

India Union Budget 2022-23

Point of view

Telecommunication



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Key announcements for the sector

Consistent with the overall focus of the budget to create an enabling ecosystem for recovery and growth of the Indian economy, the telecom sector saw clear recognition from the government as the critical enabler of the digital vision of the country. Continuing with the momentum and positive sentiment created by the structural and policy reforms initiated by the government, Budget 2022 focused on the following initiatives:

- Commitment to conduct 5G auctions in the calendar year 2022 with launch of 5G mobile services in FY'22 – 23
- Allocation of 5% of the Universal Service Obligation Fund (USOF) towards enabling affordable broadband and mobile service proliferation in rural and isolated locations.
- Renewed focus on Bharat Net completion by 2025 through Public Private Partnership (PPP) models
- Since BharatNet needs more coverage across the remaining villages and gram panchayats to be covered, the government will contract private and public players through a PPP mode for fibre deployment completion by 2025.
- As a part of the Production Linked Incentive (PLI) plan, a scheme for design-led manufacturing will be introduced to build a robust ecosystem for 5G

Some of the other proposals relating direct tax and indirect tax are discussed below:

Direct Tax Proposals

- A new concept of Updated RoI has been introduced in Budget '22. This RoI can be filed within two years from the end of the relevant Assessment Year ('AY'). Some of its key features are as follows:
 - It cannot result in reduction of income or increase in refund
 - Updated RoI cannot be filed in certain circumstances including assessment/reassessment initiated or completed.
 - "Additional tax" over and above tax and interest on assessed income to be paid while filing updated return:
 - 25% of tax and interest if return filed within 1 year from end of AY
 - 50% of tax and interest if return filed between 1-2 years from end of AY
 - Consequential amendments proposed in the timelines for completion of assessment proceedings where Updated RoI is filed.
- With a view to reduce repetitive appeals by the Income-tax Department, Budget '22 has proposed to defer filing of appeal before Tribunal/High Court on an issue that is a question of law identical to the one which is pending before jurisdictional High Court/ Supreme Court in the case of the taxpayer in question or any other taxpayer.
- Faceless Assessment scheme is proposed to be updated. Key changes include,

- Assessment order to be considered valid even when prescribed procedure under Faceless Assessment Scheme not followed *[Effective retrospectively from 1 April 2021]*
- Timeline for Income Tax department to notify faceless schemes for Transfer Pricing assessments, Dispute Resolution Panel and proceedings before Income Tax Appellate Tribunal extended from 31 March 2022 to 31 March 2024 *[Effective from 1 April 2022]*
- With a view to boost manufacturing in India, Section 115 BAB of Income-tax Act, 1961 ('the Act') prescribed a beneficial corporate tax rate of 15% for newly set-up manufacturing companies provided they commenced the manufacturing before 31 March 2023. Budget '22 has proposed to extend this timeline to 31 March 2024.
- Last date for incorporation of eligible start-ups for claiming a three-year tax holiday extended by one year to 31 March 2023.
- The Budget proposes a TDS of 10% on any monetary or non-monetary benefit or perquisite (in excess of INR 20,000) provided to a resident and arising from a business or profession. Certain categories of individuals/Hindu Undivided Families ('HUF') have been exempted from this provision.
- Budget '21 had prescribed a higher rate of TDS on payments made to persons who had not filed their RoI in the preceding two AYs. It is now proposed to apply this provision to persons who are in default for only one year i.e., the immediately preceding AY.
- Indian companies receiving dividend from foreign companies on account of a shareholding of 26% or more were hitherto subjected to a concessional rate of 15%. It is now proposed to phase out this rate from AY 2023-24. This is to ensure parity with the new dividend taxation regime pursuant to the abolition of Dividend Distribution Tax ('DDT').
- It has been clarified that even if no exempt income has accrued during the year, the expenditure incurred in relation to such income computed in the manner prescribed in the Income-tax Rules shall be disallowed.
- It has been proposed that any payment of surcharge or cess shall not be allowed as a deduction. This clarification overrules some contrary jurisprudence and comes in with retrospective effect from 1 April 2005.
- Reduction of goodwill from the block of assets to be considered as transfer from AY 2021-22.
- Proceedings carried out on entities undergoing business reorganisations which are pending court approval shall not become invalidated because of a subsequent approval order of the court.

Indirect Tax Proposals

Changes under Customs Act:

- Basic Customs Duty (BCD) rate on camera lens for use in manufacturing of camera module of cellular mobile phone (tariff item 3920 99 99/ 9002 11 00) is proposed to be decreased from 15% / 10% to 2.5% with effect from 2 February 2022.
- BCD rate on specified parts of transformers for use in manufacture of chargers / adapters is proposed to be decreased from 10% / 15% to 5%. This change is being made effective from 2 February 2022 and the concessional rate will be valid till 31 March 2024.
- BCD rate of Nil on specified goods required for paging service and their parts falling under any chapter is being omitted with effect from 2 February 2022. Consequently, these goods will now attract applicable BCD rate as per their classification.
- Vide S. No. 513 of notification No. 50/2017-Customs, BCD rate of NIL is prescribed for parts or components for use in the manufacturing of populated printed circuit board of specified goods. Few of these specified goods are being omitted from the entry. Consequently, the parts or components for use in the manufacturing of populated printed circuit board of such omitted goods will continue to attract Nil BCD vide S. No. 39 of notification No. 24/2005-Customs. Further, this entry is being omitted from 1 April 2024.
- Concessional BCD rate of Nil is prescribed for parts of line telephone handsets falling under tariff item 8518 30 00. The description of the exempted goods has been changed to line telephone handsets falling under tariff item 8518 30 00.

- Customs duty exemptions on capital goods being gradually withdrawn: Automatic sunset clause in customs duty exemption notifications pertaining to Capital Goods has now been activated with a sunset date ranging from 31 March 2023 to 31 March 2024.
- Project Import duty rate of 7.5% from 30 September 2023.
- SEZ reforms leading to replacement of SEZ Act, changes in Customs administration of SEZ, introduction of risk-based intervention and usage of common EDI platform (w.e.f. 30 September 2022) – details of these changes are awaited.
- Legislative changes brought in to specifically include officers of DRI, Audit and Preventive formation, in the class of proper officers under Customs. Change has been made with retrospective effect.

Changes under Goods & Services Tax (GST):

- Input tax credit ('ITC') can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38.
- Time limit extended by 2 months (up to 30 November) with respect to transactions of previous financial year which includes:
 - Availability of credit
 - Issuance of credit note
 - Rectification of details reported in periodic monthly return
 - Rectification / omission of TCS details.
- Powers granted to:
 - Impose restriction on utilisation of balance in Electronic Credit Ledger ('ECL')
 - Provide for prescribing the maximum proportion of output tax through ECL
 - Block the credit in specified cases
 - Extend the scope of withholding of or recovery from refunds with respect to all types of refund.
- Section 38 to be amended to prescribe the manner, conditions and restrictions for communication of details of inward supplies and ITC to the recipient by means of an auto-generated statement and to do away with two-way communication process in return filing.
- Omission of section 42, 43 and 43A of the CGST Act to do away with two-way communication process in return filing.
- Amendment to section 47 of the CGST Act, to provide for late fees for delayed filing of TCS return.
- Retrospective amendment for applicability of interest only if wrongly availed credit is utilised.
- Transfer of Balance in Cash Ledger (CGST and IGST) permitted between distinct persons.
- Section 54 of the CGST Act to be amended to provide clarity regarding the relevant date for filing refund claim in respect of supplies made to an SEZ developer or an SEZ.

Implications for the sector

Budget 2022 has set the tone of optimism for the sector. With respect to the launch of 5G services, the Government has ushered a new phase of growth for the telecom sector. Ensuring enhanced digital access across the rural hinterlands through USOF allocation, commitment to complete Bharat Net by 2025, easier availability of 5G devices through the PLI scheme and reduced customs duty will go a long way in creating a sustainable ecosystem to reap the benefits that 5G promises.

Some of the amendments (e.g. extending the timeline for availing benefit of 15% corporate tax rate in case of manufacturing companies, extending tax holiday for start-ups) will be instrumental in furthering the Government's intention of boosting the manufacturing of various equipments / products in the 5G ecosystem. Edge data centres, IoT proliferation are expected outcomes in a Digital India of the future. Further, boost given to startups in the Artificial Intelligence, space sectors, amongst others, will create the necessary platform to nurture the skills of the future and cater to diverse industry applications.

While some of the critical asks relating to financial support in the form of reduced levies remained unanswered, the sector is pinning its hopes on reforms slated to be announced during the course of the year. Robust policies around spectrum allocation and pricing would play a critical role in accelerating the 5G roll out in the country.

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