

India Budget Update 2021-22 – MAIT

Private and confidential
February 2021



Union Budget updates : Direct Taxes

Key changes

Direct tax proposals

No change in tax rates

Type of company*	Income up to INR 10 million		Income above INR 10 million 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 FY19-20	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)	26%	15.6%	27.82%	16.69%	29.12%	17.47%
Domestic company: New manufacturing company (set up on or after 1 October 2019)	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%

*Tax rates are subject to prescribed conditions to be met by the company

Direct tax proposals

Clarifications *re* Equalisation Levy

- Consideration received/receivable for e-commerce supply or services **shall not include consideration which are taxable as royalty or fees for technical services** in India
- Online sale of goods and online provision of services shall include one or more of the following activities taking place online:
 - (a) Acceptance of offer for sale;
 - (b) Placing the purchase order;
 - (c) Acceptance of the Purchase order;
 - (d) Payment of consideration; or
 - (e) Supply of goods or provision of services, partly or wholly
- Consideration received or receivable from e-commerce supply or services to include:
 - (i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and
 - (ii) consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator
- Income-tax exemption to apply for the e-commerce supply or services made or provided or facilitated on or after 1 April 2020
- Amendments effective retrospectively from 1 April 2020

Direct tax proposals

Mergers and acquisitions

Depreciation on goodwill

- Amendments have been proposed that **goodwill of business or profession would not be considered as a 'depreciable asset'** and no depreciation would be allowed on goodwill as an asset effective AY 2021-22
- By this amendment, the Apex Court ruling in case of Smiff Securities Limited holding that goodwill is a depreciable asset has been overruled
- In a case where goodwill is purchased by an assessee, such goodwill will be regarded as asset for the taxpayer and the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the IT Act. Depreciation already claimed on goodwill prior to AY 2021-22 would be reduced from cost of acquisition
- The amendment has been made effective AY 2021-22 and hence, it is applicable to current financial year as well

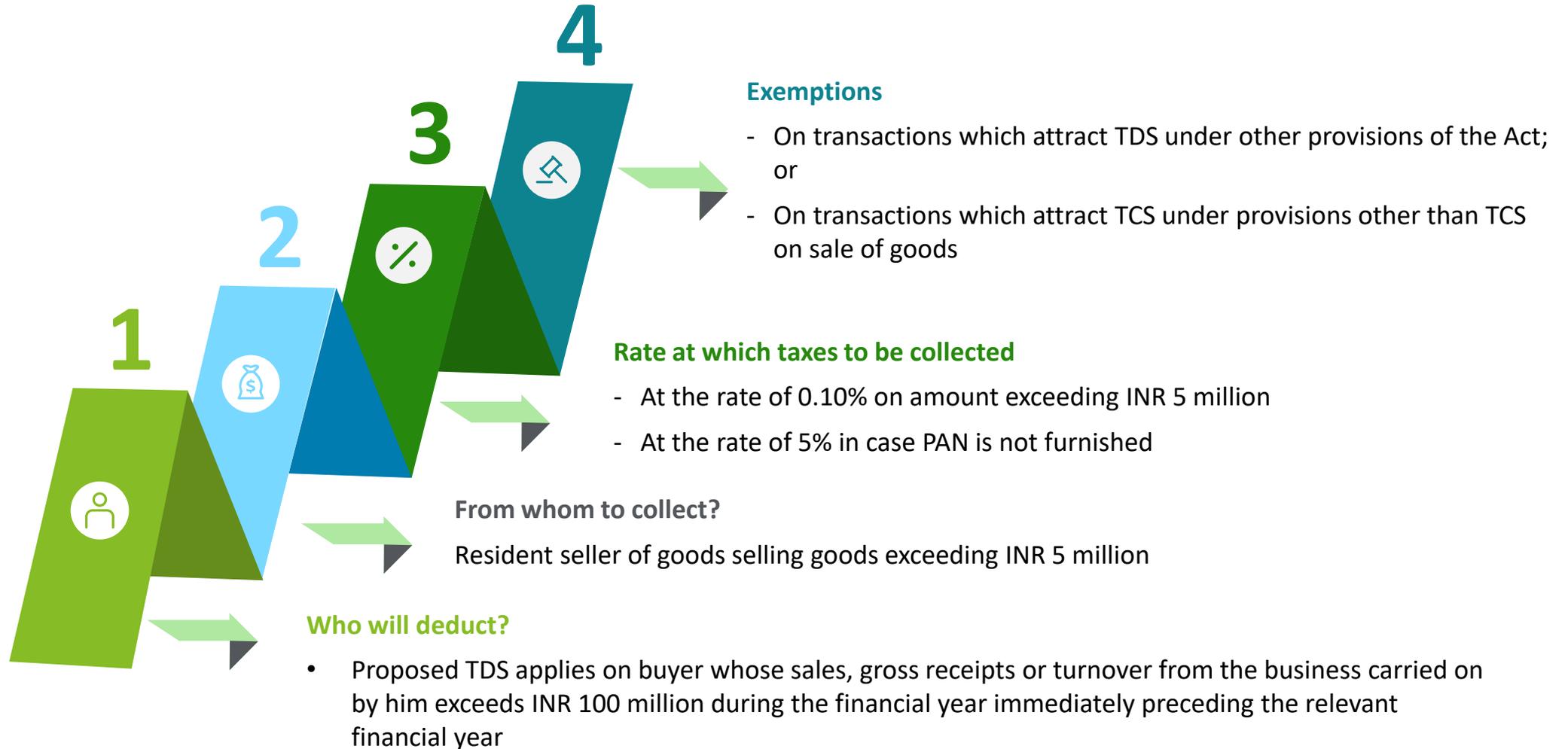
Slump exchange

- Effective AY 2021-22, the definition of **'Slump Sale' is widened to include all types of transfers** as defined in section 2(47) of the IT Act. This proposal impacts transactions of 'slump exchange' which emerged as a more tax efficient (and blessed by courts) to spin-off business undertakings in a group restructuring

Direct tax proposals

TDS on purchase of goods

Budget proposes to introduce TDS on purchase of goods, wef from 1 July 2021



Direct tax proposals

Reassessment

- Entire concept of re-assessment revamped; **concept of 'reason to believe' dropped**
- Reopening to happen only if AO is in possession of information, which suggests that the income chargeable to tax has escaped assessment
- Information suggesting that income chargeable to tax has escaped includes:
 - Any information flagged in line with the risk management strategy formulated by the CBDT
 - Any final audit objection raised by CAG
- **Time limit to re-open reduced to 3 years; time limit is 10 years** where AO has books of account or other documents or evidence revealing that income, represented in the form of asset, has escaped assessment of INR 5 million or more

Direct tax proposals

Litigation rationalization

Board for Advance Ruling

- AAR was non-functional for substantial time because of non-availability of eligible person to fill the post of Chairman and Vice Chairman
- AAR is being replaced by one or more BFAR each comprising of two members not below the rank of Chief Commissioner
- The Government has retained an option to allow faceless functioning of BFAR
- BFAR orders are appealable, strict deadlines
 - Appeal can be filed within 60 days;
 - High Court allowed power to extend it by another 30 days

Dispute Resolution Committee

- For eligible small taxpayers, a new voluntary mechanism is being activated
- Returned income below INR 5 million; and variation in income less than INR 1 million
- Other disqualifications mentioned
- Committee has powers to reduce or waive penalty, grant immunity from prosecution
- Faceless scheme for this committee may be notified

Faceless Tribunal Appeals

- Faceless scheme may be notified on or before 31 March 2023
- All communication shall be electronic
- Where personal hearing is needed, it shall be done through video-conferencing
- Optimization of resources and achieve functional specialization

Settlement commission scrapped

- Effective 1 February 2021, Settlement commission disbanded
- Pending applications to be cleared by Interim Board
- Faceless scheme may be notified

Direct tax proposals

Higher TDS/TCS prescribed for non-filers of income-tax returns

- Currently, there is a higher rate of TDS/TCS prescribed for non-furnishing of PAN
- In addition to above, to ensure filing return of income, higher TDS / TCS rates are proposed in case of specified persons as under:

Particulars	TDS	TCS
A. At twice the rate specified in the relevant provision of the Act	Higher of the A or B or C	Higher of the A or B
B. At the rate of 5 percent		
C. At twice the rate or rates in force		Not Applicable

- Specified person being:
 - Person who has not filed ROI for two immediate years preceding the year in which tax is required be deducted/collected;
 - Time limit to file ROI under section 139(1) for the aforementioned period has expired;
 - Aggregate of TDS and TCS exceeds INR 0.05 Million in each of two preceding years; and
 - Excludes non-resident not having a PE in India
- If the specified person does not furnish PAN, aforementioned rate or rate prescribed for non-furnishing of PAN, whichever is higher, shall apply

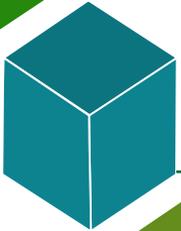
These amendments will apply from 1 July 2021

Direct tax proposals

Other amendments (1/2)



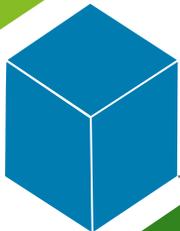
- **Belated or revised return to be filed within nine months** (at present 12 months) after the end of the FY, or before the completion of assessment, whichever is earlier



- **Time limit reduced for processing tax returns to nine months** from the end of year in which tax return is filed



- **Time limit lowered for initiating an assessment** to three months from the end of the year in which return of income is filed



- **Time limit is reduced for the completion of assessment proceedings** to 21 months from the end of the FY for tax returns filed for FY20-21 and onwards



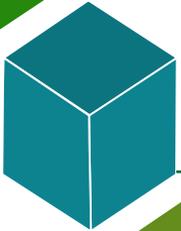
- **Tax Audit threshold increased** from Rs 50 million to Rs 100 million for taxpayers having 95 percent transactions in digital form

Direct tax proposals

Other amendments (2/2)



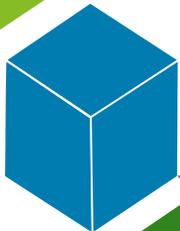
- Advance tax liability for dividend income in the hands of shareholder to arise only after declaration of dividend (as it is difficult to estimate dividend income and pay quarterly advance tax all through the year)



- Term '**liable to tax**' has been specifically defined to mean that in relation to a person, there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided



- Presumptive taxation on professional services shall only be applicable to individuals, HUF, and firms (not LLPs)



- MAT provisions rationalised for dividend income and secondary adjustments / APA



- An **employee's contribution to welfare funds**, which is deemed to be an employer's income, will be tax **deductible only if such sum is credited to the relevant fund on or before the prescribed due date** per the law. A deduction for such contribution will not be available on a payment basis



Union Budget updates : Indirect Taxes





Customs budget updates



IT / Electronics sector

Customs

Union Budget – Salient takeaways - IT & Electronics sector

- Finance Minister Nirmala Sitharaman statement with respect to 'Electronic and Mobile Phone Industry':

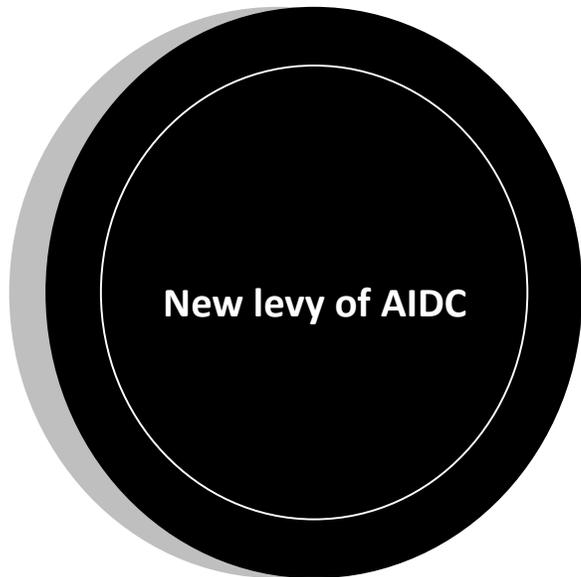
'Domestic electronic manufacturing has grown rapidly. We are now exporting items like mobiles and chargers. For greater domestic value addition, we are withdrawing a few exemptions on parts of chargers and sub-parts of mobiles. Further, some parts of mobiles will move from 'nil' rate to a moderate 2.5%'

- Changes are in line with Govt.'s initiative of '**make in India**' as one of the key focus areas - by way of increase in duties on those products/components so that there is a push for manufacture in India
- Move is expected to encourage setting-up of an entire ecosystem of mobile manufacturing within India and encourage indigenous manufacturing - increase in cost for manufacturers on short term basis which may impact pricing
- Key components such as PCB assembly, camera module, connectors etc. will now attract higher duty
- Wider debate as to whether such rate increase is in **violation of ITA**, to which India is a signatory

Customs

IT & Electronics sector - BCD increase – Mobile components, electricals and electronics

Description	W.e.f	From	To	
Inputs and raw material of Base stations & other machine for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus	02 February 2021	Nil	Applicable rate	
Inputs or raw materials (other than Lithium-Ion Cell and PCBA) for use in manufacture of Lithium-ion battery and battery pack			2.5%	
Inputs or raw materials (other than PCBA and moulded plastics) for use in the manufacture of charger or adapter of cellular mobile phone			10%	
Inputs or parts of Printed Circuit Board Assembly and moulded plastics of charger or adapter of cellular mobile phones			10%	
Parts & Inputs used in the manufacture of LED lights and fixtures including LED Lamps			5%	10%
Electrical cables including insulated Wires & cables (Except for ignition wiring used in vehicles, USB cable and optical fiber cable)			7.5%	10%
PCBA of charger or adapter and moulded Plastics of charger or adapter			10%	15%
Metal Shield, Camera Lens and specified inputs or raw materials for use in manufacture of cellular mobile phones	01 April 2021	Nil	Applicable rate	
Specified inputs/parts for manufacture of PCBA, Camera Module, connectors, wired headset, USB Cable, microphone and receiver, etc. of mobile phones			2.5%	
Inputs, parts or sub-parts for use in manufacture of PCBA of Lithium-ion battery and battery pack			2.5%	
Inputs or raw material for use in manufacture machines capable of connecting to an automatic data processing machine, Ink Cartridge			2.5%	



-  A new levy - 'Agriculture Infrastructure and Development Cess' has been imposed on goods specified in First Schedule to Customs Tariff Act 1975, not exceeding rate of BCD
-  AIDC is aimed to finance the agriculture infrastructure and other development expenditure
-  AIDC has been notified on specified goods falling under headings 0713 to 7108 at rate 2.5 percent to 100 percent. Consequent reduction in BCD rates has been made, to keep the tax burden same
-  AIDC to be calculated on transaction value similar to BCD.
-  Goods imported availing customs duty exemptions under FTA, or under advance authorization schemes or by EOUs are being exempted from AIDC
-  SWS to be levied on AIDC, except in specified cases



Customs – Legislative changes

Customs (1/2)

Key legislative changes

Mandatory filing of bill of entry in advance i.e., before the date of arrival of conveyance in order to facilitate faster clearance (for facilitating faceless assessment) *w.e.f date of Finance Act, 2021*

Mandatory time limit of two years prescribed for completion of proceedings under Customs Act which shall be computed from the date of initiation of audit, search, seizure or summons etc. – *To be notified. However, two years time limit for existing conditional exemption to be determined from February 1, 2021*

Introduction of common Customs Electronic Portal similar to GST portal

- Such portal to facilitate registration, filing of bill of entry, shipping bill, other documents and forms, payment of duty etc by importer/exporter
- Allows tax officers to services order, summons, notice or any other communication by making it available on the common portal

All conditional exemptions , unless otherwise provided shall now be valid only till 31st March falling immediately two years after the date of such exemption – *Effective date to be notified*

Changes proposed in Schedule I of the Customs Tariff Act to align with the HSN 2022, proposing 351 amendments to the existing harmonized nomenclature - *w.e.f January 1, 2022*

Customs (Import of Concessional Rate of Duty) Rules, 2017 amended with *effect from 02 February 2021:*

- Job-work of the materials (except gold, jewellery and precious metals) imported under concessional rate of duty allowed
- 100% out-sourcing for manufacture of goods on job-work allowed
- Imported capital goods can be used for specified purpose on payment of differential duty, along interest on depreciated value

Customs (2/2)

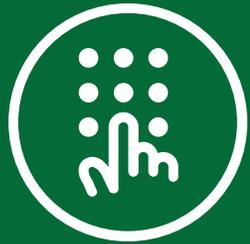
Key legislative changes



Powers to confiscate the goods entered for exportation in case the same are under wrong claim of remission/refund of duty/tax –
w.e.f date of Finance Act, 2021



A penalty 'up to five times of the refund claim', in case of fraudulent utilization of ITC of GST, for discharging tax on export of goods under claim of GST refund - *w.e.f date of Finance Act, 2021*



GST – Legislative changes

Key legislative changes

Additional restrictions on ITC availment: ITC availment allowed only on the details of invoice/debit note being furnished by the supplier in his tax returns and the details of the same have been communicated to recipient - *Effective date to be notified*

Amendment brought in to limit charging of interest only on net cash liability to be retro-prospective in nature – *w.e.f July 1, 2017*

Key amendments in relation to proceeding on detention of in-transit goods/conveyances (*Effective date to be notified*):

- Option of provisional release of goods upon furnishing of bond/security done away with
- Powers granted to GST officials to sell/dispose off goods to recover unpaid penalties
- Mandatory pre-deposit equivalent to 25% of penalty levied for filing an appeal against the order passed by the officer
- Increase in rate of taxes and penalties

Mandatory requirement of certification of Annual Return (Form GSTR 9C) by Chartered Accountant done away with. *CBIC clarified provision relating to CA certification would continue to apply for FY 19-20 - Effective date to be notified*

Tax liability reported in Form GSTR 1 but not forming part of Form GSTR 3B to be considered as self assessed tax liable for recovery under the GST laws - *Effective date to be notified*

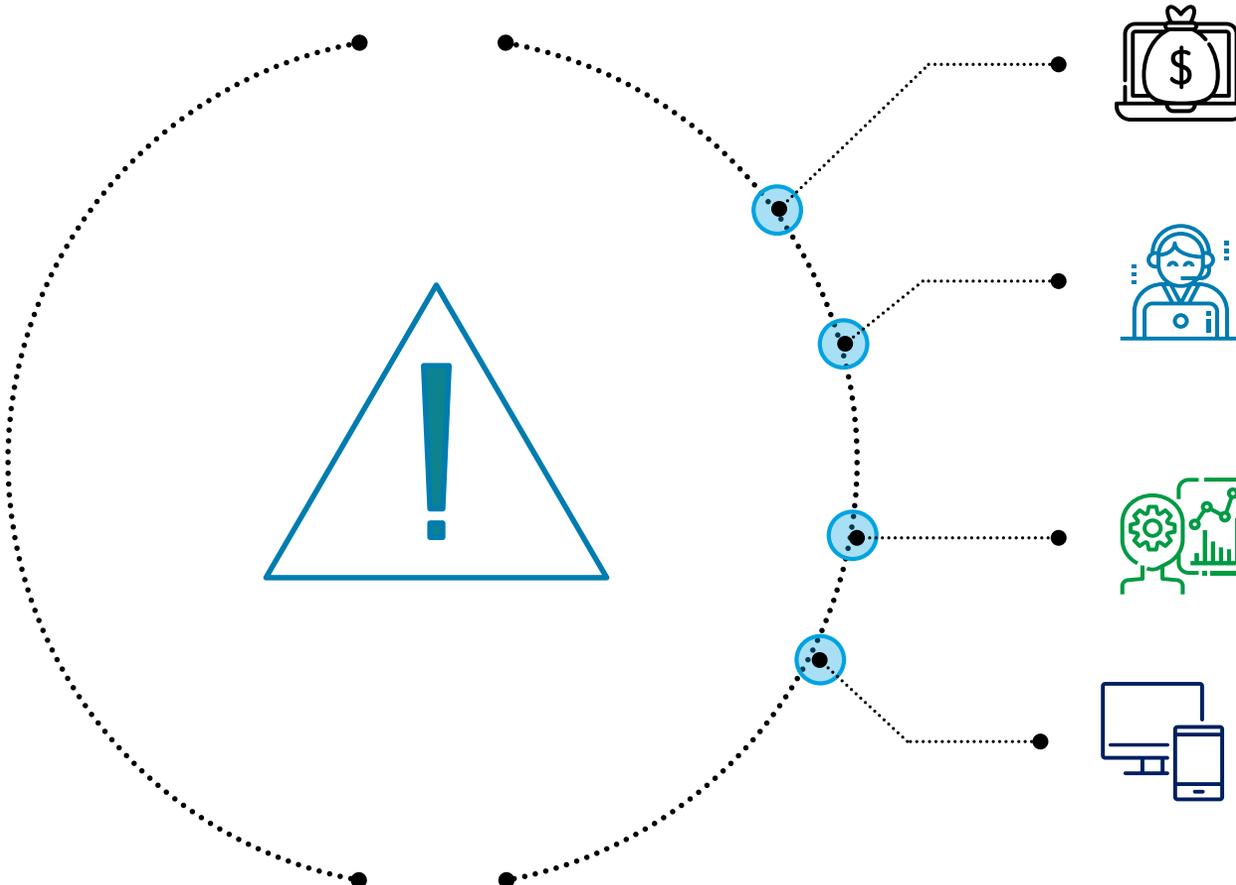
Export with payment of taxes restricted to specified goods and services. Zero rated refund for goods under LUT to be repaid if proceeds are not realized within time prescribed under FEMA, 1999 - *Effective date to be notified*



Business Intelligence and Fraud Analytics Tools

Business Intelligence and Fraud Analytics Tool (BIFA)

An AI based GSTN tool to highlight discrepancies in taxpayers' furnishings and improve tax compliance.



Objective

- Detection of tax evasion
- Statistical insights for policymakers
- Revenue Assurance

Date Source for the Solution

- Registrations, returns, payments, refunds
- Enforcement (raid/survey) and audits

Focus Areas

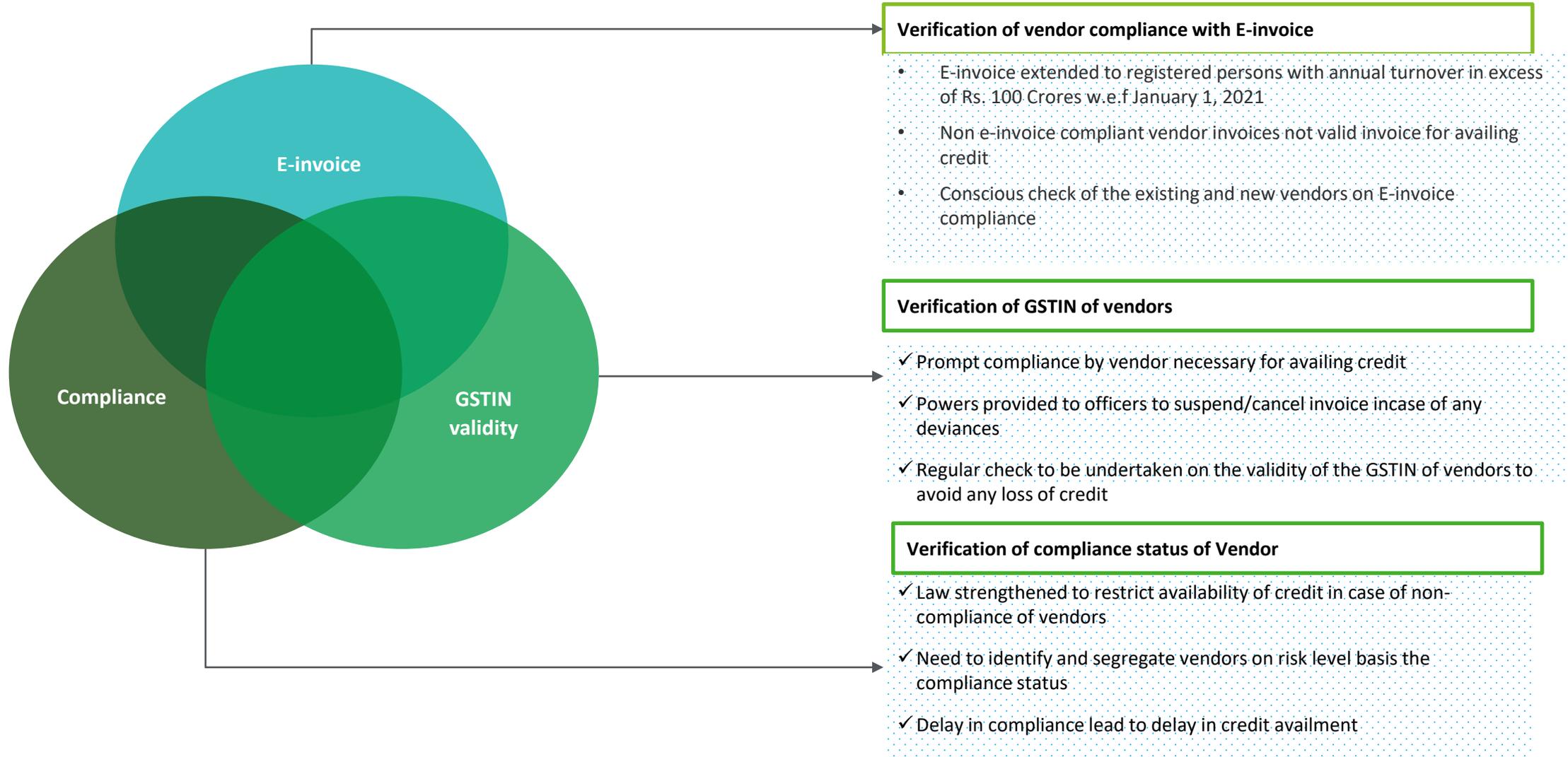
- Gap in data furnished by taxpayers – variance analysis
- Anomaly Detection – find outliers
- Mapping of risk score – registration, refund and overall risk
- Network detection – entire supply chain and related party analysis

Mitigation Strategy

- Robust and reconciled backup of details furnished and time series analysis
- Periodic health-check required to monitor transactions and variances
- Possible parameters
 - ✓ Status of GSTIN (inactive or active)
 - ✓ GSTR1 /GSTR3B Filing: Regularity and filing of both returns
 - ✓ Difference of ITC as per PR and GSTR-2A vendor
 - ✓ Data as filed in GSTR1 and GSTR3B (**with vendor's consent**)

Business Intelligence and Fraud Analytics Tool (BIFA)

Impact on AP processing

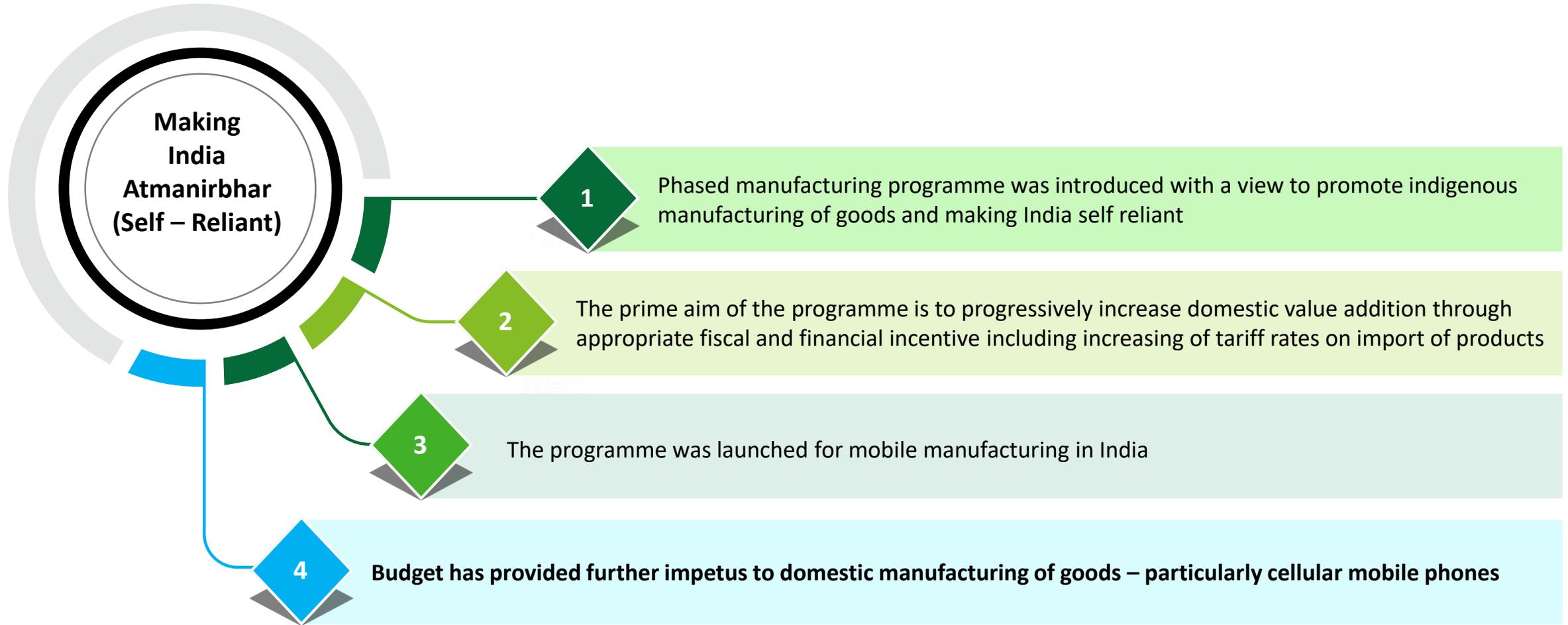




Annexure - PMP

Customs

Phased Manufacturing Programme ('PMP')



Customs

Phased Manufacturing Programme ('PMP')

In April 2016, Government notified implementation of Phased Manufacturing Plan (PMP) for cellular mobile phone and related sub-assembly, to increase value addition in India. PMP was planned to be extended to parts/sub parts/inputs of aforesaid assemblies as below, over period of time:

Year	Sub-Assembly	As a % of cost	Status
2016-17	(i) Charger/ Adapter (ii) Battery Pack (iii) Wired Handset	5-10%	Implemented
2017-18	(iv) Mechanics (v) Die Cut Parts (vi) Microphone and receiver (vii) Keypad (viii) USB Cable	5-10%	Implemented
2018-19	(ix) Printed Circuit Board Assembly (x) Camera Module (xi) Connectors	55-65%	Implemented
2019-20	(xii) Display assembly (xiii) Touch panel/Cover Glass Assembly (xiv) Vibrator Motor/ Ringer	20-25%	Implemented

In this budget, BCD of 2.5-10% has been levied on raw material/ inputs of various sub parts



Q & A



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