Rajesh Kumar & Associates
(ADVOCATES & CONSULTANTS)

Office Address: 601, SG Alpha Tower-II, Sector-9, Vasundhara, Ghaziabad, U.P. - 201012

Budget 2021- Key Legal Changes

Following changes has been made in Tax and Corporate Laws vide Budget-2021 [Finance Bill, 2021].

Changes in GST Law:

Vide Finance Bill 2021 following changes have been made in the Central Goods and Services Tax Act, 2017:

(i) Interpretation of word "Person" under Section 7 of the CGST Act: It adds that the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another. Thus, a member's club and members shall be treated as distinct persons.

(ii) Eligibility to claim ITC u/s 16 of the CGST Act: An additional requirement is provided to claim ITC, i.e., details of the invoice or debit note that is furnished by the supplier is to be mentioned in the statement of outward supplies and such details has to be communicated to the recipient of such invoice or debit note.

(iii) Applicability of Interest Liability Clause u/s 50 of the CGST Act: That the proviso to Section 50, i.e., shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger is made effective from 01.07.2017.

(iv) Condition for filing an appeal against an order u/s 129(3) of the CGST Act: Appellant before filling an appeal needs to pay a sum equal to twenty-five per cent. of the penalty.

(v) Change in procedure of release of goods u/s 129 of the CGST Act: Now for release of goods u/s 129 (a), the concerned person is liable to pay penalty equal to 200% of the tax payable on such goods where the owner of such goods comes forward to pay the penalty. However, where the owner does not come forward to pay the penalty then in such cases, he/she is required to pay penalty the equal to 50% the value of the goods or 200% of the tax payable on such goods, whichever is higher.

The proper officer detaining/seizing the goods have to issues a notice within 7 days specifying the penalty payable and pass an order within 7 days after service of such notice.

In case of failure by the owner/transporter of goods pay the penalty within 15 days on receipt of the order; the goods so detained/seized will be liable to be sold or disposed to recover the penalty. In case of perishable goods; period of 15 days may be reduced.

Conveyance used for transportation of the goods so seized/detained shall be released on payment of penalty or 1 lakh rupees, whichever is less.

(vi) In case of refund on zero rated supply, if the sale proceeds are not received within the time prescribed in FEMA, such refund is required to be deposited along with applicable interest.

Changes in Income Tax Law:

(i) In order to ease compliance burden on senior citizen pensioners who are of 75 years of age or above, it is proposed to exempt them from the requirement of filing Income tax if the full amount of tax payable has been deducted by the paying bank. This exemption is proposed to be made available to such senior citizens who have only interest income apart from the pension income.

(ii) In order to reduce compliance burden, the time-limit for re-opening of assessment is being reduced to 3 years from the current 6 years from the end of the relevant assessment year. Re-opening up to 10 years is proposed to be allowed only if there is evidence of undisclosed income of ` 50 lakh or more for a year.

(iii) Further, it is proposed to completely remove discretion in re-opening and henceforth re-opening shall be made only in cases flagged by the system on the basis of data analytics, objection of C&AG and in search/survey cases. Further, in order to bring certainty in income tax proceedings at the earliest, it is also proposed to reduce the time limits for general assessment or processing of income tax return by three months.

(iv) Advance-tax liability on dividend income shall arise only after the declaration/payment of dividend. The dividend paid to Real Estate Infrastructure Trusts or Infrastructure Investment Trusts (REIT/InvIT) shall be exempt from TDS. It is also proposed to clarify that deduction of tax on incomes including dividend income of Foreign Portfolio Investors may be made at treaty rate. It is also proposed to exempt dividend payment from levy of Minimum Alternate Tax (MAT) for foreign companies if the applicable tax rate is less than the rate of MAT.

(v) A Dispute Resolution Committee is proposed to be constituted. A taxpayer having taxable income up to 50 lakh and disputed income up to 10 lakh shall be eligible to approach the Committee. For ensuring efficiency, transparency and accountability, the procedure of the Committee will be conducted in a faceless manner.

Consequently, the Settlement Commission shall be discontinued from 01.02.2021.

To ensure faster disposal of cases, it is proposed to replace the Authority for Advance Rulings with a Board for Advance Rulings. It is also proposed to provide an appeal against the order of such Board to the High Court.

(vi) It is proposed to make the Income Tax Appellate Tribunal faceless and jurisdiction-less. A National Faceless Income Tax Appellate Tribunal Centre shall be established and all the communication between the Tribunal and the appellant shall be made electronically.

(vii) To incentivise digital transactions and to reduce the compliance burden of the person who is carrying almost all of their transactions digitally, it is proposed to increase the limit for tax audit for persons who are undertaking 95% of their transactions digitally from Rs. 5 crore to Rs. 10 crore.

(viii) In order to protect the revenue, it is proposed to provide that the penalty proceedings initiated for fake invoice/sham transactions of more than Rs. 2 crore shall also be eligible for provisional attachment of assets.

(ix) In order to ensure timely deposit of employees' contribution to these funds by the employers, it is proposed to reiterate that the late deposit of employees' contribution by the employer shall never be allowed as deduction to the employer.

(x) In order to widen the scope of TDS, it is proposed to levy a TDS of 0.1% on a purchase transaction exceeding Rs. 50 lakh in a year. In order to reduce the compliance burden, it is also proposed to provide that the responsibility of deduction shall lie only on the persons whose turnover exceeds Rs. 10 crores.

(xi) In order to reduce compliance burden on the small charitable trusts running educational institutions and hospitals, it is proposed to increase the limit on annual receipts for these trusts from present Rs. 1 crore to Rs. 5 crore for non-applicability of various compliances like approval etc. In order to provide certainty, it is proposed to clarify that charitable trusts shall not be permitted to claim carry forward of loss. However, the loan repayment and replenishment of corpus shall be allowed as application.

Certain benefits have been granted to specified sectors;

(i) In order to facilitate the transition of Urban Cooperative Banks to Small Finance Banks, it is proposed to provide tax neutrality for the transition of UCBs to SFBs. Hence, the UCB shall not be required to pay capital gains for the assets transferred to the SFBs.

(ii) In order to incentivise purchase of affordable house, it is proposed to extend the eligibility period for claim of additional deduction for interest of Rs. 1.5 lakh paid for loan taken for purchase of an affordable house to 31st March 2022. In order to increase the supply of affordable houses, it is proposed to extend the eligibility period for claiming tax holiday for affordable housing projects by one more year to 31st March, 2022.

In order to promote supply of Affordable Rental Housing for the migrant workers, it is also proposed to allow a new tax exemption for the notified Affordable Rental Housing Projects.

In order to incentivise home buyers and real estate developers, it is proposed to increase safe harbour limit from 10% to 20% for the specified primary sale of residential units.

(iii) In order to incentivise setting-up of more start-ups in the country, it is proposed to extend the eligibility period to claim tax holiday for the start-ups by one more year to 31st March, 2022. In order to incentivise investment in start-up, it is proposed to extend the eligibility period of claiming capital gains exemption for investment made in the start-ups by one more year to 31st March, 2022.

(iv) In order to allow funding of infrastructure, it is proposed to make Zero Coupon Bonds issued by notified IDF eligible for tax benefit.

(v) In order to promote IFSC, It is proposed to provide more tax incentives which includes tax holiday for capital gains incomes of aircraft leasing company, tax exemptions for aircraft lease rental paid to foreign lessor, tax incentive for re-location of foreign funds in IFSC and tax exemptions to investment division of the foreign banks located in IFSC.

Changes in Custom Law:

Following changes has been proposed in Customs Law;

(i) It is proposed to mandate filing of bills of entry before the end of day preceding the day of arrival of goods (Section 46).

(ii) It is proposed to allow the specified amendments by importer/exporter on self-amendment basis. Till now, all amendments were to be approved by the departmental officer. (Section 149).

(iii) To encourage paperless processing, it is proposed to recognize the use of a common portal to serve notice, order etc and the portal to act as a one-point digital interface for the trade to interact with the Customs.

(iv) A new section 28BB has been added to prescribe a definite time-period of two years subject to certain exceptions, for completion of investigations.

(v) A new provision is being proposed that any goods entered for exportation making a wrongful claim of remission or refund shall be liable to confiscation [sub-section (ja) is being added to section 113 of the Customs Act]. Further, a new provision is being inserted in the Customs Act (section 114AC) to prescribe a penalty in specific cases where any person claims refund of tax or duty discharge, using fraudulent invoices, on exports of goods.

(vi) Section 110 of the Customs Act is proposed to be amended to revise the procedure for pre-trial disposal of seized gold for expediting such disposals.

(vii) It is proposed to add a new provision in law to prescribe that all conditional exemptions, unless otherwise specified or varied or rescinded, given under Customs Act shall come to an end on 31st March falling immediately two years after the date of such grant or variation (Section 25 of the Customs Act).

(viii) The Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 [IGCR] are being made so as a trade facilitation measure to allow:

-job-work on the materials (except precious metals) imported under IGCR

-clearance of imported capital goods imported under IGCR on payment of customs duty on the depreciated value.

A number of cumbersome conditions in customs exemptions are now being replaced by the requirement of observance of Import of Goods at Concessional rate (IGCR). This will simplify and standardized the compliance requirement for end use-based exemptions.

(ix) Rate of Custom duty has been rationalized to protect Indian manufacturing sector, especially MSME.

Introduction of Agricultural Infrastructure and Development Cess:

A new cess has been proposed on certain imported goods and excisable goods. Following imported goods will bear the cess, starting from midnight today.

-Gold, Silver and dore bars 2.5%

-Alcoholic beverages (falling under chapter 22) 100%

-Crude palm oil 17.5%

-Crude soyabean and sunflower oil 20%

-Apples 35%

-Coal, lignite and peat 1.5%

-Specified fertilizers (Urea etc) 5%

-Peas 40%

-Kabuli Chana 30%

-Bengal Gram/Chick peas 50%

-Lentil (Mosur) 20%

-Cotton (not carded or combed)

On the Central Excise side, such cess has been imposed on Petrol [Rs. 2.5 per litre] and Diesel [Rs. 4 per litre] has been imposed.

Key Amendments in Corporate Law:

Following far reaching changes has been initiated through the present budget:

(i) Competition in distribution of electricity.

(ii) PPP model on major ports. Subsidies to Indian Shipping Companies.

(iii) Consolidation of the provisions of SEBI Act, 1992; Depositories Act, 1996; Securities Contracts (Regulation) Act, 1956 and Government Securities Act, 2007 into a rationalized single Securities Markets Code.

(iv) Creation of regulated gold exchanges.

(v) FDI limit in Insurance sector has been increased to 74% from present 49%.

(vi) Decriminalization of the Limited Liability Partnership (LLP) Act, 2008.

(vii) Definition under the Companies Act, 2013 for Small Companies by increasing their thresholds for Paid up capital from “not exceeding Rs. 50 Lakh” to “not exceeding Rs. 2 Crore” and turnover from “not exceeding Rs. 2 Crore” to “not exceeding Rs. 20 Crore”. It shall ease compliance burden of small companies.

(viii) Chnages in provisions related to one person companies. Now, OPCs are being allowed to grow without any restrictions on paid up capital and turnover, allowing their conversion into any other type of company at any time, reducing the residency limit for an Indian citizen to set up an OPC from 182 days to 120 days and also allow Non Resident Indians (NRIs) to incorporate OPCs in India.

(ix) To ensure faster resolution of cases, NCLT framework will be strengthened, e-Courts system shall be implemented and alternate methods of debt resolution and special framework for MSMEs shall be introduced.

(x) New MCA21 Version 3.0. This Version 3.0 will have additional modules for e-scrutiny, e-Adjudication, e-Consultation and Compliance Management.

(xi) Securities Contracts (Regulation) Act, 1956 (shall come in force on 01.04.2021): The definition of “securities” under Section 2(h) of the Act has been expanded to include instruments issued by a “pooled investment vehicle”. Special provisions have been made for a “pooled investment vehicle” u/S. 30B - a pooled investment vehicle, registered with the Securities and Exchange Board of India SEBI shall be eligible to borrow and issue debt securities in such manner and to such extent as may be specified under the SEBI regulations.

It shall, subject to the provisions of the trust deed, be permitted to provide security interest to lenders in terms of the facility documents entered into by such pooled investment vehicles.

(xii) SARFAESI Act, 2002: A pooled investment vehicle has been included in the definition of a “borrower” under Section 2(f) of this Act.

(xiii) THE PROHIBITION OF BENAMI PROPERTY TRANSACTION ACT, 1988 (w.e.f. 01.07.2021): Adjudicating Authority u/S.7: The competent authority authorised under section 5(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act.

(xiv) THE INDIAN STAMP ACT, 1899: A new provision (SECTION 8G) has been inserted which states that any instrument for conveyance or transfer of a business or asset or right in any IMMOVABLE PROPERTY from a Government company, its subsidiary, unit or joint venture, by way of- strategic sale or disinvestment or demerger or any other scheme of arrangement, to another Government company or to the Central Government or any State Government, after the approval of the Central Government, shall NOT be liable to duty under this Act.

For any queries, please write to: **office@rklegal.org**

Who We Are:

Rajesh Kumar and Associates is one of India’s foremost full-service business law firm, offering an extensive range of advisory, transactional, compliance, and litigation services. We advise a diverse clientele, which includes domestic and international companies, financial institutions, high net worth individuals and families, non-profit and funds. The firm has experience in advising clients in Manufacturing sector, Service Sectors, Banks, Mining & processing Sector, Multi-national companies, Export houses, 100% EOU & Special Economic Zone units, Non-government organizations (NGO), Cooperative sector etc.