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India Union Budget 2021-22

Point of view

Media and Entertainment

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While the Union budget 2021 was fairly muted towards the M&E sector, with no specific sector related reliefs and measures announced, some of the overall changes that have been introduced in direct and indirect taxes are presented below:

Key announcements

- **Merger and Acquisition**
  - Goodwill of a business or profession will not be considered a depreciable asset w.e.f. FY2020-21 and accordingly, no tax depreciation will be allowed on such goodwill. In case of an acquired goodwill, purchase price shall be considered as cost of acquisition for computation of capital gains, however, earlier depreciation obtained (if any) shall be reduced from purchase price.
  - Slump sale to include transfer of an undertaking by any modes (including by way of slump exchange).
- **Equalisation Levy (EL)**

  The EL provisions were expanded vide Finance Act 2020 to inter alia include online sale of goods and online provision of services. However, there were certain ambiguities surrounding these provisions. It has now been clarified, effective April 1, 2020, as under:
  - EL shall not apply on consideration chargeable to tax as Royalty/Fees for Technical Services.
  - Online sale of goods/ online provision of services would include instances where one or more of the following activities are carried out online:
    - Acceptance of offer for sale; or
    - Placing or acceptance of purchase order; or
    - Payment of consideration; or
    - Supply of goods or provision of services, partly or wholly.
  - Consideration received or receivable from e-commerce supply or services to include:
    - consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and
    - consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.
- **Start-ups**
  - Sunset clause for deduction to eligible startups proposed to be extended to startups incorporated before April 1, 2022.

- **Withholding tax**
  - — TDS / TCS applicable at higher rate of five per cent or twice the applicable rate vis-à-vis non-filers of income-tax returns for past two years. The provisions to apply where aggregate TDS/TCS is INR 50,000 or more in each of the two preceding years.
- **Dispute Resolution**
  - — Faceless Income-tax Appellate Tribunal scheme to be introduced on the same line as Faceless Appeal Scheme
  - — Authority for Advance Ruling shall be discontinued and to be replaced by Board of Advance Ruling (BAR). Orders of the BAR shall be appealable before High Court.
- **Compliance**
  - — Time-limit for re-opening of assessment reduced from 6 years to 3 years from end of relevant assessment year. Only in specific cases where income escaping assessment (represented in the form of an asset) exceeds / likely to exceed INR 5 million or more, time-limit of 3 years stands enhanced to 10 years
  - — The threshold for exemption from tax audit requirement increased to INR 100 million where cash transactions do not exceed 5 percent
  - — Changes in due dates for compliance procedures in certain cases (i.e. issuance of intimation, issuance of scrutiny notice by tax office, filing of belated return and revised return reduced by three months.
- **Indirect Tax areas: Goods and Services Tax (GST)**
  - — Section 16 of Central Goods and Service Tax Act, 2017 (CGST Act) proposed to be amended to restrict availment of input credit only when the invoice / debit note details are furnished by supplier in the statement of outward supplies (i.e. 'GSTR1') filed within the due date
  - — Amendment in Section 35 and 44 of CGST Act proposed for withdrawing mandatory requirement of certification of GST Audit Report in Form 9C by Chartered Accountant. Assessee to file self-certified reconciliation statement may get included in the Annual Return format (i.e. in Form 9)
  - — Section 16 of Integrated Goods and Services Act, 2017 (IGST Act) proposed to be amended whereby Supply of goods or services made to SEZ developer / Unit shall be treated as Zero rated (thereby not subject to IGST), only if such supplies are used for Authorized operations
  - — Option of Zero-rated supplies with payment of IGST (rebate option), proposed to be made applicable only to notified class of taxpayers or notified supplies of goods or services
  - — Linkage of foreign exchange remittance with exports of goods for claiming refund. In case, foreign exchange remittance is not received, exporter to pay back the refund with applicable interest.
- **Indirect Taxes: Customs**
  - — Exemption of customs duty on temporary import of costumes and props by filmmakers in India.
  - — Entries in connection to newsprint and other uncoated paper have been merged to provide clarity that exemption is available to newsprint and other uncoated paper conforming to the specifications of newsprint (other than its surface roughness).
  - — Automatic sunset clause in all customs duty exemption notifications – normal sunset period of two years from the date of notification. Any existing customs notification will expire on March 31, 2023
  - — Around 400 customs notifications being reviewed based on crowdsourcing of inputs and analysis by CBIC. Changes to be notified by October 1, 2021
  - — Time bound investigations related to duty demand – to be completed within two years with an option to extend by one year
- **Miscellaneous**
  - — Relaxation from interest for default in advance tax payments provided for dividend income except specified deemed dividend transactions

— Employee contribution to a fund paid after due date under respective Acts shall not be allowed as deduction.

Implications for the sector

- Media and Entertainment industry has suffered one of the worst impacts of the COVID-19 pandemic and perhaps for the longest period of time. While movie theatres and cinema halls were shut down for the most part of the year, OTTs had a stellar year. As movie theatres try to lure movie watchers back to the cinemas and struggle to coexist with OTT, Union Budget of 2021-22 was expected to play a pivotal role on how the entertainment industry of India shapes up, however the budget had a muted outlook towards the sector.
- While there have been no direct reliefs or reforms for the sector, one hopes that the increased spending on infrastructure and healthcare services along with, the push for privatisation and support to start-ups is likely to increase in the spending power of the customers which will help in M&E uptake. Also one hopes that the focus on corporate recovery strong will help create strong opportunities for advertisement growth thereby benefitting the M&E industry’s advertisement revenue
- Exemption of customs duty on temporary import of costumes and props by filmmakers in India will help reduce the cost burden of M&E industry
- However, clarifications on the scope and applicability of Equalisation Levy may have wide ramifications for the sector and one needs to review applicability in the light of specific fact pattern
- Further, the amendments relating to depreciation on goodwill and meaning of slump sale may have a bearing on the M&A transactions in the M&E space
- The new TDS / TCS provisions will further increase the compliance burden for taxpayers.

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