



**SINGH & ASSOCIATES**

Founder - Manoj K. Singh

**ADVOCATES & SOLICITORS**

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## EDITORIAL



**Manoj K. Singh**  
Founding Partner

With immense pleasure we share with you this issue of our Newsletter "Indian Legal Impetus". I, for myself and on behalf of the team, thank you for your overwhelming response and support to our effort. Your support and inputs helps us immensely to make the newsletter better and continue to publish the newsletter.

In case you missed the Budget, a round-up has been provided in this issue. Affirming that the economy is right on track, Finance Minister Mr. Arun Jaitley presented the Union Budget for 2016-17. The Budget Analysis includes information on the taxation regime divided into direct taxes and indirect tax along with new tax proposals and policy announcements. It also includes Government's announcements made for Start Ups by providing various tax incentives.

Further, the newsbyte section of this issue briefly discusses recent updates including benefits of the India-UK DTAA to UK Partnership Firms, White Category of Industries announced by the MoE, 100% FDI allowed in Marketing of Food Products, FSSAI action against companies regarding strict norms of Nutraceuticals launched after 2011, CCI threshold limit for deal approvals w.r.t. M&A, IT Returns for AY 2016-17, regulatory relaxations for Start-Ups in India, updates from SEBI, amendments to Capital Debt Restructuring.

We hope this issue also helps us in further achieving our objective of making you understand the laws and recent legal developments in India. We welcome all suggestions and comments for our newsletter and hope that the valuable insights provided by our readers would make "Indian Legal Inputs" a valuable reference point and possession for all. You may send your suggestions, opinions, queries or comments to [newsletter@singhassociates.in](mailto:newsletter@singhassociates.in)

Thank you.



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# KEY HIGHLIGHTS OF THE UNION BUDGET FOR THE YEAR 2016-17

Corporate & Tax Practice Group

## A DIRECT TAXATION:

### 1 INDIVIDUALS / NON CORPORATE TAXATION

#### 1.1 Tax Slab For The Financial Year 2016-17

There is no change in the Tax slab for the financial year 2016-17 for individuals (including senior and super senior citizens), Hindu Undivided Family (HUF), co-operative societies, firms and Local Authorities.

#### 1.2 Increase in Surcharge on income over Rs. 1 Crore

Surcharge on income above Rs. 1 Crore increased from existing 12% to 15% on persons, other than companies, firms and cooperative societies.

#### 1.3 Additional Rebate under Section 87A

1.3.1 Additional rebate for Rs. 3,000 has been proposed under section 87A<sup>1</sup> of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for the individuals having income upto Rs. 5 lakhs.

1.3.2 This is in addition to existing rebate of Rs. 2,000. Thus, any assessee having income less than Rs. 5 Lakh may now claim a total rebate of Rs. 5,000 under section 87A.

#### 1.4 Increase in the limit of deduction of rent paid under section 80GG

The limit of deduction of rent paid for

assessee who lives in rented houses has been increased from existing Rs. 24,000 to Rs. 60,000 per annum under section 80GG<sup>2</sup> of the Act.

#### 1.5 Deduction of additional interest on housing loan

1.5.1 An additional deduction of Rs. 50,000 per annum has been proposed on account of interest paid on housing loans sanctioned in the year 2016-17 for the first time buyers.

1.5.2 This is applicable for the loans amounting upto Rs. 35 Lakhs and the value of such house for which loan taken should not be more than Rs. 50 Lakhs.

#### 1.6 Increase of Turnover Limit Under Presumptive Taxation Scheme (PTS)

1.6.1 The limit of turnover under the Presumptive Taxation Scheme (PTS) under section 44AD<sup>3</sup> of the Act has been increased from existing Rs. 1 Crore to Rs. 2 Crore.

1.6.2 For the first time, the PTS has been extended to include Professionals having gross receipts upto Rs. 50 Lakhs. However, the deemed amount of profit for such professionals under PTS would be 50% of the gross receipts.

#### 1.7 Changes in the rate of Tax Deduction at Source (TDS)

1.7.1 TDS at rate of 1% has been proposed on purchase of luxury cars costing more than Rs. 10 Lakhs.

<sup>1</sup> Section 87A - Rebate of income-tax in case of certain individuals

<sup>2</sup> Deductions in respect of rents paid

<sup>3</sup> Special provision for computing profits and gains of business on presumptive basis



1.7.2 TDS at the rate of 1% on purchase of goods and services by cash exceeding Rs. 2 Lakhs has been proposed.

1.7.3 Higher rate of TDS would not apply to non residents not having Permanent Account Number (PAN) in India. However, some alternate documents to PAN card are required to be provided by such non residents to avoid higher TDS.

**1.8 Additional Tax on Dividend**

Additional tax at the rate of 10% has been proposed on the persons receiving dividend exceeding Rs. 10 Lakhs per annum.

**1.9 Increase in Securities Transactions Tax (STT) rate**

Rate of STT on options transactions proposed to be increased from existing 0.017% to 0.5%.

**1.10 Exemption of Tax under Sovereign Gold Bond Scheme, 2015**

Exemption from capital gain is proposed on any redemption of Sovereign Gold Bond under the Sovereign Gold Bond Scheme, 2015. Further, indexation benefits to long term capital gains arising on transfer of Sovereign Gold Bond is also proposed to be provided.

**1.11 Exemption of Tax for Rupee Denominated Bond**

Exemption is proposed to be provided to non-resident investors on capital gains arising in case of appreciation of rupee between the date of issue and the date of redemption of Rupee Denominated Bonds against the foreign currency in which the investment is made.

**1.12 Change in Schedule of Advance Tax Payment**

1.12.1 It is proposed to change the schedule of advance tax payment for the taxpayers other than companies to bring the same in line with that of companies. Accordingly, the new schedule of advance tax payment for individuals, firms, AOP's, BOI's, trusts etc. shall be as under:

No. of Installment	Due date	Percentage of Advance Tax
1	15 <sup>th</sup> June	15%
2	15 <sup>th</sup> September	45%
3	15 <sup>th</sup> December	75%
4	15 <sup>th</sup> March	100%

**1.13 Disclosure of unaccounted money**

1.13.1 Income Disclosure Scheme has been introduced for disclosure of unaccounted money by any assessee with an option to pay tax at the rate of 30% plus surcharge at the rate of 7.5% and penalty totaling to 45%.

1.13.2 Under the said scheme amount of tax shall be payable within 2 months from the date of declarations.

1.13.3 The assessee shall have immunity from any prosecution under the said scheme.

**2 CORPORATE TAXATION:**

**2.1 Benefits to New Manufacturing Companies**

An option to be taxed at 25% plus surcharge and cess to be given to new manufacturing companies incorporated on or after 01.03.2016 provided such companies do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.

**2.2 Lower Corporate Tax Rate for Small Companies**





It has been proposed to lower the corporate tax rate to 29% plus surcharge and cess for relatively small companies having turnover not exceeding Rs. 5 Crores in the financial year ending March 2015. This lower rate would be applicable from the next financial year.

### 2.3 Deduction to Startups

100% deduction of profits for 3 out of 5 years to be provided to startups who have started their setups during the period April 2016 to March 2019. However, the provisions of Minimum Alternate Tax (MAT) would be applicable to such startups.

### 2.4 Deductions and Exemptions to undertakings in housing projects

2.4.1 To promote affordable housing it is proposed to provide 100% deductions for profits to undertakings in housing project for flats upto 30 square meters in four metro cities and upto 60 square meters in other cities subject to condition that such housing projects must be approved during the period June 2016 to March 2019 and completed in three years.

2.4.2 The provisions of Minimum Alternate Tax (MAT) would be applicable to such startups.

2.4.3 It is also proposed to provide exemption from service tax on construction of affordable houses upto 60 square meters under any scheme of Central / State Government including PPP Scheme.

### 2.5 No Dividend Distribution Tax for Real Estate Investment Trusts (REIT) and Infrastructure Investment Trusts (InvIT)

Any amount of dividend distributed by Special Purpose Vehicles (SPVs) to the REITs and InvITs would not be subject to Dividend Distribution Tax (DDT) subject to condition that:

- (i) Such SPVs must be 100% owned by REIT and InvIT; and
- (ii) Such amount of dividend should be paid out of current income and not from accumulated income.

### 2.6 Deferment of Place of Effective Man-

### agement ('POEM')

The criteria to determine residential status of a foreign company in India as per Place of Effective Management ('POEM') rule has been proposed to be deferred by one year and accordingly, it is proposed to be implemented in 2017-18.

### 2.7 To Phase out some deductions and exemptions under the Income Tax:

It is proposed to phase out some deduction and/or exemptions under the Income Tax as under:

- (i) Accelerated depreciation as per Section 32 of the Act, restricted to maximum 40% from 01.04.2017.
- (ii) Weighted deduction on research and development activities as per Section 35 restricted to 150% from 01.04.2017 and 100% from 01.04.2020.
- (iii) Weighted deduction for specified businesses as per Section 35AD of the Act restricted to 100% only from 2017-18.
- (iv) Weighted deduction for skill development under section 35CCD of the Act will continue upto 01.04.2020.
- (v) Benefits of deductions as per section 10AA of the Act will be available to newly set up special economic zone units commencing activity before 31.03.2020.

### 2.8 Taxation Regime for Securitization Trust/ Asset Reconstruction Companies and Their Investors

For the purpose of rationalization of the tax regime for Securitization Trust/ Asset Reconstruction Companies and their investors, it has been proposed that:

- (i) The income of securitization trust including an ARC shall be exempt.
- (ii) However, income distributed or deemed to be distributed shall be taxable in the hands of the investors. The income accrued or received from the securitization trust shall be taxable in the hands of investor in the same



manner and to the same extent as it would have happened had investor made investment directly in the underlying assets and not through the trust.

(iii) Withholding Tax shall be applicable at the rate of 25% in case of payment to resident investors which are individual or HUF and at the rate of 30% in case of others. In case of payments to non-resident investors, the tax shall be withheld at rates in force.

(iv) The new regime shall apply to securitization trust being an SPV defined under SEBI (Public Offer and Listing of Securitized Debt Instrument) Regulations, 2008 or SPV as defined in the guidelines on securitization of standard assets issued by RBI or being setup by a securitization company or a reconstruction company in accordance with the SARFAESI Act.

(v) The new tax regime shall be applicable with effect from 01.06. 2016.

## 2.9 New Dispute Resolution Scheme

2.9.1 It is proposed to introduce the Direct Tax Dispute Resolution Scheme, 2016 ('the Scheme') for resolution of tax disputes/ appeals pending before the CIT(A) in an instant manner. As per scheme, it is proposed that there should not be any penalty in respect of cases with disputed tax up to Rs. 10 Lakh. In respect of cases with disputed tax exceeding Rs. 10 lakh should be subjected to 25% of the minimum of the imposable penalty. Further, any pending appeal against a penalty order can also be settled by paying 25% of the minimum of the imposable penalty and tax interest on quantum addition.

2.9.2 The scheme also provides for instant resolution of matters arising due to retrospective amendment in tax laws as per the new Dispute Resolution Scheme, tax matters arising due to retrospective amendment can be settled instantly by filing of a declaration in prescribed form and manner and payment of tax arrears.

## 2.10 Introduction of Tax Amnesty Scheme for Undisclosed Income and Assets Located within India

2.10.1 It is proposed to introduce a Tax Amnesty Scheme providing an opportunity to the persons who have not paid full taxes in the past tax years to come forward and declare the undisclosed income/assets and pay tax, surcharge and penalty totaling 45% of such undisclosed income declared and such income represented in the form of any asset. Further it is also proposed that the declarants will have immunity from prosecution.

## 2.11 Lower tax rate on income from patents registered in India

2.11.1 It is proposed to charge tax at the rate of 10% on the income generated from worldwide exploitation of patents developed and registered in India by a person resident in India.

## 2.12 Miscellaneous

2.12.1 It is proposed that assessing officer mandatorily grant stay of demand in case the assessee pays 15% of the disputed demand, while the appeal is pending before the Commissioner of Income-Tax (Appeal).

2.12.2 It is proposed to increase the monetary limit from Rs. 15 Lakhs to Rs. 50 Lakhs for deciding an appeal by a single member Bench of ITAT.

## B. INDIRECT TAXATION

### 1. SERVICE TAX:

#### 1.1 Rate of Service Tax Increased

1.1.1 The rate of service tax is proposed to be increased from existing 14.5% (including Swacch Bharat Cess of 0.5%) to 15% by incorporating a new levy of Krishi Kalyan Cess of 0.5%.

#### 1.2 Broadening of Tax Base

1.2.1 Certain service tax exemptions withdrawn as per details below:

(i) Exemption withdrawn and service tax to be levied under forward charge, with effect from 01.04.2016 on services provided by a Senior Advocate to an advocate or firm of advocates and a person represented on an arbitral tribunal to an arbitral tribunal.





(ii) Exemption on construction, erection, commissioning or installation of original works pertaining to monorail or metro in respect of contracts entered into on or after 01.03.2016.

(iii) Exemption on transport of passengers by ropeway, cable car, aerial tramway or air conditioned stage carriage.

(iv) Abatement on shifting of used household goods by a Goods Transport Agency is being rationalized at the rate of 60%, without input tax credit, with effect from 01.04.2016.

### 1.3 Exemptions for Service Tax

1.3.1 It is proposed to provide exemption from levy of service tax on the following services:

(i) Services provided by National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer's welfare, Government of India, by way of knowledge dissemination;

(ii) Service of housing projects under specified housing schemes (i.e. construction of affordable houses up to 60 square metres under any scheme of the Central or State Government including PPP Schemes);

(iii) Service of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India ('PFRDA');

(iv) Services provided by Employees' Provident Fund Organisation ('EPFO') to employees;

(v) Services provided by Insurance Regulatory and Development Authority (IRDA);

(vi) Regulatory services provided by Securities and Exchange Board of India (SEBI);

(vii) Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship;

(viii) Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Manage-

ment (PGPM) (other than executive development programme), Integrated Programme in Management and Fellowship Programme in Management (FPM);

(ix) Services provided under Deen Dayal Upadhyay Grameen Kaushalya Yojana and services provided by Assessing Bodies empanelled by Ministry of Skill Development & Entrepreneurship;

(x) General insurance services provided under 'Niramaya' Health Insurance Scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability.

### 1.4 Scheme for Settlement of Pending Cases Relating to Service Tax

It is proposed to provide a scheme of settlement to settle cases pending before Commissioner (Appeals) on filing of prescribed declaration by taxpayers and payment of disputed tax and interest along with 25% of minimum penalty applicable thereupon.

### 1.5 Assignment of spectrum and subsequent transfers thereof declared as service

Assignment of right to use the spectrum and its transfers proposed to be declared as a service leviable to service tax and not sale of intangible goods. Accordingly, sales tax/ VAT would not be applicable on such sale or transfer.

### 1.6 Limitation Period for Issuing Demand Notices Increased

The limitation period for issuing demand notices by the Service Tax Department has been proposed to be increased from 18 months to 30 months for short levy/ non levy/ short payment/ non-payment/ erroneous refund of Service Tax.

### 1.7 Increase of monetary limit for launching prosecution in service tax laws

The monetary limit for launching prosecution is proposed to be increased to Rs. 2 Crores of service tax evasion and the power to arrest being restricted only to situations where the tax payer has collected the tax but not deposited the same to the exchequer above a certain



threshold of Rs. 2 Crores.

## 2. EXCISE:

### 2.1 No change in the standard rate of excise

2.1.1 There is no change in the standard rate of excise and it remains at 12.5%.

### 2.2 Increase in the time limit for issue of show cause notice

2.2.1 It is proposed to increase the time limit for issue of show cause notices in cases not involving fraud, suppression of facts, willful misstatement, etc. from 1 year to 2 years.

### 2.3 Amendments in The Central Excise Act, 1944

2.3.1 Following changes/amendments has been proposed in the Central Excise Act, 1944:

(i) Amendment of Section 5A to omit the requirement of publishing and offering for sale on the date of issue, by the Directorate of Publicity and Public Relations of CBEC, of notifications issued for publication in the Official Gazette.

(ii) Amendment of Section 11A to increase the limitation period from one to two years in cases not involving fraud, suppression, etc.

(iii) Amendment of Section 37B to empower the Board for implementation of any other provision of the said Act in addition to the power to issue orders, instructions and directions.

(iv) Amendments in the Third Schedule to the Central Excise Act, 1944 to include therein:

a) All goods falling under heading 3401 and 3402;

b) Aluminum foils of a thickness not exceeding 0.2 mm;

c) Wrist wearable devices (commonly known as 'smart watches'); and

d) Accessories of motor vehicle and certain other specified goods.

## 3. CUSTOMS:

### 3.1 No change in the Rate of Duty

3.1.1 The peak rate of Basic Custom Duty (BCD) remains unchanged at 10%.

### 3.2 Provisions for Deferred Payment of Custom Duty

3.2.1 The facility of deferred payment of custom duty to certain class of importers and exporters has been proposed to be provided in the Customs Act.

### 3.3 Implementation of Single Window Project

3.3.1 It proposed to implement Customs Single Window Project at major ports and airports starting from beginning of next financial year.

### 3.4 Introduction of The Baggage Rules, 2016

3.4.1 The Baggage Rules, 2016 is proposed to be introduced to substitute the existing Baggage Rules, 1998 to simplify and rationalize multiple slabs of duty free allowance available to various categories of passengers.

### 3.5 Amendments to the Customs Baggage Declaration Regulations, 2013

3.5.1 The Customs Baggage Declaration Regulations, 2013 is proposed to be amended to provide that baggage declaration will have to be filed only by passengers who carry dutiable or prohibited goods.

### 3.6 Uniform rate of interest for indirect taxes

3.6.1 It is proposed to levy a uniform rate of interest of 15% on all indirect taxes (Customs, Excise and Service Tax). However, a higher rate of interest of 24% shall be applicable where



service tax is collected but not deposited with the Government.

## C. POLICY ANNOUNCEMENT AND PROPOSALS

### 1. RURAL DEVELOPMENT

1.1 It is proposed to establish District Level Committees under Chairmanship of senior most Member of Parliament (Lok Sabha) from the district for monitoring and implementation of designated Central Sector and Centrally Sponsored Schemes for rural development.

1.2 A new Digital Literacy Mission Scheme is proposed for rural India to cover around INR 6 Crores additional household within the next 3 years.

### 2. EDUCATION AND SKILLS DEVELOPMENT

2.1 It is proposed to provide regulatory architecture to ten public and ten private institutions to facilitate them in emerging world-class Teaching and Research Institutions.

2.2 It is proposed to set up a National Board for Skill Development Certification by the Government in partnership with the various industry and academic institutions.

### 3. INFRASTRUCTURE AND INVESTMENT

3.1 It is proposed to make amendments in the Motor Vehicles Act for the purpose to open up the road transport sector in the passenger segment.

3.2 Reforms are proposed in the Foreign Direct Investment (FDI) Policy in the area of insurance and pension, Asset Reconstruction Companies, Stock Exchanges and Non Banking Financial Companies.

3.3 It is proposed to allow 100% FDI through approval route (FIPB approval) in marketing of food products produced and manufactured in India.

3.4 The Department of Disinvestment is proposed to be re-named as the "Department of Investment and Public Asset Management

(DIPAM)".

### 4. FINANCIAL SECTOR REFORMS

4.1 It is proposed to amend the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) to enable the sponsor of an Asset Reconstruction Company (ARC) to hold up to 100% stake in the ARC and permit non institutional investors to invest in Securitization Receipts.

4.2 It is proposed to get General Insurance Companies owned by the Government to be listed in the stock exchanges.

### 5. GOVERNANCE AND EASE OF DOING BUSINESS

5.1 It is proposed to introduce a Bill for Targeted Delivery of Financial and Other Subsidies, Benefits and Services by using the Aadhar framework.

5.2 For the purpose of improving the quality of service delivery to farmers, it is proposed to introduce Department of Biotechnology (DBT) on pilot basis for fertilizer in selected districts across the country,

5.3 It is proposed to launch "Ek Bharat Shreshtha Bharat" program to link States and Districts in an annual program that connects people through exchanges in areas of language, trade, culture, travel and tourism.

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## NEWSBYTES

### A. **BENEFITS OF THE INDIA-UNITED KINGDOM (UK) DOUBLE TAXATION AVOIDANCE AGREEMENT TO UK PARTNERSHIP FIRMS**

The Ministry of Finance, Government of India, released circular no. 02/2016 dated 25<sup>th</sup> February, 2016 wherein it has clarified regarding applicability of India-United Kingdom (UK) Double Taxation Avoidance Agreement.

As per the Amending Protocol to the India-UK Double Taxation Avoidance Agreement (DTAA) dated 10<sup>th</sup> February, 2014 notified vide Notification No.10/2014, the definition of the term 'person' in Article 3(1)(f) of the DTAA was amended to delete the exclusion of UK partnership firms, and in addition, it was provided in Article 4 of the DTAA that in case of a partnership, estate or trust, the term 'resident of a Contracting State' applies only to the extent that the income derived by such partnership, estate or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

The Board has now clarified that the provisions of the India-UK DTAA would be applicable to a partnership that is a resident of either India or UK, to the extent that the income derived by such partnership, estate or trust is subject to tax in that State as the income of a resident, either in its own hands or in the hands of its partners or beneficiaries.

### B. **ENVIRONMENT MINISTRY RELEASES WHITE CATEGORY OF INDUSTRIES**

The Ministry of Environment, Forest and Climate Change (MoEFCC), Government of India, issued a press release dated 5<sup>th</sup> March, 2016 wherein the Government released a new categorization of industries based on their pollution load. The Ministry has developed the criteria of categorization of industrial sectors based on the Pollution Index which is a function of the emissions (air pollutants), effluents (water pollutants), hazardous wastes

generated and consumption of resources.

Based on the discussions among Central Pollution Control Board, State Pollution Control Boards and MoEFCC, the following criteria on 'Range of Pollution Index' for the purpose of categorization of industrial sectors was finalized.

- Industrial Sectors having Pollution Index score of 60 and above - Red category.
- Industrial Sectors having Pollution Index score of 41 to 59 - Orange category.
- Industrial Sectors having Pollution Index score of 21 to 40 - Green category.
- Industrial Sectors having Pollution Index score including & up to 20 - White category.

The newly introduced White category contains 36 industrial sectors which are practically non-polluting. There shall be no necessity of obtaining the Consent to Operate for White category of industries and intimation to concerned SPCB / PCC shall suffice.

The purpose of the categorization is to ensure that the industry is established in a manner which is consistent with the environmental objectives. The new criteria will prompt industrial sectors willing to adopt cleaner technologies, ultimately resulting in generation of fewer pollutants. Another feature of the new categorization system lies in facilitating self-assessment by industries as the subjectivity of earlier assessment has been eliminated. This 'Re-categorization' is a part of the efforts, policies and objective of present government to create a clean & transparent working environment in the country and promote the Ease of Doing Business.

### C. **100% FDI IN MARKETING OF FOOD PRODUCTS**

The union budget 2016 provided for 100% FDI



in marketing of food products provided they are produced and manufactured in India. The move is aimed at injecting life into the food processing sector, create market for the farmers and promote employment opportunities. Government shed light on the plight of farmers whose fruits and vegetables either do not fetch the right prices or fail to reach the markets. Food processing industry and trade should be more efficient and therefore FDI policy has to address the requirements of farmers and food processing industry.

In 2013, India allowed 51% FDI in multi-brand retailing. It came with a plethora of conditions such as 30% mandatory local sourcing, \$100 million upfront investment and half of it in backend infrastructure. The new policy does away with such riders, allowing retailers to sell their own food products without any restrictions as long as they are produced in India.

#### **D. FSSAI ISSUES NOTICE TO COMPANIES ASKING TO FOLLOW STRICT NORMS ON NUTRACEUTICALS LAUNCHED AFTER 2011**

The Food Safety and Standards Authority of India released an order dated 30<sup>th</sup> March, 2016 with the subject as 'Enforcement activities on Nutraceuticals, Food Supplements and Health Supplement'.

It was stated that till the Standards of Nutraceuticals, Food Supplements and Health Supplements are finally notified, the enforcement activities against Food Business Operators (FBOs), engaged in manufacture and distribution of Nutraceuticals, Food Supplements and Health Supplements, may be restricted to testing of Nutraceuticals, Food Supplements and Health Supplements with respect to requirements given in the draft notification on such products uploaded on the FSSAI website on 9<sup>th</sup> September 2015.

However, it may be ensured that such products fulfill the criteria given below:

- (a) The impugned Nutraceuticals, Food Supplements and Health Supplements

- (b) were available in the market prior to the notification of Food Safety and Standards Rules and Regulations; FBOs of these products had applied for product approval but the same was pending for decision as on 19<sup>th</sup> August 2015 when the Product Approval advisory ceased to remain in operation in pursuance of the judgment of the Hon'ble Supreme Court;
- (c) Such products are explicitly covered under the draft notification on Nutraceuticals, Food Supplements and Health Supplements.

#### **E. GOVERNMENT RELAXES CCI THRESHOLD LIMIT FOR DEAL APPROVALS W.R.T MERGER AND ACQUISITIONS**

The Ministry of Corporate Affairs released notification no. S.O. 675(E), dated 4<sup>th</sup> March, 2016, where in exercise of the powers conferred by sub-section (3) of Section 20 of the Competition Act, 2002 (12 of 2003), the Central Government in consultation with the Competition Commission of India, has enhanced, on the basis of the wholesale price index, the value of assets and the value of turnover, by hundred per cent for the purposes of section 5 of the said Act.

#### **F. NOTIFICATION OF INCOME TAX RETURNS FOR ASSESSMENT YEAR 2016-17**

The Central Board of Direct Taxes, Ministry of Finance issued a press release, dated 1<sup>st</sup> April, 2016, regarding notification of Income Tax Returns for Assessment Year 2016-17 wherein the CBDT has notified the forms for filing of Income-tax returns for Assessment Year 2016-17. These return forms, namely ITR-1 (Sahaj), ITR-2, ITR-2A, ITR-3, ITR-4, ITR-4S (Sugam), ITR-5, ITR-6, ITR-7 are available on the official website of the Department, <http://www.incometaxindia.gov.in>

With the passage of Finance Bill, 2015, wealth-tax is no longer leviable with effect from assessment year 2016-17. Taxpayers are, therefore, not required to file a wealth tax return from assessment year 2016-17 onwards.





While abolishing the charge of Wealth-tax, the Finance Minister also announced that information which was required to be furnished in the return of wealth will now form a part of the Income-tax return.

Individuals and HUFs with income above a specified limit, filing returns in ITR-3 and ITR-4 are already required to furnish information of their assets and liabilities in their annual return of income. With Assessment Year 2016-17, individuals and HUFs filing their returns of income in ITR-1, ITR-2, ITR-2A and ITR-4S, having income exceeding Rs.50 lakh will now be required to furnish information regarding assets and liabilities in Schedule-AL of the relevant ITR form.

Lastly, the press release stated that these changes in ITR forms are in tune with the announcement made in the Budget Speech 2015.

#### **G. REGULATORY RELAXATIONS FOR START-UPS**

The Reserve Bank of India has released notification no. RBI/2015-16/318 A.P. (DIR Series) Circular No. 51, dated February 11, 2016, wherein it has permitted start-ups with overseas unit to open foreign currency a/c abroad. It invited attention of Authorized Dealer Category - I (AD Category-I) banks to the Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2000, notified by the Reserve Bank vide Notification No. FEMA. 10 (R) /2015-RB dated January 21, 2016, as amended from time to time.

RBI has clarified that a start-up in India with an overseas subsidiary is permitted to open foreign currency account abroad to pool the foreign exchange earnings out of the exports/sales made by the concerned start-up. The overseas subsidiary of the start-up is also permitted to pool its receivables arising from the transactions with the residents in India as well as the transactions with the non-residents abroad into the said foreign currency account opened abroad in the name of the start-up.

Further, RBI stated that the balances in the said foreign currency account as due to the Indian start-up should be repatriated to India within a period as applicable to realization of export proceeds (currently nine months). A start-up is also permitted to avail of the facility for realizing the receivables of its overseas subsidiary or making the above repatriation through Online Payment Gateway Service Providers (OPGSPs) for value not exceeding USD 10,000 (US Dollar ten thousand) or up to such limit as may be permitted by the Reserve Bank of India from time to time under this facility and to facilitate the this arrangement, an appropriate contractual arrangement between the start-up, its overseas subsidiary and the customers concerned should be in place.

#### **H. SEBI Policies After Union Budget**

The Union Budget 2015-16 introduced the following policies with regard to SEBI

- New derivative products will be developed by SEBI in the Commodity Derivatives market. SEBI which started regulating the commodities market last year has been tasked with developing new products for commodities which are expected to include option and index trading. The transaction in foreign currency of sale of commodity derivatives taking place on a recognized association established in international financial services centre shall not be liable to commodity transaction tax.
- It is also proposed to amend the SEBI Act 1992 to provide for more members and benches of the Securities Appellate Tribunal. Currently, SAT has only one bench which sits in Mumbai. An appeal shall lie to SAT against any order passed by SEBI while the SAT's order shall be further challenged before the Supreme Court. The move is aimed at removing the pendency of cases. Section 15K of SEBI Act, 1992, empowers the Central Government



to establish one or more Securities Appellate Tribunals. However, the number of members of SAT is limited to three. Hence, in view of the budget announcement, an amendment to these sections in the SEBI act is expected.

For developing an enabling eco system for the private placement market in corporate bonds, an electronic auction platform will be introduced by SEBI for primary debt offer. Furthermore, a framework for an electronic platform for the repo market in corporate bonds will be developed by the RBI. A complete information repository for corporate bonds, covering both primary and secondary market segments will be developed jointly by RBI and SEBI.

## I. **SEBI MUTUAL FUND NORMS**

The **Securities and Exchange Board of India** Thursday relaxed mutual fund norms to allow asset management companies (AMCs) to invest unclaimed redemption and dividend amounts in separate liquid and money market schemes.

### 1. **Treatment of unclaimed redemption and dividend amounts (effective from April 1, 2016)**

#### 1.1. Investment Schemes

- the unclaimed redemption and dividend amounts shall be allowed to be invested in a separate plan of Liquid scheme / Money Market Mutual Fund scheme floated by Mutual Funds in addition to call money market or money market instruments
- AMCs would have to start such schemes specifically for deploying amounts unclaimed by investors.
- AMCs will however not be permitted to charge any exit load in such MF plans the TER

(Total Expense Ratio) of such plan shall be capped at 50 bps. One basis point is one-hundredth of a percentage point.

#### 1.2. Tracing The Rightful Owner

Duty has been cast upon the mutual funds to take concrete steps to identify and trace the rightful owners of unclaimed amounts.

- Mutual funds shall provide on their AMC websites a list of names and addresses of investors in whose folios there are unclaimed amounts.
- Association of Mutual Funds in India (Amfi) will also provide on its website a consolidated list of investors across the MF industry in whose folios there are unclaimed amounts.
- The websites shall also mention the procedure for claiming the unclaimed amount.

#### 1.3. Payment On Claims

- Investors claiming the amounts within a period of three years from the due date shall be paid initial unclaimed amount along-with the income earned on its deployment.
- investors claiming after three years, shall be paid initial unclaimed amount along-with the income earned on its deployment till the end of the third year

### 2. **Distribution Of Mutual Fund Products** (effective with immediate effect)

SEBI relaxed the distribution norms for MF products, a new cadre of distributors who are allowed to sell



simple and performing MF products will now be allowed to sell retirement benefit schemes having tax benefits, liquid schemes and money market MF schemes too.

## J. VALUATION OF SECOND HAND MACHINERY

The Central Board of Excise and Customs vide its CIRCULAR NO. 25/2015 dated 15<sup>th</sup> October 2015 has issued revised guidelines for valuation of imports of second hand machinery. This circular supersedes circular 4/2008-Cus dated 12th February 2008.

### VALUATION OF GOODS

- Second hand machinery sold for export to India which meets all requirements set out in Customs Valuation (Determination of Value of Imported Goods) Rules 2007 shall be valued on the basis of price paid or payable for the goods.
- Costs of the following elements need to be determined for the purpose of arriving at the value under section 14 of the Customs Act –
  - i. Cost of reconditioning, refurbishment, modernization, or improvement of machinery prior to their importation into India
  - ii. The pre-shipment inspection, dismantling and crating charges incurred by the buyer after the sale of the goods.

### DIFFICULTY IN APPLICATION OF VALUATION RULES - SECOND HAND MACHINERY

- Rule 4 and 5 CVR, 2007 provides for valuation on the basis of value of similar or identical goods imported to India at or about the same time. It becomes very difficult to find data relating to sales of second hand machinery in India rendering the application of rule

4 and 5 difficult.

- Under Rule 7, goods are valued on the basis of subsequent sales of identical or similar goods in India, application of which may also not be possible because the goods being appraised are imported for use rather than for resale.
- Under Rule 8 of the CVR, 2007, value of goods is based, among other things, on the cost of production of the goods plus an amount for profit and general expenses. However, since used capital goods are not manufactured as such, viz, as old and used machinery, it is not possible to calculate assessable value based upon the cost of production.
- Rule 9 provides for the residual method when goods cannot be appraised under any other rule so as to factor condition, depreciation, refurbishment, charges of disassembly & packing and any expenses incurred by way of pre-shipment inspection agency charges etc. In order to eliminate the challenge in applying and rule 9 and to bring uniformity it is necessary to obtain inspector / appraisal reports from qualified neutral parties.

### INSPECTION/APPRaisal REPORTS- NEW GUIDELINES

- Inspection / Appraisal Reports issued by Chartered Engineers, or their equivalent, based in the country of sale of the second hand machinery prepared as per FORM A specified in the circular shall be accepted by all Custom Houses.
- In the absence of an overseas Inspection / Appraisal Reports, the goods may be inspected by an agency in India notified by the DGFT<sup>1</sup>. If there are no DGFT notified agencies, the importer may continue to avail of the services of locally empanelled

<sup>1</sup> Directorate General of Foreign Trade



chartered engineers. In both cases the report shall be prepared as per FORM B.

## FINAL VALUATION

The value declared by importer shall be compared with the appraisal report as well as the depreciated value of goods as per custom rules.

1. In found consistent, the same may be appraised under rule 3 of the CVR, 2007.
2. In case of significant differences, the Rule 12 requires that the proper officer shall seek an explanation from the importer justifying the declared value. The officer after giving due consideration to the evidence put forth by the importer shall determine whether the case falls under rule 3.
3. In all other cases, the proper officer may proceed to determine the value of the goods, sequentially, in terms of rule 4 to 9.

## ANALYSIS

The notification officially recognizes the following existing practice in ports all over India and provides that:

- Custom houses shall rely upon a chartered engineer's inspection report while valuing imports of second hand machinery and that inspection/appraisal reports issued at the port of loading should be accepted.
- There is no need to specify the agencies whose certificates alone would be accepted. No Custom House shall require any importer to have an inspection / appraisal report of second hand machinery from a particular Chartered Engineer.

In case the importer is unable to produce an inspection/appraisal report in the prescribed format from the country of sale,

he shall have the goods inspected by DGFT notified agencies or locally empanelled chartered engineers.

## K. START Ups

The union budget 2016-17 introduced beneficial measures for startups in line with the Prime Minister's 'Start-up India, Stand-Up India' plan. The government expects young entrepreneurs to generate employment for the people, bring innovation and be key partners in Make in India program.

Government promised to introduce a bill to amend the Companies Act, 2013 in the current Budget Session of the Parliament to improve the enabling environment for startups. The move aims to liberate new ventures from considerable hurdles and red tape and promises completion of registration of startups in a day.

It was further announced that 100% deduction of profits shall be allowed for 3 out of 5 years for startups set up during April 2016 to March 2019. However, Minimum alternate tax shall apply in their cases which would amount to approximately 20% on. Existing startups would still be subject to normal taxation at 33%. Capital gains will not be taxed if invested in regulated notified fund of funds and by individuals in notified startups, in which they hold majority shares. Similarly, a special patent regime with a 10% rate of tax on income from worldwide the exploitation of patents developed and registered in India was proposed.

In the last budget announced in 2015, government had established a mechanism known as SETU (Self-Employment and Talent Utilisation) to support all aspects of startup businesses, and other self-employment activities, particularly in technology-driven areas. An amount of Rs 1,000 Crore was initially earmarked in NITI Aayog for the purpose.

## L. CAPITAL DEBT RESTRUCTURING-AMENDMENTS

The RBI had notified the strategic debt



restructurings scheme in June, 2014. The scheme was aimed at allowed **banks and** Term-lending and Refinancing Institutions to convert their loans into equity stake. SDR will provide banks with enhanced capabilities to initiate change of ownership in cases of restructuring of accounts where borrower companies are not able to come out of stress due to operational/managerial inefficiencies despite substantial sacrifices made by the lending banks.

A consortium of lenders converts a part of their loan in an ailing company into equity, with the consortium owning at least 51 per cent stake. The scheme is in furtherance to the framework for revitalizing distressed assets in the economy based on the general principle of restructuring that shareholders bear the first loss rather than the debt holders. RBI vide its notification dated February 25, 2016 has brought in a few amendments to the existing SDR scheme.

## DISINVESTMENT LIMIT RELAXED

Under the scheme, the consortium was required to divest their 51% stake to new promoters within a period of 18 months. On completion of the divestment, the asset classification would be upgraded to standard. It has now been decided that the asset classification benefit will be available to the lenders provided they divest a minimum of 26% of the shares of the company to the new promoters within the stipulated time line of 18 months and the new promoters take over management control of the company. Lenders would thus have the option to exit their remaining holdings gradually, with upside as the company turns around.

## TIMELINES

JLFs were required to adhere to certain prescribed timelines during SDR process. In partial modification of the extant instructions, it is advised that the JLF can have flexibility in the time taken for completion of individual activities up to conversion of debt into equity in favor of lenders and the asset classification

benefit shall stand throughout the period taken. However, if the targeted conversion of debt into equity shares does not take place within 210 days from the review of achievement of milestones/critical conditions, the benefit will cease to exist. Thereafter, the loans will be classified as per the conduct of the account as per the extant Income Recognition, Asset Classification and Provisioning norms

RBI has considered the possibility of banks being unable to sell their stake to new promoters within the 18 month period, thus revoking the 'stand-still' benefit, which may result in sharp deterioration in the classification of their remaining loan exposures. It provides that in order to avoid the cliff effect of resultant provisioning, banks should build provisions such that, by the end of the 18 month period from the reference date, they hold provision of at least 15 per cent of the residual loan. The required provision should be made in equal installments over the four quarters and it shall be reversed only when all the outstanding loans in the account perform satisfactorily during the 'specified period' after transfer of ownership control to new promoters.

## MARK TO MARKET SETTLEMENT

Equity shares acquired and held by banks under the scheme were exempt from the requirement of periodic mark-to-market for the period of 18 months. Lenders thus assume the risk of compounding of a company's credit deterioration at the end of 18 month period on account of mark to market or account of recognizing loss on sale of equity shares to the new promoters. In view of this, it has been decided that banks should periodically value and provide for depreciation of these equity shares as per IRAC norms for investment portfolio. Banks will, however, have the option of distributing the depreciation on equity shares acquired under SDR, over a maximum of four calendar quarters from the date of conversion of debt into equity i.e., the provisioning held for such depreciation should not be less than 25% of the depreciation during





the first quarter, 50% of the depreciation as per the current valuation during the second quarter, and so on.

## CONCLUSION

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Although banks have made a concerted effort to invoke the SDR scheme for revitalization of distressed assets, its implementation and impact have not been encouraging. The market environment is not congenial. The banks are struggling to find new buyers. The failure can partly be blamed on banks pursuing their self interests instead of working as a team. The relaxation of disinvestment limit to 26% is a welcome relief to all. Indian banks are coping with \$117 billion of stressed loans. It is essential that they work together to bring themselves out of this hole and save valuable assets which might otherwise vanish into thin air.







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