

## INDIA BUDGET 2022-23



**Booster for growth**

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## Foreword

After a pandemic impacted Financial Year ('FY') 2020-21, the Indian economy witnessed a sharp rebound and recovery in FY 2021-22. Against this backdrop, the Indian Finance Minister ('FM') presented Budget 2022-23 in India's 75th year of independence. Budget 2022-23 contains the blueprint for 'Amrit Kaal', the two and half decades leading up to an India in its centenary year of independence. This will be guided by PM GatiShakti which is a transformative approach and will be driven by seven engines, all of which are expected to propel the economy forward in unison.

The Budget appears to be growth oriented and forward looking. The thrust of the Budget is on kick starting a virtuous cycle with the Government leading the way by announcing a large capital expenditure of INR 7.5 trillion (~USD 100 billion). Growth for the current year has been estimated at 9.2%, the highest among all large economies and in the range of 8 to 8.5% for FY 2022-23. Fiscal deficit in the current year is estimated at 6.9% of the Gross Domestic Product ('GDP') and the target for FY 2022-23 has been pegged at 6.4% of the GDP.

On the economic front, Budget 2022-23 supports the growth momentum with several timely announcements such as capacity building for infrastructure projects, expansion of national highways network, awarding contracts for implementation of multi-modal logistics parks and opening up defence R&D for industry, Start-ups and academia. Also announced are provisions permitting world class foreign universities and institutions in the Gujarat International Finance Tec-City ('GIFT City') to offer courses in financial management, Fintech and science, setting up an International Arbitration Centre in GIFT City, extension of the Emergency Credit

Line Guarantee Scheme including expansion of the total cover and earmarking an exclusive amount for the weakened hospitality and related enterprises, climate action, issue of sovereign green bonds, measures to promote Start-ups and construction of eight million houses in rural and urban areas. Newer measures are proposed which are aimed at Ease of Doing Business 2.0 and urban planning to provide sustainable living for all.

Presenting a paperless budget, the FM has walked the talk on digitisation measures announced in several sectors and in particular relating to the introduction of a digital currency by the Reserve Bank of India, use of Kisan drones for delivery of digital and high-tech services to farmers, software for registration of land records, issuance of e-passports and development of high quality e-content in the education sector.

The tax space also saw some noteworthy announcements such as introduction of a taxation scheme for virtual digital assets, capping the surcharge relating to long term capital gains, parity in the rate of surcharge for co-operative societies with that of domestic companies, extension of timelines for incorporation of Start-ups to avail a tax holiday and to domestic manufacturing companies to commence operations to avail a concessional tax rate, stability in tax rates, streamlining litigation by introducing measures to preclude repetitive litigation, amendments in Customs duty towards promoting greater reliance on domestic manufacturing to provide an impetus to electronics and simplification of the Customs tariff structure. The Budget, however does not deliver on the much required rationalisation and simplification of the income tax provisions and acts as a dampener in the area of personal taxes. The proposed provisions for filing updated returns appear to be in the nature of a voluntary income disclosure scheme. Further, as has been the trend, there are some proposals which appear to have been introduced to counter judicial rulings. Nevertheless, with various welcome announcements, Budget 2022-23 imparts new energy and strength to India's development trajectory.

With the much needed booster shot to the economy provided by various positive strides on the policy and tax front, the Indian economy is poised for sustained growth in the next few years.

The JMP Advisors Team  
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**JMP Advisors Private Limited**

12, Jolly Maker Chambers II, Nariman Point, Mumbai 400 021, India  
T: +91 22 22041666, E: [coe@jmpadvisors.in](mailto:coe@jmpadvisors.in), W: [www.jmpadvisors.com](http://www.jmpadvisors.com)

## Key policy announcements



## Building a resilient India



## Key policy announcements

Budget 2022-23 is the template for placing India on the trajectory for achieving the vision of a digitally empowered India with world-class infrastructure and availability of globally competitive education. It focuses on the long term objectives while attempting to address the country's key short-term challenges. It lays down a parallel track of a futuristic and inclusive blueprint that will directly benefit youth, women, farmers, Scheduled Castes and Scheduled Tribes as well as public investment for modern infrastructure. The four priorities that drive the Budget's expenditure agenda are PM GatiShakti; Inclusive Development; Productivity Enhancement and Investment, Sunrise Opportunities, Energy Transition and Climate Action; and Financing of Investments. This section summarises significant policy proposals announced in the Budget.

### I. PM GatiShakti

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



## **1. Roadways**

- i. PM GatiShakti Master Plan for Expressways will be formulated in FY 2022-23 to facilitate faster movement of people and goods.
- ii. The National Highways network will be expanded by 25,000 km in FY 2022-23. INR 200 billion (~USD 2.70 billion) will be mobilised through innovative ways of financing to complement public resources.

## **2. Multimodal Logistics Parks**

Contracts for implementation of Multimodal Logistics Parks at four locations through PPP mode will be awarded in FY 2022-23.

## **3. Railways**

- i. The Railways will build upon the concept of 'One Station-One Product' to help local businesses and supply chains.
- ii. As a part of the Atmanirbhar Bharat, 2,000 km of network will be brought under Kavach, the indigenous world-class technology of safety and capacity augmentation in 2022-23.

- iii. The Indian Railways will introduce 400 new generation trains with better energy efficiency and passenger riding experiences during the next three years.
- iv. One hundred Cargo Terminals for multimodal logistics facilities will be developed during the next three years.

## **II. Inclusive Development**

### **1. Agriculture**

- i. The procurement of wheat in Rabi 2021-22 and the estimated procurement of paddy in Kharif 2021-22 will cover 120 million metric tonnes of wheat and paddy from 16 million farmers, and INR 2.37 trillion (~ USD 0.03 trillion) direct payment of Minimum Support Price value to farmers' accounts.
- ii. Use of 'Kisan Drones' will be promoted for crop assessment, digitization of land records, spraying of insecticides and nutrients.
- iii. States will be encouraged to revise the syllabi of agricultural universities to meet the needs of natural, zero-budget and organic farming, modern-day agriculture, value addition and management.

- iv. Implementation of the Ken-Betwa Link Project will be taken up at an estimated cost of INR 446 billion (~USD 5.90 billion) to provide irrigation benefits to over 2.2 million acres of farmers' lands and drinking water supply for 6.2 million people.

## **2. Support to Micro Small and Medium Enterprises ('MSMEs')**

Emergency Credit Line Guarantee Scheme which has provided additional credit to more than 13 million MSMEs, will be extended up to March 2023 and its guarantee cover will be expanded by INR 500 billion (~USD 6.70 billion). This additional amount will be earmarked for hospitality and related enterprises.

## **3. Skill Development**

- i. The National Skill Qualification Framework will be aligned with dynamic industry needs.
- ii. Start-ups will be promoted to facilitate 'Drone Shakti' through varied applications and for Drone-As-A-Service (DAAS).

#### **4. Education**

- i. Taking note of the serious disruption in education caused due to COVID-19 pandemic, the 'one class-one TV channel' programme of PM eVIDYA will be expanded from 12 to 200 TV channels to provide supplementary education for classes 1 to 12 in regional languages.
- ii. To encourage the pursuit of vocational courses which promote crucial critical thinking skills, it is proposed to set up 750 virtual labs in science and mathematics and 75 skilling e-labs in FY 2022-23.
- iii. A digital university will be established to provide access to students for world-class quality education with a personalised learning experience at their doorsteps.

#### **5. Housing for All**

Eight million houses will be completed for the identified eligible beneficiaries under the PM Awas Yojana in FY 2022-23. For this purpose, INR 480 billion (~USD 6.40 billion) has been allocated.

#### **6. Post Office and Digital Banking**

- i. In the year 2022, all post offices will provide core banking services enabling financial inclusion and access to accounts through net banking, mobile banking and ATMs.

- ii. It is further proposed that the public at large would be able to transfer funds online between post office accounts and bank accounts.
- iii. To mark 75 years of independence, 75 Digital Banking Units are proposed to be set up in 75 districts by Scheduled Commercial Banks.

### **III. Productivity Enhancement and Investment, Sunrise Opportunities, Energy Transition and Climate Action**

#### **1. Ease of Doing Business and Ease of Living**

- i. A new phase of Ease of Doing Business 2.0 and Ease of Living will be launched and will be guided by digitisation of manual processes and interventions, integration of the central and state-level systems and standardization and removal of overlapping compliances.  
.....
- ii. Issuance of e-passports for citizens travelling overseas will be launched in FY 2022-23.
- iii. Necessary amendments in the Insolvency and Bankruptcy Code, 2016 ('IBC') will be made to enhance the efficacy and time-bound resolution process and also facilitate cross-border insolvency resolution.

- iv. To speed up the voluntary winding up of companies from the current two years' time to less than six months, it is proposed to introduce an Information Technology based system 'Centre for Processing Accelerated Corporate Exit' (C-PACE).

## **2. Land Records Management**

Adoption of Unique Land Parcel Identification Number will be encouraged to facilitate IT-based management of records.

## **3. Government Procurement**

To reduce indirect cost for suppliers and work-contractors, the use of surety bonds as a substitute for bank guarantees will be made acceptable in government procurements. The Insurance Regulator, IRDAI has given the framework for issue of surety bonds by insurance companies.

## **4. Telecom Sector**

It is proposed to conduct spectrum auctions in the year 2022 to facilitate roll out of 5G mobile services within FY 2022-23.

## **5. Promotion of Exports**

The Special Economic Zones Act, 2005 was enacted for the promotion of exports. This will now be replaced with a new legislation to optimally utilise available infrastructure and to enhance competitiveness of exports.

## **6. Self-reliance in Defence**

To cut down the import bill and promote self-reliance in equipment for the Armed Forces, it is proposed to earmark 68% (up from 58%) of the total capital procurements budget for domestic industries in FY 2022-23.

## **7. Sunrise Opportunities, Energy Transition and Climate Action**

- i. Focus on Green Energy, Clean Mobility Systems, Space Economy, Artificial Intelligence, Geospatial Systems and Drones, Semiconductor and its eco-system, Genomics and Pharmaceuticals, will assist in sustainable development and provide employment opportunities for youth.
- ii. It is proposed to allocate an additional amount of INR 195 billion (~USD 2.6 billion) for PLI for manufacture of high efficiency solar modules.

- iii. Several near-term and long-term actions are proposed to promote a low carbon development strategy.

## **IV. Financing of Investments**

### **1. Public Capital Investment**

The outlay for capital expenditure is sharply increased by 35.4% from INR 5.54 trillion (~USD 70 billion) in FY 2021-22 to INR 7.50 trillion (~USD 100 billion) in FY 2022-23. This outlay in FY 2022-23 will be 2.9% of GDP.

### **2. Green Bonds**

Sovereign Green Bonds will be issued for mobilizing resources for green infrastructure. The proceeds from issue of sovereign green bonds will be utilized towards building green infrastructure and in public sector projects to reduce the carbon intensity of the economy.

### **3. GIFT city - IFSC**

- i. World-class foreign universities and institutions will be allowed in GIFT city to offer courses in Financial Management, FinTech, Science, Technology, Engineering and Mathematics.



- ii. An International Arbitration Centre will be set up in the GIFT city for the timely settlement of disputes under international jurisprudence.
- iii. Services for global capital for sustainable and climate finance in the country will be facilitated in the GIFT city.

#### **4. Digital Rupee**

It is proposed to introduce the Digital Rupee to be issued by the Reserve Bank of India ('RBI') in FY 2022-23 using blockchain and other technologies, which will lead to a more efficient and cheaper currency management system.

## Key tax proposals

Tax Time



## Direct taxes

This section summarises the significant direct tax proposals announced in Budget 2022-23. These proposals are subject to enactment of the Finance Bill, 2022. Further, the direct tax proposals in the Finance Bill, 2022 are effective from FY 2022-23 unless otherwise specifically stated. References to sections are to sections in the Income-tax Act, 1961 ('the IT Act') unless otherwise stated.

### ***I. Tax rates***

- i. There is no proposal for revision in the base tax rates.
- ii. Surcharge payable on income tax computed on income from long term capital gains on transfer of a capital asset is proposed to be capped at 15%.
- iii. Surcharge is proposed to be reduced to 7% on income tax in case of co-operative societies having income greater than INR 10 million (~USD 0.14 million) but less than INR 100 million (~USD 1.4 million).
- iv. Surcharge is proposed to be capped at 15% of income tax payable, in case of Association of Persons ('AOPs') having only companies as its members.

## ***II. Provisions relating to International Financial Services Centre ('IFSC')***

### **1. Tax holiday for units located in an IFSC [Section 80LA]**

Deduction for gains earned by an IFSC unit from the transfer of aircrafts that were previously leased by the IFSC unit (provided it commences its operations by 31 March 2024) is proposed to be extended to the transfer of ships.

### **2. Exemption from income tax on transfer of offshore derivative instruments or over-the-counter derivatives [Section 10(4E)]**

Exemption for income accruing or arising to, or received by a non-resident on transfer of non-deliverable forward contracts entered into with an Offshore Banking Unit ('OBU') located in an IFSC is proposed to be extended to income from the transfer of offshore derivative instruments or over-the-counter derivatives.

### **3. Exemption from income tax on leasing of ships [Section 10(4F)]**

Exemption for income of a non-resident by way of royalty or interest on the lease of aircrafts paid by a unit of an IFSC (which has commenced operations by 31 March 2024) is proposed to be extended to royalty or interest income from lease of ships.

### **4. Exemption from income tax on income from portfolio of securities or financial products [New Section 10(4G)]**

It is proposed to exempt the income of a non-resident from portfolio of securities or financial products or funds managed by any portfolio manager in an account maintained with an OBU in an IFSC.

## **III. Provisions relating to Transfer Pricing**

### **1. Revision of Transfer Pricing orders prejudicial to the Revenue [Section 263]**

- i. It is proposed to grant revisionary powers to income tax authorities in respect of Transfer Pricing orders passed by the Transfer Pricing Officer ('TPO'), if the order passed is erroneous and prejudicial to the interests of Revenue.

- ii. It is proposed to make a consequential amendment to section 153 to allow the tax officer a time limit of two months to give effect to the TPO's order issued consequent to the revision order.

#### ***IV. Scheme for taxation of Virtual Digital Asset ('VDA')***

##### **1. Taxation on transfer of VDA [New Sections 2(47A) and 115BBH]**

- i. The term 'VDA' is proposed to mean:
  - a. any information or code or number or token (not being Indian/foreign currency) generated through cryptographic means or otherwise, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;
  - b. a non-fungible token or other token of similar nature; and
  - c. any other digital asset, as may be notified by the Central Government.

- ii. It is proposed to tax the income from transfer of a VDA at 30% (plus applicable surcharge and cess), without allowing deduction for any expenses (other than the cost of acquisition) or allowances or set off of any loss.
- iii. It is proposed to provide that loss from the transfer of VDA will not be allowed for set-off against any other income; further, the carry forward of such losses to subsequent years will not be permitted.

## **2. Taxation on gifting of VDA [Section 56(2)(x)]**

- i. Section 56(2)(x) inter alia provides for taxation of any 'property' received by a person from any person, without consideration or for a consideration less than FMV (subject to threshold of INR 50,000) (~USD 700).
- ii. In order to tax VDA received as gift, it is proposed to expand the definition of 'property' used in section 56(2)(x) to include VDA.

## **3. Withholding tax on payment for transfer of VDA [New Section 194S]**

- i. It is proposed that tax is to be withheld at 1% of consideration payable to a resident for transfer of a VDA, if during a FY, the consideration payable by a specified person as defined exceeds

INR 50,000 (~ USD 700); in any other case, tax is required to be withheld if the consideration exceeds INR 10,000 (~ USD 150).

- ii. Tax is required to be withheld even in case of a barter transaction in transfer of a VDA.
- iii. Specified person means:
  - a. Individual/Hindu Undivided Family ('HUF') whose total sales or turnover or gross receipts do not exceed INR 10 million (~ USD 0.14 million) in case of business or INR 5 million (~ USD 70,000) in case of profession during the immediately preceding FY;
  - b. Individual/HUF not having any income from business or profession.
- iv. In case the transaction is covered under section 194-O as well as under this section, tax will be withheld under this section.
- v. The proposed amendment will be effective from 1 July 2022.



## ***V. Provisions relating to profits and gains of business or profession***

### **1. Deduction for donations made to research association, university, college or other institution [Section 35]**

- i. It is proposed to amend section 35 to provide that the deduction claimed by the donor with respect to donation given to a research association, university, college or other institution shall be disallowed unless such institution files the statement of donations.
- ii. The proposed amendment will be effective retrospectively from FY 2020-21.

### **2. Clarification on disallowance of certain expenditure [Section 37(1)]**

Section 37 disallows expenditure incurred by a taxpayer for any purpose which is an offence or which is prohibited by law. It is proposed to clarify that such expenditure shall include expenditure incurred for the following:

- a. Any purpose which is an offence under or which is prohibited by any law in or outside India;
- b. Providing any benefit or perquisite to a person and acceptance of such benefit or perquisite is in violation of any law, regulation or guideline governing the conduct of such person;

- c. Compounding of an offence under any law in or outside India.

### **3. Disallowance of Health and Education cess as business expenditure [Section 40(a)(ii)]**

- i. It is proposed to clarify that the term 'tax' shall include any surcharge or cess on tax by whatever name called. Therefore, health and education cess and surcharge on tax will not be allowed to be deducted in computing the income chargeable under the head 'profits and gains of business or profession'.
- ii. The proposed amendment will be effective retrospectively from FY 2004-05.

### **4. Allowance of interest expenditure only on payment basis [Section 43B]**

Section 43B inter alia provides that certain interest will be allowed as a deduction only on payment basis. It is proposed to amend section 43B to provide that the conversion of outstanding interest liability into debentures or any other instrument by which the liability to pay interest is deferred to a future date shall not be considered as actual payment for the purpose of section 43B.

## **VI. Capital gains**

### **1. Amendment in the definition of slump sale [Section 2(42C)]**

- i. The definition of slump sale was amended vide the Finance Act, 2021 to expand its scope to cover all forms of transfer under slump sale. However, inadvertently, there was a reference to the word 'sales' instead of 'transfer' in the last sentence of the definition. The proposed amendment now seeks to correct this error.
- ii. The proposed amendment will be effective retrospectively from FY 2020-21.

### **2. Reduction of goodwill from the block of asset deemed to be transfer [Section 50]**

- i. Goodwill of a business or profession is not considered as a depreciable asset with effect from FY 2020-21. As a result, a consequential amendment was made to section 50 by inserting a proviso to state that the Written Down Value ('WDV') and Short Term Capital Gain ('STCG') shall be determined in the manner as may be prescribed.
- ii. Subsequently, the Central Board of Direct Taxes had issued a notification inserting a new Rule 8AC in the Income-tax Rules, 1962 ('the Rules') providing the computation methodology for WDV of block of assets and STCG.

- iii. A further consequential amendment is now proposed that the reduction of goodwill of a business or profession from the block of assets shall be deemed to be 'transfer'.
- iv. The proposed amendment will be effective retrospectively from FY 2020-21.

## ***VII. Tax reliefs and incentives***

### **1. Deduction in respect of contribution to National Pension System ('NPS') [Section 80CCD]**

- i. It is proposed to increase the maximum deduction for the employer's contribution to NPS account from the existing limit of 10% of salary of taxpayer to 14% in case of State government employees.
- ii. The proposed amendment will take effect retrospectively from FY 2019-20.

### **2. Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability [Section 80DD]**

- i. It is proposed to extend the deduction to individual/member of HUF where such person has subscribed to a scheme from LIC or any other insurer for the benefit of a differently abled dependant even where the scheme provides for payment of annuity or lumpsum amount to the

differently abled dependant on attainment of 60 years of age by such individual/member of HUF and the payment or deposit to such scheme has been discontinued.

- ii. It is further proposed that the aforesaid annuity or lumpsum amount received by the differently abled dependant before his death shall not be taxable in the hands of such individual/member of HUF.

### **3. Special provisions relating to eligible Start-ups [Section 80-IAC]**

Time limit for incorporation of eligible Start-ups in order to avail a tax holiday is proposed to be extended upto 31 March 2023.

## ***VIII. Withholding Taxes***

### **1. Withholding of tax on sale of immovable property [Section 194-IA]**

- i. It is proposed to provide that tax is to be withheld on the actual sum paid/credited for the transfer of immovable property or on the stamp duty value of such property, whichever is higher.
- ii. If the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than INR 5 million (~USD 70,000), no tax withholding is required.

## **2. Withholding of tax on benefit or perquisite in respect of business or profession [New Section 194R]**

- i. It is proposed that tax is to be withheld by a person who is providing any benefit or perquisite, whether convertible into money or not, to a resident wherein such benefit or perquisite is arising from business or profession carried on by such resident. Tax is to be withheld at 10% of the value of such benefit or perquisite payable to the resident.
- ii. No tax is required to be withheld under this section, if the aggregate value of the benefit or perquisite provided or likely to be provided during the FY does not exceed INR 20,000 (~ USD 300).
- iii. The above provision will not apply to an individual/HUF whose total sales/turnover/gross receipts do not exceed INR 10 million (~ USD 0.14 million) in case of business or INR 5 million (~ USD 70,000) in case of profession, during the immediately preceding FY.
- iv. The proposed amendment will be effective from 1 July 2022.

**3. Withholding/collection of taxes on payments made to non-filers of income tax returns [Section 206AB and 206CCA]**

- i. It is proposed to amend the definition of specified person, to mean a person who has not filed its return of income for the FY immediately preceding the FY in which tax is required to be withheld/collected. With this proposed amendment, the requirement to file the income tax return in at least one of the prior two years has been reduced to one year. The threshold of aggregate amount of withholding tax and tax collected at source of INR 50,000 (~ USD 700) is still applicable.
- ii. It is proposed that the provisions of section 206AB will not be applicable to taxpayers covered under sections 194-IA, 194-IB and 194M.

**4. Refund for denying liability to deduct tax in certain cases [New Section 239A, Sections 246A and 248]**

- i. It is proposed to insert a new section to provide that a refund application may be made to the tax officer where withholding tax is deposited to the credit of the Central Government in relation to payments under section 195 (other than interest), and the taxpayer claims that no tax was required to be withheld. The said refund application is to be made within 30 days from the date of payment of tax withheld.

- ii. The tax officer shall pass the order within six months from end of month in which the refund application is received by him.
- iii. The order of the tax officer can be appealed to the Commissioner of Income Tax (Appeals) ['CIT(A)'].
- iv. The existing provisions of claiming refund by filing an appeal to the CIT(A) under section 248 will not be applicable to refund of tax paid on or after 1 April 2022.

## ***IX. Other key proposals***

### **1. Updated return of income and tax thereon *[New Section 139(8A) and 140B]***

- i. It is proposed to provide that a taxpayer can furnish an updated return of income within three years from the end of the FY, in such form, as may be prescribed, irrespective of whether original/belated/revised return of income has been filed or not.
- ii. It is further proposed that an updated return of income shall not be allowed to be filed if it is a return of loss or if it results in a refund or an increase in refund or a reduction in total tax liability.
- iii. It is also proposed that no person shall be eligible to file an updated return in certain cases such as if a search has been initiated or a survey has been conducted or where an updated return of



income has already been filed earlier or assessment or re-assessment or recomputation or revision proceedings are pending or completed for the relevant FY in case of the taxpayer.

- iv. It is proposed that 'additional income tax' on the updated return of income shall be computed after reducing advance tax, self-assessment tax, tax deducted or collected at source, any relief of tax or tax credit, as increased by refund already granted and interest and fees, as may be applicable.
- v. The amount of 'additional income tax' shall be computed as under:
  - a. 25% of the total tax and interest, if the updated return is filed after the expiry of the due date for filing the belated/revised return but before expiry of 24 months from the end of the FY;
  - b. 50% of the total tax and interest, if the updated return is filed after the expiry 24 months from the end of the FY but before expiry of 36 months from the end of the FY.
- vi. For the computation of 'additional income tax', tax shall include surcharge and cess, by whatever name called, on such tax.
- vii. It is proposed that the assessment for the updated return of income may be completed before the expiry of nine months from the end of the FY in which such updated return is furnished.

## **2. Concessional tax regime for new domestic manufacturing companies extended [Section 115BAB]**

- i. Currently, a domestic company set up and registered on or after 1 October 2019 and which commences manufacture or production of any article or thing on or before 31 March 2023 is eligible to opt for a concessional rate of tax at 15% plus applicable surcharge and health and education cess.
- ii. It is proposed to extend the date of commencement of manufacture or production by one year, to 31 March 2024.

## **3. Withdrawal of concessional rate of tax on foreign dividends [Section 115BBD]**

It is proposed to withdraw the concessional rate of tax of 15% on dividends received by an Indian company from a foreign company in which the Indian company holds 26% or more of the nominal value of the equity share capital. This is to bring at par the tax treatment of dividends received from such foreign company with that of dividends received from domestic companies.

## **4. Reduction in the rate of Alternate Minimum Tax ('AMT') applicable to co-operative societies [Sections 115JC and 115JF(b)(i)]**

It is proposed to reduce the rate of AMT applicable to co-operative societies from 18.5% to 15%.

## **5. Liability of the Directors of Private Limited Company [Section 179]**

- i. It is proposed to omit the words 'in liquidation' from the heading of section 179 to clarify that the section does not refer to the liability of directors only in the event of liquidation.
- ii. It is further proposed to expand the scope of the expression 'tax due' to include 'fees' in addition to tax, interest and penalty.

## **6. Amendment related to successor entity after reorganisation [Section 170, New Sections 170A and 156A]**

- i. It is proposed that in case of a business reorganisation the pending or completed tax proceedings on the predecessor entity during the course of reorganisation shall be deemed to have been made on the successor entity.
- ii. In case of a business reorganisation, it is proposed that the successor entity can file a modified return in the prescribed form within six months from the end of the month of receipt of the order of the High Court or Income Tax Appellate Tribunal ('ITAT') or Adjudicating Authority under IBC.
- iii. It is further proposed that where any tax, interest, penalty, fine or any other sum in respect of demand notice is reduced as a result of the order of the Adjudicating Authority under IBC, the tax officer shall modify the notice of demand appropriately. It is further proposed that in case

where such order is modified by the National Company Law Appellate Tribunal or the Supreme Court, then such modified notice of demand shall be revised accordingly.

## **7. Litigation, Assessments and Reassessments [Sections 148, 148A, 148B and 149]**

- i. It is proposed to simplify the approval process in case of reassessments by removing the requirement of the approval by the specified authority before issuing the notice under section 148 for reassessment of income escaping tax, if the tax officer has passed an order holding it a fit case for reassessment under section 148A(d).
- ii. It is proposed to insert a new section 148B to mandate obtaining of prior approval by the tax officer below the rank of Joint Commissioner, before he passes an order of assessment, reassessment or recomputation in certain cases such as search and seizure.
- iii. It is proposed to extend the re-opening of the cases up to 11 years from the relevant FY even in cases where income of INR 5 million (~USD 70,000) or more has escaped assessment in the form of expenditure in relation to a transaction, event or occasion or any entries in the books of account.
- iv. It is also proposed that if the investment in asset or the expenditure is incurred in multiple years, then the notice of assessment/reassessment can be issued for all such years within the time limit of 11 preceding years where the aggregate value exceeds INR 5 million (~USD 70,000).

- v. It is proposed to widen the scope of information available for reopening of assessment with the tax officer to include:
  - a. Any audit objection
  - b. Exchange of information under tax treaties
  - c. Information available under the scheme of faceless collection of information
  - d. Information which requires action in consequence of the ITAT or a Court order

## **8. Key amendments to the Faceless Assessment Scheme [Section 144B]**

In order to resolve various technical, procedural and legal issues emanating from the implementation of section 144B, it is proposed to rationalise the procedure laid down in section 144B. The key proposed amendments are:

- i. Request for personal hearing to be mandatorily accepted and facilitated through video conference/video telephony.
- ii. Failure to follow prescribed procedure under Faceless Assessment provisions not to make assessment invalid/non est. The proposed amendment is effective retrospectively from FY 2021-22.

- iii. Role of different units (assessment unit, verification unit, review unit and technical unit) to be co-ordinated through National Faceless Assessment Centre.

#### **9. Extension of timelines for notifying for faceless schemes under various provisions [Sections 92CA, 144C, 253 and 255]**

It is proposed to extend the date for issuing directions for notifying faceless schemes as under:

<b>Sr. No</b>	<b>Faceless Scheme</b>	<b>Existing Date</b>	<b>Proposed Extended Date</b>
1	Determination of arm's length price by TPO	31 March 2022	31 March 2024
2	Dispute Resolution Panel	31 March 2022	31 March 2024
3	Appeal before ITAT	31 March 2022	31 March 2024
4	Disposal of appeals by ITAT	31 March 2023	31 March 2024

#### **10. Penalty and prosecution**

A few amendments are proposed in the penalty and prosecution provisions in order to make the provisions more rigorous and to expand the scope of some of the provisions.

## **11. Set off of losses permissible to facilitate strategic disinvestment of public sector companies** ***[Section 79]***

- i. Section 79 states that where there is change in the shareholding of a closely held company, then the loss incurred in any of the prior FYs shall be allowed to be carried forward and set off against income of the FY only if the shareholders holding at least 51% of the voting power as on the last day of the FY in which the loss was incurred continue to hold the shares on the last day of the FY in which the income is to be set off.
- ii. It is proposed that that the aforesaid restriction would not apply to an erstwhile public sector company subject to the condition that the ultimate holding company of such public sector company, immediately after the completion of such strategic disinvestment, continues to hold, directly or indirectly, at least 51% of the voting power of such public sector company.
- iii. If the above condition is not complied with in any FY after the completion of strategic disinvestment, then the restriction on carry forward and set off of loss would apply in the FY in which the condition is breached as well as in subsequent FYs.
- iv. The proposed amendment will be effective from FY 2021-22.

## **12. No set off of losses against undisclosed income detected consequent to search, requisition or survey [New Section 79A]**

- i. It is proposed to introduce new section 79A wherein if any undisclosed income is detected during the course of search, requisition or survey proceedings, then such income shall not be allowed to be set off against any loss incurred in current FY or brought forward losses of past FYs or unabsorbed depreciation.
- ii. The term 'undisclosed income' is specifically defined for the purpose of this proposed new section.
- iii. The purpose of introducing the proposed section is to curb tax evasion and ensure that proper tax is paid on income detected due to a search, requisition or survey.
- iv. The proposed amendment will be effective from FY 2021-22.

## **13. Rationalisation of the provisions of Charitable trusts and Institutions**

It is proposed to align the tax exemption regime for registered charitable trusts and specified institutions for effective monitoring, bringing consistency in granting exemptions, and for providing clarity on taxation in certain circumstance.



#### **14. Filing of return by person claiming exemption under section 10(23C)**

It is proposed that for the purpose of claiming exemption under section 10(23C), the specified institution, trust etc. should file the tax return within the prescribed due date.

#### **15. Penalty for passing benefits from trust to trustee or specified person [New Section 271AAE]**

It is proposed to levy a penalty for passing unreasonable benefits to the trustee or any specified person of 100% of the benefit if the violation is noticed for the first time and 200% of the benefit if the violation is noticed again in a subsequent FY.

#### **16. Tax on specified Income of Trusts or Institutions [New Section 115BBI]**

It is proposed to tax certain specified income of trusts or institutions applied in violation of certain provisions at the rate of 30%, without allowing deduction for any expenditure or set-off of any loss.

#### **17. Expenditure on medical treatment in respect of illness relating to COVID-19 not taxable as perquisite [Section 17]**

- i. In order to provide relief as stated in the press statement dated 25 June 2021 issued by the Ministry of Finance, it is proposed that any sum paid by the employer in respect of any expenditure actually incurred by the employee on his own medical treatment or for the medical

treatment of any member of his family in respect of any illness relating to COVID-19, shall not form part of 'perquisite' and hence will not be taxable in the hands of the employee.

- ii. The proposed benefit is subject to such conditions as may be notified.
- iii. The proposed amendment will be effective from FY 2019-20.

**18. Expenses incurred on treatment of COVID-19 and amount received on death of an individual due to COVID-19 not taxable [Section 56(2)(x)]**

- i. It is proposed that the amount received by an individual from any person, in respect of medical expenditure actually incurred by him for his own treatment or treatment of family members for illness related to COVID-19, shall not be considered as income, subject to conditions as may be prescribed.
- ii. It is further **proposed** that any amount received by a family member of a deceased, from the employer of the deceased, where cause of death is illness related to COVID-19 shall not be considered as income. If such amount is received from any person other than the employer, an amount upto INR 1 million (~USD 14,000) shall not be considered as income. This shall be subject to the amount being received within 12 months of death and other conditions as may be prescribed.

- iii. These proposed amendments will have a retrospective effect from FY 2019-20.

## **19. Expenditure in relation to income not includible in total income [Section 14A]**

- i. In view of various judicial precedents and to clarify the intention of the Legislature, it is proposed to provide that the provisions for disallowance of expenditure in relation to exempt income shall also apply to a particular FY even when no exempt income has accrued or has been received by the taxpayer during such FY, as long as the expenditure has been incurred in relation to earning exempt income. Thus, the legislative intent is to match the expenditure which is related to earning taxable income even in two separate FYs.
- ii. It is further proposed that this section shall have a non obstante clause i.e. have an overriding effect on any other contrary provisions in the Act.
- iii. The proposed amendment will be effective from FY 2021-22.

## **20. Coverage of 'specified fund' widened [Section 56(2)(viib)]**

The definition of 'specified fund' is proposed to be expanded to include Category I and II Alternative Investment Funds ('AIFs') regulated under IFSC Authority Act, 2019. Accordingly, the consideration for issue of shares which is in excess of fair market value of shares received by such specified fund is proposed to be excluded from taxation.

## **21. Unexplained cash credits in the nature of loans/borrowings or any other liability [Section 68]**

It is proposed to provide that where unexplained cash credits consist of any loans or borrowings or any other liability credited in the books of the taxpayer, it shall be treated as explained only if the lender/creditor also offers an explanation about the source of such funds and the tax officer is satisfied with such explanation.

## **22. Scope of dividend and bonus stripping widened [Section 94]**

- i. It is proposed to amend the provision relating to bonus stripping to expand the coverage of the provision to “securities” in addition to “units”.
- ii. It is further proposed to extend the applicability of the anti-avoidance provisions relating to dividend stripping and bonus stripping to include units of business trust such as Infrastructure Investment Trust (‘InvIT’), Real Estate Investment Trust (‘REIT’) and AIFs.

## **23. Procedure where identical question of law is pending before High Courts or Supreme Court [New Section 158AB]**

- i. It is proposed that where a collegium consisting of two or more Chief Commissioners of Income Tax (‘CCITs’)/Principal Commissioners of Income Tax (‘PCITs’)/Commissioners of Income Tax (‘CITs’) is of the view that any question of law arising in case of a taxpayer is identical to a

question of law already pending before the jurisdictional High Court or the Supreme Court in his own case or in the case of any other taxpayer, against the order of the ITAT or the jurisdictional High Court which is in favour of the taxpayer, the collegium may direct the jurisdictional tax officer not to file an appeal in the case of the taxpayer against the order passed by CIT(A) or the ITAT, till the identical question of law is decided by the said High Court or the Supreme Court.

- ii. It is further proposed that on the basis of the direction from the collegium, the tax officer shall make an application to the ITAT or the jurisdictional High Court, as the case may be, that an appeal may be filed after the decision on the identical pending question of law becomes final. This application shall be filed only if the taxpayer provides his consent.
- iii. Where the order of the CIT(A)/the ITAT in case of the taxpayer is not in conformity with the final decision on the identical question of law by the jurisdictional High Court or the Supreme Court in the other case, the tax officer shall proceed with filing an appeal with the ITAT or the jurisdictional High Court, as the case may be. Such appeal shall be filed within 60 days of the communication of the order passed by the jurisdictional High Court or the Supreme Court.
- iv. Section 158AA has been substituted by the aforesaid provisions.

## 24. Widening the scope of reporting by persons engaged in specified activities [*Section 285B*]

- i. It is proposed to extend the requirement of furnishing the prescribed statement containing particulars of all payments exceeding INR 50,000 (~USD 700) in aggregate, which is currently applicable to persons carrying on the production of cinematograph films to persons engaged in specified activities. The threshold limit of INR 50,000 (~USD 700) is per person per year.
- ii. It is further proposed to define specified activities to mean event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as may be notified in this behalf.

## Indirect taxes

This section summarizes some of the significant indirect tax proposals announced in Budget 2022-23.

### ***I. Customs Duty***

- i. Comprehensive review of customs duty exemptions done, resulting in about 350 exemptions being withdrawn. More than 40 exemptions relating to capital goods and project imports are proposed to be gradually phased out. Certain exemptions for duty free import of specified goods by bonafide exporters of items like handicraft, apparel, leather goods are being introduced.
- ii. Some Items for which Basic Customs Duty has been increased w.e.f. 2 February 2022 are as follows:

Name of Item	Existing rate (%)	Proposed rate (%)
Edible Oils – Microbial fats & Oils	30	100
Umbrellas	10	20
Imitation Jewellery	20	Higher of 20% or INR 400 per Kg

Name of Item	Existing rate (%)	Proposed rate (%)
Electrical & Electronic items-		
Single or Multiple Loudspeakers	15	20
Headphones & Earphones	15	20
Smart meters	15	25
Printed Circuit Board Assembly of smart meters	10	20
Solar Energy Sector-		
Solar Cells	20	25
Solar Modules	20	40

- iii. Customs Tariff rate changes on 414 items (without any change in effective rates of Basic Customs Duty) w.e.f. 1 May 2022. Some items are as follows:

Name of Item	Existing rate (%)	Proposed rate (%)
Cashew nuts, in shell	30	2.50
Soft dates & Hard dates	30	20
Wheat other than seed quality	100	40
Coke, Coal gas and Tar	10	5
Naphtha	10	2.50
Motor spirit (Petrol), High Speed Diesel and Liquified natural gas	10	2.50



Name of Item	Existing rate (%)	Proposed rate (%)
Aviation Turbine Fuel and Liquified Petrol Gas	10	5
Raw Silk	30	15
Cotton yarn (put up for retail sale)	25	10

- iv. Customs Tariff rate changes on 97 items (with change in effective rates of Basic Customs Duty) w.e.f. 2 February 2022. Some items are as follows:

Name of Item	Existing rate (%)	Proposed rate (%)
Cocoa Beans, whole or broken, raw or roasted	30	15
Acetic Acid	10	5
Project Imports	10	7.50

- v. Import of Goods Concessional Rate of Duty ('IGCR') Rules, 2017 have been comprehensively revised as a trade facilitation measure to introduce end-to-end automation in the entire process and standardization of various forms, as also doing away with transaction based permissions or intimations.
- vi. Applicability of Social Welfare Surcharge ('SWS') on goods exempted from basic customs duty has been clarified.

- vii. Special Economic Zones Act, 2005 shall be replaced with a new legislation which will ease up the business operations of the enterprises in SEZ.

## **II. Excise Duty**

In order to encourage blending of fuel, unblended fuel is proposed to attract additional basic excise duty of INR 2 (~USD 0.03) per litre effective from 1 October 2022.

## **III. Goods and Services Tax ('GST')**

The following amendments will come into effect from a date to be notified, unless otherwise specified:

- i. One more condition is proposed to be added to avail Input Tax Credit ('ITC') w.r.t. a supply, credit of which should not have been restricted in the details communicated to the taxpayer in GSTR-2B.
- ii. Time limit for availing ITC in respect of an invoice or debit note for a FY is proposed to be extended from existing 'due date of furnishing GST return for the month of September' to '30 November' of the following FY.
- iii. Time limit for issue of a Credit Note in respect of a supply in a FY has been proposed to be extended to 30 November of the following FY.

- iv. Provisions relating to furnishing of outward supply return (GSTR-1) have been proposed to be amended, mainly to:
  - a. Provide conditions and restrictions for furnishing details, as also for communicating details to recipients
  - b. Do away with two-way communication process in return filing
  - c. Extend time for rectification of errors in respect of details of outward supply from existing 'due date of furnishing GST return for the month of September' to '30 November' of the following FY
  - d. Provide for tax period-wise sequential filing of return of outward supplies, this means that GSTR-1 for a month cannot be filed if the said return for the previous month is not filed.
- v. Provisions relating to communicating details of inward supplies and ITC have been proposed to be amended to provide certain conditions and restrictions, as also to do away with two-way communication process in return filing.
- vi. Provisions relating to furnishing of monthly summary return (GSTR-3B) have been proposed to be amended, mainly to:
  - a. Provide an option to pay either self-assessment tax or a prescribed amount in case of certain class of registered persons notified by the Government

- b. Extend time for rectification of errors in the return furnished from existing 'due date of furnishing GST return for the month of September or second quarter' to '30 November' of the following FY
  - c. Provide for furnishing details of outward supplies (GSTR-1) as a condition for furnishing of summary return (GSTR-3B).
- vii. Claim of ITC on provisional basis is proposed to be substituted with claim of eligible ITC on self-assessed basis. ITC claimed by recipient in respect of supplies where tax has not been paid by the supplier, is proposed to be reversed by him along with applicable interest. On payment of tax by supplier subsequently, recipient can re-avail ITC thereon.
- viii. Provisions relating to matching, reversal and re-claim of ITC, as also output tax liability have been proposed to be omitted, in order to do away with two-way communication process in return filing. Effectively, GSTR-2 and GSTR-3 returns are proposed to be scrapped.
- ix. In addition to prescribing restrictions for utilizing amount in electronic credit ledger, a provision prescribing maximum proportion of output tax liability to be discharged through electronic credit ledger has been proposed. Amendment is also proposed to be made for transfer of amount in electronic cash ledger under Central Goods and Services Tax ('CGST') of a registered person to electronic cash ledger under CGST or Integrated Goods and Services Tax ('IGST') of a distinct person.

- x. Provision proposing retrospective amendment from 1 July 2017 regarding levy of interest at the rate of 18% per annum on ITC wrongly availed and utilized has been introduced.
- xi. Amendment has been proposed extending the scope of withholding of or recovery from refunds in respect of all types of refunds.
- xii. Provisions relating to cancellation or suspension of registration are proposed to be amended as under:
  - a. person paying tax under composite scheme has not furnished return for a FY beyond three months from the due date of furnishing said return
  - b. person other than paying tax under composite scheme has not furnished returns for such continuous tax period as may be prescribed.

## Abbreviations

AIF	: Alternative Investment Fund	InvITs	: Infrastructure Investment Trusts
AMT	: Alternate Minimum Tax	ITAT	: Income Tax Appellate Tribunal
AOP	: Association of Person	ITC	: Input Tax Credit
CGST	: Central Goods and Services Tax	MSME	: Medium, Small and Micro Enterprise
CIT(A)	: Commissioner of Income-tax (Appeals)	NPS	: National Pension System
FM	: Finance Minister	OBU	: Offshore Banking Unit
FY	: Financial Year	PLI Scheme	: Production Linked Incentive Scheme
GDP	: Gross Domestic Product	RBI	: Reserve Bank of India
GIFT City	: Gujarat International Finance Tec-City	REITs	: Real Estate Investment Trusts
GST	: Goods and Services Tax	SGST	: State Goods and Services Tax
HUF	: Hindu Undivided Family	STCG	: Short Term Capital Gains
IBC	: Insolvency and Bankruptcy Code, 2016	The IT Act	: The Income-tax Act, 1961
IFSC	: International Financial Services Centre	TPO	: Transfer Pricing Officer
IGST	: Integrated Goods and Services Tax	VDA	: Virtual Digital Asset
INR	: Indian Rupee	WDV	: Written Down Value

## About JMP Advisors

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