Newsflash:
Budget 2022 Impact on Select Industries - Real Estate and Infrastructure Industry

THE POWER OF BEING UNDERSTOOD

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1.0 Background

The Indian economy is now the 3rd largest economy of the world with GDP of US$ 10.18 trillion in terms of purchasing power parity and economic growth in FY 2021-22 is estimated to be 9.2%. The Budget 2022 has been presented at a very crucial juncture as the Indian economy is expected to witness real GDP expansion of 9.2 % in FY 2021-22 after a contraction of 7.3 % in FY 2020-21 with a fiscal deficit of 6.9% of the GDP. At the same time, there is a strong revival and the economy is expected to grow by 8% to 8.5% in FY 2022-23, making it the fastest growing economy in the world.

Infrastructure is the backbone of any major economy like India. In order to achieve the GDP of $5 trillion by 2024-25, India needs to spend about $1.4 trillion over these years on infrastructure. Major policy reforms have been announced in the infrastructure sector including significant increase in public capital investment laying down a platform for making India a $5 trillion economy. As far as the real estate sector is concerned, after witnessing a big slump due to less demand vis-à-vis supply of real estate for several years and due to pandemic, leading to huge pile of stock for the developers and builders, the sector has seen commendable growth in the last few months. The sector currently faces rising input costs, uncertain economic environment due to current Covid wave and possibility of increase in interest rates.

With this backdrop, we discuss below some of the Budget 2022 proposals for Real Estate and Infrastructure Industry.

2.0 Key Highlights/ policy matters

2.1 Public Capital Investment

The outlay for capital expenditure in the Union Budget is being stepped up sharply by 35.4 per cent from Rs. 5.54 lakh crore in the current year to Rs. 7.50 lakh crore in 2022-23. This outlay in 2022-23 will be 2.9 per cent of GDP.

2.2 Urban Planning Support to States

A high-level committee of reputed urban planners, urban economists and institutions will be formed to make recommendations on urban sector policies, capacity building, planning, implementation and governance. 5 existing academic institutions to be designated as Centres of Excellence in urban planning with an endowment fund of Rs 250 crore each.

2.3 PM Gati Shakti National Master Plan

The scope of PM GatiShakti National Master Plan will encompass the different modes of transport, seamless multimodal connectivity and logistics efficiency. It will also include the infrastructure developed by the state governments as per the GatiShakti Master Plan. The focus will be on planning, financing including through innovative ways, use of technology, and speedier implementation. The touchstone of the Master Plan will be world-class modern infrastructure and logistics synergy among different modes of movement – both of people and goods – and location of projects. This will help raise productivity and accelerate economic growth and development.

2.4 Road Transport

PM GatiShakti Master Plan for Expressways will be formulated in 2022-23 to facilitate faster movement of people and goods. The National Highways network will be expanded by 25,000 km in 2022-23.

2.5 Seamless Multimodal Movement of Goods and People

The data exchange among all mode operators will be brought on Unified Logistics Interface Platform (ULIP), designed for Application Programming Interface (API).

2.6 Multimodal Logistics Parks

Contracts for implementation of Multimodal Logistics Parks at 4 locations through public-private partnership (PPP) mode will be awarded in 2022-23.

2.7 Railways

'One Station-One Product' concept will be popularized to help local businesses & supply chains. Further, 400 new-generation Vande Bharat trains with better energy efficiency and passenger riding experience, will be developed and manufactured during the next 3 years. 100 cargo terminals for multimodal logistics facilities in the next 3 years. It is further proposed to develop multimodal connectivity between mass urban transport and railway stations.

2.8 Land Records Management

The adoption or linkage with National Generic Document Registration System (NGDRS) with the 'One-Nation One-Registration Software' will be promoted as an option for uniform process for registration and 'anywhere registration' of deeds & documents.

2.9 National Infrastructure Pipeline (NIP)

NIP launched with projected infrastructure investment of around Rs. 111 lakh crore (US$ 1.5 trillions) during FY 2020-2025 in over 9,000 projects covering 34 infrastructure sub-sectors. Allocation of Rs. 60,000 crores for 'Har Ghar, Nal se Jal' for tap water availability to 3.8 crore households in 2022-23.

2.10 Solar Power

To facilitate domestic manufacturing for the ambitious goal of 280 GW of installed solar capacity by 2030, an additional allocation of Rs. 19,500 crore for Production Linked Incentive for manufacture of high efficiency modules, with priority to fully integrated manufacturing units from polysilicon to solar PV modules, will be made.

2.11 Housing for all

Allocation of Rs. 48,000 crores for completion of 80 lakh homes in FY22-23 under the PM Awas Yojna for housing. Another announcement was that the Central Government will work with the state governments for reduction of time required for all land and construction related approvals, for promoting affordable housing for middle class and Economically Weaker Sections in urban areas. They shall also work with the financial sector regulators to expand access to capital along with reduction in cost of intermediation.

3.0 Key proposals in Direct Tax

3.1 Positive proposals / impact

- There is no change in the corporate tax rates. The corporate tax rate under the concessional regime of 25.17% with no minimum alternate tax (MAT) would continue.

- Finance Act, 2021 inserted sections 206AB in the IT Act which provides for special provision for deduction of tax at source in case of specified persons at higher rates specified therein. It is proposed that the provisions of section 206AB will not apply in relation to transactions on which tax is to be deducted under the sections 194-IA (TDS on transfer of immovable property) and 194-IB (TDS on rent) of the Act. This amendment eases the compliance burden for individuals and HUF for whom simplified tax deduction system has been provided without requirement of tax deduction account number (TAN).

- Surcharge on Long term Capital gains arising to Individual/ HUF/AOP/BOI capped at 15% as against the graded surcharge of up to 37% and to cover any long-term asset. The benefit was earlier restricted to capital assets such as listed equity shares, units of equity oriented mutual fund and business trust.

3.2 Negative proposal / impact

- Section 194-IA provides for levy of TDS @ 1% on consideration paid for transfer of immovable property other than agricultural land. This section did not take into account the stamp duty value of the immovable property under the present provisions. It is proposed to amend section 194-IA to provide that TDS will be applicable on the sum paid/credited to the transferor or the stamp duty value of such property, whichever is higher. This amendment will take effect from 1st April 2022.

- In order to prevent tax evasion through bonus stripping and dividend stripping, the definition of 'unit' under Section 94 of the Act expanded from units of mutual funds to further include securities, units of Alternative Investment Funds (AIFs) and units of Infrastructure Investment Trust (InvIT) and Real Estate Investment Trust (REIT).

3.3 Other significant direct tax proposals

- **Rationalisation of the rate of Surcharge** in case of certain AOPs - Surcharge in case of AOP, consisting of only companies as its members, proposed to be restricted to 15%.

- **Clarification regarding treatment of cess and surcharge** – Explanation inserted retrospectively (w.e.f. AY 2005-06 onwards) that 'tax' includes surcharge or cess and as such, 'health and education cess' shall be disallowed under section 40(a)(ii) of the Act.

- **Clarification in respect of disallowance under section 14A** – Clarified that the disallowance under section 14A shall be applicable even if no exempt income is earned during the financial year. Further, the section is amended to provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act. The amendment shall be applicable from AY 2022-23 onwards.

- **Clarification regarding deduction of interest on actual payment** – Clarified that conversion of interest payable, under section 43B, into debenture or any other instrument by which liability to pay is deferred to a future date, shall not be deemed to be actual payment for the purpose of claiming deduction under the said section.

- **Rationalization of provisions of section 206AB and section 206CCA to widen and deepen tax base** The requirement of higher TDS / TCS shall be applicable in case of non-filing of tax return by the payee for preceding 1 year instead of 2 years as earlier provided.

- **Amendment related to successor entity subsequent to business reorganization** –
  - To clarify that proceedings in case of predecessor entity which ceases to exist pursuant to business reorganization are valid, section 170 proposed to be amended to provide that such proceedings pending or completed on the predecessor shall be deemed to have been made on the successor entity.

  - In order to enable the successor entity to give effect to business reorganization, it is proposed to insert section 170A allowing the successor entity to file a modified return within 6 months from the end of the month in which the order of competent authority is issued.

  - It is proposed to insert section 156A to give effect to the orders of the competent authority to modify the income-tax demand as directed by such authority.

- **Withdrawal of concessional rate of taxation on dividend income under section 115BBD** – The provisions of section 115BBD relating to concessional rate of 15% for dividend from specified foreign company shall not be applicable from AY 2023-24.

- **Cash credits under section 68 of the Act** - It is proposed to amend the provisions of section 68 to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider.

- **Provisions for filing of updated return**

  Proposal to allow filing of updated tax return within 2 years from the end of assessment year on payment of additional tax as under and subject to certain conditions –

- If updated tax return is filed within 1 year from the end of assessment year – additional tax payable = 25% of (tax + interest)
- If updated tax return is filed after 1 year from the end of assessment year and within 2 years from the end of assessment year – additional tax payable = 50% of (tax + interest)

➢ **Set-off of loss in search cases - Amendment in the provisions of section 79A of the Act** - It is proposed to insert section 79A to provide that, notwithstanding anything contained in the Act, no set-off of brought forward loss or unabsorbed depreciation shall be allowed against any undisclosed income unearthed during the course of search and survey proceedings.

➢ **Scheme for taxation of virtual digital assets (Section 115BBH)** –

- Income from transfer of any virtual digital asset shall be taxable at 30%.
- No deduction (except cost of acquisition) or loss shall be allowed.
- Set-off and carry forward of loss from transfer of virtual digital assets shall not be allowed.
- Section 194S (Applicable from 1 July 2022 onwards) - Deduction of tax at 1% on payment for transfer of virtual digital asset to a resident subject to the prescribed conditions.
- Section 56(2)(x) – Receipt of virtual digital asset for nil or inadequate consideration shall be chargeable to tax in the hands of recipient.

➢ **Appeal by revenue where an identical question of law is pending before jurisdictional High Court or Supreme Court** – Procedure prescribed under section 158AB for deferral of revenue appeal where identical question of law is pending before jurisdictional HC or SC in case of any other assessment year of the assessee or in case of any other assessee.

➢ **Rationalization of provisions relating to assessment and reassessment**

- Section 148 proposed to be amended to clarify what constitutes information under Explanation 1 to section 148 and it proposes to include any audit objection, or any information received from a foreign jurisdiction under an agreement or directions contained in a court order, or information received under a scheme notified under section 135A, etc.

- Further, section 149 proposed to be amended to provide that a notice under section 148 shall be issued up to 10 years from end of the relevant assessment year where the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented – (a) in the form of an asset or (b) expenditure in respect of a transaction or in relation to an event or occasion or (c) an entry or entries in the books of accounts.

- In order to mitigate the legal and procedural problems faced in the operation of the faceless assessment procedure and to streamline the same, new procedure is proposed under section 144B of the IT Act. Section 144B(9) treating the proceedings to be void on non compliance of procedure laid down under the said section, proposed to be omitted from date of its inception.

4.0 Key proposals in Indirect Tax

4.1 Positive proposals / impact

- Section 16(4) of the CGST Act is being amended to provide for an extended time for availment of ITC to a financial year upto 30th day of November of the following financial year or furnishing of relevant annual return, whichever is earlier. Prior to amendment, for any financial year, no input tax credit could be availed beyond the due date of filing the Form GSTR – 3B pertaining to the September month immediately succeeding the end of the financial year.

- Section 34(2) and 39 of the CGST Act is being amended to provide for an extended time for issuance of credit notes in respect of any supply made in a financial year and making rectification of error in GST returns. The same has been extended upto 30th day of November of the following financial year or furnishing of relevant annual return, whichever is earlier. Prior to amendment, no credit note with impact of GST could be issued or rectification of errors could be made for any financial year beyond due date of the return for the month of September following the end of the financial year.

- Amendment made in section 49 of the CGST Act to allow the transfer of amount available in electronic cash ledger (IGST and CGST) of a registered person to the electronic cash ledger under the CGST Act or the IGST Act of a distinct person. By distinct person we refer to persons having the same PAN but different GST numbers.

4.2 Negative proposal / impact

- Restriction on claim of input tax credit on provisional basis and maximum permissible claim shall be to the extent supplier has reported the supplies and the same is communicated to the recipient.

5.0 Prior to the announcement of the Budget 2022, the real estate industry was expecting relief on the following matters, which were missed out in the Budget proposals:

5.1 Rationalizing the provision of Section 23(5) pertaining to notional taxation

In accordance with section 23(5) of the IT Act, the property held as stock in trade, if remaining unsold for more than 2 years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, would be taxed on notional basis under the head income from house property.

Such notional taxation provision is extremely detrimental to such developers and builders who have been unable to sell their stock due to the sluggish demand in the pandemic economic impact and persons moving back to their hometowns. The developers incur costs of holding the property even when the property is not sold and subjecting such property to notional tax is extremely harsh. Thus, there was an expectation that either such provision may be done away with or alternatively, the period of 2 years may be increased to at least 5 years. However, no relief has been provided in this respect.

5.2 Extension of the Tax Holiday under section 80IBA

Deduction under section 80IBA is one of the major tax benefits provided by the government in order to encourage developers in affordable housing sector. The developers and builder fulfilling the necessary conditions can claim exemption on 100% of the profits derived from such construction project.

The exemption under section 80-IBA of the IT Act is restricted to such projects which are approved between 1 June 2016 to 31 Match 2022. There is no doubt that affordable housing initiative has been a path breaking initiative of the government having huge social impact and has provided much needed housing for the poorer and lower income segment of the society. Considering that the operational restrictions imposed due to covid may cause delay in the administration procedure, such project approval time limit may be extended to 31st March 2024. However, while the time limit for new manufacturing companies have been extended, there is no extension of tax holiday under section 80IBA.

6.0 Comments

Overall, major policy reforms have been announced for the infrastructure industry in Budget 2022 with an eye on becoming a $5 trillion economy. The huge boost in the allocated public capital investment is a major positive for the infrastructure industry which will boost the demand for raw materials, employment, etc. leading to India leaving the COVID-19 scars far behind. However, the real estate industry has not got any booster measures and some of the expectations of the sector have not been met. Though, the recovery for the real estate industry has been quite good in the past few months, however, one would have expected some major announcements to make the recovery more remarkable.

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