

Union Budget 2022 - 2023

Indirect Tax Analysis

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Introduction

- In this update we have highlighted the key changes made to the indirect tax regime in the Union Budget presented by the Finance Minister on February 1, 2022. Various new proposals have been tabled. Apart from amending the current provisions of indirect tax laws, certain new provisions/schemes have been introduced, including a proposal to replace the existing Special Economic Zones Act, 2005 with a new legislation.
- We hope that this update will prove to be handy for understanding the key implications to the indirect tax regime pursuant to the Budget. We will be happy to hear your feedback on this update and help you with any further information that you may require. Feel free to send us an email at knowledgecentre@argus-p.com.

February 1, 2022

GST – Key Changes

- Certain provisions of the Central Goods and Services Tax Act, 2017 (“CGST Act”)^{^^} have been amended to provide for extension of time limit upto 30th of November of the following financial year or date of annual return, whichever is earlier, in the following cases:
 - i. Section 16(4) – Deals with Input tax credit in respect of any invoice or debit note.
 - ii. Section 34(2) – Deals with credit notes pertaining to a financial year.
 - iii. Section 37(3) – Deals with rectification of errors in respect of details of outward supplies furnished in Form GSTR-1.
 - iv. Section 39(9) – Deals with rectification of errors in respect of return furnished in Form GSTR-3B.
 - v. Section 52(6) – Deals with rectification of errors in respect of statement furnished by electronic commerce operator liable to collect tax at source.
- The aforesaid amendment is in accordance with the recommendation of the Law Committee as specified in the agenda to the 43rd GST Council Meeting held on May 28, 2021.

All changes would be effective from a future date as may be notified, unless specifically mentioned

^{^^} Reference invited to the provisions of CGST Act would include similar reference to the State GST laws

GST – Key Changes

- Section 16(2)(ba) of the CGST Act, has been introduced to provide that input tax credit can only be availed if it is not restricted in terms of Section 38 of the CGST Act (communication of details of inward supplies and input tax credit).
- Section 37 of the CGST Act (furnishing of outward supplies), is also being amended in order to:
 - i. Provide for conditions and restrictions for furnishing the details of outward supply and for communication of the details of such outward supplies to concerned recipients.
 - ii. Provide for tax period-wise sequential filing of details of outward supplies.
- Section 38 of the CGST Act is being substituted for prescribing the manner as well as conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an auto-generated statement. It seeks to do away with two-way communication process in return filing.

All changes would be effective from a future date as may be notified, unless specifically mentioned

GST – Key Changes

- The auto-generated statement as specified under Section 38 of the CGST Act shall consist of:
 - i. Details of inward supplies of which credit may be available to recipient
 - ii. Details of inward supplies of which credit cannot be availed (wholly or partially) by the recipient, based on the following supplies furnished by the supplier in Form GSTR-1:
 - a) Supplies made by a registered person after the prescribed period of registration;
 - b) In case of default in payment of tax by a registered person for such continuous period, as may be prescribed;
 - c) Where the output tax payable exceeds the output tax paid by the registered person above the limit, as may be specified;
 - d) Where registered person has availed input tax credit in excess of credit available;
 - e) In case of default by a registered person in discharging tax liability in accordance with Section 49(12) of the CGST Act;
 - f) By such other class of persons, as may be prescribed.

All changes would be effective from a future date as may be notified, unless specifically mentioned

GST – Key Changes

- Section 39 of the CGST Act (furnishing of returns for payment of tax) is being amended to:
 - i. Provide an option to specified persons to pay either self assessed tax or an amount in lieu of such tax, subject to the terms and conditions, as may be prescribed.
 - ii. Provide for furnishing of details of outward supplies of a tax period under Form GSTR-1 as a condition for furnishing the return under Form GSTR-3B for the said tax period.
- Section 41 of the CGST Act (claim of input tax credit and provisional acceptance thereof), is being substituted to remove the concept of “claim” of eligible input tax credit on a “provisional” basis. It provides for:
 - i. Availment of self-assessed input tax credit subject to the conditions as may be prescribed.
 - ii. In case where tax payable on the supply has not been paid by the supplier, the credit is liable to be reversed along with interest. Once the supplier makes payment of the tax payable on the supply, such credit can be re-availed in the manner as may be prescribed.
- The two-way communication process contemplated in return filing based on matching, reversal and re-claim of input tax credit and reduction in output tax liability under Sections 42, 43 and 43A of the CGST Act has been omitted.

All changes would be effective from a future date as may be notified, unless specifically mentioned

GST – Key Changes

- Section 49 of the CGST Act, which deals with payment of tax, interest, penalty is being amended so as to:
 - i. Provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger;
 - ii. Allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the Integrated Goods and Services Tax Act, 2017 (“IGST Act”) of a distinct person;
 - iii. Provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger.
- The ambiguity with respect to recovery of interest on excess availment and utilisation of irregular input tax credit has been addressed vide the current Finance Bill by way of a retrospective amendment to Section 50(3) of the CGST Act with effect from July 1, 2017.
- The rate of interest under Section 50(3) of the CGST Act has been reduced retrospectively with effect from July 1, 2017, from 24% to 18%*.

All changes would be effective from a future date as may be notified, unless specifically mentioned

** Effective from the date of enactment of Finance Bill, 2022*

GST – Key Changes

- Section 54 of the CGST Act, which deals with refund of tax is being amended so as to :
 - i. Provide that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed;
 - ii. Extend the scope of withholding of or recovery from refunds in respect of all types of refund;
 - iii. Specify that the relevant date for filing refund claim in respect of supplies made to a Special Economic Zone developer or a Special Economic Zone unit would be the due date for furnishing GSTR-3B return, in respect of such supplies.

All changes would be effective from a future date as may be notified, unless specifically mentioned

Customs – Key Changes

- The Finance Bill, 2022 retrospectively amends the definition of "Proper Officer" under Sec. 2(34) of the Customs Act, 1962 ("the Customs Act") and other relevant provisions under Section 3 and Section 5 of the Customs Act and effectively grants powers to DRI, Audit and Preventive officers for performing the functions as a 'proper officer' under the Customs Act.
- The aforesaid amendment negates the effect of the judgment of the Hon'ble Apex Court in the case of Canon India Private Limited v. Commissioner of Customs [C.A. 1875 of 2018] dated March 3, 2021, wherein it was held that the proceedings under Section 28 of the Customs Act conducted by the Additional Director General of the DRI was without any authority of law in as much as the DRI was not the 'proper officer' to issue a show-cause notice for recovery of Customs duty.

Effective from the date of enactment of Finance Bill, 2022

Customs – Key Changes

- For proper compliance and management of work, it has been specified that two or more officers of Customs can concurrently exercise powers and functions under the Customs Act.
- In order to address the issue of undervaluation in the case of imports, Section 14 of the Customs Act, which deals with valuation of goods, is being amended to include provisions enabling the Board to specify the additional obligations of the importer in respect of a class of imported goods, the criteria of selection and checks in respect of such goods.
- Section 135AA of the Customs Act is inserted to protect the import and export data submitted to Customs authorities by importers or exporters in their declarations by making the publishing of such information as an offence under the Customs Act, unless provided by such law.

Effective from the date of enactment of Finance Bill, 2022

Customs – Key Changes

- **Customs (Import of goods at concessional rate of duty) Rules, 2017** have been amended with effect from March 1, 2022, to provide the following facilities:
 - i. End to end automation in the entire process by way of providing for requirement of submitting all the necessary details electronically, through a common portal.
 - ii. Standardizing and notifying the various forms for submitting details electronically.
 - iii. Need for any transaction-based permissions and intimations is being done away with.
 - iv. Procedure to claim the notification benefit is being simplified and automated.
 - v. Submission of Monthly Statement by the importer on the Common Portal for monitoring of the use of goods for the intended purposes.
 - vi. Option for voluntary payment of the necessary duties and interest, through the Common Portal is being provided to the importer.

Customs – Key Changes

- **Anti-Dumping duty** is being permanently revoked, on imports of the following
 - i. Straight Length Bars and Rods of alloy-steel, originating in or exported from People’s Republic of China, imposed vide Notification No. 54/2018-Cus (ADD) dated October 18, 2018;
 - ii. High Speed Steel of Non-Cobalt Grade, originating in or exported from Brazil, People’s Republic of China and Germany, imposed vide Notification No. 38/2019-Cus (ADD) dated September 25, 2019;
 - iii. Flat rolled product of steel, plated or coated with alloy of Aluminum or Zinc, originating in or exported from People’s Republic of China, Vietnam and Korea RP, imposed vide Notification No. 16/2020-Cus (ADD) dated June 23, 2020.
- **Countervailing duty** is being permanently revoked on imports of Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products, originating in or exported from People’s Republic of China, imposed vide Notification No. 1/2017-Cus (CVD) dated September 7, 2017.

Effective from February 1, 2022

Central Excise – Key Changes

- Tariff Items 2710 12 43 and 2710 12 44, have been inserted in the Fourth Schedule to the CEA, relating to E12 and E15 fuel blends, conforming to the new BIS specification [IS 17586] that has been issued for Ethanol Blended Petrol with percentage of ethanol up to 12 (E12) and 15 (E15) percentage respectively. This will align the Fourth Schedule to the Central Excise Act, 1944, with the similar proposed amendment in the sub-heading 2710 12 in the First Schedule to the Customs Tariff Act, 1975.*
- In order to promote blending of Motor Spirit (commonly known as Petrol) with ethanol/methanol and blending of High Speed Diesel with bio-diesel, an additional Basic Excise Duty of Rs. 2 per litre on Petrol and Diesel, intended to be sold to retail consumers without blending, would be levied with effect from October 1, 2022.

**Effective from the date of enactment of Finance Bill, 2022.*

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