

DA TAX UPDATE- INDIRECT TAX

An e-Tax update from **Darda Advisors LLP**

Union Budget 2021- Key Tax Proposals

Issue: 12



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Our Webinar on Union Budget 2021

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Deciphering Union Budget 2021

Tuesday, 2nd Feb
11.00 am - 12.30 pm

Speakers

D. Vineet Suman
Co-founder and Managing Partner
Darda Advisors LLP

Aditya Surana
MD, Consark LLP
Direct tax

LIVE | WEBINAR

Join us on 2 February 2021 Tuesday @ 11 am to analyse Union Budget 2021 in detail:

Kindly register on below link

<https://attendee.gotowebinar.com/register/5244471865315405582>

Once you register, we will send you joining link detail by email.

Do Join Us!

Economic Survey 2021

Following are the key highlights of Economic Survey 2021

- Advice to the Government: Keep up the spending!
- Economy to go past Pre-Covid levels in two years
- Higher growth will keep debt in check
- Indian banking needs an Asset Quality Review 2.0
- An eye on core inflation for Policy Making
- In support of the farm laws
- Pointing to a problem of overregulation
- A regulator for healthcare
- Why Bangladesh is beating India at exports
- India can't just rely on 'Jugaad'
- Does India's Sovereign Credit Rating reflect its fundamentals? No!

6 Pillars of Union Budget and key announcements

In her speech, the finance minister mentioned that this year budget proposals rest on six pillars. They are

- Health and well-being
- Physical, financial capital and infrastructure
- Inclusive development for aspirational India
- Reinvigorating human capital
- Innovation and R&D
- Minimum government and maximum governance

Key announcements for the six pillars

- Rs 64,180 crore will be invested over 6 years to improve primary, secondary and tertiary healthcare, in addition to National Health Mission
- PLI launched to create manufacturing global champions across 13 sectors with amount committed nearly ₹1.97 lakh crore in next 5 years starting FY2021-22
- FM says 217 projects worth over Rs 1 lakh crore completed under National Infrastructure Pipeline

6 Pillars of Union Budget and key announcements

- Government aims to complete 11,000 km of national highway infrastructure this year
- Social security benefits will be extended to gig and platform workers
- Realigning National Apprenticeship Training scheme for graduates and diploma holders in Engineering
- Partnership with UAE and Japan in area of skill development and recognition
- National Research Foundation with outlay of ₹50,000 crore over 5 years
- National Language Translation Mission to boost internet access
- Deep Ocean Mission for ocean exploration and biodiversity conservation

Corporate Law Changes

Following are the key changes in Companies Act, MCA website, LLP Act

- Easing Compliance requirements of Small Companies – Threshold increased to Share Capital upto Rs.2 crore and Turnover upto Rs.20 crore
- Allow One Person Companies (OPC) to grow without any restriction in Share Capital or Turnover.
- NRIs will be allowed to set-up OPCs. Presence in India of 120 days in a year enough to start an OPC.
- Tribunals to be regionalized
- Launching MCA Version 3.0 – E-Scrutiny, E-Adjudication and Compliance management to be simplified.
- Decriminalization of LLP Act, 2008

Direct Tax Key Proposals

Following are the key changes in relation to direct tax

- Senior citizens of age 75 years and above who have only pension and interest income – Need not file Income Tax Returns (ITR) and paying banks to deduct tax
- Re-opening of assessment to reduced to 3 years from 6 years. Only where evidence of concealment of income of Rs. 50 lakhs or more – re-opening can be made upto 10 years & only with approval of Pr.CCIT.
- Reducing litigation for small tax payers – Constitution of Faceless Dispute Resolution Panel for people with total Income upto Rs.50 lakh and disputed income of Rs.10 lakh
- Income Tax Appellate Tribunal to become faceless – Only electronic communication will be done
- Relaxation to NRIs – Rules to remove hardship of Double Taxation
- Tax audit limit to be increased to Rs.10 crores from Rs.5 crores for those having less than 5% cash transactions
- Dividend Tax- Dividend will be exempt from TDS. Advance tax liability on dividend income will arise only after declaration or payment of dividend. For Foreign Investors(FIs) – lower treaty rate benefit will be given.

Direct Tax Key Proposals

- Affordable Housing – Additional interest deduction (Sec 80EEA) of Rs.1.5 lakhs to be extended for loans taken till 31 March, 2022.
- Affordable Housing Projects – Tax holiday extended till 31 March, 2022.
- Tax holiday for capital gains for aircraft leasing companies and tax exemption to lease paid to foreign persons
- Pre-Filling of Returns – Details of capital gains, dividend income and interest income will be pre-filled in the returns
- Employee contribution not paid by employer will not be allowed as a deduction.
- Tax holiday for Start-Ups extended to 31 March, 2022. Capital gains exemption on investment in start ups also extended to 31 March, 2022.
- The stamp duty value can be up to 120% (earlier 110%) of the consideration if the transfer of “residential unit”, which means an independent housing unit is made between 12 November 2020 and 30 June 2021.

Extract from FM's speech on GST

- *“Before I come to my indirect tax proposals, I would like to appraise the House on GST. The GST is now four years old, and we have taken several measures to further simplify it. Some of the measures include:*
 - i. nil return through SMS,*
 - ii. quarterly return and monthly payment for small taxpayers,*
 - iii. electronic invoice system,*
 - iv. validated input tax statement,*
 - v. pre-filled editable GST return, and*
 - vi. staggering of returns filing.*
- *The capacity of GSTN system has also been enhanced.*
- *We have also deployed deep analytics and Artificial Intelligence (AI) to identify tax evaders and fake billers and launched special drives against them.*
- *The results speak for themselves. We have made record collections in the last few months.*
- *The GST council has painstakingly thrashed out thorny issues. As chairperson of the council, I want to assure the house that we shall take every possible measure to smoothen the GST further, and remove anomalies such as the inverted duty structure.”*

Indirect Tax Proposals- GST

Following are the key changes made in GST

Aspect	Proposed provision	Impact
Zero rate supply only for authorised operations of SEZ developer/unit	The word 'authorised operations' inserted in section 16(1)(b) of IGST Act, 2017	By this change, all supplies to SEZ developer/unit would not have benefit of zero-rated supply except for authorised operations
Repayment of refund of unutilised ITC with interest if export realisations of goods is not received within prescribed time limit	Section 16(3) of CGST Act, 2017 substituted with new sub sections (3) and (4)	The refund received to be paid back along with the applicable interest within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999

Indirect Tax Proposals - GST

Aspect	Proposed provision	Impact
Restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services	Section 16(3) of CGST Act, 2017 substituted with new sub sections (3) and (4)	Currently, the same is available for all tax payers and in future, it would be available to notified tax payers only
GST Audit report certified by CA/CWA not required	Clause (5) of section 35 of CGST Act, 2017 to be omitted.	Mandatory requirement to submit GST audit report duly certified by CA/CMA for prescribed GST tax payers is to be removed.

Indirect Tax Proposals - GST

Aspect	Proposed provision	Impact
Self certified reconciliation statement can be submitted along with annual return	Existing section 44 of CGST Act, 2017 to be replaced	Now, the tax payers who need to submit GST annual return may submit along with a self certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year

Indirect Tax Proposals - GST

Aspect	Proposed provision	Impact
Interest on net cash liability	Proviso to section 50(1) of CGST Act, 2017 substituted retrospectively w.e.f 1 July 2017	To remove anomaly after the changes made last year on applicability of interest on net cash liability prospectively, the proviso is substituted retrospectively w.e.f 1 July 2017
Conditions for availment of input tax credit (ITC)	Insertion of clause (aa) under section 16(2) of CGST Act, 2017 – additional condition to comply with section 37 of CGST Act, 2017 and communication to receiver	Additional condition inserted by which supplier needs to file GSTR-1 and duly communicated to receiver under section 37 of CGST Act, 2017 to become eligible for availment of ITC

Indirect Tax Proposals - GST

Aspect	Proposed provision	Impact
<p>‘Self Assessed tax’ defined</p>	<p>In section 75 (12) of the CGST Act, 2017, the following Explanation shall be inserted, namely:—</p> <p>‘Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.’</p>	<p>Non-disclosure of output liability under Form GSTR 3B which is reflected in Form GSTR-1 would be considered as part of ‘Self assessed tax’</p>

Indirect Tax Proposals - GST

Aspect	Proposed provision	Impact
<p>Scope of provisional attachment expanded</p>	<p>Section 83(1) of the CGST Act, 2017, the following sub-section shall be substituted, namely:—</p> <p>“(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.”</p>	<p>Scope of provisional attachment expanded to include sections under Chapter XII (Assessment – section 59 to 64), Chapter XIV (Inspection, Search, Seizure And Arrest - Section 67 to 72) and Chapter XV (Demands And Recovery – Section 73 to 84)</p>

Indirect Tax Proposals - GST

Aspect	Proposed provision	Impact
<p>Pre-deposit of 25% of penalty to file appeal before first appellate authority in the case of detention, seizure and release of goods and conveyances in transit</p>	<p>The following proviso shall be inserted under section 107(6) of CGST Act, 2017, namely:—</p> <p>“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.”</p>	<p>In the case of seizure/detention of goods at check posts and further order issued, there would be mandatory to pre deposit 25% of penalty including tax for filing appeal before first appellate authority</p>
<p>Tax not to be paid for detention/seizure under section 129 of CGST Act, 2017</p>	<p>In section 129 of CGST Act, 2017:</p> <p>(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted....</p>	<ul style="list-style-type: none"> • Only penalty as specified to be paid. Earlier the tax payer needs to pay tax and penalty as prescribed and thus leads to litigations at

Indirect Tax Proposals - GST

Aspect	Proposed provision	Impact
	<p>(ii) sub-section (2) shall be omitted;</p> <p>(iii) for sub-section (3), the following sub-section shall be Substituted.....,</p> <p>(iv) in sub-section (4), for the words “No tax, interest or penalty”, the words “No penalty” shall be substituted</p> <p>(v) for sub-section (6), the following sub-section shall be Substituted.....,</p>	<p>various High Courts</p> <ul style="list-style-type: none"> • Execution of a bond and furnishing of a security may not be allowed • Power of proper officer to sale or dispose of the goods to recover the penalty • The conveyance can be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less

Indirect Tax Proposals - GST

Aspect	Proposed provision	Impact
<p>Penalty proceeding conclusion under section 74 of CGST Act, 2017 limited to certain offence and general penalty under section 122 and 125 of CGST Act, 2017 for other persons</p>	<p>Reference of section 129 and 130 under explanation-1 clause (ii) of section 74 of CGST Act, 2017 removed.</p> <p>130. Confiscation of goods or conveyances and levy of penalty</p> <p>129. Detention, seizure and release of goods and conveyances in transit</p>	<p>Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125,</p> <ul style="list-style-type: none"> • are deemed to be concluded and not under section 129 and section 130.

Indirect Tax Proposals - GST

Aspect	Proposed provision	Impact
Scope of Supply – Services from association to its members and vice versa	Insertion of clause (aa) under section 7(1) of CGST Act, 2017 and removed paragraph from Schedule II retrospectively w.e.f 1 July 2017	To avoid impact of various judgments on taxability of supply between associations/other and its members and vice versa, specific clause inserted retrospectively

Indirect Tax Proposals – Central Sales Tax

- **Form C can now only be issued for inputs used in manufacture of specified petroleum and alcoholic products and procurement of the said products for resale thereof**

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Indirect Tax Proposals - Customs

Provisions

- **Penalty (not exceeding five times the refund claimed) for claiming IGST refund on export by utilising ITC on fake invoices** - In line with penalty under GST and Income tax law for fake invoice aspect, the penalty clause under Customs Act is introduced when the IGST refund claim on export is made by utilising ITC on such fake invoices. (New section 114AC under Customs Act shall be inserted)
- To enable service of order, summons, notice, etc. by making it available on the **common portal**
- Definite period of 2 years (extendable upto 1 year) prescribed for **investigation**
- **Conditional exemption notifications** would be valid for 2 years, unless specifically provided. Further, all existing conditional exemptions in force as on the date on which the Finance Bill 2021 receives the assent of the President unless having a prescribed end date, shall come to an end on 31 March, 2023 (if not specifically extended/rescinded earlier) on review.

Indirect Tax Proposals - Customs

- **To include inventories, photographs and lists** certified by the Commissioner (Appeals) to the documents to give **evidentiary value** to such documents.
- **Mandate filing of bill of entry before the end of the day** preceding the day (including holidays) of arrival of goods.
- **Confiscation** of any goods entered for exportation under claim of remission or refund of any duty or tax or levy, so as to make a wrongful claim in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force.
- **Review of Exemption Notifications:** Certain miscellaneous exemption notifications have been reviewed and these notifications have either been merged with other exemption notifications or rescinded as these have outlived their utility.
- At present, there are certain **end-use based exemptions** in notification No. 50/2017- Customs which are presently being administered without the need to follow the procedure set out under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR Rules, 2017). To provide uniformity of enforcement of end-use provisions, the condition of IGCR Rules is being provided for the relevant entries

Indirect Tax Proposals - Customs

- It is being proposed to make the following amendments in the provision relating to **ADD, CVD, Safeguard measures** [sections 8B, 9 and 9A of the Customs Tariff Act and respective Rules] to provide for:
 - a. imposition of duty from the date of initiation of anti-circumvention investigation;
 - b. anti-absorption provisions to counter situation where, by reduction of export prices or otherwise, the ADD/CVD levied is sought to be absorbed, diluting the intended impact of such ADD/CVD.
 - c. imposition of these duties on review for period upto 5 years at a time;
 - d. uniform provisions for imposition ADD/CVD on account of inputs (attracting ADD or CVD) used by EoUs and SEZs for manufacture of goods that are cleared to Domestic Tariff Area;
 - e. whenever any particular ADD or CVD is temporarily revoked, such temporary revocation shall not exceed one year at a time;
 - f. final findings are to be issued in ADD/CVD, in investigation in review proceedings, by the designated authority, at least three months prior to expiry of the ADD under review (with effect from the 1st July, 2021);

Indirect Tax Proposals - Customs

- g. provisional assessment in anti-circumvention investigation and make some other technical changes in ADD/CVD Rules;
- h. manner of application of safeguard measure, including tariff-rate quota in the Safeguard Duty (name changed to Safeguard Measures) Rules.

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Indirect Tax Proposals - Customs

Rates proposal (Key products):

Note - Applicable w.e.f 2 February 2021 00:00 except specified otherwise

- **AIDC (Agriculture Infrastructure and Development Cess)** imposed on imports of certain items (Apples, Crude Soya bean oil, Crude palm oil and others, fertilizers, coal, lignite and peat, petrol and diesel) and simultaneously BCD is being proportionately reduced. Similar relevant changes under Central Excise
- **Social Welfare Surcharge (SWS)** would be levied on AIDC. However, exemption from SWS on AIDC has been given to gold and silver. Further, goods imported under customs duty exemptions available under FTA and EOU as well as under advance authorization schemes are being exempted from AIDC.
- BCD reduced on Gold or Silver findings from 20% to 10%
- BCD @ 5% on Denatured ethyl alcohol (ethanol)

Indirect Tax Proposals - Customs

- Goods falling under heading 7007 when used for motor vehicles will attract the tariff rate of 15%
- Social Welfare Surcharge (SWS) exempted on Marble and travertine, Crude or roughly trimmed (tariff item 2515 11 00) and on Marble and travertine Blocks (tariff item 2515 12 10)
- BCD @ 2.5% on 2.5% on all goods under CTH 2528 (boron ore and concentrate)
- BCD reduced on Naphtha from 4% to 2.5%
- BCD on Carbon blacks increased from 5% to 7.5%,
- 7.5% BCD on Bis-phenol A and Epichlorohydrin
- BCD on (Builder's ware of plastics, not elsewhere specified or included) is being increased from 10% to 15%
- 7.5% BCD on Polycarbonates

Indirect Tax Proposals - Customs

- BCD on Nylon chips is being reduced from 7.5% to 5%
- Plastics falling under tariff item 3920 99 99 will now attract 15% BCD
- Toy balloons @ 60% BCD
- BCD on Raw Silk (not thrown) and Silk Yarn increased from 10% to 15%
- BCD on Nylon fibre and yarn is being reduced from 7.5% to 5%
- BCD rates under chapter 72 is being reduced and rationalized
- Notifications imposing anti-dumping duty or countervailing duty on certain products of steel are being temporarily revoked for the period 02 February 2021 to 30 September 2021

Indirect Tax Proposals - Customs

- BCD on Screws, bolts, nuts etc. under heading 7318 is being increased to 15%
- BCD exemption on 'tunnel boring machines (TBMs)' (heading 8430) has been withdrawn. Consequently, it will now attract BCD of 7.5 %.
- Tariff rate on all goods falling under sub-heading 8414 40 and 8414 80 is being increased to 15%
- BCD on Solar Inverters (sub-heading 8504 40) is being raised to 20%
- Solar lanterns or solar lamps will now attract 15% BCD
- Notification No. 1/2011-Customs, dated 6 January, 2011 is being rescinded. Consequently, all items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for the initial setting up of a solar power generation project or facility will attract applicable BCD

Indirect Tax Proposals - Customs

- BCD @ 2.5% on PCBA, Camera module, Connectors, wired headset, USB cable, microphone and received etc.
- BCD on PCBA of charger or adapter, is being increased from 10% to 15% by increasing the tariff rate
- Tariff rate on all goods falling under tariff item 9031 80 00 (other measuring or checking instruments, appliances and machines) is being increased from 10% to 15%
- **High Speed Rail Projects** are being included in the list of projects eligible for benefit **under Project Imports Scheme**

Budget documents' link

- Budget Speech
- Finance Bill
- Memorandum of Finance Bill
- Budget Highlights
- Economic Survey 2021

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About Darda Advisors LLP

At Darda Advisors LLP , we are dedicated to provide curated and client specific solutions through well-thought strategies in addition to helping them solve complex problems pertaining to tax and regulatory matters. Founded in 2019, by a crew of experts all of whom are former Big Four's professionals with extensive consulting experience in the field. We offer a wide range of services and cater clients spread across the globe. Our approach is to bring together global standards and practices, that are developed and customized to meet our client's needs by collaborating international business practices with India's market knowledge, laws, regulations and practices.

- Goods and Service Tax (GST) Services
- Other Indirect Tax Services
- SEZ/EOU set up and Compliance
- Foreign Trade Policy (FTP) Assistance
- Company Secretarial Services
- Due Diligence
- Incentives (Central and State) Assistance
- Valuation Services
- Virtual Tax Head Services
- Corporate Tax and International Tax Services
- Certification and Attestation

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