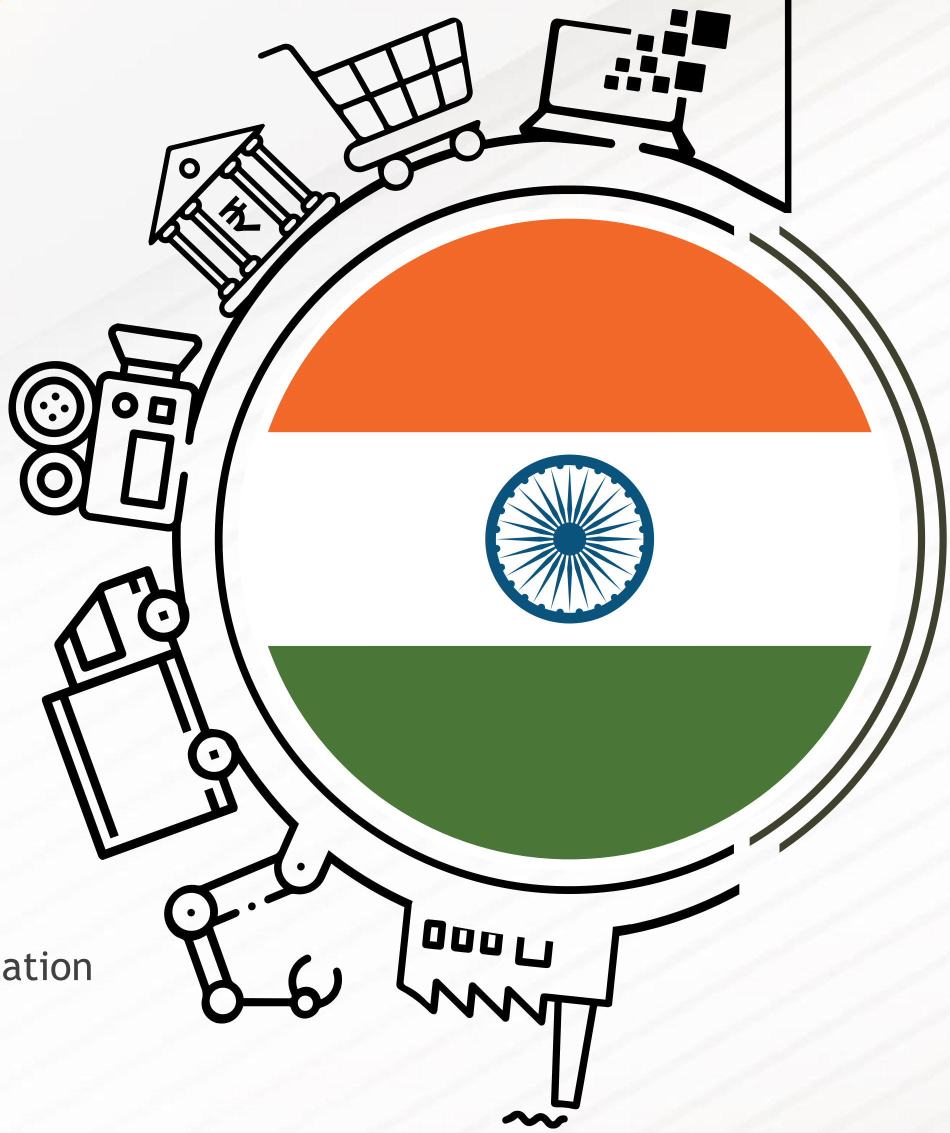
INDIA UNION BUDGET 2022-23

KEY HIGHLIGHTS



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The last year has been a mixed bag for India, with the country staging a sustained recovery with economic activity returning to pre-pandemic levels as well as witnessing the chaos caused by detrimental waves of the COVID-19 pandemic. Overall, macro-economic stability indicators suggest that the Indian economy is well placed to take on the challenges of 2022-23. The stage for the Budget presentation was set by the Economic Survey stating that the Government has the fiscal space to do more to support the economy that is forecast to grow at a healthy 8-8.5% growth in the 2022-23 fiscal.

This Budget continues to provide impetus for growth. Presenting the Union Budget, the Hon'ble FM, mentioned that the Union Budget sought to lay foundation and give a blueprint to steer the economy over the next 25 years (Amrit Kaal) and outlined the following goals of the Government:

- Focus on growth and all-inclusive welfare
- Promoting technology enabled development, energy transition and climate action
- Virtuous cycle starting from private investment, crowded in by public capital investment

The top four priorities of this year's budget are:

- PM Gati Shakti
- Inclusive Development
- Productivity Enhancement and Investment, Sunrise Opportunities, Energy Transition, and Climate Action
- Financing of Investments

PM Gati Shakti is a transformative approach for economic growth and sustainable development. The approach is driven by seven engines, namely, Roads, Railways, Airports, Ports, Mass Transport, Waterways, and Logistics Infrastructure.

The Budget laid down significant emphasis on capital investment/infrastructure development, with a proposed outlay of USD 100bn earmarked for capital expenditure.

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We are highlighting some of the key tax and regulatory proposals, relevant from an International investor's perspective.

1. International Financial Services Centre (IFSC)

The Government in 2015, announced setting up of IFSCs in India starting with Gujarat's GIFT city and has introduced several measures to support the development of a world class Fin-Tech hub. Extending its measures to incentivise GIFT IFSC, multiple exemptions have been proposed on income earned by non-residents:

- **Transfer of offshore derivative instruments or over-the-counter derivatives:** Tax exemption is extended to income arising to a non-resident on transfer of offshore derivative instruments or over-the-counter derivatives to an offshore banking unit in IFSC.
- **Portfolio income:** Income received by a non-resident from a portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an eligible Offshore Banking Unit, in any IFSC, would be exempt subject to certain conditions. Such conditions are onerous for taxpayers to comply with. The Budget proposes that if the fund manager is located in an IFSC, some of these conditions so prescribed shall be relaxed.
- **Ship leasing activities:** Royalty and interest income paid by an eligible unit in the IFSC to a non-resident on account of lease of an aircraft, is exempted from taxes in India. This exemption is now also extended to royalty and interest income from leasing of ships

The measures are aimed at attracting investments in such IFSCs.

2. Scheme for taxation of virtual digital assets

Considering the phenomenal increase in transactions, the Finance Bill proposes to provide for a specific tax regime to tax income arising on transfer of Virtual Digital Assets (VDA) at a flat rate of 30% (plus applicable surcharge and cess) with no deduction of expenses (except cost of acquisition). Further, loss from a transfer of VDA cannot be set off against any other income. Even a gift of VDA is also proposed to be taxed in the hands of the recipient. In order to keep track of such transactions, the Finance Bill has also proposed TDS @ 1% on transfer of such VDA (including exchange). It may however be stated that there are several open issues which may require to be addressed pursuant to these amendments.

3. Extension of last date for commencement of manufacturing or production

The Budget extends the stimulus measures announced under "Make in India" initiative for new domestic manufacturing companies. A concessional tax rate of 15% was introduced under section 115BAB for a new domestic manufacturing company commencing commercial production on or before 31 March 2023 provided it does not avail any specified incentives or deductions. In view of the pandemic, commercial production commencement threshold of domestic manufacturing companies has been extended to 31 March 2024.

4. Extension of last date of incorporation for eligible start-ups for exemption

To initiate the development of start-ups in India and provide a competitive platform for businesses which are newly established to thrive amidst the aggressive business atmosphere, a tax holiday for start-ups was introduced in 2016. Eligible start-ups are entitled for deduction of 100% of the profits derived during any 3 consecutive years out of 10 years beginning from the year of incorporation subject to fulfilment of certain other conditions.

One of the condition is that start-up should have been incorporated on or after 1 April 2016 but before 1 April 2022.

Taking into consideration the cumulative impact of the persistence of the COVID-19 pandemic which has resulted in some delay in setting up of start-ups, Budget 2022 has given relief by proposing to extend the period of incorporation till 31 March 2023.

5. Opportunity to file updated tax return

As per extant laws the period available to file belated or revised returns is very short i.e., within 3 months from the end of the relevant assessment year.

The Finance Bill proposes to introduce a new concept of filing updated tax returns within the additional time of 24 months from the end of the relevant assessment year. This proposal for updated returns over a period longer than that is provided in the existing provisions of the Income-tax Act would on one hand bring huge data with the IT Department to a logical conclusion resulting in additional revenue realisation and on the other hand, will facilitate ease of compliance to the taxpayer in a litigation free environment.

It is proposed that an amount equal to 25% if the updated return is filed within 12 months from the end of assessment year or 50%, as additional tax on the tax and interest due on the additional income furnished would be required to be paid. Updated returns would not be filed in cases where it increases the refund or decreases the tax liability as compared to the original return. Certain other conditions are to be met before filing of this updated return.

6. Dividend and bonus stripping on shares and securities

The domestic tax law provides for an anti-avoidance mechanism to deal with transactions in securities and units of mutual fund which, inter-alia, include dividend stripping and bonus stripping. However, these provisions of bonus stripping do not cover other securities viz. stocks and shares. Similarly, the provisions of dividend and bonus stripping do not cover units of Infrastructure Investment Trust (InvIT) or Real Estate Investment Trust (REIT) or Alternative Investment Funds (AIFs) etc.

The Finance Bill proposes to extend the anti-avoidance measures pertaining to the prevention of tax evasion to stocks and shares and units of InvIT or REIT or AIFs.

7. Revision of order passed by Transfer Pricing Officer

Revision of an assessment order which is erroneous in so far as it is prejudicial to the interests of revenue could be made by the Commissioner. However, there was no clarity as to who has the power under section 263 to revise the order of the Transfer Pricing Officer under section 92CA. The Finance Bill proposes to extend the power of revision by the Commissioner even to orders passed by a Transfer Pricing Officer.

8. Faceless proceedings

As part of process of making the tax administration transparent and efficient, provisions for notifying faceless schemes have been introduced in the Act. Schemes related to the transfer pricing functions and international taxation which are presently out of the regime of faceless assessment were proposed to be bought within the ambit of faceless scheme by 31 March 2022.

The Finance Bill proposes to extend the date for issuing directions under faceless schemes for transfer pricing functions and international taxation till 31 March 2024.

9. Key policy announcements and other reforms

The Finance Minister also announced the following:

- To promote exports, the Special Economic Zones Act, 2005 will be replaced with a new legislation that will enable the states to become partners in ‘Development of Enterprise and Service Hubs’.
- An International Arbitration Centre will be set up in the GIFT City for timely settlement of disputes under international jurisprudence.
- The next phase of Ease of Doing Business EODB 2.0 and Ease of Living, will be launched.
- The Reserve Bank of India will introduce Digital Rupee, using blockchain and other technologies, starting 2022-23.
- Necessary amendments in the Insolvency and Bankruptcy Code will be carried out to enhance the efficacy of the resolution process and facilitate cross border insolvency resolution.
- Accelerated Corporate Exit - establishing C-PACE to speed up the voluntary winding-up of these companies from the currently required 2 years to less than 6 months.

CONCLUDING THOUGHTS

With a significant push to capital expenditure to propel growth India has delivered a pro-growth budget to boost the supply side and attract private investment. A transformative approach for economic growth and intention to steer India toward sustainable development would accelerate growth across key sectors such as health, education, infrastructure, transportation, defence, clean tech and EV, and will enhance ‘ease of doing business’.

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