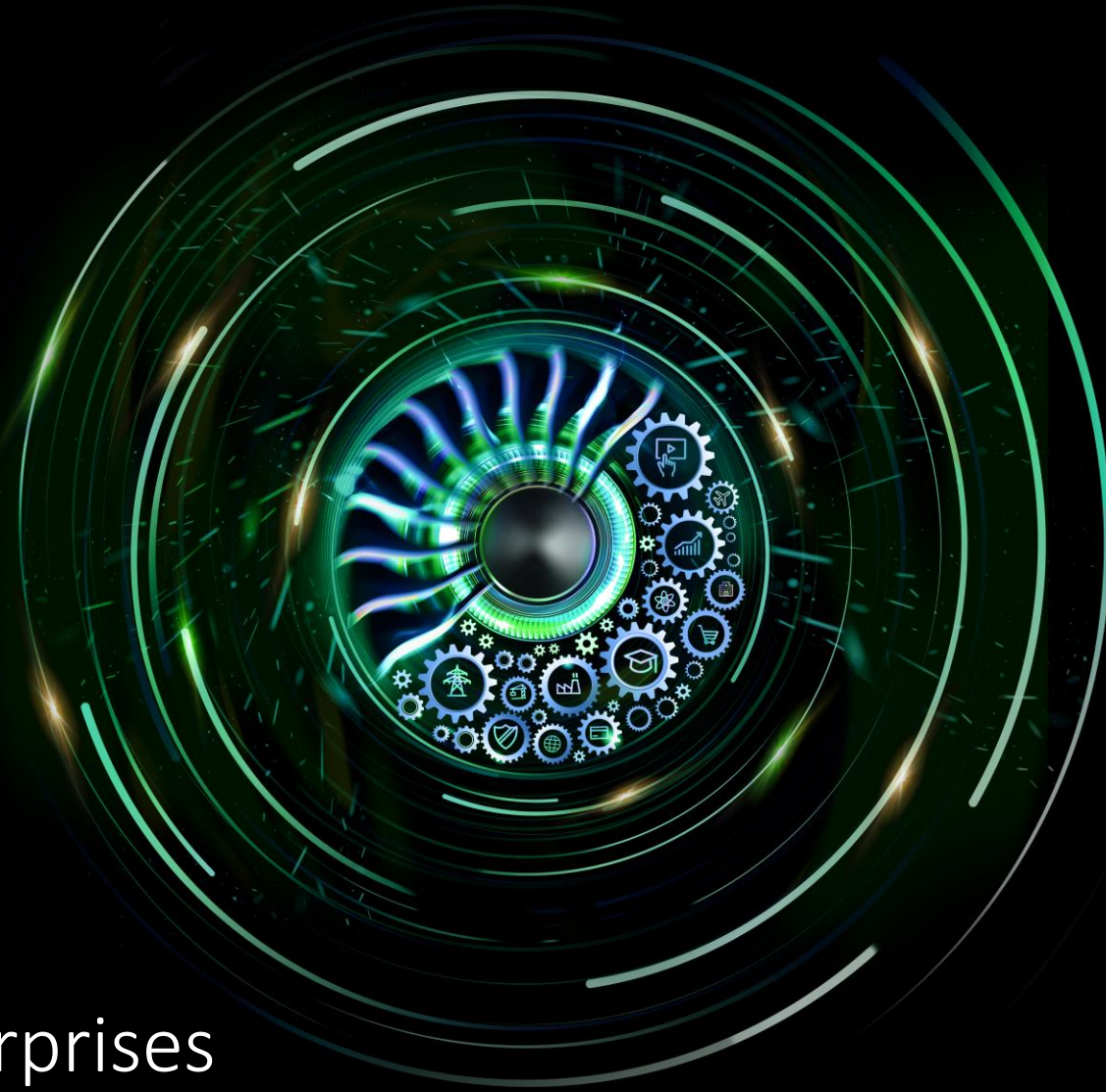


Analysis of
India Budget 2022
Impact for US
multinational enterprises

2 February 2022



We will discuss...



**Economic
Indicators**



**Direct
Tax**



**Indirect
Taxes**

Economic Indicators

The economy is expected to grow at 9.2% in FY21-22, followed by 8-8.5% growth in FY22-23.

Higher vaccine coverage and improved mobility support a positive growth outlook for FY22-23.

Risks of severe infection, supply-side disruptions, weak labour market, and inflation remain the key concerns.



Economic Indicators

Sector-wise announcements: A blueprint from India @75 to India @100

Ease of doing business:

- International arbitration centre at GIFT City
- IBC reforms to enhance the efficacy of the resolution process

Inclusion and better penetration and efficiency in transactions

- Core banking solutions to be offered by India Post
- RBI to launch digital rupee using blockchain in FY23-24
- Tax on crypto investments

Financial Services

Bridging the digital divide

- Bharat Net Optical fiber project to bring broadband across villages & remote areas

Building the new-age digital infrastructure

- Spectrum auctions of 5G airwaves will be conducted this year to roll out 5G services in FY22-23
- Design led manufacturing to be launched for 5G ecosystem

Technology, Media and Telecom

Focusing on building productive capacity and last mile efficiencies

- Expand the capex target by 35.4% from INR 5.54 trillion to INR 7.50 trillion. For FY23-24, effective capex will be INR 10.7 trillion

Boosting infrastructure spending with multiplier effect on jobs and income

- 100 new cargo terminals to be developed in three years
- Four multi-modal logistics parks to be developed in FY23-24

Government and public sector

Economic Indicators

Sector-wise announcements: A blueprint from India @75 to India @100

Focus on social infrastructure and quality of living

- Focus on child health through 200,000 Anganwadi upgradation
- National Digital Health Ecosystem to be rolled out under Ayushman Bharat Digital Mission (ABDM)
- National Tele Mental Health program for quality mental health counselling and care services

Healthcare

Sustainability and climate change

- Four pilot projects for coal gasification and conversion into industrial chemicals
- Focus on manufacture of high efficiency solar modules under PLI

Boost to the chemical industry and local defense industry

- The 68% of the defence capital to be used for domestic procurement
- Reduced customs duty on certain critical chemicals

Energy, Resource and Industrials

Support to pandemic-impacted sectors and promotion to green mobility

- Hospitality sector to avail benefit of extension of ECLGS till FY23-24
- Enhancing the EV ecosystem

Consumer

Direct Tax



Direct Tax

Rates and date extension

Corporate tax rates: No change in corporate tax rates for all classes of taxpayers (refer Annexure 1 for a detailed table). Current tax rates are as follows:

- Companies opting for simplified tax regime to be subjected to ETR of 25.17%; Minimum Alternate Tax (MAT) not applicable
- New manufacturing domestic companies to be subjected to ETR of 17.16%; MAT not applicable
- Companies opting be governed by normal regime to be subjected to ETR 34.94%; MAT applicable at ETR of 17.47%
- Foreign companies to be subjected to ETR of 43.68%; MAT applicable at ETR of 16.38%
- LLPs to be subjected to ETR of 34.94%; MAT applicable at ETR of 21.55%

Surcharge on Long Term Capital Gains (LTCG): Surcharge on any LTCG capped at 15% (could be 37% currently)

Surcharge on Association of Persons (AOPs): Surcharge on AOPs where all members are companies capped at 15%

New manufacturing domestic companies: Timeline extended for commencing manufacturing or production to avail concessional tax rate of 15% (ETR of 17.16%) from March 31, 2023 to March 31, 2024

Start-ups: The date for incorporation of eligible start-ups extended to March 31, 2023 for availing profit linked deduction



Direct Tax

Taxation of virtual digital assets

Virtual digital assets

- Income from the transfer of any **virtual digital asset to be taxed** at 30%, with effect from FY22-23
- No deduction allowed on any expenditure (other than cost of acquisition) or allowance or in setting off-of any loss
- Set-off of losses incurred on transfer of virtual digital asset against any other income is not permitted. Carry forward of such losses to subsequent years is also not permitted

Taxation on gift

- A gift of virtual digital assets is taxable in the hands of the recipient

Withholding tax

- Payment of consideration to a resident on the transfer of virtual digital assets shall be subject to withholding tax at 1% from July 1, 2022. Certain exceptions have been provided

Virtual digital assets have been defined to include cryptocurrency, non-fungible tokens. Other digital assets to be notified by the central government



Direct Tax

Incentives to International Financial Services Centre (IFSC) (Gift City) (1/2)

Participatory Note issuance by Offshore banking Units in IFSC

- Non-residents to be exempt from tax on gains from transfer of offshore derivative instruments or over-the-counter derivatives entered with Offshore Banking Units (OBUs) of IFSCs. This is in addition to current exemption for gains from transfer of non-deliverable forward contracts
- Income earned by a non-resident from portfolio of foreign securities or financial products or funds, managed or administered by any portfolio manager based in a IFSC is proposed to be tax exempt – benefit not available to the extent non-resident investor earns income from Indian securities

Deemed income provisions

- Investment by Category I and II AIFs registered in IFSC excluded from the applicability of deemed income provisions
- Deemed income provision seeks to tax difference between price at which shares are issued and FMV of shares as income in the hands of Indian company issuing shares

Ship leasing

- Royalty or interest income earned by a non-resident from lease of ships to entity in IFSC exempt from tax



Direct Tax

Incentives to International Financial Services Centre (IFSC) (Gift City) (2/2)

Non-tax announcements

- Setting-up of International Arbitration Centre for timely settlement of disputes under international jurisprudence
- Allowing foreign universities and institutions to offer various courses without the need to comply with domestic regulations, with certain exceptions



Direct Tax

Corporate tax – Deductions (1/2)

Treatment of cess and surcharge

- The term 'tax' includes any surcharge and cess and therefore no tax deduction will be allowed for payment of education cess (retrospectively from FY 04-05) – negates favorable Court rulings

Expenditure in relation to exempt income

- Expenses incurred for the purpose of earning exempt income can be disallowed even if no exempt income was earned during the relevant year – risk of retroactive application since provisions are ambiguous

Disallowance of expenses:

- Proposed to specifically disallow the following expenses -
 - for any purpose which is an offence under, or which is prohibited by, any law, in India or outside India; or
 - any benefit or perquisite, to a person, whether or not carrying on a business or exercising a profession, where acceptance of such benefit or perquisite is in violation of any law or rule or regulation or guidelines, governing the conduct of such person; or
 - to compound an offence under any law, in India or outside India.



Direct Tax

Corporate tax – Deductions (2/2)

Deduction of interest on actual payment

- Conversion of interest payable on loan or borrowing from a specified financial institution/NBFC/scheduled bank or a co-operative bank into debenture or any other debt instrument by which liability to pay interest is deferred to a future date, shall not be deemed to have been actually paid and therefore not allowed as a deduction
- The deduction will be available only upon actual payment
- The proposed amendment does not cover conversion of interest payable on inter-company loans or External Commercial Borrowings, and thus deduction for such interest payable converted to debenture or any other instrument, will continue to be available under the tax law



Direct Tax

Corporate tax – Other amendments (1/2)

Taxation of foreign dividends earned by Indian MNEs

- To provide parity in tax treatment for dividends received from specified foreign companies vis a vis dividend received from domestic companies, it is proposed to withdraw the concessional tax rate of 15%, which was erstwhile applicable to dividends from specified foreign companies

Extending the scope of anti-avoidance measures

- Proposal to extend the bonus and dividend stripping provisions to units of InvITs, REITs, and AIFs with effect from FY22-23. Bonus stripping provisions also extended to shares

Opportunity to file Updated return within 3 years in case of enhancement of income

- Taxpayers can opt to file updated return within 3 years from end of relevant fiscal year after payment of additional tax at the rate of 25% or 50%, as the case may be. Updated return cannot be filed for claiming additional loss or reducing tax liability. No updated return can be filed in certain situations such as issue of notice for tax audit proceedings

Faceless assessment (tax audits)

- Existing provisions of faceless assessment to be substituted with a new provision. Erstwhile faceless assessment scheme provided that assessment proceedings will be void if the prescribed procedure was not followed, which is now proposed to be omitted (retrospectively from FY 20-21) though the new scheme requires tax officer to compulsorily offer physical hearing if insisted by taxpayer



Direct Tax

Corporate tax – Other amendments (2/2)

Litigation management

- Tax authorities to defer filling an appeal before High Court / Tribunal if an identical question of law is pending before the jurisdictional High Court or the Supreme Court, in taxpayer's own case or in case of another taxpayer. Process to be followed after taking approval of the taxpayer.

Mechanism for refund of tax withholding under net of tax contracts

- Application for refund of tax withheld on payment to non-residents (in case of net of tax contracts where tax is borne by the payer) and paid to the government on or after April 1, 2022, to be made to the tax authority instead of an appeal to CIT (appeals).
- An order passed by the tax authority, pursuant to the above, can be appealed to CIT (appeals).

Withholding on benefit or perquisite arising from a business / profession

- Tax to be withheld at the rate of 10% on the value of any benefit or perquisite, to be paid to a resident. This would generally apply to non-cash benefits given to agents and vendors



Direct Tax

Personal taxation

No change in applicable income tax rates and deductions

Surcharge on any LTCG capped at 15% for all capital assets

COVID related relief:

- The Finance Ministry had released a press statement on June 25, 2021, where it was announced that –
 - Amounts received from employer or other persons for COVID-19 medical treatment would be tax exempt;
 - Ex-gratia received from employer or other persons on death due to COVID-19 to be tax exempt;
 - Exemption limited to INR 1 million (~USD 13k) if received from person other than employer

The above announcements are now proposed to be incorporated in the statute



Direct Tax

Business reorganization

Business reorganization

- Assessment or other proceedings made on the predecessor during pendency of such reorganisation shall be deemed to have been made on the successor
- Successor permitted to file income tax return within six months from end of the month in which order is issued by competent authority

Carry forward of tax losses permissible for erstwhile public sector company

- Change in shareholding pursuant to strategic divestment to not impact carry forward of tax losses to erstwhile public sector companies, subject to ultimate holding company continuing to hold at least 51%. The amendment is proposed to be effective from FY 21-22

Modifying tax demand issued to Insolvency and Bankruptcy Code (IBC) companies based on order by competent authority

- Tax demands in the name of IBC companies to be modified by tax officer pursuant to the order issued by competent authority



Direct Tax

Transfer Pricing

Enhancement of revisionary powers under section 263

- Revision proceedings under Section 263 have been amended to specifically include Transfer Pricing order under section 92CA.
- The timeline for modification of the assessment order is two months from the receipt of the revised Transfer Pricing order

Faceless assessment deferred

- Proposed faceless Transfer Pricing assessment, Dispute Resolution Panel and ITAT proceedings are deferred and the time limit for notifying the relevant schemes is extended to March 31, 2024



Indirect Taxes



Indirect Taxes

Goods and Services Tax (GST) Updates

Input Tax Credit :

- Input Tax credit only if supplier has remitted tax
- Reversal of credit with interest if supplier has not paid the taxes
- Interest for wrongful availment and utilisation is prescribed at 18%

Beneficial amendments :

- Time limit for availment of Input tax credit and issuance of credit note for a FY has been extended to 30th Nov of the following year
- Cash balance in Electronic cash ledger can now be transferred across GST registration of distinct person(s)

- Amendments to curb on irregular availment of input tax credit in the supply chain.
 - Credit can now be availed only if tax has been remitted by the supplier. To be diligent in availment of credits
 - Additional compliance for genuine tax-payers
-

- Additional time-line for availment credit. Align with avoid clash with other statutory timelines
- Significant relief by allowing cross transfer of credits. Effective cash flow management for entities

Indirect taxes

Special Economic Zone (SEZ) Update

- **Special Economic Zones Act** will be replaced with a new legislation
 - Facilitate states to become partners in 'Development of Enterprise and Service Hubs'.
 - To optimally utilise available infrastructure and enhance competitiveness of exports
 - Customs Administration of SEZs to function on the Customs National Portal with effect from 30th September 2022
- Export incentives came under radar of WTO.
- Ministry of Commerce set up panel under chairmanship of Baba Kalyani to review SEZ policy
- The report recommended transformation of SEZ into Employment and Economic Enclaves (3Es). **To shift the focus to employment from exports.**
- New policy is expected to be WTO compliant.
- Need to await details on the Tax incentives

Indirect taxes

Customs Updates

DRI officers to be Proper Officers :

- DRI, Audit and Preventive officers now recognized 'proper officer' - nullifying the Supreme Court's decision in the case of **Canon India**.
- Now DRI officers are empowered to carry out scrutiny of imports based on assignment and conclude assessments including recovery of Duty short paid/Non-paid etc

Customs Tariff Changes

- 350 Customs duty exemptions to be withdrawn on account of being redundant and based on industry feedback
- 'Tarrifisation' undertaken to align Customs Tariff duty with Customs effective duty structure for goods in Textiles, chemicals, metals sector, etc. (effective 01 May 2022)

Indirect taxes

Customs

PMP for wrist wearable devices (commonly known as smart watches) to promote indigenous manufacturing

S. No.	CTH	Commodity	From	To			
				2022-23	2023-24	2024-25	April 2025 onwards
The following parts (s. no. 1 to 7) used for manufacturing wearable devices fall under tariff item 8517 62 90 of the customs tariff:							
1.	8517 79 10	Printed circuit board assembly	NIL	NIL	10%	15%	15%
2.	8544	Charging cable	10%	NIL	5%	10%	15%
3.	39, 73, 85	Specified parts of wearable devices	Per CTH	NIL	5%	10%	15%
4.	8507 60 00/ 8507 80 00	Battery	15%	NIL	5%	10%	15%
5.	8517 79 90	Display assembly	NIL	NIL	NIL	5%	10%
6.	8501	Vibrator motor	10%	10%	10%	10%	10%
7.	Any chapter	Parts, sub-parts, and raw materials for use in manufacturing the s. no. 1 to 6 above	Per CTH	NIL	NIL	NIL	NIL
8.	8517 62 90	Wrist wearable devices	20%	20%	20%	20%	20%

Note: IGCR conditions shall apply for the items in s. no. 1 to 7 above.

Indirect taxes

Customs

PMP for hearable devices to promote indigenous manufacturing

S. No.	CTH	Commodity	From	To			
				2022-23	2023-24	2024-25	April 2025 onwards
The following parts (s. no. 1 to 6) used for manufacturing hearable devices fall under sub-headings 8518 21, 8518 22, 8518 29, or 8518 30 of the customs tariff:							
1.	8518 90 00	PCBA for hearable devices	10%	NIL	10%	15%	15%
2.	8544	USB cable	10%	15%	15%	15%	15%
3.	73, 74, 85	Specified parts of hearable devices	Per CTH	NIL	5%	10%	15%
4.	8507 60 00/ 8507 80 00	Battery	15%	NIL	5%	10%	15%
5.	8518 90 00	Speaker assembly (pre-assembled speaker driver with protective mesh, but not including PCBA or battery)	10%	NIL	NIL	5%	10%
6.	Any chapter	Parts, sub-parts, and raw materials used in manufacturing s. no. 1, 3, 4, and 5 above	Per CTH	NIL	NIL	NIL	NIL
7.	8518 21, 8518 22, 8518 29 and 8518 30	Hearable devices	15%	20%	20%	20%	20%

Note: IGCR conditions shall apply for the items in s. no. 1 to 6 above.

Indirect taxes

Customs

PMP for smart meters to promote indigenous manufacturing

S. No.	CTH	Commodity	From	To			
				2022-23	2023-24	2024-25	April 2025 onwards
The following parts (s. no. 1 to 6) used for manufacturing smart meters fall under tariff item 9028 30 10 of the customs tariff:							
1.	9028 90 10	Assembled/populated PCB for smart meters	7.5%	20%	20%	20%	20%
2.	8517 69 90	Communication module	10%	NIL	NIL	5%	10%
3.	8536 49 00	Relay	10%	5%	10%	10%	15%
4.	8517 71 00	Antenna	NIL	NIL	NIL	5%	10%
5.	8524 11 00/ 8524 91 00	LCD and backlight for LCD	15%	NIL	5%	10%	10%
6.	8506 50 00	Battery	10%	NIL	5%	10%	10%
7.	Any chapter	Parts, sub-parts, and raw materials used in manufacturing s. no. 1 to 6 above	Per CTH	NIL	NIL	NIL	NIL
8.	9028 30 10	Smart meters	15%	25%	25%	25%	25%

Note: IGCR conditions shall apply for the items in s. no. 1 to 7 above.

Indirect taxes

Capital goods and Project Imports

Capital Goods

- Government has announced a gradual phasing out of import duty exemptions on capital goods linked to sectors such as power, fertilizer, textiles, leather, footwear, food processing, fertilizers etc

Project imports

- Gradually **phasing out** of the concessional rates to project imports and applying a moderate tariff of 7.5 percent
- New projects registered after September 30, 2022 under Project Import scheme will attract Basic Custom Duty of 7.5% vs rates of 0-5%
- Grandfathering of customs duty exemption for existing Project Import Licenses till September 30, 2023

Withdrawal of project import duty concessions to benefit local producers in areas like coal mining projects, power generation, transmission or distribution projects, railway and metro projects

Indirect taxes

Production Linked Incentives (PLI)

Telecom

- A scheme for design-led manufacturing will be launched to build a strong ecosystem for 5G.

Solar

- Additional allocation of USD 2.64 Billion for manufacture of high efficiency modules, with priority to fully integrated manufacturing

- The PLI in 14 sectors has received excellent response, with potential to create 6 Million new jobs, and an additional production of USD 401 Billion during next 5 years
- To encourage other sectors, Government expanded the scheme to other key sectors such as Solar Modules etc

Indirect taxes

Customs Tariff changes

SWS levy rationalisation and clarification

- Levy of social welfare surcharge has been rationalised on a few textile and fabric products
- Social welfare surcharge payable would be nil in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted. This has been done to overcome the judgement pronounced by the Supreme Court in the matter of Unicorn Industries vs. Union of India

Revocation of anti-dumping duty on specified steel products

- Anti-dumping levy has been revoked on import of the following goods:
 - Straight length bars and rods of alloy steel originating in or exported from China
 - High-speed steel of non-cobalt grade originating in, or exported from Brazil, China, and Germany.
 - Flat rolled product of steel, plated or coated with alloy of aluminum and zinc originating in, or exported from China, Vietnam, and Korea Republic

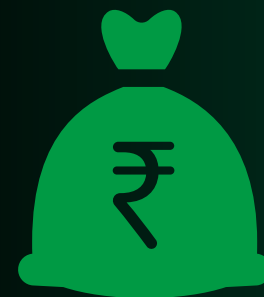
AIDC and health cess levy rationalisation

- Various notifications have been amended to provide exemption of AIDC and health cess, besides the applicable BCD, to remove ambiguity.

Tariff changes to align with HSN 2022 complementary changes

- Amendments have been proposed to align the Indian tariff with the complementary amendments to the HS 2022 published by WCO. These complementary amendments include minor changes across chapters in the tariff, with an aim to bring greater clarity. Further, new tariff entries are introduced by accommodating requests from different ministries and departments.

Annexures



Annexure 1: Corporate tax rate card (No changes in tax rate)

Type of company*	Income up to INR 10 million		Income above INR 10 million and up to INR 100 million		Income above INR 100 million	
	Normal provisions	MAT	Normal provisions	MAT	Normal provisions	MAT
Domestic company: Normal rate	31.2%	15.6%	33.38%	16.69%	34.94%	17.47%
Domestic company: Turnover up to INR 4 billion in FY20-21	26%	15.6%	27.82%	16.69%	29.12%	17.47%
Domestic company: Does not avail tax incentives or exemptions	25.17%	Not applicable	25.17%	Not applicable	25.17%	Not applicable
Domestic company: New manufacturing company (set up on or after 1 March 2016) - Does not avail tax incentives/exemptions	26%	15.6%	27.82%	16.69%	29.12%	17.47%
Domestic company: New manufacturing company (set up on or after October 1, 2019) - Does not avail tax incentives/exemptions	17.16%	Not applicable	17.16%	Not applicable	17.16%	Not applicable
Foreign company	41.6%	15.6%	42.43%	15.91%	43.68%	16.38%

Note: Surcharge is capped at 15% in the case of an Association of Persons where the members are only companies.

*Tax rates have been rounded off to two decimals and are subject to prescribed conditions to be met by the company

LLPs will continue to be subjected to ETR of 34.94%; MAT applicable at ETR of 21.55%

Thank you!

Kindly spare a minute to help us with your feedback for today's session...

For any queries, please feel free to write to us at intax@deloitte.com



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