

# Budget expectations

December 2022

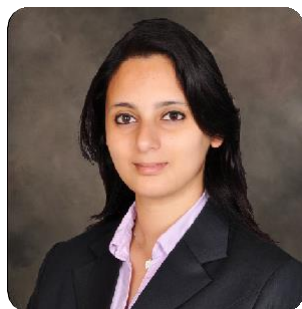


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# Economy

# Economy



**Dr Rumki Majumdar**

Economist

## Current environment



- Despite the RBI raising rates by 1.9 ppts since April 2022, inflation has remained above its tolerance range for over nine months. The RBI will have to submit a report to the central government stating the reasons for the failure to contain prices.
- The runaway dollar is causing import bills to soar and further pushing inflation up. In addition, INR depreciation against the US dollar is more due to the appreciation of the latter owing to the flight to safety amongst global investors amidst global uncertainties. The domestic currency is appreciating against euro, pound, and yen, and thereby suggests that the macroeconomic fundamentals of the Indian economy remain strong.
- The other challenge is the rise in current account deficit and currency depreciation against dollar. A rebounding domestic economy has led to higher imports and moderated global demand has caused exports to slowdown. The US dollar's unrelenting rise and global inflation are further causing India's import bills to rise.



# Expectations

We expect the GDP to maintain a reasonable growth momentum, unlike what we expected at the beginning of the year. Considering global economic uncertainties and a possible slowdown, we remain cautiously optimistic about growth that may range between 6.5 and 7.1 percent during FY2022-23 and 5.5-6.1 percent the following year. Economic activity will likely pick up early next year, contingent on the pace of global economic revival and the improving domestic economic fundamentals.

## Top three asks:

### Expectation #1

Keep the overall Consumer Price Index (CPI) inflation within the range of the RBI's target inflation rate for the remaining year. The government and the RBI need to make a coordinated effort to control inflation. The RBI has already tightened the monetary policy but will have to calibrate policy rate rises to check inflation without impeding growth. In addition, the government will have to adjust trade duties such that its own revenues are not affected much.

### Expectation #2

Lay emphasis on sustainable growth in demand, which will require efforts to create jobs and increase income generation opportunities. India is a domestic demand-driven economy, and so far, recovery in consumer spending has not been sustainable. The suggested move will put more money in consumers' wallets.

### Expectation #3

Prepare for a global slowdown and focus on sectors that can make India an attractive investment destination. The Production Linked Incentive (PLI) scheme and infrastructure plan are a success and with the national logistics policy, there will be a substantial reduction in production cost. The government must focus on fast completion of projects and efficient execution of initiatives. The other expectation would be raising capital for investments through asset monetisation.

# Taxation



# Direct tax



**Rohinton Sidhwa**

Partner

## Current environment



- The net direct tax collection for FY2022–23 witnessed a steep growth of 23 percent, a clear indicator of the revival of economy after the pandemic. Plugging of tax leakages by the Indian Government is one of the factors that resulted in the steep growth.
- In the past, the government introduced various withholding tax provisions to plug such tax leakages and increase the tax base. These provisions will help achieve the government’s intent. However, clarity is required on the implementation of these provisions as the industry is grappling with various challenges.
- The progress on OECD Inclusive Framework proposals on Pillar 1 and Pillar 2 are at an advanced level. There is a line of sight on implementation by 2023 end. More countries are moving ahead with withdrawal of Digital Service Taxes (DSTs) and relevant similar measures. India had introduced the provisions of Equalisation Levy and Significant Economic Presence. However, there is no clarity on the interplay of these provisions and a clear roadmap is the need of the hour.
- Therefore, the government should consider introducing necessary steps to address taxpayers’ concerns in the forthcoming budget.





# Expectations

## Top five asks:

### Expectation #1: Clarification for deduction of tax at source under Section 194-O of the Income tax Act, 1961 (the Act)

- Taxpayers faced practical issues on applicability and implementation of the provisions of Section 194-O of the Act. To address those issues, they have the following expectations:
  - Clarify as to which entity shall be required to deduct tax under Section 194-O of the Act where the sale of products/service is via intermediaries and multiple e-commerce operators are involved.
  - To promote exports from India, it should be clarified that the provisions of Section 194-O will not apply when the e-commerce operator facilitates sale of goods or services by a resident seller to a customer outside India. Similar exemption for exports is provided in Section 206C(1H) to collect taxes at source.
  - The exemption threshold needs to be increased for individuals and H/UFs from INR 5 lakh to INR 40 lakh to align it with the threshold for GST registration prevailing in a majority of the states.
  - Consider allowing the deductor to report a consolidated monthly entry per deductee to reduce the volume of quarterly transactions for reporting and issuing TDS certificates.
  - It is recommended that sales returns, cancellations, and incidental charges (such as delivery or transport charges, packing charges, gift wrap charges, convenience fee) shall be excluded while computing the 'gross amount' for the purpose of Section 194-O of the Act.
  - Clarify that pre-paid instruments (such as gift vouchers) are excluded from the definition of goods and services.

### Expectation #2: Clarifications on applicability and implementation of Section 194R of the Act

- In the context of Section 28(iv) of the Act, the Supreme Court (SC), in the case of Mahindra & Mahindra Ltd (2018) 93 taxmann.com, has upheld that the benefit received must be in some other form rather than just money. It is recommended to reconsider FAQ 2 of Circular No 12/2022 and clarify that TDS under Section 194R is applicable only to payment of non-monetary benefit or perquisite.
- Although, Section 194R does not expressly refer to Section 28(iv) of the Act, the language of Section 194R(1) is identical to Section 28(iv) viz. any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. However, the clarifications introduced by Circular No 12/2022 in FAQ 1 appears to expand the scope of the provision to even apply where the benefit is taxable under Section 41(1) of the Act. Hence, FAQ 1 should be re-considered and clarified that TDS under Section 194R is applicable only to payment of benefit or perquisite, which is taxable under Section 28(iv) of the Act.
- It should be clarified that any write-off of debt is not a benefit or perquisite arising from business or exercise of profession and hence, not liable to TDS under Section 194R.
- With the practical challenges facing the industry, a lead time of at least six months may be provided and the effective date of the provision may be deferred to that extent. Alternatively, it may be clarified that no punitive action by way of TDS recovery, interest, penalty or disallowance of expense will be taken for any TDS default under Section 194R for a period of six months starting 1 July 2022.

### Expectation #3: Equalisation Levy (EQL) & Significant Economic Presence (SEP)

- With the advancement of the OECD proposals on Pillar 1 and 2 and to promote the ease of doing business in India, the government should come out with a roadmap with respect to implementation of SEP and EQL provisions.
- It should be clarified that the SEP provisions should only apply to digital transactions. The terms, such as 'systematic and continuous soliciting of business activities', 'engaging in interactions', 'users' should be defined and guidance using appropriate examples and quantifiable metric for explaining the meaning should be issued.
- Rules for attribution of income should be prescribed at the earliest to provide certainty and smooth implementation of the SEP provisions.

- Transactions with group companies and the definition of users for SEP provisions should be excluded from EQL.
- Clarification should be provided to eliminate the overlap of SEP and EL provisions to ensure that the income chargeable to EL, which is exempt, should not be attributed to SEP.

**Expectations #4: Exemption from filing of tax return to non-residents where entire tax has been withheld per the provisions of the Act**

- A relaxation from the requirement for filing of income tax return was extended to non-resident taxpayers deriving income in the dividend, interest, royalty, and fees for technical services as referred in Sections 115A(1)(a) and 115A(1)(b) of the Act.
- It may be considered to extend the said relaxation to non-residents taxpayers who have been subject to withholding tax on income (and having no permanent establishment in India) under the Act for ease of compliance. For example, non-residents earning interest on income tax refund or interest received from the government or an Indian concern on monies borrowed or debt incurred other than in foreign currency, which has been subject to withholding tax under the Act. They should be exempted from filing of tax return in India.

**Expectation #5: Extension of the sunset clause for Section 194LC and Section 194LD**

- The concessional tax rate regime introduced by the Finance Act, 2012 (for Section 194LC) and Finance Act, 2013 (for Section 194LD) has significantly provided a viable and attractive avenue for raising funds by Indian businesses, thus helping India to maintain the momentum in economic growth over the years.
- Therefore, it may be considered to further extend the sunset period for the said concessional tax regimes, which would support the vision to make India an attractive investment for the debt market and attain the objective of being a US\$ 5 trillion economy.

# Indirect tax



**Mahesh Jaising**

Partner

## Current environment



- The Union Budget FY2023 shall be the last full budget of the current government before the general elections in May 2024. It is expected to cover important issues affecting the economy, particularly employment opportunities, talent upskilling, rising cost of living, and income brackets.
- The economy has done well in the first three quarters of FY2022 compared with FY2021. The government's determination to carry this momentum to the next financial year, and the expectations from the Union Budget FY2023 remain reasonably high.
- In the budget FY2022, the government took the following measures to facilitate trade and boost the Make in India vision:
  - Introduced and implemented Phased Manufacturing Plan (PMP) on selected products by increasing the duty on finished goods and reducing on raw materials and inputs required to manufacture such finished goods
  - Allowed job work under Import of Goods at Concessional Rate of Duty (IGCR)
  - Simplified customs tariff by incorporating unconditional exemptions within the customs tariff itself

- The Central Board of Indirect Tax and Customs (CBIC) has also been steadfast to adopt digital transformation in customs clearance, such as Compliance Information Portal. The government is taking measures to digitise the customs-related process.



## Expectations

### Top three asks:

#### Expectation #1: Widen the Production Linked Incentive (PLI) scheme or introduction of the Phased Manufacturing Plan (PMP) for new products

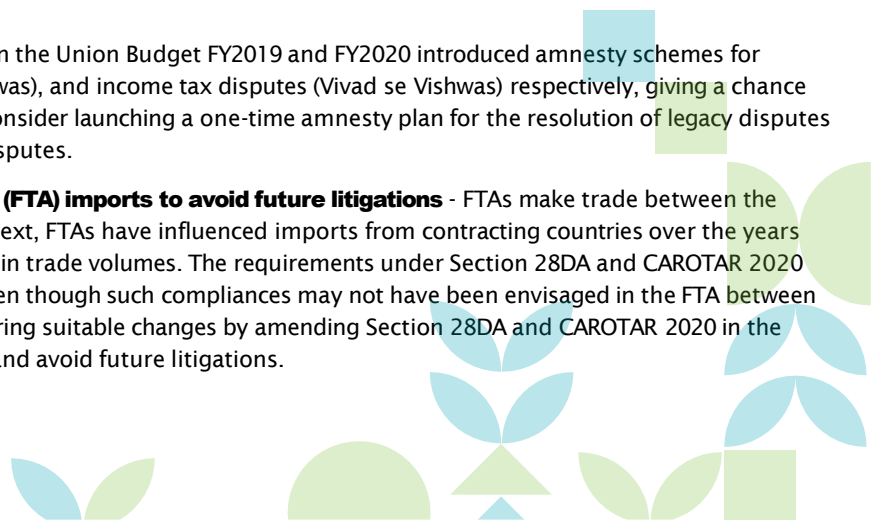
- According to various export promotion councils, the PLI scheme that advocates incremental production-based incentives has the potential to boost India's exports and diversify the export basket.
- The government has made clear its intention of expanding the PLI scheme and identifying more emerging industries, such as leather, toys, chemicals, shipping containers.
- The Union Budget FY2023 will broaden the PLI scheme or introduce PMP for new products and consider the upcoming potential industries, especially with India's exports aiming to reach US\$ 1 trillion by 2025.

#### Expectation #2: Simplify tariff structure

- The *WTO Trade Policy Review* report released in November 2020 recommended that India needs to simplify its tariff structure to make it easily understandable for importers and exporters.
- In previous Union Budgets, the government simplified the tariff structure by removing various exemption notifications. However, there are still many notifications in operation that must be simplified.
- The government should further simplify the tariff structure to ensure fewer interpretational issues, which will help reduce litigation.

#### Expectation #3: Amnesty scheme for customs and other custom expectations

- **Introduction of Development of Enterprise and Service Hubs (DESH) Bill 2022** - India is a growing economy and the government proposed reforms in the DESH Bill (expected to be made by 30 September 2022) to ensure proper utilisation of Special Economic Zones (SEZs). The government should introduce the DESH Bill in the winter session of the parliament in 2022 and expedite its implementation.
- **Amnesty scheme for customs** - The government in the Union Budget FY2019 and FY2020 introduced amnesty schemes for central excise and service tax disputes (Sabka Vishwas), and income tax disputes (Vivad se Vishwas) respectively, giving a chance to resolve past disputes. The government should consider launching a one-time amnesty plan for the resolution of legacy disputes pertaining to customs matter to end long-drawn disputes.
- **Ease compliance rules for Free Trade Agreement (FTA) imports to avoid future litigations** - FTAs make trade between the contracting countries hassle-free. In the Indian context, FTAs have influenced imports from contracting countries over the years with a startling reduction in duties and an increase in trade volumes. The requirements under Section 28DA and CAROTAR 2020 are cumbersome and challenging for importers, even though such compliances may not have been envisaged in the FTA between the contracting countries. The government should bring suitable changes by amending Section 28DA and CAROTAR 2020 in the upcoming budget to provide relief to the importer and avoid future litigations.



# Personal tax



**Tapati Ghose**

Partner

## Current environment



- After the pandemic, the Indian economy has been resilient and is slowly returning to its growth trajectory despite gloomy geopolitical atmosphere.
- The ambitious structural reforms rolled out by the government to enhance transparency, good governance, and global competitiveness are expected to bring stability and multi-fold growth.
- Budget is considered a key driver of growth and policy reforms.
- The government, in its journey of enhancing the ease of doing business initiative, had taken up the task of consolidating various labour regulations. Twenty-nine labour-related regulations have been consolidated into four labour codes, viz. code on wages; social security; industrial relations; and occupational safety, health, and working conditions.



- Consolidation of various central labour regulations will ensure the following objectives are met:
  - Re-alignment to reflect current business requirements
  - Minimisation of litigation
  - Simplification of varied statutes to help companies comply better and enable its enforcement in a more simplified and transparent manner



## Expectations

### Top three asks:

#### Expectation #1: Revise tax slab rates

- Per the current income tax provisions, an individual is required to pay taxes based on slab rates. The highest slab rate (after including surcharge and cess) for income exceeding INR 5 crore in India is at present 42.744 percent.
- The tax rate for individuals has not been changed since the FY2017-18 (new tax regime bought in FY2020-21). Hence, to give more purchasing power to individuals and some relief to the employed taxpayers, the highest tax rate of 30 percent should be reduced to 25 percent and the threshold limit for the highest tax rate be increased from INR 10 lakh to INR 20 lakh. Therefore, the proposed highest slab rate (including surcharge and cess) can be reduced to 35.62 percent.
- Revision of tax slab rates could be as follows:

| Annual income      | New tax regime | Proposed slab rate under new regime |
|--------------------|----------------|-------------------------------------|
| Up to INR 2.5 lakh | NIL            | NIL                                 |
| INR 2.5–5 lakh     | 5%*            | 5%*                                 |
| INR 5–7.5 lakh     | 10%            | 10%                                 |
| INR 7.5–10 lakh    | 15%            | 15%                                 |
| INR 10–12.5 lakh   | 20%            | 20%                                 |
| INR 12.5–15 lakh   | 25%            | 20%                                 |
| INR 15–20 lakh     | 30%            | 20%                                 |
| Above INR 20 lakh  | 30%            | 25%                                 |

| Annual income      | Historical tax regime | Proposed under historical tax regime |
|--------------------|-----------------------|--------------------------------------|
| Up to INR 2.5 lakh | NIL                   | NIL                                  |
| INR 2.5–5 lakh     | 5%*                   | 5%*                                  |
| INR 5–10 lakh      | 20%                   | 20%                                  |
| INR 10–20 lakh     | 30%                   | 20%                                  |
| Above INR 20 lakh  | 30%                   | 25%                                  |

\* Subject to rebate under Section 87A

Applicable surcharge and educational cess will be levied on the above.

The highest tax rate in neighbouring countries are as follows:

Hong Kong – 17 percent  
 Singapore – 22 percent  
 Malaysia – 30 percent

Hence, it is recommended that India should ensure that tax rates fall in that range.

## Expectation #2: Increase in the limit for various deductions

- At present, deduction available under the following sections are as follows:
  - Section 80C of the Act for payments/investments towards life insurance premia, contributions to provident fund, subscription to certain equity shares or debentures, etc., is capped at INR 1,50,000.
  - Section 80D deduction in respect of health insurance premium is capped up to INR 25,000/ 50,000.
  - Section 80TTA deduction of up to INR 10,000 in the hands of individuals and Hindu Undivided Family (HUF) in respect of interest on savings account with banks, post offices, and co-operative societies carrying on the business of banking.
  - Section 80EEA deduction in respect of affordable housing – One of the conditions mentioned is that the loan should be sanctioned between April 2019 and March 2022.
  - 80EEB deduction in respect of purchase of electric vehicle – This deduction was available only if loan has been sanctioned by the financial institution from 1 April 2019 to 31 March 2023.
- Section 80C  
The current limit mentioned above seems quite low. With the increase in cost of living and inflation, the government should look at increasing the limit under Section 80C. This will have two-fold benefits, viz., individual taxpayers would be willing to save more and will benefit from a lower tax outgo, thereby increasing disposable income to meet the increase in price of various commodities.
- Section 80D  
Considering the increase in costs of medical treatments, the cost of comprehensive insurances has increased manifold and hence, the erstwhile limit under this section may be revisited.
- Section 80TTA  
It is unlikely that salaried individuals would keep their entire savings in a savings bank account, which earns a much lower rate of interest compared with term deposits. They may transfer some portion of their savings to term/recurring deposits in banks to earn comparatively better returns.
- Section 80EEA  
With the rise in demand for residential real estate in metropolitan and tier-II cities in the post-COVID world, it is expected that the deduction be extended.
- Section 80EEB  
Demand for electric vehicles is increasing each day. The government has brought in provisions to provide deduction in respect of interest payable on loan taken to purchase electric vehicle. However, the condition for availing loan to purchase electric vehicle is until 31 March 2023.
- It is recommended that the government should increase the deduction limit as follows:
  - Section 80C – INR 2.5 lakh
  - Section 80D – The limit to be increased to INR 50,000/1,00,000. Section 80TTA – Interest on all types of bank deposits (such as Fixed Deposit Receipt [FDR]) should be included within the scope of Section 80TTA. The limit should be increased from INR 10,000 to INR 50,000.
  - Section 80EEA – The condition for availing loan should be extended for at least three years, i.e., until 31 March 2025.
  - Section 80EEB – The condition for availing loan for purchasing electric vehicle should be extended for at least two years, i.e., until 31 March 2025.



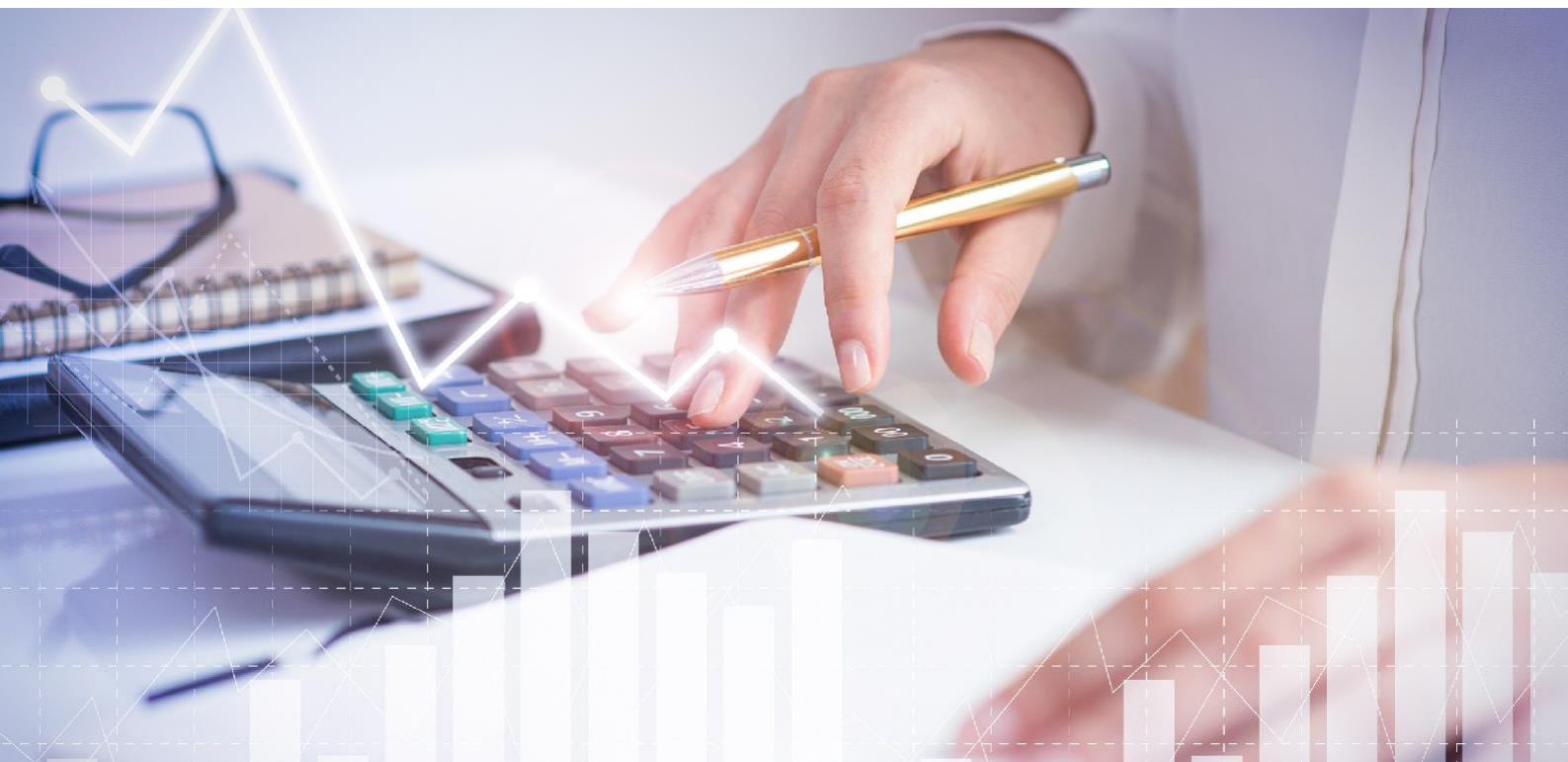
### Expectation #3: Exemption in respect of provident fund contribution already taxed

- Budget 2020 provided that employer contribution to Recognised Provident Fund (RPF), superannuation, and National Pension System (NPS) exceeding INR 7,50,000 will be taxable in the year of contribution.
- Section 17(3) of the Income tax Act, 1961 (the Act) provides for taxability of funds received from provident fund if certain conditions outlined in the fourth schedule (i.e., not rendering continuous service of five years, etc.) are not complied with.
- In case of contributions by employer in excess of limits specified, the excess contribution and the accretions thereon is taxable in the hands of the employee.
- The same provident fund balance when withdrawn would be subject to tax withholding, if the conditions for exemption (for example, five years of continuous service) are not complied with and there is no specific exemption provided for excluding the income already taxed (mentioned above). Hence, there could be double taxation at the withdrawal stage to the extent the contribution/accretion has already been taxed.
- It is recommended that there should be a specific provision in the Act, providing exemption in respect of contributions/accretions, which are already taxed under Section 17(2)(vii) at the time of provident fund withdrawal.

### Policy recommendations

- After the pandemic, the working culture across organisations has undergone several changes. Organisations introduced work from home, remote working, hybrid working, etc. However, there are no policies/guidance with respect to various provisions (such as tax, social security, insurance, workman compensation) on account of the new remote work culture. Therefore, the government may look at announcing certain guidance/policy-related aspects.
- Some organisations permit moonlighting to its employees. The government should look at providing a notification that clarifies on tax implications on this aspect.

# Mergers and acquisitions tax



**Amrish Shah**

Partner

## Current environment



- Mergers and Acquisitions (M&A) activity is expected to boost the rather lull environment businesses are trying to overcome.
- The government has been providing certain relaxations to improve this scenario and provide much-needed relief. However, certain relaxations in the M&A arena are the need of the hour.

We have discussed key expectations and their rationale in this regard.





# Expectations

## Top four asks:

### Expectation #1: Ensure outbound mergers to be practical, i.e., tax neutral

- The Companies Act, 2013, permits the merger of an Indian company into a foreign company, subject to certain conditions.
- The merger of an Indian company with another Indian company is tax neutral if the prescribed conditions are satisfied. However, no specific exemption is provided under the Income-tax Act, 1961 for the merger of an Indian company with a foreign company.
- Tax exemption will be provided on the merger of an Indian company with a foreign company by the specific clause in Section 47.

### Expectation #2: Extend transition of losses from amalgamating a 'non-industrial undertaking' company to an amalgamated company

- Under the existing provisions in Section 72A, the benefit of carry forward of losses and unabsorbed depreciation is, inter alia, allowed in cases of amalgamation of a company owning an 'industrial undertaking'.
- The provision was incorporated when India was a capital-intensive country. The country is moving from a capital-intensive to a capital-light model; the services industry is also growing and contributing to the economy.
- To encourage rapid consolidation and growth and make India competitive in the services sector, the benefit under Section 72A (to carry forward of losses and depreciation on amalgamation) should be extended to service industries, amongst others.

### Expectation #3: Rationalise taxation of contingent consideration

- India is an attractive market for international investors. With a focus on balancing profitable exits and correct valuations, most private equity players plan to introduce a combination of clauses in the shareholders agreement. This includes consideration payable in a contingent manner based on certain performance milestones that the promoters achieved.
- In essence, such clauses incentivise promoters for their good performance.
- There is no clarity on whether such contingent consideration is to be taxed in the year of transfer or receipt, after the consideration crystallises.
- It may be clarified by an explanation or clarificatory provision to Section 45 (in case of a contingent consideration), the contingent portion should be chargeable to tax as capital gains in the year in which the same is crystallised, irrespective of the year in which the transfer takes place (in line with the accrual concept - refer to Section 5 of the Act).

### Expectation #4: Provide exemption to foreign shareholders in case of mergers and demergers

- Section 47(via) provides that transfer of shares of an Indian company transferred in a foreign amalgamation would not be regarded as a transfer, provided certain conditions are met.
- Similarly, Section 47(via) provides that transfer of shares of a foreign company that derive value substantially from assets located in India, in an amalgamation, would not be regarded as a transfer provided certain conditions are met.
- The above sections seem to indicate that the exemption is provided only to the amalgamating foreign company and not to its shareholders.
- Specific provisions should be incorporated in the Act to provide relief to the shareholders of the amalgamating foreign company such as Section 47(vii), which exempts shareholders in a domestic amalgamation.



- A similar issue emerges for demergers. In the absence of exclusion from compliance with the Indian company law requirements in Section 47(vid), the benefit of shareholder exemption is not available to shareholders of the foreign demerging company in an overseas demerger. This has the effect of imposing a tax liability on the shareholders of the foreign demerging company and hence, against the principle of enabling tax neutrality for overseas demergers.
- A proviso (as provided in Section 47[vid] and 47[vid]) should be incorporated in Section 47(vid) to provide exemption to the shareholders of the foreign demerged company despite the demerger not complying with the relevant Indian company law provisions.



# Transfer pricing



**Vishweshwar  
Mudigonda**

Partner

## Current environment



An appropriate transfer pricing policy and its implementation is one of the critical areas for multinational enterprises. Transfer pricing issues have become important considerations for tax disputes in India, leading to protracted litigation. For India to become a manufacturing hub, the government must improve its supply chain and attract global investors by ensuring ease of doing business and tax certainty to investors. The government has developed dispute prevention schemes, such as safe harbour rules, advance pricing agreement to ensure tax certainty. However, various practical issues in framing and implementing regulations need to be addressed. Some of the most important amendments include the following:



# Expectations



## Top three asks:

**Expectation #1: Ensure consistency in compliance requirements for income tax return and transfer pricing documentation requirements for non-resident taxpayers**

Pursuant to amendment through the Finance Act, 2020, a non-resident taxpayer is not required to file income tax return in India if it is a taxable income in India; only includes dividend, interest, royalty or fee for technical services; and the taxes have been appropriately withheld from such taxable income under the provisions of Income Tax Act.

With the above exemption under Section 115A, a question arises about the non-resident taxpayer's obligation for filing Accountant's Report in Form 3CEB under Section 92E of the Act. Section 92E has not been amended consequent to the above exemption under Section 115A(5) of the Act. Non-reporting of international transaction in Form 3CEB attracts multiple penalties under Sections 271BA, 271AA, 271G, and 270A of the Act. In a situation where a non-resident need not file a tax return in India would still need to file Form 3CEB to avoid any penalty for non-reporting of the international transaction.

**Expectation #2: Establish a mechanism to fast-track conclusion of unilateral Advance Pricing Agreement (APAs) that cover less complex/standard transactions**

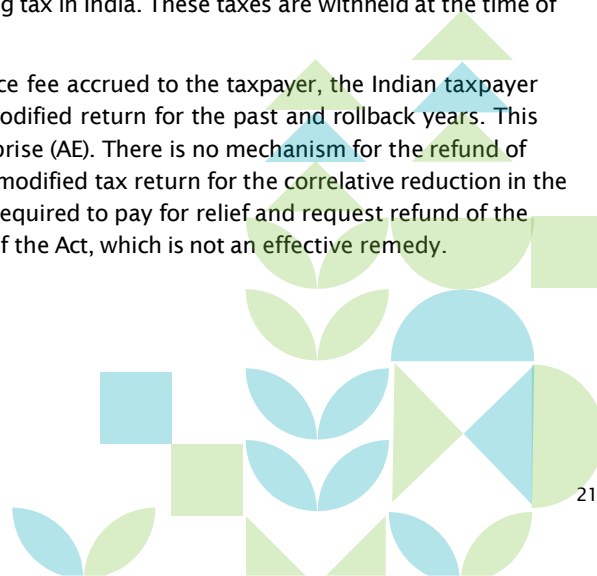
Delay in concluding the APAs creates an uncertainty for taxpayers and risk of litigation looms over them, impeding the government's 'ease of doing business' initiative. They bear the burden of interest on differential tax payment for past years, besides secondary adjustments. In addition, suitable means to fast-track unilateral APA conclusions need to be explored.

Some countries have undertaken measures to speed-up APA conclusion processes. For example, China's State Taxation Administration (STA) recently introduced a fast-track unilateral APA process under which they aim to conclude the APAs within six months from the date of filing the APA applications. The government can consider similar fast-track mechanisms for APA applications, covering international transactions, such as loans, corporate guarantee, intra-group service charges, or for companies that have a cost-plus remuneration mechanism in the service companies involved in Information Technology (IT) or Information Technology enabled Services (ITeS) business. These transactions/sectors usually have almost standardised APA resolutions.

**Expectation #3: Adjustment for withholding tax after completing of APA**

Arm's length price is determined in APAs for various international transactions, such as intra-group royalty charges, fees for technical service, or any other intra-group service charge that are subject to withholding tax in India. These taxes are withheld at the time of accrual in the books of accounts of the Indian taxpayer.

If the arm's length price determined in the APA is lower than the actual service fee accrued to the taxpayer, the Indian taxpayer is required to claim lower deduction for such intra-group payments in the modified return for the past and rollback years. This often results in excess withholding tax for the non-resident Associated Enterprise (AE). There is no mechanism for the refund of withholding taxes to non-resident taxpayers as they are not allowed to file a modified tax return for the correlative reduction in the transaction value. Under the present provisions, non-resident taxpayers are required to pay for relief and request refund of the excess taxes withheld by the Indian entity from the CBDT under Section 119 of the Act, which is not an effective remedy.



**Policy recommendations**

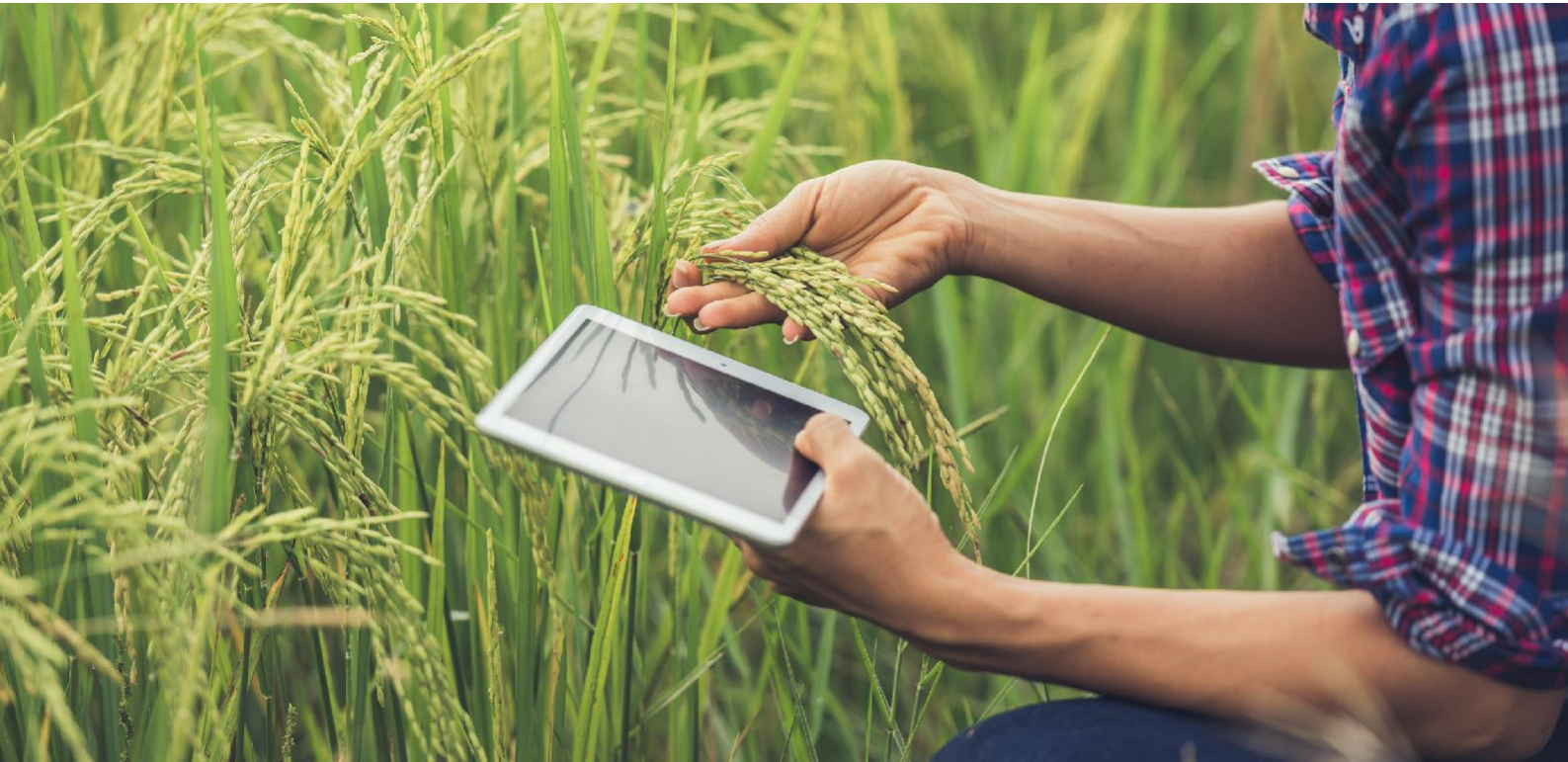
- Section 92E should be amended to provide exemption to non-resident taxpayers from filing Form 3CEB, where they are exempted under Section 115A(5) from filing tax return in India.
- The fast-track mechanism will reduce the burden of the existing APA pipeline as IT/ITeS applications for the unilateral APAs constitute an estimated 35 percent by numbers. It will have a dual benefit of faster resolution of APAs and a reduction in huge pending APA cases.
- The government should rationalise the APA scheme to allow AEs to claim refund if there is an excess withholding tax by the Indian entity.





# Sectors

# Food and agribusiness



**Anand  
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## Current environment



India is an agrarian economy. Agriculture and its allied sectors are the largest source of livelihood in the country. The country can generate US\$ 813 billion in revenue with an investment of US\$ 272 billion in the agritech and allied segments by 2030<sup>1</sup>. The sector is slowly shifting from traditional farming to horticulture and livestock production. The demand for fresh and processed food products is increasing due to rising income levels, urbanisation, and changing consumption habits. In addition, the government has announced several policies, schemes, and programmes towards this sector. Some of these include the Production Linked Incentive (PLI) scheme to boost the food processing sector, the Krishi UDAN 2.0 scheme for facilitating and incentivising agri-produce movement by air transportation, a composite portal to provide agricultural marketing-related services through a single digital platform, etc. To ensure maximum benefits of these schemes, the government should work on specific areas, such as ease of doing business, creation of policies to support technology development and adoption, build infrastructure to optimise food and agribusiness supply chain. Such policies can also facilitate demand generation and marketing of produce to generate greater levels of income and adjust production with demand. Promotion of investments, along with policy push, can transform agriculture practices and an ecosystem within this sector.

<sup>1</sup><https://economictimes.indiatimes.com/news/economy/agriculture/india-can-generate-usd-813-bn-in-revenues-from-agri-food-sector-by-2030-report/articleshow/88459530.cms>



## Expectations

### Top four asks:

#### Expectation #1: Ease of doing business to accelerate sector growth

The demand for allied sectors, such as food processing, horticulture, livestock production, organic farming, smart proteins, floriculture, dairy, nutraceuticals, is increasing. Hence, the government must make budgetary allocations and develop monitoring mechanisms to support implementation on ground. It can refine single-window mechanisms with a dedicated application filing, processing, and tracking support across states. Creation of 'one-stop-shop' for approvals and clearances will improve ease of doing business. Hence, players can quickly avail scheme benefits and facilitate investors and entrepreneurs to obtain approvals and clearances to expand their business across India. The government should provide a user-friendly portal with multi-language support feature as a single point of information to educate players about the already existing schemes and policies. In addition, to facilitate the growth of agri-exports, the government should ease the documentation process; incentivise international tie-ups; educate stakeholders about the best practices in agriculture and manufacturing, latest international standards in quality and packaging; implement food safety and traceability systems as required by the importing countries of developing economies. These measures will boost Indian exports and promote the development of agriculture and its allied sectors.

#### Expectation #2: The government policies to support technology development and adoption

The evolution of digital technologies, such as Artificial intelligence (AI), Machine Learning (ML), remote sensing, big data, block chain, Internet of Things (IoT), the Geographic Information System (GIS) technology, and use of drones and robots, is transforming agricultural value chains and modernising operations. At present, the adoption of these is still nascent in India due to limited penetration of mechanisation tools, lack of awareness, and presence of segregated small-holder farms. To support and accelerate the development and adoption of new technologies, the government has launched the Digital Agriculture Mission (2021–2025). Further, the government can support this by digital infrastructure acceleration, technology affordability, ease of access and operations, easy maintenance of systems, educating stakeholders, and providing supportive government policies. In addition, it should focus on developing an ecosystem to facilitate the delivery of digital services to farmers, such as an 'Agristack' to provide real-time and accurate information on market, schemes, logistics and warehouse, access to markets (e-NAM and marketing channels). This ecosystem will serve as a farmer database (soil condition details, crop details, land records, etc.) across states.

Policies that focus on strengthening Farmer Producer Organisations (FPOs) play a crucial role in driving the adoption of best practices. Digital technologies enable better and prompt member-management, financial management, and transparency of data amongst stakeholders. In addition, public-private partnerships are crucial for the adoption of digital technologies in the agriculture and its allied sectors. The government can further incentivise and encourage organised players to modernise the sector. Further, the government can provide low-interest loans, tax incentives, etc., to encourage start-ups to develop innovative solutions to modernise the sector. These agri-tech start-ups can build a more resilient agricultural ecosystem, improve accessibility for small-holder farmers, and train them in best practices and sustainable solutions in a faster way.



**Expectation #3: Build infrastructure to optimise food and agribusiness supply chain**

With the emergence of new allied sectors, supply chains and operating models need to be more flexible, adaptive, and resilient. Efficient management of food products by creating a network of advanced primary processing, storage, and distribution facilities could add value to products, reduce losses, and enhance key stakeholders' revenues. The government should create policies to provide attractive incentives to build facilities, such as micro cold storage to address supply chain issues (lack of proper storage infrastructure, inadequate logistics, high levels of wastage, etc). It should provide financial incentives, training, infrastructure, and marketing facilities to entrepreneurs to set up businesses, such as food processing and milk processing plants. In addition, the government should increase investments to improve infrastructure, including irrigation facilities, logistics, warehousing, and silo storage facilities across states.

**Expectation #4: Increase focus on creating awareness and developing market linkages**

The government must provide training and financial assistance as well as create awareness about schemes and best practices (crop diversification, organic farming). In addition, it should develop market linkages through a nation-wide portal/app (e-mandis), such as farm gate app developed by the Madhya Pradesh Government, which will provide market price information, assured buy-back arrangement for farmers, and a platform for companies to buy the produce. These e-mandis will facilitate buying and selling of agricultural produce without visiting mandi premises; and these measures will develop new markets for stakeholders. Setting up marketplaces focused on FPOs will drive demand and result in greater price realisations for farmers. India's important role in shaping the food security agenda for the Indo-Pacific will present an opportunity for the food processing sector to explore a greater level of integration with countries in Southeast Asia, Africa, and the Middle East from an agribusiness standpoint. On the supply side, policy interventions need to be upgraded with demand generation for Indian produce and processed products in these geographies. Country/state level partnerships (for example, partnership between the UAE and Madhya Pradesh as part of the I2U2 grouping) for specific crop/commodity groupings will secure demand, diversify cropping patterns, and increase price realisations for farmers and other stakeholders in the agricultural ecosystem.





# Consumer industry



## Porus Doctor

Partner and Consumer Industry Leader

## Expectations



### Expectation #1: Focus on driving rural consumption

Low rural consumption remains a matter of concern for the Fast-moving Consumer Goods (FMCG) industry. On the demand side, any boost in disposable income, especially in rural areas, would spur consumption. Inflation and supply shortages in rural areas have dropped FMCG sales to some extent. Stimulus packages for rural support programmes, such as the Mahatma Gandhi National Rural Employment Guarantee Act 2005 (MGNREGA) can provide some recovery. Stimulus packages and initiatives would help FMCG companies gain lost ground and expand their rural coverage. It is recommended that the government focuses on the agriculture sector in the budget to increase rural consumption. In addition, decreasing raw material prices will be a high expectation from this budget.

**Expectation #2: Build infrastructure to serve rural markets**

The rural FMCG market in India has the potential to reach US\$ 100 billion by 2025. It is important to invest in robust infrastructure to serve rural markets and achieve the growth potential. Government initiatives, such as increased spending, Production Linked Incentive Schemes (PLIs), the creation of Special Economic Zones (SEZs) can provide a much-needed push towards building warehouses, transportation, and improved road connectivity. Initiatives, such as the Pradhan Mantri Gramin Digital Saksharta Abhiyan under the Digital India initiative can integrate rural markets into a digital ecosystem.

**Expectation #3: Ease cost pressure to enhance profitability**

Due to global macro-economic headwinds, inflationary pressures have resulted in the rise of commodity prices, which negatively affects margins for FMCG companies. This has led to price hikes by a few FMCG companies to mitigate the impact of rising input costs. As a result, consumers have to spend more to buy essentials. The global outlook is expected to remain weak and government measures, including capping exports to prioritise domestic demand and duty-free imports of certain essential commodities, can ease the pressure on FMCG companies and provide relief to end consumers.

**Expectation #4: Enhance digitisation measures**

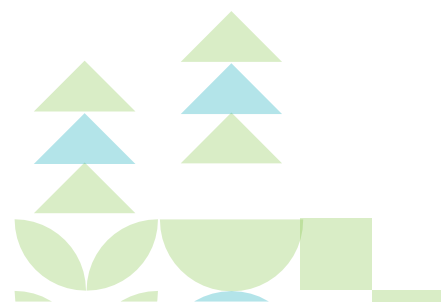
Continued financial support for the digital payment ecosystem will promote the use of payment platforms that are economic, user friendly, and likely to support e-commerce activities. Investments to improve and increase the adoption of Open Network for Digital Commerce (ONDC) will integrate Indian retailers into the digital ecosystem.

**Expectation #5: Alternative packaging solutions**

The ban on use of single-use plastics is viewed as a progressive step towards environmental conservation. However, a large part of the FMCG sector relied on plastics as the primary packaging material. The ban on plastic has necessitated the adoption of a safe, economical, and sustainable packaging material. Government measures, such as production incentives for alternative packaging industries, investment in sustainable packaging research can help the FMCG sector move towards being plastic neutral, while maintaining their margins.

**Expectation #6: Credit for retailers**

At present, several existing schemes, such as Pradhan Mantri MUDRA Yojana (PMMY) and dedicated institutes for Micro, Small & Medium Enterprises (MSME) financing, such as the Small Industries Development Bank of India are available for retailers. Despite this, the credit gap for MSMEs stands at INR 16 lakh crore<sup>1</sup> of which, the retail sector accounts for a significant portion. The government can give priority lending status to specific sub-sectors, capital access to retailers, and reduce the credit gap. Several upcoming start-ups in the fintech space and micro-Non-Banking Financial Companies (NBFCs) use technology to check the credit worthiness of small businesses and provide loans. The government can set up a platform to connect traditional retailers and start-ups to check the credit worthiness and design suitable loan products. In addition, the government can incentivise private players to provide capital assistance to retailers based on receivables, inventory, etc. Further, they can bring initiatives to improve the financial literacy of retail store owners and small businesses and encourage them to use credit as required.



**Expectation #7: Labour participation and upskilling**

Workforce management in the retail sector is complex with huge attrition rates and lack of necessary skills. The government can simplify and standardise laws for part-time and gig workers covering aspects, such as minimum wage, max hours, contract terms, benefits. This can be facilitated by maintaining digital records for attendance, overtime, salaries, etc. More women can be motivated to participate by encouraging policies, such as flexible timings, childcare systems, short sabbaticals. Training and skill development of the workforce is another area where the government can initiate new initiatives or incentivise/encourage the private sector to participate in skill development.

**Expectation #8: Drive sustainability in the retail segment**

The retail industry has been increasingly directing their strategies and investments towards sustainable and responsible growth. A report<sup>2</sup> assessing the environmental impact of the stimulus package represented India amongst countries that have negative contributions in their sustainability measures. The government can incentivise sustainability measures taken during design, procurement, manufacturing and distribution of product to reduce the carbon footprint.

The government can initiate a waste prevention programme that transforms production, usage, and disposal of the products. It can cover multiple retail categories, such as electronics, apparel, auto, food, furniture. Setting minimum standards on durability and recycled content and enhancing labelling requirements will further promote the adoption of sustainable practices. The government can also promote reuse, refill, and repair of products to improve the product lifecycle and reduce the environmental impact.

<sup>2</sup> <https://www.climatepolicyinitiative.org/wp-content/uploads/2021/02/Improving-the-impact-of-fiscal-stimulus-in-Asia.pdf>



# Infrastructure



**Arindam Guha**

Partner and Government & Public Services Leader

## Current environment



As India continues its journey towards becoming a US\$ 5 trillion inclusive economy, financing infrastructure development and climate-friendly inclusive growth becomes extremely important.

In infrastructure financing, about 70 percent investments over the past decade have been made by the central and state governments, with the share of the private sector being about 30 percent.<sup>1</sup> Given the current global economic slowdown and increasing inflationary pressures, it is important to attract and facilitate private investments through specific measures in the Union Budget 2023-24 (Budget) to ensure adequate financing of the INR 111 lakh crore National Infrastructure Pipeline (NIP) by 2025.

<sup>1</sup> Source: National Infrastructure Pipeline, Government of India, 2021



On the climate finance front, India is likely to have a cumulative financing gap of about INR 55 lakh crore<sup>2</sup> until 2030. The purpose is to achieve climate-related goals articulated as part of the country's Nationally Determined Contribution (NDC), a part of which may overlap with investments made under the NIP. With the adoption of its comprehensive Lifestyle for Environment (LIFE) approach, some key initiatives that require financing support include energy transition to renewables, adoption of electric mobility and mass transit systems in transport, efficient usage, and recycling of key resources, such as water and waste. The Budget provides a good opportunity to facilitate new/additional financing mechanisms to boost the green growth agenda.



## Expectations

### Expectation #1: Infrastructure financing – Operationalise single-window credit guarantee facilities

- The proposed credit guarantee institution/facilities may offer guarantees for loans or project bonds pertaining to infrastructure projects in eligible sectors developed under Public-Private Partnership (PPP). Various risks that would need to be covered under the guarantees can include: (a) breach of contract risk, including failure to make contractually agreed payments or implement pre-agreed tariff; (b) changes in laws/regulations; (c) delays/failures in land acquisition; (d) delays/failures in approval of licences/permits; (e) delays/failures related to financial close; and (f) termination risk. This would require a strong recourse mechanism in the form of an agreement between the credit guarantee institution, implementing agency (the central or state government), and the Ministry of Finance. The purpose is to: (a) release funds in the event of the guarantee being triggered due to an event of default and (b) subsequent transfer of funds by the Ministry of Finance to the credit guarantee institution from the budgetary allocation of the concerned implementing agency.
- The initial capital adequacy ratio for the proposed guarantee facilities may need to be maintained at 1:1. Further, the amount of equity capital backing the guarantees may be in line/commensurate with the scale of overall infrastructure development in the country. Once it has established a track record of underwriting guarantees, and more importantly, its recourse mechanism has been well established and confirmed, the credit guarantee institution may start to explore underwriting models involving more usage. However, the Government of India may also look at partial risk guarantee arrangements in partnership with multilateral development agencies to expand coverage of the guarantee facilities.
- For the facility to be successful and ensure standardisation of appraisal and other operational processes, it would need to be positioned as a one-stop single window mechanism covering all infrastructure projects that require the Government of India guarantees. The requisite governance, management, and operational practices would need to be implemented within the credit guarantee institution in alignment with the applicable best practices.
- Tax-related provisions
  - The income of such credit guarantee institution may be made 100 percent deductible by way of a tax holiday under Chapter VIA to ensure funds are entirely utilised for infrastructure projects and are not rerouted to the government by taxation. On a test-check basis, the tax holiday may be extended to such institutions/facilities for the first five years and thereafter may be extended based on need-assessment. Alternatively, tax exemption can be also considered depending on the entity structure of the proposed credit guarantee institution.
  - From a cashflow perspective, either nil or lower rate of tax withholding could be announced for income pay-outs to such an institution.
  - In addition, following key relaxations may be considered in relation to the expenditure envisaged to be laid out by the above institutions/facilities:
    - Any loss attributable to substantial pay-outs may be allowed to be carried forward and set-off indefinitely or for a substantial higher period considering the time gap between pay-out and recovery.
    - Based on the continual assessment of creditworthiness and in the event of pay-outs envisaged, any provisions created may be allowed as a deduction while computing income under the head profits and gains in the year of creation of provision itself.
    - Services provided by credit guarantee institution by guaranteeing loans extended to infrastructure projects in eligible sectors may be exempt from levy of GST.

<sup>2</sup> Source: Report for Sub-Committee for assessment of financial requirements for India's NDC, June 2020, GoI

- **Likely impact:** Operationalising the above facility is likely to increase private interest in infrastructure projects implemented on PPP basis as it would facilitate the availability of long-term financing from financial institutions. It is likely to reduce cost of borrowing and direct government financing for infrastructure projects. In addition, extension of guarantees to infrastructure bonds would enhance their credit assessment/rating and may lead to interest from long-term investors, such as domestic pension funds, and insurance companies that are required to follow minimum rating thresholds in respect of their investments.

**Expectation #2: Finance green growth – Facilitate setting up of national level securitisation cum asset backed security platform for infrastructure and green loans**

- The mandate of the proposed national level securitisation platform would be to: (a) purchase infrastructure loan portfolios, including those for supporting climate-friendly projects, such as developing additional renewable capacity, implementing mass transit projects, water and waste recycling; and (b) package the purchased loans into market-based asset-backed securities with differing seniority/risk levels and varying tenures for offering to institutional investors through private placement.
- The initial equity capital of the proposed securitisation platform could be co-funded by the government together with one or more development finance institutions. This could be further used through borrowings from institutional investors partly guaranteed through existing credit guarantee mechanisms. The platform may be best managed by a credible and reputed investment banking-cum-fund management agency selected through a public procurement process (based on demonstrated expertise and experience).
- Detailed operational guidelines aligning to relevant best practices would need to be put in place to address key areas, such as (a) eligibility criteria for loans for securitisation, including those used for funding 'green' projects; (b) selection of partner banks and financial institutions; (c) guidelines around investment of proceeds raised through 'green' asset-backed securities, which are likely to attract a distinct category of investors.
- Tax-related provisions
  - The income in the hands of the securitisation trust may be categorised into separate categories (based on nature of the underlying assets' class created). Assets may also be segregated based on risk rating/risk levels for example: based on credit assessment of the loans held, it may be categorised as high-, medium-, and low-risk assets.
  - To incentivise mobilisation of resources towards securities backed by high-risk assets, any income on securities and capital gains thereon, may be exempted from tax. Further, any capital loss may be allowed to be set-off from other non-exempt capital gains up to a prescribed number of years.
  - As far as securities backed by medium-/low-risk assets are concerned, the income thereon may be charged to tax at a concessional rate in the hands of either of the two parties (i.e., securitisation trust or investor). Similar relaxations as above may be provided in relation to capital gains/losses from the sale of such securities.
- **Likely impact:** The proposed facility would effectively function as take-out financing for banks and financial institutions involved in lending to infrastructure (including green) projects, thereby providing them additional leeway to undertake additional lending. Subject to proper structuring of the asset-backed securities, the mechanism would help convert existing loan portfolios into different instruments with varying risk and tenure profiles, thereby appealing to a wider section of investors. For example, an asset-backed security with higher seniority and longer tenure may be positioned to pension funds and insurance companies for investment based on their underlying rating.



### Expectation #3: Set up dedicated asset monetisation fund at the central and state/regional level

- Pursuant to the notification of the National Monetisation pipeline in 2020, monetisation of operating infrastructure assets is poised to pick up additional pace with activities in new sectors, such as railways, airports, and at the state level with three to four states set to join the initiative. To enable effective management of the proceeds from asset monetisation and using them to further the cause, the government may consider setting up specific funds both at the national and state/regional level. The mandate of these funds can be to: (a) provide a dedicated corpus for infrastructure investment, which is not diverted to other areas of government spending, (b) ensure a reasonable return on the corpus through effective deployment in new infrastructure projects and money market operations of short-term surplus resources, (c) use equity capital to raise loans, which can add to the corpus, and (d) mobilise extra-government/budgetary resources from private and not-for-profit sectors.
- For optimum management of the corpus, the fund(s) may be best managed through reputed fund managers with similar expertise and experience. Relevant tax and regulatory provisions may be notified for mobilising extra-government/budgetary resources from private and not-for-profit investors.
- Tax-related provisions
  - The asset monetisation fund may be granted registration under Sections 80G and 12AB to accept donations and incentivise contributions from private sectors' Corporate Social Responsibility funds (CSR funds)/not-for-profit organisations.
  - An exception for the above may be carved out from the restrictions in relation to equity contribution to other exempt trusts/charitable institutions as included in Section 11. Further, expenditure in relation to infrastructure initiatives (without equity purchase) may be expressly clarified to be valid application of income u/s 11.
  - Above contributions may be included in the list of activities in Schedule VII of the Companies Act, 2013 for them to qualify as 'Corporate Social Responsibility' (subject to appropriate limits – say 5 percent to ensure entire CSR funds are not routed to above fund and corporates continue to engage in charitable/community initiatives using private-sector expertise).
- **Likely impact:** The proposed structure will enable the state governments to generate additional resources for their infrastructure investments both through contributions from private and not-for-profit investors and higher returns through effective investments/fund management. As a result, the proposed fund would function as a blended finance mechanism for specific infrastructure projects.





# Education



**Kamlesh Vyas**

Partner

## Current environment



In the past few years, several recommendations of the National Education Policy (NEP) 2020 and several interventions in the area of digital- and technology-enabled learning have been implemented.





## Expectations

At the school education level, emphasis should be on setting up data and analytics-based management. This can be achieved by establishing Vidya Samiksha Kendras at states; focussing on early childhood care and education, foundational literacy and numeracy, and vocational education; setting up PM SHRI schools; and moving away from traditional learning to concept- and application-based learning, etc.

In the higher education sector, the focus has been on digital learning to create the regulatory framework for the entry of foreign universities, take quality of Indian education to an international level and attract international students to study in India, support incubation and entrepreneurship development centres, change the regulatory structure, enhance multi-disciplinarity, etc. The core focus of Budget 2023 for the education sector is expected to be on digital and technology applications in education. This includes additional support for initiatives, such as setting up virtual learning labs to promote critical thinking skills, enabling teachers to develop quality e-content, setting up a digital university.

The initiative to upgrade Anganwadis to focus on children's health and prepare them better for entering school is likely to find greater support.

The key imperative is to augment overall budget allocation to education. Some other key expectations include garnering additional support for the following:

- Digital university and 'one-class one-TV channel' programme under the PM eVidya programme
- Saksham Anganwadi and POSHAN
- Integration of pre-school education with primary schools
- Foundational literacy and numeracy
- Creation of more universities, adding seats in existing universities and offering scholarships and making hostel facilities available to students to enhance enrolment
- Scholarship incentive scheme for the girl child
- Padhna Likhna Abhiyan Scheme
- DIKSHA and incorporating NDEAR norms in the learning architecture

## Direct tax expectations

### Current environment



Significant developments in the education sector have resulted in speedy implementation of several recommendations of the National Education Policy (NEP) 2020 and on digital and technology enabled learning. It is backed by the recent notification of the International Financial Services Centres Authority, (Setting up and Operation of International Branch Campuses and Offshore Education Centres) Regulations, 2022.

Various amendments have been made in the tax regulations that govern educational institutions, for example, application of income to be considered on a payment basis and bringing consistency in the two regimes.

The need of the hour is to streamline these amendments and bring in more operational/legislative clarity to ensure that legislations prove instrumental in their intended objectives of attracting foreign investment and ensuring seamless transition.



# Expectations

## Expectation #1: Clarification in relation to universities offering online education

- With the disruptions caused by COVID-19, most educational institutions have built and utilised their online capacities and capabilities to impart education/conduct courses - the activities continue to remain in the nature of teaching by an educational institution.
- There is an ambiguity on whether universities providing education on an online platform are liable to pay 'Equalisation Levy' in India. The applicability of the said provision seems even more challenging in case these universities operate courses on third-party platforms or have logistics partners in India or outside with students based in India.
- The matter also involves interpretation on whether or not such income is considered outside the purview of 'fees for technical services' under various tax treaties.

### Recommendation

- The Memorandum of the Finance Act, 2020, at the time of introducing equalisation levy, laid down the intent for the introduction thereof. It stated that the levy is introduced to tax those non-resident companies that carry out business activities through digital means without any physical presence in the other country.
- The intent appeared to target 'business activities' carried on through digital means. Imparting of education online ought not to tantamount to business and subjecting the same to equalisation levy does not appear to be the intent of the law.
- Finance Act 2021 introduced the definition of 'online sale of goods' and 'online provision of services', which is wide enough to cover within its ambit imparting education online as described above.
- The above definitions may be amended to specifically exclude imparting of education online and related activities from its ambit.

## Expectation #2: Clarification in relation to acquisitions in the education sector

- Various acquisitions in the education sector are undertaken for expansion/outreach and pooling/harmonising of resources to offer quality education to students across the country.
- There appears to be no provision in the law to encourage such expansions/bring clarity.
- Further, there is an ambiguity in terms of whether such shares/interest/membership acquired by an educational institution shall fall within prescribed/permissible investments u/s 11(5).

### Recommendation

- A clarification is required in relation to the tax impact on such acquisitions of educational institutions. For example, there is lack of clarity in the tax and regulatory rules in relation to permissibility of one Section 8 company being acquired by another Section 8 company in the ordinary course of activities (i.e., other than winding up provisions contained in law).
- A clarification is also required in relation to acquisition of unincorporated charitable institutions.
- An amendment may be made to include any investment/s in shares/other capital of other charitable entity/ies with objects similar within the purview of permissible investments u/s 11(5).





### Expectation #3: Clarification in relation to application of income on a 'payment basis'

Considering the recently inserted explanation to Section 11 that allows application of income on a 'payment basis' by charitable/ educational institutions, clarifications are awaited in relation to certain key issues listed below. While most entities have taken a position for filings pertaining to FY2021-22, the following issues may still require attention:

- Lack of clarity/transitory provisions, for example, treatment of prepaid expenses outstanding as on 31 March 2021
- Practical challenges in respect of opening provision of expenses outstanding as on 31 March 2021. The same being earlier claimed as application, cannot be considered as application at the time of pay-out from the said provisions. This brings taxpayers to a situation to maintain a track of such provisions outstanding as on 31 March 2021 and pay-outs therefrom to be compliant with the law (a compliance that may be excessively tedious and time-consuming).
- Ambiguity in relation to allowability of depreciation vis-à-vis purchase price of asset being considered as application on a payment basis. As depreciation as an expense cannot be 'paid', there is ambiguity in the applicability.
- A situation of mismatch has risen for many charitable institutions, which follow accrual basis of accounting, wherein income/ donation is accounted on accrual and application is considered on a cash basis (due to the amendment).

### Recommendation

Clarifications may be introduced in relation to the following:

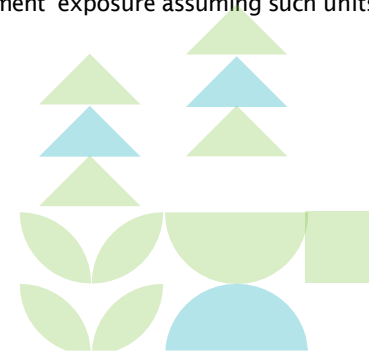
- Allowability of prepaid expenses outstanding as on 31 March 2021
- Treatment of provisions outstanding as on 31 March 2021, which have already been claimed as application in the year of creation of provision
- Excluding depreciation and other non-cash expenses from the above explanation in relation to application of income to be allowed on 'payment basis', considering the same is a non-cash expenses (i.e., it shall never be paid).
- Considering contributions/other incomes of charitable institutions on a 'receipt basis' to bring it in line with the above amendment seeking to allow application of income on 'payment basis' (as against accrual basis).

### Expectation #4: Clarification in relation to tax implications/incentives to foreign universities

At present, regulations have been introduced in relation to the manner/procedure to be followed by foreign universities/educational institutions for setting up of International Branch Campuses (IBC)/Offshore Educational Centre (OEC) (including relevant conditions to be satisfied).

Certain key clarifications ought to be provided from a tax and regulatory perspective as mentioned below:

- Most foreign universities enjoy perpetual tax exemption in their home countries. Hence, to incentivise the top universities to set up under the International Financial Service Centre Authority (IFSCA), a similar perpetual tax exemption ought to be provided. However, a perpetual tax holiday would prove more attractive and at par with home country.
- Clarity on interplay between foreign exchange legislation, IFSCA legislation and Foreign Contribution Regulation Act, 2010 (FCRA) and applicability of each in case of set-up under IFSCA would also be a welcome move.
- It would be helpful for foreign players if clarifications were provided on 'Permanent Establishment' exposure assuming such units are set up in India.



**Recommendation**

In relation to the above, the requisite clarifications shall be brought out as under:

- Section 80LA may be applied to such entities for a staggered tax holiday for 10 years.
- Clarification ought to be provided for roles and responsibilities of the FCRA authorities and IFSCA. Further, an integrated system may be set-up for a single-window approval from both the authorities.
- It may be expressly clarified that setting up IBC/OEC ought not to be covered within the purview of Section 9.
- Alternatively specific conditions may be laid down for such exposure to be triggered, since, in most cases Tax Treaty protection may not be available due to presence in India.

**Expectation #5: Statement of donation in Form 10BD and related compliances**

Clarifications are awaited in relation to the said compliance on certain issues/ambiguities. The following is an illustrative list of these issues:

- Ambiguity in relation to reportability of donation received in kind: While deduction under 80G is not available for such donations, Form 10BD seeks information on donation in kind
- Exchange rate to be used for reporting donations received in foreign currency
- In absence of identification number and/or other minor details of donors, whether the same shall tantamount to anonymous donation u/s 115BBC of the Act

**Recommendation**

In relation to the above, the requisite clarifications shall be brought out as under:

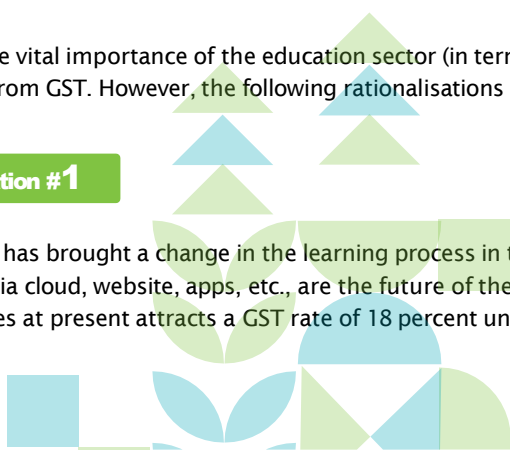
- Information in relation to donation in kind may be omitted in Form 10BD.
- Similar to rules in relation to conversion of income in foreign currency, rules may be introduced for conversion of foreign donations received. For example, the State Bank of India Telegraphic Transfer Buying rate (SBI TT Buying rate) as on date of receipt of donation/as on last day of month of donation may be prescribed.
- In absence of minor details, such as tax identification number, donations ought not be considered as anonymous donations u/s 115BBC as long as donor is identifiable in substance.

## Indirect tax expectations

Due to the vital importance of the education sector (in terms of taxing this sector), the GST law has exempted certain core education services from GST. However, the following rationalisations can be made to aid the education industry bloom:

**Expectation #1**

COVID-19 has brought a change in the learning process in the past few years. EdTech enterprises providing educational services virtually via cloud, website, apps, etc., are the future of the education sector. However, educational services provided by these enterprises at present attracts a GST rate of 18 percent unlike conventional schools, which are exempt from the GST levy.



**Recommendation**

Considering the increasing importance of online education, the upcoming budget should focus on reducing GST to bring certain parity between offline and online educational service providers. This would offer affordable educational services, thereby attracting learners towards online education.

**Expectation #2**

Given the prominence of using technology for teaching-learning at levels from school to higher education, formalising online education should be a priority of the government in the upcoming budget.

**Recommendation**

There upsurges a need to provide GST concessions to the telecom industry players and other digital technology service providers considering the significance of digitalisation in the education sector. It is further recommended to grant tax concession w.r.t. imports made for sourcing advanced technologies related to education.

**Expectation #3**

At present, educational services provided by foreign educational institutions, i.e., providing education as part of curriculum to obtain a qualification recognised by foreign law are not per se exempt under GST.

**Recommendation**

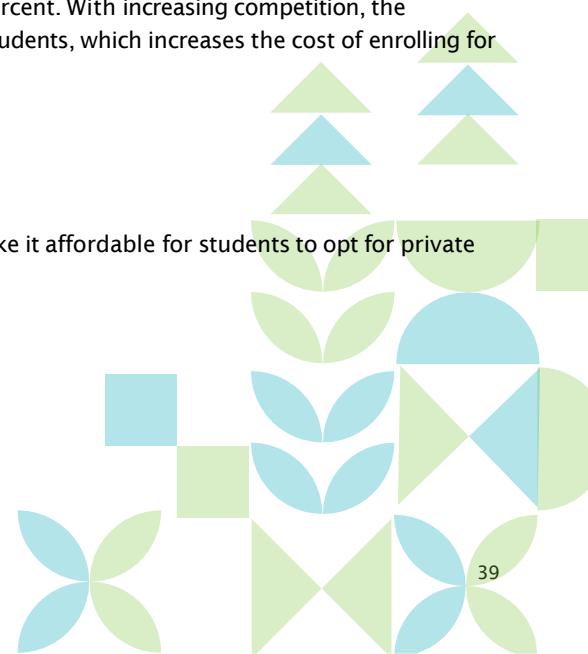
To enhance collaboration with foreign institutions and reduce the cost of foreign education, it is suggested to levy a concessional rate of GST on such services.

**Expectation #4**

At present, educational services by private coaching centres attract a GST rate of 18 percent. With increasing competition, the demand for private coaching has increased too. The brunt of higher GST is borne by students, which increases the cost of enrolling for private coaching.

**Recommendation**

The GST rate on private coaching may be reduced from 18 percent to 12 percent to make it affordable for students to opt for private tutorials.



**Expectation #5**

Providing quality education in schools has been one of the aims of the NEP 2020. Great infrastructure can be developed with the help of Public Private Partnerships (PPP), i.e., with the key infrastructure private players, thereby providing effective and sufficient infrastructure.

**Recommendation**

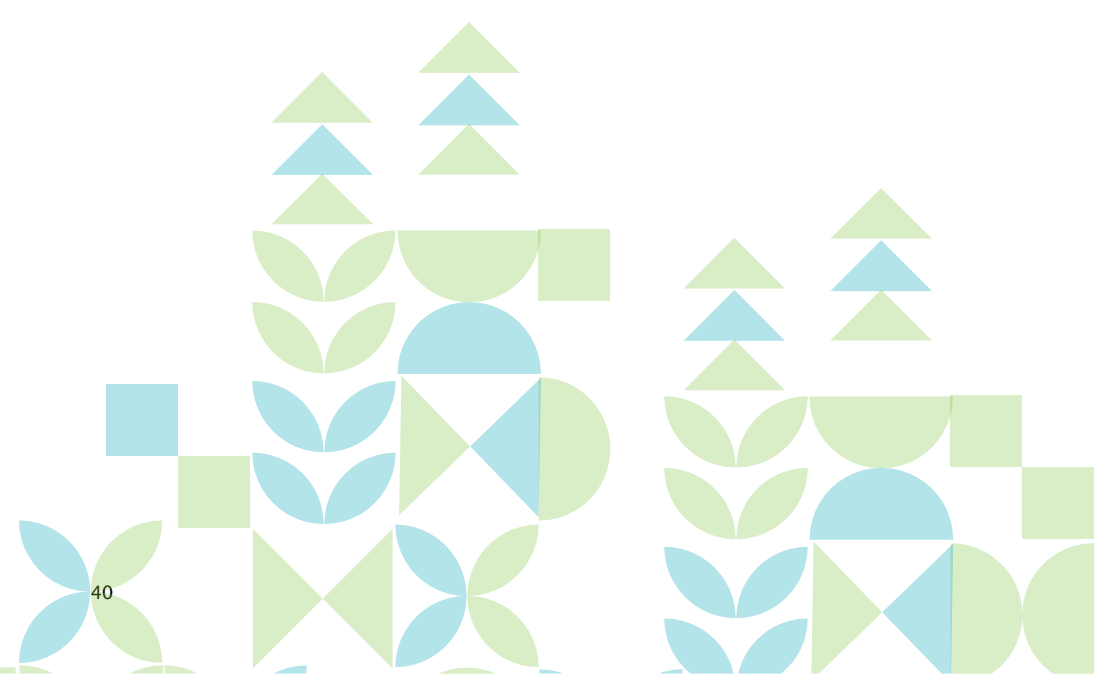
- The government can take measures to boost PPP by levying a lower GST rate to the construction industry providing work contract services pertaining to development of schools and its related infrastructure.
- GST on renting of immovable property to educational institutions should be exempt from GST.

**Expectation #6**

Most educational services provided by an educational institution are exempt from the ambit of GST, but a majority of the input services provided to an educational institution are under the ambit of GST. The unutilised input tax cost is ultimately recovered from students leading to an increase in education cost for students. Thus, the purpose for exempting outward supplies is not met.

**Recommendation**

Taxable services provided to educational institutions attracting a GST rate of 18 percent may be capped at a lower rate of GST to mitigate the tax burden on students ultimately.



# Energy, resources and industrials



**Debasish Mishra**

Partner, Energy, Resources and Industrials Leader

## Expectations



### Top three asks:

**Expectation #1: Provide a consolidated or group taxation regime for the infrastructure sector**

- Either of the following approaches should be adopted to address inefficiencies, administrative challenges, and compliance burdens, and boost the sector:
- Consolidated group tax filing approach – A group of wholly owned or majority owned companies, treated as a single entity for taxation purposes and intra-group transactions, should be ignored for return filing.
- Group taxation approach – Offsetting losses incurred by one or more group companies should be allowed against profits of other companies in the group.

**Expectation #2: Inclusion of the power sector and railway or airport redevelopment as specified business under Section 35AD**

- The power sector is currently excluded from specified businesses u/s 35AD. There is no clarity on redevelopment projects for railways and airports to be considered as a new infrastructure facility.
- Power, railway redevelopment, and airport redevelopment projects have always been capital intensive. The inclusion, set up, and operation of renewable power plants, and redevelopment of railways and airports under the concession agreement should be included as the 'specified business' definition for Section 35AD.
- The assessee engaged in developing, operating, and maintaining any power generation facility, railway redevelopment, airport redevelopment project, should be covered either as a specified business or within the meaning of the infrastructure facility.

**Expectation #3: Provide beneficial tax treatment for income from sale of Renewable Energy Certificates (RECs)**

- At present, the Act includes beneficial provisions (i.e., Section 115BBG) in relation to income from transfer of carbon credits. However, there are no similar provisions with respect to RECs. This creates confusion for taxpayers and litigation with the tax department.
- RECs are similar to carbon credits. Therefore, the concessional or NIL tax, similar to Section 115BBG, should be proposed with respect to income earned from the sale/transfer of RECs.



# Financial services



**Sanjoy Datta**

Partner and Financial Services Industry Leader

## Current environment



- The global economy could be heading towards recession due to multiple crises, including the Russia-Ukraine war, persistent high inflation in the US, the US dollar gaining strength vis-à-vis other global currencies, the energy crisis in Europe, rising cost of living in the UK, and China continuing to be in partial lockdown.
- Although the global growth outlook is uncertain, the Indian economy has remained resilient and is slated to grow at about 7 percent. It is well poised to emerge as Asia Pacific's growth leader. In fact, the six-member Monetary Policy Committee minutes records the RBI Governor's statement that "Whatever be the unfolding scenario, India is expected to be amongst the fastest-growing major economies in the world". This has also been reaffirmed by the IMF.



- As a result, the RBI is balancing inflation and growth with constant intervention through policy measures and relaxations. It is also taking significant measures to strengthen the Indian financial markets. For example:
  - Introducing a concept note paper on Central Bank Digital Currency (CBDC) to create awareness about CBDCs and their features/uses and dissuade the use of private digital currencies, given their inherent risks.
  - Issuing guidelines on digital lending to ensure appropriate monitoring by regulated entities that partner with/outsource certain services to loan services providers (LSP)/Digital Lending Apps (DLA) to provide loans digitally.
- Moreover, with an aim to scale up investments from Private Equity Funds (PEs) and Venture Capital Funds (VCs) into India, and bolster the start-up ecosystem, the finance ministry has constituted an expert committee headed by former SEBI chief, M. Damodaran, to examine and suggest appropriate measures to address their issues.



## Expectations

### Top three asks:

#### Expectation #1: Introduce a new and simplified tax and regulatory framework for PEs/VCs and start-ups

- PEs/VCs play a critical role in providing risk and growth capital to Indian businesses, especially those in the start-up phase, and other privately owned businesses. India has a vibrant and prosperous start-up ecosystem that has delivered several unicorns. However, more recently, there has been a slowdown in the industry, with increased capital costs and several start-ups looking to shift their base overseas for fund raising and other business reasons.
- Internationally, PEs/VCs and start-ups have flourished in an atmosphere of structural flexibility, fiscal neutrality, and operational adaptability. Hence, it is paramount that the government brings about various tax and regulatory reforms to support the industry.
- To this effect, a simple and separate tax and regulatory framework, such as that for FPIs may be introduced, specifically for PEs/VCs and start-ups. Key areas that need to be addressed include the following:
  - Provide parity for capital gains tax treatment between unlisted and listed securities.
  - Define and clarify direct and indirect tax treatment on carry structures/payments.
  - Ease taxation on ESOPs to ensure only single-point taxation on transfers/exits.
  - Permit investment by insurance companies, EPFOs, and other welfare funds into Alternate investment funds.
  - Allow listing by Indian companies overseas and/or provide light-touch regulations for listing on Indian stock exchanges.

#### Expectation #2: Provide tax and regulatory relaxations for digital innovations

- Banking and payment systems constantly need to operate in a dynamic and fast-changing environment due to constant technological advancements and ease of doing business requirements.
- With India being a pioneer of the Unified Payments Interface (UPI), hopes are cast on India, and specifically Indian FinTechs, to transform cross-border payment systems with appropriate in-built fraud and risk safeguards. In fact, the International Financial Services Authority (IFSCA) also introduced the IFSCA (FinTech Incentive) Scheme, 2022, with the objective to promote the establishment of a world-class FinTech hub at IFSC-GIFT City.
- Hence, to boost the FinTech industry and increase spending on digitalisation and innovation in the financial services space, regulatory and tax relaxations (such as weighted tax deductions on infrastructure), data warehouses, research, and training institutions, and the creation of digital banks may be considered. In addition, relaxations from digital tax (i.e., equalisation levy on financial services related e-commerce operators), guidance and withholding tax on purchase of securities, would help reduce costs and compliances on unwarranted financial services transactions/products.

**Expectation #3: Provide certainty/clarity on taxation of cryptos/digital currencies**

- Crypto currencies and other digital assets are gaining momentum across the world from a business and regulatory perspective. The concept note paper on CBDC and the taxation regime for Virtual Digital Assets (VDAs), crypto currencies, tokens, nodes, codes, etc., also indicates its increasing relevance in the Indian context.
- The present scheme of taxation of crypto assets (i.e., taxation of transfer and gifts at a flat rate of 30 percent, no deduction or allowances or benefit of losses, withholding tax at 1 percent) seems to be straightforward and attempts to provide a basis of taxation similar to that provided for betting/gambling activities. Recognising the importance of addressing various tax compliance risks with respect to crypto-assets, the OECD has also introduced the Crypto-Asset Reporting Framework (CARF), designed to ensure the collection and automatic exchange of information on transactions in crypto-assets.
- To align with global reporting, avoid litigation, and provide certainty to investors, clarifications/deliberations inter alia on open issues (such as characterisation, legislation, valuation, withholding tax applicability on non-residents, wide scope) would ensure that key players do not evade tax in India.

# Technology, media and telecommunications



**P.N.Sudarshan**

Partner and TMT Industry Leader

## Current environment



In 2021–22, India’s technology sector witnessed an outstanding performance. Per industry estimates, India’s Information Technology-IT enabled Services (IT-ITeS) industry recorded 15.5 percent growth in FY2022 to achieve US\$ 227 billion in revenue and about 5 million direct workforce. The domestic market saw an increased adoption of digital services across the board, along with a matured start-up ecosystem and successful start-up Initial Public Offerings (IPO). In addition, India successfully concluded the auction of 5G spectrum, and major telecom operators have announced plans to launch 5G services within 2022. 5G’s reliable and efficient connection speed is expected to usher in the next phase of digital revolution in India and accelerate the digital transformation at an unprecedented scale.



The country witnessed high churn amongst the technology industry workforce, where the industry majors witnessed high attrition levels for the first time in decades. This churn may subside as the talent market rebalances in the short term. The demand for IT skills, especially in the new-age technologies, such as Artificial Intelligence/Machine Learning (AI/ML), analytics, digital, is likely to increase in the medium term. It presents an opportune time for the industry to focus on upskilling and reskilling workforce in the emerging technology areas to address medium-term opportunities.

As we look at the outlook for the industry, we note that most of the major economies in the world are currently witnessing a challenging macroeconomic situation, with high inflation and increasing interest rates, which is likely to impact business sentiments in the short term. Any protracted economic slowdown is likely to result in short-term volatility for our export-oriented IT industry, especially in projects related to discretionary spending. Economic slowdowns affect different industries differently and technology and digital are integral to business operations in the current environment. As enterprises look to optimise their operations and innovate for growth amidst macroeconomic uncertainties, the technology industry will take a centre stage in the road to recovery.

On the manufacturing side, after the successful response to the Production Linked Incentive (PLI) scheme for electronics manufacturing services, India announced the PLI scheme of US\$ 10 billion for the semiconductor and display board manufacturing industries. This ambitious scheme is expected to create about 35,000 direct and 1,00,000 indirect jobs and attract US\$ 22 billion investments. The initial response from the industry has been very positive. The domestic business houses and global semiconductor companies are evaluating business opportunities in this emerging industry.

## Expectations



### Transfer Pricing

#### Expectation #1: Streamline the Advance Pricing Agreement (APA), Mutual Agreement Procedure (MAP), regulations and benchmarking

- Prescribe fixed timelines for the closure of APAs.
- Enhance the bandwidth of the APA teams to reduce the huge backlog of cases.

#### Expectation #2: Review safe harbour rules

- Notify safe harbour margins for entities with a turnover up to INR 1,000 crore.
- Rationalise the safe harbour mark-ups in line with the benchmarks available and increase the applicability threshold.

#### Expectation #3: Revamp the Dispute Resolution Panel (DRP)

The DRP mechanism, which is at present a taxpayer-specific dispute resolution, needs to be replaced with a neutral alternative body. It will need members from industries, judiciary, and revenue to arrive at a balanced issue-based resolution to address common international tax and transfer pricing issues (predominantly fact based).



## Direct Taxes

### Expectation #1: Avoid double taxation on equalisation levy paid by non-residents in specific cases

- A dispute on taxability of receipt by non-resident results in tax demand and interest payments after the discharge of equalisation levy, will lead to a situation of double taxation. The equalisation levy paid by the non-resident may be allowed to be adjusted against tax demand and the equalisation levy deposited suo moto should be treated as advance tax paid by the non-resident taxpayer.

### Expectation #2: Provide quietus to the ongoing litigation around characterisation of telecom Inter-connect Usage Charges (IUC) payable to foreign telcos

- While the revenue authorities' stand is that IUC paid to foreign telcos is taxable as royalty and/or as Fee for Technical Services (FTS), various courts/tribunals over the years have held that IUC constitutes charge for a standard facility, which is not taxable in India.
- It is recommended that suitable amendments be made in the Income-tax Act, 1961 or a circular be issued to clarify the taxability of IUC payments to provide relief to telcos.

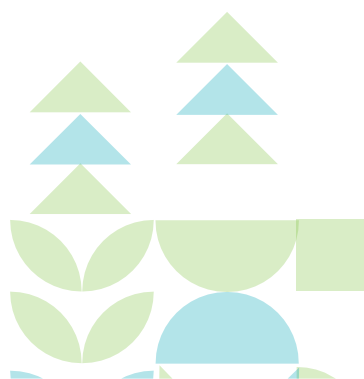
### Expectation #3: Bring clarity around provisions governing tax withholding on royalty from cinematographic films

- The Finance Act, 2020 reduced the rate of withholding tax under Section 194J to 2 percent as against 10 percent for royalty, where such royalty is in consideration for sale, distribution, or exhibition of cinematographic films. Clarification should be provided that the reduced rate of 2 percent applies to theatre and covers cinematographic films released on OTT.

## Indirect Tax

### Expectation #1: Resolve confusions regarding duty concessions on telecom products

- There are various ambiguities with respect to exemption from custom duties on telecom products. The exemption provided to telecom products classified under CTH 85176290/85176990 under Sr. No. 20 of the notification no. 57/2017-customs is very ambiguous. The interpretation of product coverage under Sr. No. 20 is complicated and creating confusion amongst the industry.
- Telecom products, such as Voices of Internet Protocol (VoIP) Phones, Multi-Input Multi-Output (MIMO) products, Long-Term Evaluation (LTE) products, have been made a part of the exclusion list under Sr. No. 20 and are attracting Basic Customs Duty (BCD) by 20 percent. According to the industry, these products are covered under Information Technology Agreement. Such exclusions based on the technical specifications of the product have created several issues.
- The government should come forward with requisite clarifications and amendments to resolve confusions based on the technical specifications of the product.





### Expectation #2: Amendment to Section 18 of the Customs Act for ease of doing business

- Nowadays, with advancement in technology, various products imported under Media, Entertainment and Telecom sector feature various advanced specifications. Due to these technologically advanced products, customs officers frequently raise queries about classification, availment of concessional benefits, etc., despite submission of technical details, datasheets, and clarification provided by importers. This leads to delay in clearances and importers are forced to get the goods provisionally assessed under Section 18 of the Customs Act and get it cleared upon submission of a bank guarantee along with Bond.
- Considering the recent disputes on import of technologically advanced products, the government should come forth with suitable amendments to Section 18. It should facilitate clearance of goods upon submission of Bond and do away with the requirement of furnishing a bank guarantee. This would facilitate trade and curtail the financial hardships on the importer.

## Individual Tax

### Expectation #1: Potential double taxation on Provident Fund (PF) contributions at the time of withdrawal

Authorities must provide clarity that where the contributions and interest have already been taxed, the same will not again be subject to tax at the point of withdrawal.

### Expectation #2

Widen the deduction u/s 80TTA in respect of interest to include interest on fixed deposits in addition to interest on savings bank interest.



# Global capability centres



**Gaurav Gupta**

Partner and Global Capability Centre Leader

## Current environment



India continues to be the Global Capability Centres (GCC) hub with more than 1,500 GCCs based in India. The past decade saw a shift in GCCs from providing basic services to now running technology- and innovation-led initiatives for their parent organisations. GCCs are now spearheading digital and technology transformation for their parent organisations and heavily investing in technologies, such as Artificial Intelligence (AI), Machine Learning (ML), cloud, robotics, and high value-added services. They are working towards becoming global innovation hubs for their parent organisations and providing end-to-end product research and development.

GCCs continue to invest in hiring and upskilling their talent and developing niche skills. They focus on developing leadership roles within and from GCCs. In the post-pandemic era, most GCCs continue to work on a hybrid model.

In the next five years, there is a potential for the GCC sector to scale up by an additional US\$ 25–50 billion. This would mean a potential gross output of US\$ 180–260 billion and employment generation for 6–8 million people.

However, to realise the potential GCCs would need support in infrastructure development, increased investment in skill development, consistent taxation policies, and creation of an ecosystem that fosters innovation.



## Expectations

### Expectation #1: Streamline safe harbour to provide ease of doing business and tax certainty

The Indian Government tried to streamline safe harbour rates in June 2017 to make it reasonable and closer to comparable benchmarks. Even after 2017, not many taxpayers have adopted the benefit of safe harbour to avoid litigation. This benefit has been restricted to small companies, and is still inaccessible to medium-scale companies. Safe harbour rates are still higher than the comparable benchmark, which make it commercially unviable for taxpayers to adopt. Due to the present safe harbour regime, many taxpayers must apply for Advance Pricing Agreement (APA) to attain tax certainty that increases the burden of APA applications.

- Only a handful of safe harbour applications filed by taxpayers until today are from the GCC sector. A rationalised safe harbour regulation may provide an effective resolution to GCCs. Therefore, the government may re-evaluate the safe harbour provisions based on two aspects: (1) to provide safe harbour rates closer to comparable benchmarks with a little premium for certainty, and (2) to increase the threshold to cover almost 75 percent of the companies under this spectrum. This can provide tax certainty to taxpayers and ease the burden of the APA.

### Expectation #2: Eligibility of input tax credit on construction of immovable property

- The Goods and Services Tax (GST) laws restrict input tax credit on works contract and construction services except in cases where such services are provided for construction of plant and machinery or in the same line of business (of the input works contract/ construction service).
- This is causing difficulty for GCCs that consume such goods/services for investments (construction) of their facilities or are planning for such investment. It also creates a bottleneck for investments towards properties to be used by GCCs (where rentals are charged at a full rate of GST). Net result is GST paid on construction services/goods in relation to such immovable property, which is not allowed as input tax credit. This results in increased cost for any GCC entity making such investments and/or escalations in costs towards leased premises.

### Expectation #3: Develop physical, digital, and skill infrastructure and ease the process of setting up GCCs

India is the most preferred destination for GCC. At present, they are in Bengaluru, Hyderabad, NCR, Chennai, Pune, and Mumbai. However, these big cities have saturated infrastructure and are unable to keep up the pace. To tackle this, the government should develop infrastructure within these and tier-II cities.

They should increase physical and digital infrastructure investment and incentivise organisations and state governments to proactively build GCC parks/hubs and infrastructure that can be used for the GCC set-up. This will attract more GCCs and reduce the set-up time, which currently takes three-to-nine months, including space identification, approvals, and physical set-up.

In addition, the government can consider developing satellite cities as GCC corridors and build good infrastructure connectivity between them.

As GCCs provide value-added services, the government should come up with a policy framework to upgrade to new-age skills and promote investment in institutions.

**Expectation #4: Reduce tax cost on service exports by GCC**

- Refund of GST paid on capital goods, where such capital goods are used in export/zero-rated supplies, is not available under the GST regime. It can be liquidated by the rebate mechanism, which provides the full payment of output GST (against adjustment of input tax credit on capital goods) and then claims a refund of such output GST that has been paid.
- Capital goods form a large part of investment for GCCs and this restriction (on input tax credit in relation to capital goods) creates blockages in working capital.
- Refund of input tax credit on capital goods should be permitted by an amendment to the provision.
- Wherever refunds are difficult in one shot, due to the quantum involved in case of capital goods, the amended provision may also prescribe a staggered manner of refund to be granted. This would ease working capital requirements of exports.

# Identified theme

# Climate (sustainability, environment)



**Inderjeet Singh**

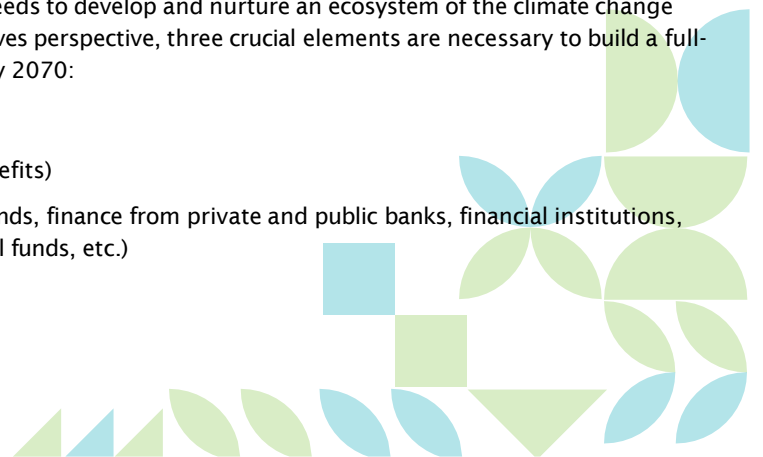
Partner

## Current environment



At COP-26 (26th United Nations Climate Change Conference in 2021), Prime Minister Narendra Modi announced that India will achieve the zero-emission target by 2070. For this, the country needs to develop and nurture an ecosystem of the climate change sector, which is currently at a nascent stage. From a fiscal incentives perspective, three crucial elements are necessary to build a full-fledged self-sustaining ecosystem of the climate change sector by 2070:

- Defining what constitutes the climate change sector
- Defining fiscal incentives for the climate change sector (tax benefits)
- Incentivising climate finance through fiscal measures (green bonds, finance from private and public banks, financial institutions, foreign portfolio investors, private equity funds, venture capital funds, etc.)







# Expectations

## Top four asks:

### Expectation #1: Define what constitutes climate change sector

- The climate change sector may be defined under the Income-tax Act, 1961, to clearly identify the types of sub-sectors or projects eligible for fiscal benefits. The definition will be a key element in identifying the target group that should get the fiscal incentives. A missing definition will lead to a wide interpretation of the climate change sector and dilute the objective of incentivising genuine participants trying to solve climate change problems.
- The climate change sector may broadly include the following areas (the coverage could also be aligned to internationally accepted definition of green projects or SEBI definition of green project applicable for the purposes of green bonds):
  - Renewable and sustainable energy (wind, solar, etc.)
  - Clean transportation (mass transportation)
  - Sustainable water management (clean and/or drinking water, water recycling, etc.)
  - Climate change adaptation
  - Energy efficiency (efficient and green buildings)
  - Sustainable waste management (recycling, waste to energy, etc.)
  - Sustainable land use (sustainable forestry and agriculture, afforestation, etc.)
  - Biodiversity conservation
  - Pollution prevention and control (reduction of air emissions; greenhouse gas control; soil remediation; and waste prevention, reduction, recycling and energy/emission efficient waste to energy)
  - Circular economy adapted products, production technologies and processes (such as the design and introduction of reusable, recyclable, and refurbished materials; components and products; and circular tools and services), and/or certified eco-efficient products

### Expectation #2: Tax holiday for domestic companies that focus on solving climate change problems

- To fast-track the development of an ecosystem of the climate change sector in India, 100 percent profits of a domestic company completely engaged in prescribed sub-sectors or projects listed under the climate change sector (per definition that may be incorporated under the Income-tax Act, 1961) may be exempt from income tax for a period of any 10 consecutive years of a block of 15 years, subject to relevant guardrails.
- The tax holiday is expected to achieve dual objectives of: (1) nurturing existing companies focussed on tackling climate change problems, and (2) incentivising the establishment of new companies in this area.

### Expectation #3: Tax incentives for green bonds

- To attract investments in green bonds issued by Indian issuers (including sovereign green bonds), from Indian resident investors as well as non-resident investors, the following measures can be considered:
  - Interest income earned by investors in green bonds may be treated as tax exempt in the hands of investors.
  - In addition, any profits earned by investors in green bonds from sale/transfer of such bonds may be treated as tax exempt in the hands of investors, irrespective of whether such profits/gains are offered to tax in India by investors as 'business profits' or 'capital gains'. This will indirectly help issuers of the bonds to get a lower borrowing interest rate.
  - To ensure clarity, the definition of 'green bonds' for the purpose of granting such income tax benefits, may be aligned with the regulatory prescription issued by SEBI.
  - The income tax exemption may be granted to investors in such bonds, whether (i) the bonds are issued under the Foreign Direct Investment (FDI) or the Foreign Portfolio Investment (FPI) or the External Commercial Borrowing (ECB) window, etc., or (ii) the bonds are issued by an Indian issuer entity or a financier, such as a bank/Non-Banking Financial Company (NBFC)/Housing Finance Company (HFC) or (iii) the bonds are listed or unlisted.

**Expectation #4: Funnel finance towards Environmental, Social, and Corporate Governance (ESG) focussed/compliant projects**

- A wide spectrum of financiers (private and public banks, financial institutions, foreign portfolio investors, private equity funds, venture capital funds, etc.) can offer crucial support to the climate change sector by financing projects focussed on solving climate change problems. To encourage such a wide range of financiers to participate in achieving net-zero emission target of 2070, income arising in the hand of such financiers from lending and/or investing in projects covered under the climate change sector may be exempt from income tax.
- India may also consider incentivising sovereign wealth funds and foreign pension funds to invest in the renewable and sustainable energy (wind, solar, etc.) sub-sector by adding it to the list of eligible sub-sector under Section 10(23FE) of the Income-tax Act, 1961. Accordingly, income in the nature of dividend, interest and/or long-term capital gains earned by sovereign wealth funds and foreign pension funds from investment made in renewable and sustainable energy (wind, solar, etc.) companies may be exempt from income tax.



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