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## **BUDGET 2019**

## **AN INSIGHT INTO INDIRECT TAX PROPOSALS**

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## PREFACE

### Union Budget 2019 – “Reform, Perform and Transform”

The first budget of the Modi 2.0 Government had a pragmatic approach towards a bright and stable new India, based on the principle of “**Reform, Perform and Transform**”. Various government initiatives like ‘Digital India’, ‘Make-in-India’ and promoting alternate source of energy coined during the 1<sup>st</sup> term of the Modi Government, were the focal points of this budget as well.

The Indirect Tax proposals also centered around these initiatives and marked approach of the Government.

The Government’s intent to boost and provide support to domestic industries was fortified by increase in the rate of customs duty on a number of products like electronic goods, automobiles, paper, plastics etc. It is particularly impressive that the Government has recognized the threat that fossil fuels such as coal, petroleum etc. pose on the environment. The Government’s attempt to reduce customs duty rates on the import of electric vehicles parts, nuclear fuel etc. is a step towards promoting a cleaner, renewable and environment friendly energy.

In an earnest attempt to put an end to the myriad of pending litigations under the *erstwhile* indirect tax regime, the Government has come up with the novel ‘Sabka Vishwas Legacy Dispute Resolution Scheme 2019’.

Apart from the above, the amendments proposed in the GST law aims to remove the inherent incongruities like interest will apply only for delay in tax payment through cash, transfer of cash ledger balances, enabling provisions for new returns and creation of National Appellate Authority for Advance Ruling in case of conflicting rulings.

The measures are vast and lay-down a strong foundation of positive tax reforms. The appended booklet contains our insight on various Indirect Tax proposals.

Trust you find it an interesting read.

We would be happy to have your thoughts / comments on the booklet at [updates@nityatax.com](mailto:updates@nityatax.com)

#### Disclaimer:

*This Insight has been prepared for clients and firm’s personnel only. It is solely for the purpose of general information and does not represent any opinion of NITYA Tax Associates. We are not responsible for the loss arising to any person for acting or refraining from acting on the basis of material contained in this Insight. It is recommended that professional advice be sought based on specific facts and circumstances.*

## 1. Amendments in Customs law

### Legislative changes (Customs Act)

- Section 99B inserted empowering the proper officer (authorized by the Commissioner) to verify the identity of a person. This power can only be exercised for the purpose of protecting the interest of revenue or for preventing smuggling.

Such person will be **required to undergo authentication or furnish Aadhaar or other document / information**, in the prescribed manner. Failure of the same may result in suspension of clearance of goods, sanction of refund, drawback or any other benefits relating to import or export.

- Section 103 amended to empower the proper officer (with prior approval of Assistant / Deputy Commissioner) to **screen or scan a person suspected of secreting contraband goods** in his body.
- Section 104 amended to enable arrest for the following offences, also making them cognizable and non-bailable:
  - Fraudulent availment of drawback exceeding Rs. 50 Lakhs;
  - Fraudulent obtaining of FTP scrips which are utilized in discharging duty of more than Rs. 50 Lakhs.

Penalty equivalent to the face value of scrips and punishment upto 7 years is also proposed.

*The amendments have been brought to discourage the deceitful availment of export incentives, which has been on the rise in recent times.*

- In case of seized goods, proper officer has been authorized **to allow the owner or any person with whom the goods have been found or seized, to keep the custody of goods** with him. To protect the interest of revenue and prevent smuggling, the proper officer may **provisionally attach any bank account** for a maximum period of 6 months.
- Section 149 amended to provide for the form, manner, time, restrictions and conditions for the proper officer to amend any document.

*This is an important change that will restrict the scope of amendments in documents. Currently, there is no time limit for amendment of bill of entry in case of short / excess tax payment. Further, the department often refuse request of taxpayers for amending bill of entry.*

*These amendments will streamline the procedure and bring certainty in minds of taxpayers as well as department*

- General penalty increased from Rs. 1 Lakh to Rs. 4 Lakhs in case of contravention of provisions of the Customs Act and from Rs. 50,000 to Rs. 1,00,000 in case of contravention of provisions of Rules and Regulations made thereunder (where no specific penalty is prescribed).

**(Effective from enactment of Finance Bill, 2019)**

**Legislative changes (Customs Tariff Act)**

- Section 9(1A) inserted to empower the Central Government to extend the levy of countervailing duty on articles imported with different name or composition, or in unassembled or disassembled form or with changed country of origin vis-à-vis original article.
- The order of levy of safeguard duty in terms of Section 8B, has been made appealable before the CESTAT.

**(Effective from enactment of Finance Bill, 2019)**

**Rate changes**

- In line with Make in India scheme, basic customs duty on various goods has been increased to promote manufacture of indigenous goods. The basic customs duty on several raw materials and capital goods has also been reduced. A summary of change in rate of important items is attached as **Annexure-1**.

**(Effective from midnight July 5, 2019)**

## 2. Amendments in CGST Act

### Anti-profiteering provisions

- Penalty equivalent to 10 percent imposed on the profiteered amount. Penalty not payable in case the profiteered amount is deposited within 30 days of passing of the order.
- Profiteered amount defined to mean amount determined on account of not passing the benefit of reduction in rate of tax or increased input tax credit.

*The National Anti-Profiteering Authority ('NAPA') has been imposing penalty under Section 122(1) of the CGST Act, stating that incorrect tax invoices have been issued by the taxpayer. In our view, such penalty is not sustainable since the invoices issued by the taxpayers are in accordance with the law even if there is profiteering.*

*Once this provision is implemented, the taxpayers can consider paying the amount within 30 days of the order and file a writ before the High Court (in case they are aggrieved by such order). This will save them from the penalty of 10 percent and may not result in much working capital blockage (since High Courts are also admitting writs on anti-profiteering issues after giving directions for depositing profiteered amount)*

### Transfer of taxes from electronic cash ledger

- Section 49(10) inserted to permit *inter-se* transfer tax, interest, penalty or fee available in electronic cash ledger of IGST, CGST, SGST, UTGST or Cess.

*Necessary amendments have already been made in the CGST Rules by introduction of Rule 87(13) and FORM GST PMT-09*

### Invoicing

- Section 31A inserted mandating a class of suppliers to provide the recipient an option to pay the consideration electronically.

*This provision is in consonance with the newly proposed invoicing system with UPI based QR Codes to promote digital payments. The National Payment Corporation of India and GST Council of India have entered into an agreement to give GST cashback / credits to shops and merchants using UPI based QR codes*

### Payment of interest

- Interest to be payable only on the net tax payable after setting off input tax credits.

*The GST Council in its 31<sup>st</sup> meeting, gave an in-principle approval for this amendment. It is notable that relief under Section 50 is proposed to the extent a supplier declares the supplies in the return. It shall not apply where the supplies were omitted (intentionally or unintentionally) in the return.*

### Registration

- Section 25 amended to provide that every person, already registered or applying for new registration, needs to get its registration authenticated by furnishing Aadhar number or by undergoing the authentication procedure to be prescribed by the Government. The failure of the same will result in invalidation of registration.

*Notably, the amendment provides that the person (other than individual) obtaining new registration can furnish proof of Aadhaar number of Karta, Managing Director, Whole Time Director etc. The amendment does not provide similar stipulation for already registered person (other than individual). Invalidation of registration, if any, shall operate prospectively.*

### Constitution of National Appellate Authority for Advance Ruling

- National Appellate Authority for Advance Ruling ('NAAAR') will be constituted for settling disputes where two Appellate Authority for Advance Ruling ('AAAR') have given contrary rulings for same person in different States.
- NAAAR will consist of the President (being retired Judge of Supreme Court or Chief Justice of High Court) and two technical members.

*Applicability of NAAAR will be limited to cases of contrary advance rulings by two AAARs for the same assessee. Further, the constitution of NAAAR has one judicial and two technical members. The constitution of GST Appellate Tribunal has already been challenged on this very ground and stayed by the Delhi High Court in the case of Bhartiya Vitta Salahkar Simiti v. UOI, CA No.6900/2018 (similar writs have also been filed in other States). The constitution of NAAAR is also expected to be challenged on similar grounds.*

### Commissioner granted powers for extension of annual return and TCS return

- Amendment in Section 44 of the CGST Act, empowering the Commissioner to extend the due date of annual return. Similar power granted for TCS return.

*Till now, due dates of annual return and TCS returns were extended through Removal of Difficulties Order. Every Removal of Difficulties Order is required to be immediately placed before each house of the Parliament. Since the annual return has already been extended thrice and the same may happen in future as well, this provision will cut down the compliances at government's end.*

**Enactment of changes proposed in earlier GST Council meetings**

- Following changes which were proposed by GST council or effected by way of Notifications, have been proposed to be enacted in the Finance Bill, 2019:

S.No.	Amendment	Existing publication
1	Amendment in Section 39 of the CGST Act related to new return formats (ANX-1, ANX-2 and RET-1)  <i>(Also refer to NITYA's Insight   Issue 29   Recent developments on New GST Return System for detailed update)</i>	Press Release dated June 11, 2019
2	Prescription of composition scheme for service providers with turnover up to Rs. 50 Lakhs	Notification No. 2/2019-Central Tax (Rate) dated March 7, 2019
3	Increase in limit of aggregate turnover for registration for supplier of goods to Rs. 40 Lakhs	Notification No.10/2019-Central Tax dated March 7, 2019

**(Effective from a date to be notified)**



### 3. Amendments in Service Tax law

#### Retrospective exemption to grant of liquor license

- Exemption granted to service tax applicable on license fee or application fee related to liquor license, from April 2016 to June 2017. Notably, service tax on government services was payable under reverse charge by the taxpayers. Further, credit of service tax paid on liquor was not available under service tax or GST since liquor is not covered under excise duty or GST, respectively.
- Refund of service tax incorrectly paid shall be available to the taxpayers.

*The GST Council in its 26<sup>th</sup> meeting convened on March 10, 2018, agreed that no GST is payable on liquor license fee. The Council agreed that this would also apply mutatis mutandis to the demand raised by service tax. Basis the minutes of GST Council meeting, the Punjab and Haryana High Court in the case of Divya Singh v. UOI, CWP No.12390 of 2017 also observed that no service tax is payable on liquor license fee.*

*Interestingly, no corresponding exemption has been issued under GST law till date. Consequently, the authorities might raise demand of GST on license fee. The government should issue a retrospective amendment under GST as well to avoid disputes under GST on this issue.*

#### Retrospective amendment on services provided by IIMs

- Exemption granted to specified courses provided by IIMs for the period July 2003 to March 2016. Similar exemption was provided under service tax law w.e.f. April 2016 vide Notification No.9/2016-ST dated March 1, 2016.

#### Retrospective amendment on services related to long term lease of plots

- Exemption granted to upfront amount called as premium, salami, cost, price, development charges or by any other name, payable in respect of service by way of granting long term lease of thirty years or more of plots for development of infrastructure for financial business for the period October 2013 to June 2017.

*It is notable that exemption is limited to development of infrastructure for financial business only. This seems to be a miss since similar exemption under GST is available to both industrial plots and plots for development of infrastructure for financial business*

#### 4. Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

##### Introduction

The Government has proposed an amnesty scheme for settlement of disputes of old Indirect Tax laws.

- The scheme shall *inter alia* be applicable on the following Indirect Tax enactments:
  - Central Excise Act, 1944
  - Central Excise Tariff Act, 1985
  - Chapter V of the Finance Act, 1944
  - Additional Duties of Excise (Goods of Special Importance) Act, 1957
  - Finance Act, 2004, 2007, 2015 & 2016 (Education Cess, Senior and Higher Secondary Education Cess, SBC and KKC)
  - Any other act notified by Central Government

**Note:** The scheme shall not be applicable on the Customs Act, 1962 and goods on which central excise duty is presently applicable (covered under the Fourth Schedule of the Excise Act)

##### Person eligible for Scheme

- The following persons shall be eligible to claim benefit of the scheme:
  - Persons who have filed an appeal before appellate forum [Supreme Court, High Court, CESTAT and Commissioner (Appeals)] and final hearing has not been taken place till June 30, 2019
  - Persons who have received Show Cause Notice (SCN) for which final hearing has not taken place till June 30, 2019
  - Persons against whom enquiry or investigation or audit has been conducted and the amount of duty has been quantified before June 30, 2019
  - Persons who makes voluntary disclosure
  - Person who have arrears of tax dues including arrears reported in return as amount due but not paid

##### Person ineligible for Scheme

- The following persons shall be ineligible to claim benefit of the scheme:
  - Persons who have filed an appeal before appellate forum and final hearing has been concluded
  - Persons who have received Show Cause Notice (SCN) for which final hearing has been concluded

- Persons who were convicted for offence on the same matter
- Proceedings related to erroneous refunds
- Persons who makes voluntary disclosure after enquiry or investigation or audit
- Persons who have filed an application in settlement commission
- Person who have arrears of tax due which are reported in return as amount due but not paid

*Arrears of tax due which are reported in return as amount due but not paid, have been covered under eligible as well as ineligible category. This seems to be a mistake at legislature's end. In case the Finance Bill is enacted as such, such cases will not be eligible for benefit of the Scheme.*

### Tax Dues and relief available

Situation	Tax Dues	Relief available (as % of Tax Dues)	
		Tax dues Rs.50 Lakhs or less	Tax dues more than Rs.50 Lakhs
Appeal before the Appellate Forums / Courts	Tax disputed in the appeal	70%	50%
Show Cause Notice (SCN)	Tax payable in the SCN	70%	50%
Enquiry or investigation or audit initiated	Tax quantified	70%	50%
Voluntarily disclosure	Tax amount disclosed	No relief	
Arrears of tax due including orders not appealed against, tax reported in returns but not paid etc.	Tax amount in arrears	60%	40%
Show Cause Notice for penalty or late fee only	Penalty or late fee amount	Full penalty or late fee	

### Important points:

- Amount payable is defined to mean tax dues less tax relief (Tax dues less relief discussed above)
- The Scheme does not apply to appeals or SCNs finally heard on or before June 30, 2019

- Amount in arrears defined to mean total amount recoverable as arrears of duty on following counts:
  - No appeal filed against an order-in-original or order-in-appeal before expiry of time of filing of appeal
  - Order attained finality
  - Declarant filed a return admitting tax liability but has not paid it

### Restrictions

- Tax dues is not allowed to be paid through ITC
- Amount payable once paid, not refundable in any circumstance
- The tax paid will not be allowed to be claimed as ITC (to self or to recipient)
- Pre-deposit shall be adjusted against the amount due. If pre-deposit exceeds the amount payable, then no refund shall be granted.
- There is immunity against demand, penalty and prosecution for the same matter for the period for which declaration is filed. There will be no immunity for other issues as well as subsequent periods

### Authority

- Designated committee will verify the correctness of declaration filed by an assessee
- Constitution of designate committee, its rules of procedure and functioning will be prescribed vide Rules

### Illustration

S. No.	Brief description	Relief			
		Rs.50 Lakhs or less (A)		More than Rs.50 Lakhs (B)	
		Demand	Amount Payable	Demand	Amount Payable
1	Appeal before the Appellate Forums / Courts	<ul style="list-style-type: none"> <li>▪ Tax – Rs.40 Lakhs</li> <li>▪ Interest – Rs.30 Lakhs</li> <li>▪ Penalty – Rs.40 Lakhs</li> </ul>	<ul style="list-style-type: none"> <li>▪ 12 Lakhs (30% of tax due)</li> <li>▪ No interest</li> <li>▪ No penalty</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tax – Rs.150 Lakhs</li> <li>▪ Interest – Rs.90 Lakhs</li> <li>▪ Penalty – Rs.150 Lakhs</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tax – Rs.75 Lakhs (50% of tax due)</li> <li>▪ No interest</li> <li>▪ No penalty</li> </ul>
2	Show Cause Notice (SCN)				
3	Enquiry or investigation or audit initiated				

S. No.	Brief description	Relief			
		Rs.50 Lakhs or less (A)		More than Rs.50 Lakhs (B)	
		Demand	Amount Payable	Demand	Amount Payable
4	Voluntarily disclosure	<ul style="list-style-type: none"> <li>Tax – Rs.40 Lakhs</li> <li>Interest – Rs.30 Lakhs</li> <li>Penalty – Nil</li> </ul>	<ul style="list-style-type: none"> <li>Tax – 40 Lakhs</li> <li>No interest</li> <li>No penalty</li> </ul>	<ul style="list-style-type: none"> <li>Tax – Rs.150 Lakhs</li> <li>Interest – Rs.90 Lakhs</li> <li>Penalty – Nil</li> </ul>	<ul style="list-style-type: none"> <li>Tax – Rs.150 Lakhs</li> <li>No interest</li> <li>No penalty</li> </ul>
5	Arrears of tax	<ul style="list-style-type: none"> <li>Tax – Rs.40 Lakhs</li> <li>Interest – Rs.30 Lakhs</li> <li>Penalty- Rs.40 Lakhs</li> </ul>	<ul style="list-style-type: none"> <li>Tax – 16 Lakhs (40% of tax due)</li> <li>No interest</li> <li>No penalty</li> </ul>	<ul style="list-style-type: none"> <li>Tax – Rs.150 Lakhs</li> <li>Interest – Rs.90 Lakhs</li> <li>Penalty – Rs.150 Lakhs</li> </ul>	<ul style="list-style-type: none"> <li>Tax – Rs.90 Lakh (60% of tax due)</li> <li>No interest</li> <li>No penalty</li> </ul>
6	Show Cause Notice for late fee or penalty only	<ul style="list-style-type: none"> <li>Penalty – Rs.20 Lakhs</li> </ul>	<ul style="list-style-type: none"> <li>No penalty</li> </ul>	<ul style="list-style-type: none"> <li>Penalty – Rs.150 Lakhs</li> </ul>	<ul style="list-style-type: none"> <li>No penalty</li> </ul>

*The scheme is a one-time opportunity for the taxpayers to reduce their existing litigations and make a fresh start under GST. While the scheme looks too good to be true, the taxpayers need to be cautious and make careful analysis for matters which should be opted for the scheme and which should be litigated*

*One will wait to see the implementation of this Scheme which appear to be taxpayer friendly if done with good governance.*

## Annexure-1

## 1. List of major goods on which basic customs duty has been increased:

Sl. No.	Tariff Heading	Description of goods	Old rate	Revised rate
1.	Chapter 15, 2915 70, 3823 11 00, 3823 12 00, 3823 13 00, 3823 19 00	Palm stearin and other oils, having 20% or more free fatty acid, Palm Fatty Acid Distillate and other industrial monocarboxylic fatty acids, acid oils from refining, for use in manufacture of soap and oleochemicals	Nil	7.50
2.	2709 00 00	Petroleum Crude	Nil	Re. 1 per tonne
3.	3904	Poly Vinyl Chloride	7.50	10
4.	3926 90 91, 3926 90 99	Articles of plastics	10	15
5.	4002 31 00	All goods i.e. butyl rubber	5	10
6.	4002 39 00	Chlorobutyl rubber or bromobutyl rubber	5	10
7.	48	Newsprint, Uncoated paper used for printing of newspapers, Lightweight coated paper used for printing of magazines	Nil	10
8.	4901 10 10, 4901 91 00, 4901 99 00	Printed books (including covers for printed books) and printed manuals, in bound form or in loose-leaf form with binder, executed on paper or any other material including transparencies	Nil	5
9.	6813	Friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textile or other materials	10	15

10.	6905, 6907	Ceramic roofing tiles and ceramic flags and pavings, hearth or wall tiles	10	15
11.	7009	Glass mirrors, whether or not framed, including rear-view mirrors	10	15
12.	8301 20 00	Locks of a kind used in motor vehicles	10	15
13.	8302	Base metal fittings, mountings and similar articles suitable for furniture, doors, staircases, windows, blinds, hinge for auto mobiles	10	15
14.	84, 85 or 90	Capital goods used for manufacturing of specified electronic items, namely: - Cathode ray tubes - CD/CD-R/DVD/DVD-R - Deflection components, CRT monitors/CTVs; - Plasma Display Panel	Nil	Applicable rate
15.	8415 90 00	Indoor and outdoor unit of split-system air conditioner	10	20
16.	8421 23 00	Oil or petrol filters for internal combustion engines	7.50	10
17.	8421 31 00	Intake air-filters for internal combustion engines	7.50	10
18.	8421 39 20, 8421 39 90	Air purifiers or cleaners and other filtering or purifying machinery and apparatus for gases	7.50%	10%
19.	85	Specified electronic items like plugs, sockets, switches, connectors, relays	Nil	Applicable rate
20.	8504 40	Charger/Power adapter for CCTV camera/IP camera/DVR/NVR	Nil	15
21.	8512 10 00, 8512 20 10, 8512 20 20	Lighting or visual signaling equipment of a kind used in bicycles or motor vehicles	10	15
22.	8512 20 90, 8512 30 90	Other visual or sound signaling equipment for bicycles or motor vehicles	7.50	15
23.	8512 30 10	Horns for vehicles	10	15

24.	8512 40 00, 8539 10 00, 8539 21 20, 8539 29 40	Windscreen wipers, defrosters and demisters, Sealed beam lamp units and other lamps for automobiles	10	15
25.	8512 90 00	Parts of visual or sound signaling equipment for bicycles or motor vehicles	7.50	10
26.	8518 21 00, 8518 22 00	Loudspeaker	10	15
27.	8521 90 90	Digital Video Recorder (DVR) and Network Video Recorder (NVR)	15	20
28.	8525 80	CCTV camera and IP camera	15	20
29.	8702, 8704	Completely Built Unit (CBU) of vehicles	25	30
30.	8706	Chassis fitted with engines, for the motor vehicles of headings 8701 to 8705.	10	15
31.	8707	Bodies (including cabs), for the motor vehicles of headings 8701 to 8705	10	15



**2. List of major goods on which basic customs duty has been decreased:**

Sl. No.	Tariff Heading	Description of goods	Old rate	Revised rate
1.	2710	Naphtha	5	4
2.	2903 15 00	Ethylene dichloride (EDC)	2	Nil
3.	38	Diagnostic reagents	-	10
4.	82, 84, 85, 90	Capital goods used for manufacturing of following electronic items, namely: - Populated PCBA - Camera module of cellular mobile phones - Charger/Adapter of cellular mobile phone - Lithium Ion Cell - Display Module - Set Top Box - Compact Camera Module	Applicable rate	Nil
5.	9801	All goods required for setting up of identified power projects	Applicable rate	Nil
6.	Any Chapter	Following parts of electric vehicles: - E-Drive assembly, - On board charger, - E-compressor - Charging Gun	Applicable rate	Nil

**GLOSSARY OF TERMS**

Abbreviations	Meaning
CGST	Central Goods and Services Tax
CGST Act	Central Goods and Services Tax Act, 2017
CGST Rules	Central Goods and Services Tax Rules, 2017
Customs Act	Customs Act, 1962
Customs Tariff Act	Customs Tariff Act, 1975
CVD	Countervailing Duty
Excise Act	Central Excise Act, 1944
Finance Bill	Finance (No.2) Bill, 2019
FTP	Foreign Trade Policy
FY	Financial Year
HSN	Harmonized System of Nomenclature
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
IGST Rules	Integrated Goods and Services Tax Rules, 2017
SGST	State Goods and Services Tax
SGST Act	State Goods and Services Tax Act, 2017
SGST Rules	State Goods and Services Tax Rules, 2017
UTGST	Union Territory Goods and Services Tax

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