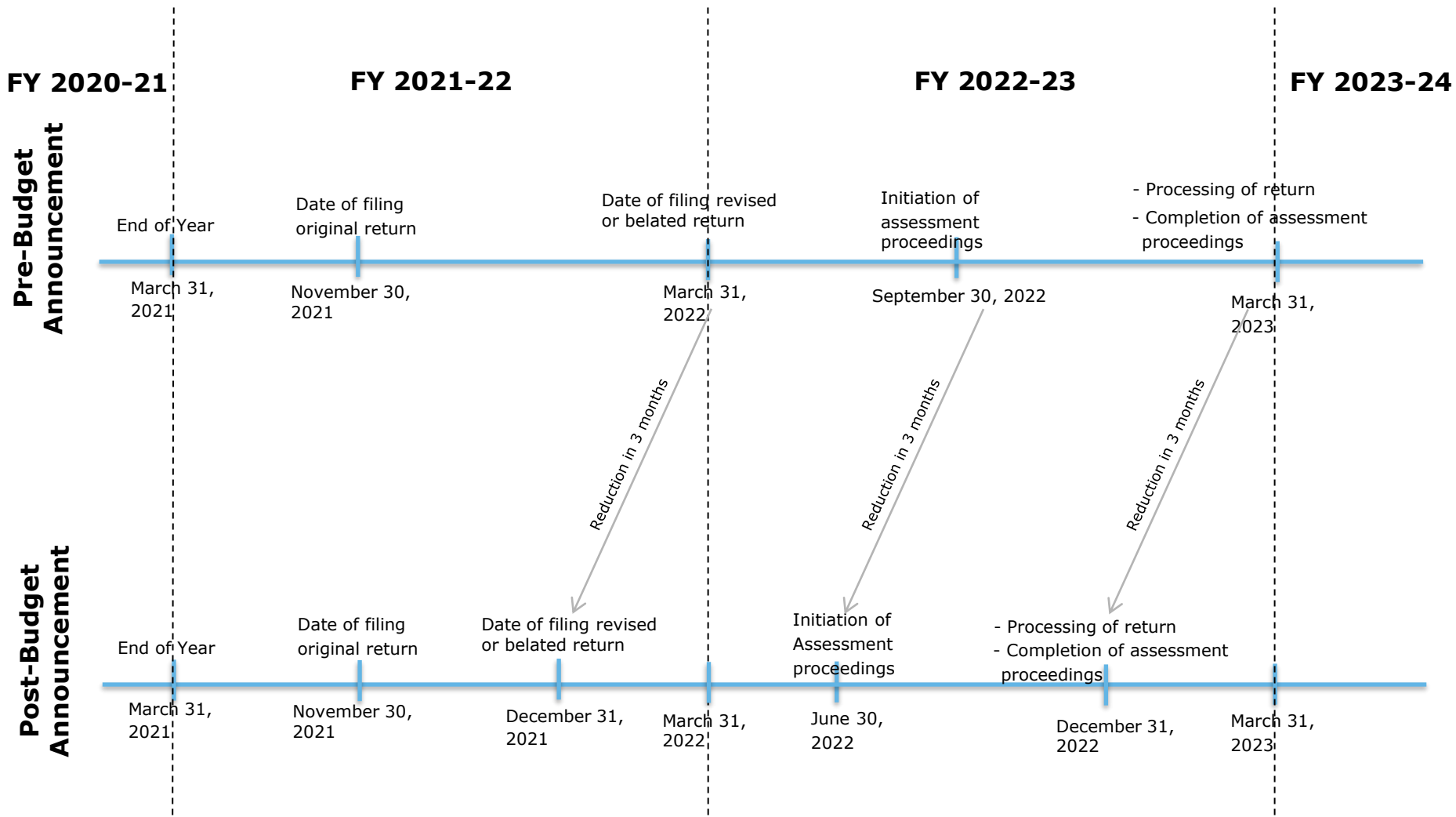
- Earlier income tax authority were required to complete the assessment proceedings and issue an order in this regard within 33 months from the end of the relevant financial year.
- The above time limit is proposed to be reduced to 21 months for FY 2020-21 and subsequent years.

Income for the Year	Time available for completing assessment proceedings	Last date to complete assessment proceedings
FY 2016-17	33 Months	December 31, 2019
FY 2017-18	30 Months	June 30, 2020
FY 2018-19	24 Months	March 31, 2021
FY 2019-20	24 Months	March 31, 2022
FY 2020-21	21 Months	December 31, 2022

- If transfer pricing assessment is also carried out, the above timelines further gets extended by 12 months.

Corporate Taxation

Return filing and completion of assessment for FY 2020-21



Other Amendments

Income escaping assessment proceedings

- Timelines for issuing notice for initiating reassessment proceedings are proposed to be revised.
- Earlier, tax authorities could issue notice for initiating reassessment proceedings up to 7 years from the end of relevant financial year if income proposed to be added is INR 100,000 or more.
- The time limit to issuance of notice for reassessment reduced to 4 years from the end of relevant financial year. No income threshold in this case.
- The above time limit of 4 years will increase to 11 years in case there is an evidence which reveal income escaping assessment of INR 5 Mn or more and in this case, approval of senior officer of the rank of Principal Chief Commissioner is needed.
- Earlier timeline of 17 years from the end of relevant financial year in case of foreign assets withdrawn.

Corporate Taxation

No deduction for employee's contribution to Welfare Funds if not deposited within time

- Section 36(1)(va) provides for deduction of any sum received by the employer from employees toward PF, ESI and other funds ("welfare funds") if such sum is paid by the employer on or before due date.
- Employer's contribution towards welfare funds is covered in section 43B. According to it, if any sum towards employer's contribution to any of welfare fund is actually paid by the employer on or before the due date for furnishing the return of the income, employer would be entitled to deduction of such contributions. This provision does not cover employee contribution referred to in section 36(1)(va).
- Though section 43B covers only employer's contribution, some courts have applied the provision of section 43B on employee contribution as well.
- Government believes that by late deposit of employee contribution, the employer get unjustly enriched by keeping the money belonging to the employees and employees loses interest thereon.
- Accordingly, it has been proposed to deny tax deduction of employee's contribution towards welfare funds to employer in case they fail to deposit employee's contribution within timelines prescribed under the relevant welfare fund rules.

Corporate Taxation

Rationalisation of Tax Audit provisions

- Currently, threshold limit of sales/turnover/receipts for tax audit purposes in case of business is INR 10 Mn and in case of profession is INR 0.5 Mn.
- Tax audit threshold in case of business is extended to INR 50 Mn if 95% of the transactions (all payments and receipts) are carried out through non-cash mode.
- Now, this INR 50 Mn threshold is proposed to be further increased to INR 100 Mn.

Turnover of business	Mode of Transactions	Tax Audit required (Yes/No)
Upto 10 Mn	Any mode of transaction	No
10 Mn to 100 Mn	Non-cash transactions more than 95%	No
>100 Mn	Any mode of transaction	Yes

Corporate Taxation

TDS on Purchase of Goods

- A new section 194Q regarding TDS on purchase of goods is proposed to be inserted which provides that any person shall deduct TDS @0.1% (5% if PAN is not provided by seller) on purchase of goods of value exceeding INR 5 Mn in a financial year, if the seller is resident in India.
- TDS will be deducted at the time of credit or payment, whichever is earlier.
- This provision will be applicable if total sales, gross receipt or turnover from the business carried on by taxpayer exceed INR 100 Mn during the preceding financial year.
- This provision will not be applicable if any other TDS provision or TCS provision applicable on the same transaction.
- However, if on a transaction both TCS provision of section 206C(1H) i.e., TCS @0.1% and TDS under section 194Q applies, then TDS under section 194Q shall prevail and TCS under section 206C(1H) will not apply.

Corporate Taxation

TDS / TCS at higher rates for non-filers of tax return –Section 206AB (TDS) and section 206CCA (TCS)

- In case where tax is required to be deducted in respect of a “**specified person**”, tax shall be deducted at higher of -
 - (a) twice the rate specified in relevant provision;
 - (b) twice the rate or rates in force;
 - (c) 5%
- **Specified person** shall mean a person who has not filed the tax returns for immediately preceding 2 years for which the time limit for filing of return has been expired and the aggregate of TDS or TCS exceeds INR 50,000 in each of these 2 years.
- In case the specified person does not have PAN, the tax shall be deducted at higher of rates provided in this section or section 206AA.
- This provision not to apply on non-residents not having permanent establishment in India or for deduction of TDS for salaries, lotteries, winnings from horse race, income from securitization trust and payment in cash by bank.
- Similar provisions provided in case of TCS.

Corporate taxation

Rationalization of Minimum Alternate Tax (MAT) provisions

- As the dividend is now taxable in the hands of shareholder, dividend received by foreign companies to be deducted for calculating book profits for MAT purposes, if the rate of tax on dividend under the applicable tax treaty is less than MAT rate.
- In the case of increase in books profits due to income of past year(s) on account of Advance Pricing Agreement (APA) or secondary adjustment, application can be made to tax officer to recompute books profit of past year(s) and tax payable, if any, in such manner as may be prescribed.

Dispute Resolution Mechanism

Substitution of Authority for Advance Rulings (AAR) with Board for Advance Rulings (BAR) (1/2)

- Foreign companies and Indian companies for transactions with foreign companies can approach AAR to seek advance ruling on the taxability of transactions to get certainty before executing the transaction.
- AAR is headed by a retired Supreme Court (SC) or a High Court (HC) judge. Due to non-availability of retired SC/HC judges, the benches of AAR remain vacant, which hampers the timely disposition of advance ruling applications.
- To provide an alternative method of providing advance ruling which can give rulings to taxpayers promptly, a Board of Advance Ruling is proposed to be constituted.
- The existing AAR will cease to operate with effect from date to be notified by the Central Government.
- The pending work of the AAR shall be carried out by BAR after the notified date.
- Advance ruling of BAR shall **not** be binding on either party i.e., applicant or tax department. Advance rulings issued by BAR will be appealable before the HC.

Dispute resolution mechanism

Substitution of AAR with BAR (2/2)

Basic	Authority of Advance Ruling (AAR)	Board of Advance Ruling (BAR)
Introduced	Finance Act, 1993	Finance Bill, 2021
Applicability of Ruling	Binding on both parties i.e., applicants and tax department	Neither binding on applicant, nor on tax department
Member	Chairman (Retired SC/HC judges) Vice chairman (Retired HC judges) One Law Member One Revenue Member	Two members each being officer of not below the rank of Chief Commissioner
Appeal against Ruling	No appeal is possible against the ruling of the AAR. Only remedy available was to file writ petition with the HC, which is a constitutional remedy.	Ruling of BAR will be appealable before the HC

Dispute Resolution Mechanism

Faceless scheme for Income Tax Appellate Tribunal (ITAT) appeal

- Appellate proceedings before the ITAT are currently face-to-face where both the taxpayer and the tax department need to appear in-person.
- It is now proposed to make ITAT proceedings faceless.
- This shall eliminate the interface between the ITAT and parties to the appeal to the extent technologically feasible.
- All communication between the ITAT and the appellant shall be via electronic modes.
- Where a personal hearing is needed, it shall be done through video-conferencing.

Dispute Resolution Mechanism

Constitution of Dispute Resolution Committee (DRC)

- In order to provide early tax certainty to small and medium taxpayers, it is proposed to introduce a new scheme for preventing new disputes and settling the issue at the initial stage.
- The new scheme is proposed to be notified to constitute one or more DRC.
- This scheme will be available to taxpayers with a taxable income of up to INR 5 Mn and any disputed income of INR 1 Mn.
- DRC shall also have powers to reduce or waive penalty or grant immunity from prosecution for taxpayers whose dispute is resolved by DRC.

Corporate Taxation

Rationalisation of provisions of Equalisation Levy

- Finance Act, 2020 introduced a new tax, called Equalisation Levy, on e-commerce operators @2% of the value of e-commerce transaction subject to certain conditions.
- It is proposed that Equalisation Levy shall not apply on transactions in the nature of royalty or fees for technical services which are taxable under the domestic law read with relevant tax treaty.
- Definition of 'online sale of goods' and 'online provision of services' is expanded to include additional activities taking place online viz. :
 - Acceptance of offer for sale;
 - Placing the purchase order;
 - Acceptance of the purchase order;
 - Payment of consideration; or
 - Supply of goods or provision of services, partly or wholly.

Other Amendments

Relief from interest for shortfall in advance tax liability on dividend income

- If the tax liability of a taxpayer exceeds INR 10,000, taxpayer has to pay tax in advance in four instalments.
- Non-payment or short payment of advance tax installment attract interest under section 234C at 1% per month.
- It is proposed that if the shortfall in the advance tax installment or the failure to pay same on time is on account of receipt of dividend income, no interest under section 234C shall be charged provided the taxpayer has paid such shortfall in subsequent advance tax installments.

Corporate Taxation

Incentive for affordable housing projects

- 100% deduction is available on income from business of developing and building affordable housing project subject to approval of the project by the competent authority within June 1, 2016 to March 31, 2021. This deduction will now be available for projects approved by March 31, 2022.
- Particulars of the housing Project is shown in below table:

Particulars	Metro Cities	Non-Metro Cities
Location	Where project is located within the metropolitan cities of Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region)	Where the project is located in any other place
Plot size of land	Plot size of land should not be less than 1000 square metres	Plot size of land should not be less than 2000 square metres
Carpet area of the residential unit	Does not exceed 60 square metres	Does not exceed 90 square metres
Project Utilization of Floor area ratio	Not less than 90% permissible under rules made by Government or local authority	Not less than 80% permissible under rules made by Government or local authority

- New tax exemption is also introduced for affordable rental housing project for migrant workers. Government to issue notification in this regard.

Other Amendments

Defining term “liable to tax”

- The term “liable to tax” is used in tax treaties as well as in domestic laws. For example, for determining the residential status of an individual. However, this term is not defined under domestic laws.
- It is now proposed to insert a definition of this term as:

The term “liable to tax” in relation to a person means that there is a liability of tax on such person under any law for the time being in force in any country and shall include a case where subsequent to imposition of tax liability, an exemption has been provided.

Corporate Taxation

Extension of date of incorporation for eligible Start-up

- A start-up is eligible for 100% deduction on its income for three consecutive years out of ten years subject to condition that total turnover does not exceed INR 1000 Mn. For this benefit Start-up is required to be incorporated on or after April 1, 2016 till March 31, 2021.
- It is proposed to extend this timeline to March 31, 2022 by one more year.

Key indirect tax proposals

Indirect taxes

Amendments in Central Goods and Services Tax (CGST Act)

- Every registered person whose turnover during the financial year exceeds the prescribed limit (INR 20 Mn) was required to get his accounts audited by a Chartered Accountant or a Cost Accountant and submit a copy of annual accounts, the reconciliation statement as prescribed with the tax authorities.
 - In order to increase ease doing of business, it is proposed that such annual accounts and reconciliation statement to be only certified by the taxpayer. No need for audit under CGST Act. The GST commissioner may exempt the requirement of such filing for a class of taxpayer.
- Input tax credit in respect of any supply of goods or services or both is available on possession of tax invoice or debit note issued by the supplier.
 - In order to limit the input tax credit, it is proposed to allow input tax credit only on invoices or debit notes when the details of such invoice or debit note have been furnished by supplier in the statement of outward supplies means in form GSTR-1 and such details have been communicated to the recipient through auto-computed GSTR-2A/2B.

Indirect taxes

Amendments in Central Goods and Services Tax (CGST Act)

- Every person who is liable to pay tax under GST laws and fails to pay on time is liable to pay interest 18% p.a. on Gross Tax liability (i.e., the total output tax).
 - In order to remove the genuine hardship to taxpayers, it is proposed to amend CGST Act retrospectively with effect from July 1, 2017 and now such interest to be paid on the net tax liability i.e., the tax liability remaining unpaid after adjusting the input tax credit.
- Any person aggrieved by any decision or order passed under the CGST Act by the officer detaining or seizing goods or conveyance may appeal to appellate authority without payment of penalty amount.
 - In order to protect the interest of revenue, it is proposed that before filing appeal against the detention or seizure order, the taxpayer should pre-deposit a sum of 25% of penalty amount.
- Export of goods means taking goods to a place outside India. There is no condition of remittance in foreign exchange to qualify as export of goods for the purpose of claiming refund of input tax credit or output tax paid. It is now proposed to link foreign exchange remittance in case of export of goods with refund claimed.

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