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# Union Budget 2015

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AN ANALYSIS OF BUDGET PROPOSALS

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## PREFACE

Dear Reader,

Budget statement 2015 requires to be admired for both, its width of vision and depth of detail. There are various measures to promote “Make in India”, to generate employment, foster entrepreneurship and galvanise Indian/foreign investments. The Budget lays a path for the future, however, the execution of the various policies pronounced will determine the true merits of this Budget.

Clearly, India is moving towards a more global tax structure, both in terms of GST, and, in terms of direct taxes. The reduction in Corporate tax rate is the most important announcement of this Budget, and one hopes this is the first step in India forming a globally competitive tax policy and environment. The upward changes in the rates of Excise Duty and Service Tax, as also, the elimination of exemptions are clearly a move towards the implementation of GST. Various changes are made in the duty rates to eliminate an inverted duty structure.

The various changes in terms of taxation of REITs, VCCs and AIFs will make for a better investment environment for the “Make in India” story and Indian equity investments.

There are certain legislative changes in Indirect taxes, which point to a regime of lower penalties consonant with the scheme of a more friendly tax administration.

The measures to curb black money will facilitate the GST regime when introduced on 1<sup>st</sup> April 2016, besides bringing a larger amount of tax into the exchequer.

The two years deference of GAAR will be welcomed. Hopefully, in this period, the credibility of the new tax administrative system will be enhanced and restored.

As with every Budget, there are several questions and unresolved issues of detailing. Please revert with your comments and questions. We would be glad to help on any Budget related issues that are open at your end.

Thank you, as always, for your support.

Warm Regards,

**Rohan Shah | Managing Partner**



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**Recommended as a Tier 1 law firm in Mumbai, India - Tax Director's Handbook 2014**

**Highly Recommended for Tax in India - Asialaw Profiles 2011, 2012, 2013, 2014 & 2015**

**Recommended as a Tier 2 firm in India - World Tax 2013, 2014 & 2015**

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## BUDGET HIGHLIGHTS

### INDIRECT TAXES

- GST to be implemented from 1<sup>st</sup> April 2016
- Excise Duty rate increased from 12.36% to 12.5%
- Service Tax rate increased from 12.36% to 14%
- Increase in time limit for taking CENVAT Credit from the present 6 months to 1 year
- BCD on certain inputs reduced to minimize duty inversion
- Reduction in SAD on inputs to address CENVAT Credit accumulation

### DIRECT TAXES

- Applicability of GAAR deferred by 2 years
- Corporate Income tax rate proposed to be reduced to 25% from 30% over 4 years
- Wealth tax abolished – surcharge imposed for income above INR 1 Crore
- Reliefs / clarity in relation to taxation of REITs, VCFs and AIFs
- Increase in limit of Specified Domestic Transactions to INR 20 Crores
- 'Indirect transfer' – clarity limited to scope of substantial interest

### EFFECTIVE DATE FOR VARIOUS CHANGES IN INDIRECT TAXES

Particulars	Effective Date of Change
Legislative changes in Customs and Excise	Date of enactment of Finance Bill, 2015, unless otherwise specified
Changes to declared list and negative list	Date of enactment of Finance Bill, 2015, unless otherwise specified
Amendments to CENVAT Credit Rules, 2004 ( <i>Other than those specified in the relevant Notifications</i> )	March 1, 2015, unless otherwise specified
New rates of Customs Duty	March 1, 2015
New rates of Excise Duty	March 1, 2015 [Retrospective amendments shall have the force of law only upon enactment of the Finance Bill, 2015 but with effect from the specific date indicated]
New rate of Service Tax	Date to be notified after the enactment of the Finance Bill, 2015

## GOODS AND SERVICES TAX

The importance and urgency for introduction of GST was well heard from the Finance Minister's speech today, when the date of April 1, 2016 to embrace GST was reiterated. With GST, state-of-the-art indirect tax regime is envisaged for India. The Finance Minister expressed that along with a revamped Direct tax regime, GST would bring in greater transparency and greater investments and thus, introduction of GST is projected as a game changing tax reform. The focus on GST is best expressed in the Finance Minister's speech:

*"GST is expected to play a transformative role in the way our economy functions. It will add buoyancy to our economy by developing a common Indian market and reducing the cascading effect on the cost of goods and services. We are moving in various fronts to implement GST from the next year."*

The Economic Survey 2014-15 (February 27, 2015) also endorsed the need of well designed GST, *"preferably with one, internationally competitive rate and with narrowly defined exemptions"*.

Preparing for GST, the following proposals in the present indirect tax regime have been made:

- Exemption from Education Cess and Secondary & Higher Education Cess on all excisable goods (effective March 1, 2015) and taxable services (effective from a date to be notified);
- Increase in the effective rate of Central Excise Duty from 12.36% (including cess) to 12.50% ,and Service Tax from 12.36% to 14%;
- Pruning of the Negative list of services and exemptions under the law of Service Tax.
- The proposal to grant registrations under Central Excise and Service Tax laws within two days of application.

### ELP Comments

To achieve the target date of April 1, 2016, the following key steps would require action in a time bound manner:

- Expeditious passage of Constitution (One Hundred and Twenty-second Amendment) Bill, which entails (i) each House of Parliament passing the Bill by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting, (ii) ratification of the Bill by the Legislatures of not less than one-half of the States by resolutions to the effect passed by those Legislatures, and (iii) finally, assent by the President of India.
- Circulation of model legislation for Centre and States including Point of Supply Rules;
- Building consensus amongst States by assuring the States for compensation on account of any loss;
- Designing an efficient and capable IT backbone for supporting the new regime;
- Concurrence between Centre and States on threshold exemption limits and rates of tax.

A concrete road map if indicated on the above would have complimented the business optimism and investor sentiments. Instead, the Finance Minister expressed that a political agreement on GST has been secured which would allow for passage of the Constitution (One Hundred and Twenty-second Amendment) Bill.

## SERVICE TAX

### LEGISLATIVE CHANGES

#### Increase in rate of Service Tax

Rate of Service Tax is proposed to be increased from **12.36%** (including E Cess and SHE Cess) to **14%** *vide* amendment in Section 66B of the Act from a date to be notified by the Government.

##### ELP Comments

The increase in rate is in line with the Government's objective to introduce GST w.e.f. April 2016 wherein all goods and services will be liable to a single rate which is expected to be higher than the current rate.

#### Levy of "Swachh Bharat Cess"

A new Cess, by the name of Swachh Bharat Cess, on all or any taxable Services at the rate of 2% on the value of such Services is proposed to be imposed. This Cess shall be levied from such date as may be notified by the Central Government after the enactment of the Finance Bill, 2015. The details of coverage of this Cess would be notified in due course.

This Swachh Bharath Cess shall be over and above the taxable Services.

##### ELP Comments

Currently there is no specific mention on availment of CENVAT Credit of such Cess.

It is to be noted that the provisions of Chapter V of the Act and Rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable Services.

#### Definition of 'Service'

The term 'Service' as defined under Section 66B(44) of the Act specifically excludes any activity which constitutes merely a 'transaction in money or actionable claim'. Explanation 2 to the said Section clarifies that transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation 2 is now proposed to be amended to state that 'transaction in money or actionable claim' shall also not include the following:

- Any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out -

- ♦ by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner
- ♦ by a foreman of chit fund for conducting or organising a chit in any manner

Further, an explanation is proposed to be added under Entry (i) of Section 66D (Negative list) to specifically state that the expression 'betting, gambling or lottery' shall not include activities specified under Explanation 2 above.

#### ELP Comments

Paragraph 2.8.2 of the 'Taxation of Services - An Education Guide' dated 20-6-2012 clarified that Services provided by the foreman of a chit fund would not be a transaction in money, and hence would be liable to tax.

However, the Delhi High Court in the case of **Delhi Chit Fund Association v Union of India [2013 TIOL 331 HC DEL ST]** held that Services provided by a foreman of a chit fund, being an activity in relation to a transaction in money (and not being covered by Explanation 2), would be excluded from the ambit of 'Service'.

The proposed amendment in Explanation 2 specifically sets out the intention of the Legislature to levy Service Tax on such activities undertaken by chit fund foremen.

### Other Legislative Changes

- Presently, Section 66F(1) of the Act provides that unless otherwise specified, reference to a Service shall not include reference to any input service used for providing such Service. This is proposed to be exemplified by way of an illustration to be incorporated in this Section, regarding services rendered by RBI and agency services rendered by banks to RBI for provision of such services.
- The definition of the term 'consideration' under Explanation (a) of Section 67 of the Act has been expanded to include the following:
  - ♦ Any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service
  - ♦ Any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or the discount received (i.e. the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket)

#### ELP Comments

The illustration has been inserted to clarify that input services are not automatically negative listed or exempted based on the exemptions available to the main service.

#### ELP Comments

In this context, it may be relevant to note the recent decision of the Delhi High Court in case of **Intercontinental Consultants & Technocrats Ltd vs. UOI [2013 (29) STR 9 (Del.)]** wherein the High Court held that nothing more or less than the consideration paid as *quid pro quo* for the Services rendered can be subject to Service Tax. The aforesaid amendment seeks to overcome the above decision.

## Change in penal provisions

- Following amendments are proposed under Section 73 of the Act:
  - ♦ A new sub-section (1B) is being inserted to provide that recovery of the Service Tax amount self-assessed and declared in the return but not paid shall be made under Section 87, without service of any notice under Section 73(1); and
  - ♦ Sub-section (4A) which provides for reduced penalty, if true and complete details of transaction were available on specified records, is being omitted
- Section 76 of the Act is proposed to be amended to limit the penalty to 10% of Service Tax amount in cases involving fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules with the intent to evade payment of Service Tax. In this regard, further amendments are proposed in the following manner:
- No penalty is to be paid if Service Tax and interest is paid within 30 days of issuance of notice
- Reduced penalty equal to 25% of the penalty imposed under an order-in-original to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order
- Reduced penalty equal to 25% to be imposed when Service Tax amount gets reduced in any appellate proceeding and the Service Tax, interest and reduced penalty is paid within 30 days of such order-in-appeal
- Section 78 which provides for penalty of 100% of Service Tax, in cases involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, has been proposed to be amended, in the following manner:
  - Penalty reduced to 15% of the Service Tax amount, if Service Tax and interest is paid within 30 days of issuance of notice
  - Penalty reduced to 25% of the Service Tax amount, if the Service Tax and interest is paid within 30 days of receipt of an order-in-original
  - Reduced penalty equal to 25% when Service tax amount gets reduced in any appellate proceeding and the Service Tax, interest and reduced penalty is paid within 30 days of such order-in-appeal
- A new Section 78B is being inserted to prescribe, by way of a transition provision that
- Amended provisions of Sections 76 and 78 shall apply to cases where either no notice is served, or notice is served under Section 73(1) or proviso thereto but no order has been issued under Section 73(2) before the date of enactment of the Finance Bill, 2015
- In respect of cases covered by sub-section (4A) of Section 73, if no notice is served, or notice is served under Section 73(1) or proviso thereto but no order has been issued under Section 73(2), before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the Service tax amount.

### ELP Comments

With this proposed amendment, penalty is sought to be capped to a maximum of 10% of the Service Tax demanded.



- Section 80 of the Act which provided for waiver of penalty in certain circumstances, is being omitted.

#### ELP Comments

The omission of this Section is a big set-back for many cases where penalties imposed under Section 76 or Section 77 could have been waived when the assessee proves that there was a reasonable cause for the failure to pay.

- Section 86 has been proposed to be amended to make provisions relating to 'Revision by Central Government' under Section 35EE of the CE Act applicable to order passed by Commissioner (Appeals) in a matter involving rebate of Service tax on Input Services or duty paid on Inputs, in case of services which are exported.
- It is also being provided that all Appeals filed in Tribunal after the date the Finance Act, 2012 came into effect and pending on the date when the Finance Bill, 2015 receives assent of the President shall be transferred and dealt in accordance with Section 35EE of the CE Act.
- Section 94 of the Act has been proposed to be amended to empower Central Government to formulate Rules to determine if an amount constitutes "consideration" under Section 67 of the Act

#### ELP Comments

This provision will provide the much needed relief to service exporters (mainly BPOs, IT and IT Enabled, Telecommunications, Media etc) whose refund has been rejected vide order of the Commissioner (Appeals).

## CHANGES IN NEGATIVE LIST

### Changes in Negative list to widen tax base

The changes proposed in the Negative list in Section 66D are as follows:

- **Admission to entertainment event and access to amusement facility**
  - ♦ The entry for admission to entertainment event and access to amusement facility has now been omitted. Accordingly, Service Tax will be levied on the following:
    - Services provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks
    - Services by way of admission to entertainment event of concerts, pageants, musical performances, concerts, award functions and sporting events other than the recognized sporting events, if the amount charged is more than INR 500 for right to admission to such an event.
  - ♦ However, Services by way of admission to entertainment event, namely, exhibition of cinematographic film, circus, recognized sporting events, dance, theatrical performance including drama and ballet shall be continued, through the exemption route
- **Process amounting to manufacture or production of goods**
  - ♦ Currently, the Negative list of Services includes Services by way of any process amounting to manufacture or production of goods.
  - ♦ “Process amounting to manufacture or production of goods” has been defined as a process on which duties of excise are leviable under Section 3 of the Excise Act or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act.
  - ♦ This definition has been amended to exclude manufacture/ production of ‘alcoholic liquor for human consumption’. Accordingly, Service Tax will be levied on such activities.
- **Services provided by Government or Local Authority**
  - ♦ ‘Government’ has now been defined to mean the Departments of Central Government, State Government and Union territories and their Departments, but shall not include any entity whose accounts are not required

#### ELP Comments

Levy of Service Tax on manufacture/ production of alcoholic liquor has been an issue of debate prior to Negative list under the category of Business Auxiliary Services [**Maa Sharda Wine Traders vs. Union Of India [2009 (15) S.T.R. 3 (M.P.)]** and **Som Distilleries Pvt. Ltd vs. Union of India and Ors [2009-TIOL-292-HC-MP-ST-LB]**]. With the introduction of Negative list based taxation, manufacture/ production of alcoholic beverages was covered under the Negative list and hence, not liable to Service Tax. The present proposed amendment seeks to levy Service Tax on such activities.

to be kept in accordance with Article 150 of the Constitution (*Form of accounts of the Union and of the States*) or the rules made thereunder.

- ♦ The definition is intended to resolve interpretational issues regarding coverage under Negative list.
- Presently, Service Tax is applicable on 'Support Services' provided by Government or a local authority to a business entity. It is proposed to amend Section 66D(a)(iv) of the Act to exclude all Services provided by Government or local authority from the Negative list. Accordingly, any Services provided by the Government or local authority to a business entity will be liable to Service Tax, unless specifically Negative listed or exempted. Therefore, the definition of 'Support Service' is also proposed to be deleted.

## EXEMPTIONS / CONCESSIONS

### New Exemptions / Concessions (w.e.f. April 1, 2015 unless otherwise specified)

Sr. No.	Description of Services*	ELP Comments
1.	Exhibition of movie by exhibitor (theatre owner) to distributor or AoP consisting of such exhibitor as one of its members	<ul style="list-style-type: none"> <li>The arrangements between exhibitors and distributors are typically on a revenue / profit sharing model. Initially, <b>Circular No. 109/03/2009, dt. February 23, 2009</b> clarified that in such revenue sharing arrangements, the two contracting parties act on principal-to-principal basis and one does not provide service to another; consequently, no tax would be leviable thereon.</li> <li>However, subsequent <b>Circular No. 148/17/2011-S.T., dt. December 13, 2011</b> overturned this view and instead clarified that in such revenue sharing arrangements, a “new entity” emerges, which is distinct from its constituent entities. This new entity may be treated as an unincorporated AoP. Accordingly, payments between the exhibitor and distributor, as well as payments treated as being made by / to such new entity, would be liable to tax.</li> <li>Based on the 2011 Circular, and also fortified by the decision of the Hon’ble Madras High Court in <b>Mediaone Global Entertainment Ltd. vs. Chief C.C.E., Chennai [2014 (34) S.T.R. 819 (Mad.)]</b> which upheld the Circular, the Department has initiated disputes in respect of payments between exhibitors and distributors. The present exemption will remove the tax burden at least in respect of payments to be made by distributors to exhibitors, or by a “new entity” to an exhibitor.</li> <li>It will be important to examine the impact of this amendment, which has been effected prospectively, for past transactions, several of which have been disputed by the Department, and are pending finality.</li> <li>Furthermore, it is pertinent to note that in the chain of transactions culminating in the exhibition of cinematograph films, the services of temporary transfer or permitting use / enjoyment of copyright in such films for exhibition in cinema hall / cinema theatre have so far enjoyed exemption. This amendment now extends the exemption to a further set of transactions between distributors and exhibitors in the aforesaid chain.</li> </ul>
2.	Service by way of right to admission to <ul style="list-style-type: none"> <li>Exhibition of cinematographic film, circus, dance or theatrical performance including drama or ballet</li> <li>Recognized sporting events</li> <li>Concerts, pageants, award functions, musical performances, sporting events other than a recognized sporting event, where consideration for admission is less than INR 500 per person</li> </ul>	<ul style="list-style-type: none"> <li>Admission to entertainment events or access to amusement facilities has thus far been negative listed in terms of Section 66D of the Act, being liable to the State levy of Entertainment Duty.</li> <li>Vide the Union Budget proposals, admission to certain events has been exempted, while access to amusement facilities will now be taxable.</li> </ul>

Sr. No.	Description of Services*	ELP Comments
	<p>The term 'recognised sporting event' is defined to mean any sporting event –</p> <ul style="list-style-type: none"> <li>Organized by a recognized sports body where the participating team or individual represent any district, state, zone or country</li> <li>Organised by specified governmental federations, universities, boards etc.</li> </ul> <p><i>[This exemption will take effect from the date on which amendments to the 'negative list' also take effect.]</i></p>	
3.	Services of effluent treatment by an operator of Common Effluent Treatment Plant	<ul style="list-style-type: none"> <li>Such services, being required for the handling of effluents in an environmentally sound manner, have been exempted.</li> </ul>
4.	Services by way of transportation of a patient in an ambulance	<ul style="list-style-type: none"> <li>Previously, only those healthcare services which were provided by a clinical establishment / authorized medical practitioner / para-medic were exempt. In respect of ambulance services, the exemption therefore largely covered transport of patients to / from clinical establishments as an adjunct of healthcare service, and where the transportation was also by a clinical establishment.</li> <li>The expansion of the exemption ensures that other parties providing the service of transporting patients by ambulance are also covered within the scope of the exemption.</li> </ul>
5.	Pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling services of fruits and vegetables	<ul style="list-style-type: none"> <li>These services have been exempted to "incentivise value addition in this crucial sector".</li> </ul>
6.	Transport of export goods by road from the place of removal to a land customs station <i>[Vide amendment to Notification No. 31/2012-S.T. dt. June 20, 2012]</i>	<ul style="list-style-type: none"> <li>The exemption which was previously available in relation to transport of such goods to a port or airport, is now being extended to a land customs station.</li> </ul>
7.	Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo	<ul style="list-style-type: none"> <li>Price paid for admission to certain tourist locations, including places of cultural or historical significance, are being exempted.</li> </ul>
8.	Services of life insurance business provided under the Varishtha Pension Bima Yojana	<ul style="list-style-type: none"> <li>This exemption has been provided keeping in mind the welfare of senior citizens, who are important beneficiaries of this scheme.</li> </ul>

\* Description of services in respect of which exemption from payment of Service Tax is proposed to be granted.

### Existing Exemptions / Concessions Amended or Withdrawn (w.e.f. April 1, 2015 unless otherwise specified)

Sr. No.	Taxable Service	Relevant Entry*	Amendments	ELP Comments
1.	Services of Construction, erection, commissioning, maintenance, etc to the Government, a local authority or a governmental authority	<p>Sr. No. 12 of the Notification provided exemption to "Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -</p> <ul style="list-style-type: none"> <li>▪ (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</li> <li>▪ (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;</li> <li>▪ (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of Section 65B of the said Act"</li> </ul>	These sub-clauses, viz. (a), (c) and (f), have been omitted.	<p>The exemption has been amended to retain its more essential entries [sub-clauses (b), (d) and (e)], which pertain to:</p> <ul style="list-style-type: none"> <li>▪ Locations / structures of historical and national importance;</li> <li>▪ Irrigation works;</li> <li>▪ Water and sewage treatment.</li> </ul>
2.	Construction, erection, commissioning or installation of original works	<p>Entry 14(a) of the Notification provided exemption to "services by way of construction, erection, commissioning, or installation of original works pertaining to</p> <p>(a) an airport, port or railways, including monorail or metro"</p>	The words "an airport, port or" have been omitted.	As regards infrastructure necessary to various modes of transportation, the exemption has been retained only for railways (including monorail or metro), and removed for airport and port, which typically see more private participation.

Sr. No.	Taxable Service	Relevant Entry*	Amendments	ELP Comments
				While such construction / works contract services have now been made taxable, the CENVAT Credit thereof will be unavailable to the airport / port operator, in terms of the specific exclusions under the CENVAT Credit provisions.
3.	Performing artist in folk or classical art forms	Sr. No. 16 of the Notification provided exemption to "Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador"	The words "if the consideration charged for such performance is not more than one lakh rupees" have been inserted.	The exemption has been retained subject to a threshold of INR 1 Lakh. However, services provided by such artists as brand ambassadors continue to remain outside the scope of the exemption.
4.	Transportation by rail or a vessel from one place in India to another	Entry 20(i) of the Notification provided exemption to "Services by way of transportation by rail or a vessel from one place in India to another of various goods, including – <ul style="list-style-type: none"> <li>Foodstuff including flour, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages"</li> </ul>	The words of the entry have been replaced with "milk, salt and food grain including flours, pulses and rice".	Other foodstuffs (being tea, coffee, jaggery, sugar, milk products and edible oil) will no longer merit the exemption.
5.	GTA services for transportation of goods in a goods carriage	Entry 21(d) of the Notification provided exemption to "services provided by a GTA, by way of transport in a goods carriage of, - <ul style="list-style-type: none"> <li>Foodstuff including flour, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages"</li> </ul>		
6.	Services of: (i) mutual fund agent (ii) distributor to a mutual fund /	Entry 29, sub-clauses (c), (d) and (e) provided exemption to services by the following persons in respective capacities:	These exemptions have been omitted.	Going forward, Service Tax is being levied on these services under the reverse charge mechanism, i.e. in the

Sr. No.	Taxable Service	Relevant Entry*	Amendments	ELP Comments
	asset management company (iii) selling or marketing agent of lottery tickets	(iv) mutual fund agent to a mutual fund or asset management company (v) distributor to a mutual fund or asset management company (vi) selling or marketing agent of lottery tickets to a distributor or a selling agent		hands of the mutual fund / asset management company / distributor of lottery, as the case may be.
7.	Intermediate production process as job work	Entry 30(c) of the Notification provided exemption to services of "carrying out an intermediate production process as job work in relation to – ▪ any goods on which appropriate duty is payable by the principal manufacturer"	For the words "any goods", the words "any goods excluding alcoholic liquors for human consumption" have been substituted. <i>[This amendment will take effect from a date to be notified post the enactment of the Finance Bill]</i>	Under the Act, amendments have been proposed to levy Service Tax on the carrying out of any process amounting to manufacture or production (including job work) of alcoholic liquor for human consumption. Accordingly, the said activity has been excluded from the scope of this exemption.
8.	Services in relation to making of telephone calls	Entry 32 of the Notification provided exemption to "Services by way of making telephone calls from - (a) departmentally run public telephone; (b) guaranteed public telephone operating only for local calls; or (c) free telephone at airport and hospital where no bills are being issued"	The Entry has been omitted.	These activities have been brought within the tax net, as part of the larger move to widen the tax base.
9.	Services of a commission agent located outside India to an exporter located in India**	The Notification granted exemption to "Service provided by a commission agent located outside India and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him."	The Notification has been rescinded. <i>[This rescission is effective immediately]</i>	W.e.f. October 1, 2014, the PPSR was amended to cover intermediaries such as commission agents for goods under Rule 9(c).  Under this Rule, the place of provision was determined as per the location of the service provider. In relation to a



Sr. No.	Taxable Service	Relevant Entry*	Amendments	ELP Comments
				<p>foreign commission agent, the place of provision of the service would therefore fall outside India, and no tax would be payable.</p> <p>The present exemption being redundant in light of the aforesaid amendment, is now being rescinded.</p>

\* Relevant Entry in the existing Notification No. 25/2012- S.T. dt. June 20, 2012

\*\* Notification No. 42/2012-S.T. dt. June 29, 2012.

## ABATEMENT OF SERVICE TAX

Amendment in Notification No. 26/2012-ST dt. June 20, 2012 (w.e.f. April 1, 2015)

Sr. No.	Taxable Service	Tax Base*	Conditions	ELP Comments
1.	Transport by rail, road and vessel	30	CENVAT Credit on Inputs, Capital Goods and Input services, used for providing the taxable service, has not been taken	Previously, divergent entries existed for transport of goods by rail, transport of passengers by rail, GTA services and transport of goods in a vessel. These are now uniform in terms of the quantum of abatement and corresponding condition.
2.	Air transport of passenger for classes other than economy	60	CENVAT Credit on Capital Goods and Inputs, used for providing the taxable service, has not been taken	The tax base for economy class travel has been retained at 40%, while the tax base for higher classes has been increased to 60%, in keeping with the statement of the Hon'ble Finance Minister in his Budget Speech that the "rich and wealthy must pay more tax than the less affluent ones."
3.	Services provided in relation to chit	Abatement withdrawn	-	An Explanation has been inserted to the definition of "service" under the Act to affirm that activities of a foreman of a chit fund for conducting or organising a chit in any manner, do not tantamount to a "transaction in money" and are therefore liable to Service Tax. Simultaneously, with the abatement for services in relation to a chit being removed, chit fund foremen will be required to discharge tax on the full consideration received by way of fee, commission or any such amount, and would be entitled to avail CENVAT Credit.

\* Tax base on which tax is to be computed, post amendment (%).

## AMENDMENT TO RULES

### Amendments to STR

#### ■ Addition/amendment in the definition of “person liable to pay Service Tax” under Rule 2(1)(d)

- ◆ An aggregator of service (including any of his representative office in India) has been designated as person liable to pay Service Tax in respect of services of a service provider involving such aggregator in any manner. If an aggregator does not have presence in India, including presence by way of a representative, an agent appointed by such aggregator shall pay Service Tax. Entry 11 has been inserted in Notification No. 30/2012-Service Tax dated June 20, 2012 to provide payment of 100% Service Tax by aggregator in such cases (effective from March 1, 2015).
  - In this context, “Aggregator” has been defined to be an owner and manager of a web based software application who, by means of such application and a communication device, enables a potential customer to connect with persons providing specific service under trade or brand name of such aggregator.
  - In relation to the definition of “Aggregator”, a broad based definition of trade name or brand name has been introduced in Rule 2(1)(bca).
- ◆ Consequent to curtailment of the scope of negative list of services to exclude all services of Government to business entities from its purview, business entities will be liable to pay Service Tax even for these newly taxed services. This change will be effective from a date to be notified after the enactment of the Finance Bill, 2015.
- ◆ Mutual funds or asset management companies have been designated as persons liable to pay Service Tax in respect of services received by them from a mutual fund agent or distributor. Entry 1B has been inserted in Notification No. 30/2012-Service Tax (supra) to provide for payment of 100% Service Tax by service recipient in such cases (effective from April 1, 2015).
- ◆ In relation to service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, the recipient of service has been defined as person liable to pay Service Tax. Entry 1C has been inserted in Notification no. N0/2012-Service Tax (supra) to provide for payment of 100% Service Tax by service recipient in such cases (effective from April 1, 2015).

#### ELP Comments

Introduction of reverse charge mechanism on services involving an aggregator is aimed to tap revenue from the growing aggregator business model; wherein tax revenue for services of network partners was lost in some cases due to separate basic threshold limit being available to each network partner. Interestingly, it does not cover a person undertaking similar activities in connection with sale of goods. Further, provision of mechanism to pay Service Tax by an aggregator not having presence in India is likely to bring compliance burden for aggregators located outside India and engaged in business involving service provision in India.

Pursuant to withdrawal of exemption on services of a mutual fund agent to a mutual fund or asset management company, services of such agents have been brought at par with services of insurance agents. In line with reverse charge mechanism for services of an insurance agent to a person carrying insurance business, 100% reverse charge mechanism has been introduced for the above referred services of a mutual fund agent.

- **Digitally signed invoices and electronic records (effective from March 1, 2015)**
  - ♦ Any bill, invoice or challan issued under Rule 4A or consignment note issued under Rule 4B can be authenticated by means of a digital signature.
  - ♦ Maintenance of records as per Rule 5 has been permitted in electronic form subject to authentication of each page of such records by means of a digital signature.
  - ♦ CBEC may specify the conditions, safeguards and procedure to be followed by any person availing the above facility of electronic invoices and/or records.
- Order No. 1/15-Service Tax dated February 28, 2015 has been issued (effective from March 1, 2015) specifying the documents, time limits and procedure with respect to registration of single premises.
- Rule 6 provides alternative composite rates of Service Tax for services of an air travel agent, money changing services, insurance services and service of a lottery distributor and selling agent. Consequent to the upward revision of Service Tax rate from the current 12.36% to 14%, the said composite rates have been proportionately increased. These changes are applicable from a date to be appointed by the Central Government by notification in official gazette. A summary of old and amended composite rates is provided hereunder:

Rule	Taxable Service	Existing composite rates	Amended composite rates
<b>6(7)</b>	Booking of air travel tickets by an air travel agent <ul style="list-style-type: none"> <li>▪ For domestic bookings</li> <li>▪ For international bookings</li> </ul>	0.6% of the basic fare 1.2% of the basic fare	0.7% of the basic fare 1.4% of the basic fare
<b>6(7A)</b>	Life insurance services <ul style="list-style-type: none"> <li>▪ For first year of policy</li> <li>▪ For subsequent years</li> </ul>	3% of premium charged 1.5% of premium charged	3.5% of premium charged 1.75% of premium charged
<b>6(7B)</b>	Purchase and sale of foreign currency including money changing <ul style="list-style-type: none"> <li>▪ For amount up to INR 100,000</li> <li>▪ For amount from INR 100,001 to INR 10,00,000</li> <li>▪ For amount exceeding INR 10,00,000</li> </ul>	0.12% of gross amount of currency exchanged, minimum INR 30  INR 120 + 0.06% of gross amount of currency exchanged exceeding INR 1,00,000  INR 660 + 0.012% of the gross amount of currency exchanged exceeding INR 10,00,000, maximum INR 6,000	0.14% of gross amount of currency exchanged, minimum INR 35  INR 140 + 0.07% of gross amount of currency exchanged exceeding INR 1,00,000  INR 770 + 0.014% of the gross amount of currency exchanged exceeding INR 10,00,000, maximum INR 7,000
<b>6(7C)</b>	Specified services of distributor or selling agent in respect of lottery <ul style="list-style-type: none"> <li>▪ If guaranteed prize payout is more than 80%</li> <li>▪ If guaranteed prize payout is less than 80%</li> </ul>	INR 7,000 on every INR 10,00,000 (or part thereof) of face value of lottery tickets printed  INR 11,000 on every INR 10,00,000 (or part thereof) of face value of lottery tickets printed	INR 8,200 on every INR 10,00,000 (or part thereof) of face value of lottery tickets printed  INR 12,800 on every INR 10,00,000 (or part thereof) of face value of lottery tickets printed

## Amendment in percentage of tax required to be paid under Reverse Charge Mechanism (effective from April 1, 2015)

- **Serial No. 8 of the Table in Notification No. 30/2012-Service Tax (supra):** In respect of manpower supply and security services (provided by an individual, HUF, partnership firm or AOP located in taxable territory to a business entity registered as body corporate in the taxable territory), a 100% reverse charge mechanism has been prescribed relieving the service provider from hitherto applicable partial tax liability. Previously, in respect of these services, 25% of the Service Tax liability was required to be discharged by the service provider, whereas the balance 75% was required to be discharged by the service recipient.

## Widened scope of Advance Ruling mechanism

- Effective March 1, 2015, the facility of Advance Ruling has been extended to all resident firms, which has been defined to include the following resident entities within its scope:
  - ♦ A “firm” as per Section 4 of the Indian Partnership Act, 1932;
  - ♦ The limited liability partnership as per Section (2)(1)(n) of the Limited Liability Partnership Act, 2008;
  - ♦ Limited liability partnership which has no company as its partner;
  - ♦ The sole proprietorship;
  - ♦ One person company.

### ELP Comments

By this inclusion, the facility of Advance Ruling has been made available to all resident assesseees, which is a welcome step to reduce litigation.

# EXCISE DUTY

## LEGISLATIVE CHANGES

### Amendments to CE Act

#### ***Presumptive Tax : Amendment to Production Capacity Based Excise Duty***

Sub-section (3) of Section 3A of the CE Act, which empowers the Central Government to charge Excise Duty on the basis of capacity of production in respect of notified goods, is proposed to be amended by way of an insertion of an Explanation to specify more than one factor relevant to the production of such notified goods.

#### ***Recovery of duty not paid/short-paid : Distinction between “wilful contravention” and “wilful contravention but details relating to transaction available in specified records” expunged***

Under Section 11A(5) of the CE Act, if during the course of audit / investigation / verification, any duty was found to be not paid / short levied / short paid / erroneously refunded for reasons attributable to fraud, collusion, wilful misstatement or suppression of facts but the details of the same were available in the specified records, the Central Excise Officer could have served notice within a period of 5 years from the relevant date, demanding such duty not levied or paid along with interest and penalty equivalent to 50% of such duty. In terms of the proposed amendment, the aforesaid provision is sought to be omitted. Accordingly, Sub-sections (6) and (7) of Section 11A of the CE Act are also proposed to be omitted.

A sub-section is sought to be inserted in Section 11A to provide that where non-payment or short payment of duty is self assessed and reflected in the periodic Returns filed by an assessee as payable, the provisions of Section 11A shall not apply, and that recovery of duty shall be made in a manner prescribed in the Rules.

#### ***Amendment to Penalty provisions under Section 11AC of the CE Act***

A proposal has been made to overhaul Section 11AC which provides for imposition of penalty in certain cases of non-payment/short payment of duty.

The proposed provision provides for imposition of penalty as follows:

- a. Where non-payment or short payment is for reason other than reason of fraud, suppression etc.
  - ♦ The mandatory penalty is capped at 10% of the duty demanded or INR 5,000/-, whichever is higher
  - ♦ The penalty is not imposable if the duty demanded along with interest is paid, prior to issuance of Show Cause Notice or within 30 days of issuance thereof
  - ♦ Where the adjudication order is issued, the penalty is payable at 25% where the duty demanded along with interest and the reduced penalty amount is paid within 30 days of the communication of such order.
- b. Where non-payment or short payment is for reason of fraud, suppression etc.
  - ♦ The mandatory penalty is 100% of the duty demanded.

- ♦ If the details relating to such transactions (where such transactions relate to the period from April 8, 2011 till the date on which Finance Bill, 2015 receives assent) are available in specific records, the penalty imposable will be 50% of the duty demanded.
- ♦ If the duty along with interest has been paid within 30 days of receipt of Show Cause Notice, the penalty would be 15% of the duty demanded, provided the same has also been paid within 30 days.
- ♦ If the amount is paid within 30 days of receipt of Order confirming demand, the penalty is capped @ 25% provided the same has also been paid within 30 days.
- ♦ Explanation has been provided to clarify the different transition scenarios where the provisions of proposed amended Section 11AC of the CE Act would be applicable

#### ELP Comments

The above amendments to Section 11AC of the CE Act seek to encourage assesseees to come forward and make payment of dues at different stages, i.e. (i) prior to issuance of Show Cause Notice (ii) but within 30 days after SCN (iii) within 30 days of communication of the adjudication order. This is a step towards reducing litigation and early conclusion of matters.

#### Settlement Commission:

- Amendments have been proposed in respect of the Settlement Commission provisions as under :
  - ♦ Section 33B is amended to enable one Vice Chairman or Member to officiate as Chairman in the latter's absence.
  - ♦ The following provisions have been omitted on account of the same having become redundant:
    - Sub-section (1A) to Section 32E which provided for payment of amounts ordered by the Settlement Commission in respect of applications made prior to June 1, 2007, within 30 days from June 1, 2007 has been omitted, having become redundant.
    - Sub-section (6) of Section 32F which provided a time limit for disposal of applications which were filed before May 31, 2007 by February 29, 2008, all such applications having been disposed of, has been omitted, having become redundant.
    - Section 32H which provided for re-opening of completed proceedings in respect of applications filed on or after June 1, 2007, has been omitted, having become redundant.
    - Explanation to sub-section (1) of Section 32K, which provided for disposal of applications filed on or before May 31, 2007 by the February 29, 2008, has been omitted as all such applications have been disposed of by the prescribed date.
- ♦ Section 32O which provides for bar on subsequent application for settlement in certain cases has been proposed to be amended to delete certain provisions which have become redundant.

#### ELP Comments

No significant changes have been proposed to be made in the provisions relating to settlement of cases by the Settlement Commission, except to delete certain provisions which have become redundant.

### Notification No. 3 / 2015 - Central Excise (N.T.)

Notification 49/2008-CE (N.T.) dated December 24, 2008, which outlines the percentages of abatements in relation to the products covered under RSP valuation, has been amended as follows:

- Inclusion of goods falling under CETH 0402 91 10 (viz. condensed milk put in unit containers) and 2101 20 (viz. extracts, essences and concentrates of tea or mate and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate), on the clearance of which an abatement of 30% will be available
- Inclusion of goods falling under CETH 2202 (viz. all goods except mineral waters and aerated waters), on the clearance of which an abatement of 35% will be available
- Reduction of rate of abatement on goods falling under CETH 64 (viz. all footwear) from 35% to 25%
- Inclusion of goods falling under CETH 85 or 94 [viz. all goods falling under CETH 8539 (except lamps for automobiles) LED lights or fixtures including LED Lamps falling under Chapter 85 or CETH 9405] on the clearance of which an abatement of 35% will be available
- Deletion of Serial Nos. 121 (viz. all goods falling under CETH 2202 9010), 122 (viz. all goods falling under CETH 2202 90 20), 123 (viz. flavoured milk of animal origin falling under CETH 2202 90 30) and 124 (viz. tender coconut water falling under CETH 2202 90 90)

### Notification Nos. 4 / 2015 - Central Excise (N.T.) and 5 / 2015 - Central Excise (N.T.)

Following amendments have been made to the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 to enable determination of the annual capacity of production for the period March 1, 2015 onwards:

- The maximum speed of packing machine for packages of notified goods of various retail selling prices is being specified as a factor relevant to production for determining Excise Duty payable under Section 3A.
- The deemed production and duty payable per machine per month are accordingly being notified in respect of the pan masala and chewing tobacco with reference to the speed range, in which the maximum speed of a packing machine for packages of various retail sale prices, falls.

### Notification No. 7 / 2015 - Central Excise (N.T.)

Registration process under Central Excise has been simplified to ensure that the registration is granted within two working days of the receipt of a duly completed application form. Verification of documents and premises, as the case may be, shall be carried out after the grant of the registration.



**Notification No. 8 / 2015 - Central Excise (N.T.) - Amendment to CE Rules**

Following amendments are proposed vide the said notification:

- The rebate / refund claims of the assessee, as pending with the authorities, can now be adjusted against amount of penalty imposed on the assessee in addition to the amount of duty and interest liability of the assessee.
- Manufacturer can issue digitally signed invoices and preserve records in electronic form.
- Following proviso to Rule 11(2) are inserted:
  - ♦ If the goods are directly dispatched to the registered dealer's customer, under the direction of the registered dealer, the invoice should specify the name of such registered dealer
  - ♦ Similarly, if the goods are directly dispatched to the job worker, under the direction of the manufacturer/ provider of output service, the invoice should specify the name of such manufacturer/ provider of output service
  - ♦ Also, if the goods imported under the cover of BOE are directly dispatched to the buyer's premises, the invoice should mention that the goods are being dispatched from the place or port of import to the buyer's premises
- The provisions of Rule 11(7), Rule 12CCC, Rule 22 and Rule 25(1), presently applicable to the registered dealers, has now also been extended to a registered importer
- Rule 12(6) and Rule 17(6) has been inserted to provide for the payment of INR 100 per day, subject to a maximum of INR 20,000 for a period of delay in submission of any return or statement, as applicable under Rule 12 / Rule 17
- An explanation to Rule 18 has been substituted to define the term 'export' for the purpose of that Rule to mean taking goods out of India to a place outside India, and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft

**Notification No. 9 / 2015 - Central Excise (N.T.) - Amendment to CE Removal Rules**

Manufacturers can file a letter of undertaking instead of executing a general bond with surety or security, as provided under Rule 3(3) of the CE Removal Rules, provided no show cause notice has been issued under Section 11A of the CE Act or no action is proposed under any Notification issued in pursuance of Rule 12CCC of CE Rules or Rule 12AAA of CCR.

**Notification No. 10 / 2015 - Central Excise (N.T.)**

The restrictions imposed under Notification No. 16/2014 (N.T.) dated March 21, 2014 with regards to withdrawal of facilities on non-compliance of certain provisions, has been made applicable to a registered importer as well.

**Notification No. 11 / 2015 - Central Excise (N.T.)**

In exercise of the powers conferred by sub-clause (iii) of clause (c) of Section 23A of the CE Act, a “resident firm” has been notified as a class of persons who can make an application to the Authority for Advance Rulings. The term ‘firm’ has been defined to have the same meaning as under Section 4 of the Indian Partnership Act, 1932 and includes (i) a Limited Liability Partnership as defined in Section 2(1)(n) of Limited Liability Partnership Act, 2002; (ii) a limited liability partnership which has no company as its partner; (iii) a sole proprietorship; and (iv) one person company.

**Circular No. 999 / 6 / 2015 - CX**

A demand was raised by trade that it may be clarified that in the case of exports, for purposes of CENVAT Credit of input services, the place of removal should be the port or the airport from where the goods are finally exported. The Board clarified that:

- In the case of clearance of goods for export by manufacturer-exporter, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer-exporter and place of removal would be this port/ICD/CFS
- ♦ In the case of export through merchant exporters, the place of removal shall be the place where the property in the goods passes from the manufacturer to the merchant exporter, which in most cases would be the factory gate, since it is here that the goods are unconditionally appropriated to the contract in cases where the goods are sealed in the factory.

## CHANGES IN RATE OF EXCISE DUTY

- The peak rate of Excise Duty has been increased to 12.5% (this subsumes Education Cess and Secondary Higher Education Cess levies).
- Excise duty rate on goods covered by the Medicinal and Toilet Preparation (Excise Duties) Act, 1955 is increased to 12.5%.

### Increase in Rates

Duty on cigarettes is increased by 29% for cigarettes of lengths not exceeding 65 mm and by 17% - 29% for cigarettes of other lengths. This also includes other products, viz. Cheroots, Cigarillos and Cigars of tobacco or of tobacco substitutes. Tabulated below is the summary of changes in rates of Excise Duty:

Sr. No.	Product Tariff No.	Description of Goods (length in mm)	Old Rate (INR Per 1000 Sticks)	New Rate (INR Per 1000 Sticks)
1.	24022010	Non filter not exceeding 65	990	1280
2.	24022020	Non-filter exceeding 65 but not exceeding 70	1995	2335
3.	24022030	Filter not exceeding 65	990	1280
4.	24022040	Filter exceeding 65 but not exceeding 70	1490	1740
5.	24022050	Filter exceeding 70 but not exceeding 75	1995	2335
6.	24022090	Other	2875	3375

- Duty on cut tobacco is increased from INR 60/- per Kg to INR 70/- per Kg.
- Waters including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured falling under tariff heading 220210 is increased from 12% to 18%. Simultaneously, the levy of additional duty of excise @ 5% on these goods is omitted.
- Duty on goods falling under tariff heading 252329, viz. ordinary portland cement, dry, coloured, portland pozzolana cement, is increased from INR 900/- per tonne to INR 1,000/- per tonne.
- Clean energy cess levied on coal, lignite and peat is effectively increased from INR 100/- per tonne to INR 200/- per tonne.
- Duty on sacks and bags (including cones) of polymers of ethylene (other than for industrial use) and other plastics including poly (vinyl chloride) is increased to 15% and 12.5% respectively.
- Excise Duty of 1% (without CENVAT Credit) / 6% (with CENVAT Credit) leviable on mobile handsets including cellular phone changed to 1% (without CENVAT Credit) / 12.5% (with CENVAT Credit) respectively. NCCD of 1% on these goods remains unchanged.

### Full Exemption from Excise Duty

- All goods which are consumed within the factory in the manufacture of Agarbatti.
- Pig iron SG grade and Ferro-silicon-magnesium for manufacture of cast components of wind operated electricity generators.
- Round copper wire and tin alloys used in the manufacture of Photovoltaic (PV) ribbon tinned copper interconnect) for manufacture of solar PV cells and modules subject to Certification by Department of Electronics and Information Technology.
- Railway or tramway track construction material of iron and steel, subject to the condition that such rails have suffered Excise Duty and no corresponding credit of duty is availed.
- Parts, components and accessories for use in manufacture of tablet computer and sub-parts thereof.
- Specified raw materials for use in the manufacture of pacemakers.

### Reduction in Rates

- Duty on footwear with leather uppers (made from leather classified under specific headings) of RSP exceeding INR 1,000 per pair is reduced from 12% to 6%. The abatement applicable for all footwear is reduced to 25%.
- Duty from 12% to 6% on
  - ♦ Wafers for use in the manufacture of IC modules for smart cards; and
  - ♦ Inputs for use in manufacture of LED driver and MCPCB for LED Lights and Fixtures & LED Lamps.
- Duty on chassis for ambulance is reduced from 24% to 12.5%.

### Withdrawal of Exemption / Optional Excise Duty Payment Facilitated

- Optional Excise Duty of 2% (without CENVAT Credit) / 6% (with CENVAT Credit) extended to:
  - ♦ Condensed milk put up in unit containers (condensed milk, other than put up in unit containers, will continue to be exempt); and
  - ♦ Peanut butter.
- Optional Excise Duty of Nil (without CENVAT Credit) / 12.5% (with CENVAT Credit) provided on solar water heater and system.
- Optional Excise Duty of 2% (without CENVAT Credit) / 12.5% (with CENVAT Credit) provided on tablet computer.

## Excise Duty Rates on Petroleum Products

Duty rates applicable prior upto 28.02.2105					Duty rates applicable w.e.f. 01.03.2015				
CENVAT (INR / Litre)	SAED (INR / Litre)	AED (INR / Litre)	Ed. & SHE Cess	Total (INR / Litre)	CENVAT (INR / Litre)	SAED (INR / Litre)	AED (INR / Litre)	Ed. & SHE Cess	Total (INR / Litre)
<b>Unbranded petrol</b>									
8.95	6	2	3%	17.46	5.46	6	6	Nil	17.46
<b>Branded petrol</b>									
10.10	6	2	3%	18.64	6.64	6	6	Nil	18.64
<b>Unbranded Diesel</b>									
7.96	Nil	2	3%	10.26	4.26	Nil	6	Nil	10.26
<b>Branded Diesel</b>									
14% + INR 5 /Litre or INR 10.25 /Litre, whichever is lower	Nil	2	3%	12.62	6.62	Nil	6	Nil	12.62

Thus, the total incidence of various duties of Excise on petrol and diesel remains unchanged.

## Important Clarifications

- The validity period of concessional Excise Duty of 6% granted to specified goods used in the manufacture of electrically operated vehicles and hybrid vehicles is extended by one more year.
- Goods manufactured domestically and supplied against ICB are eligible for full Excise Duty exemption, provided that such goods when imported, they attract Nil BCD and CVD [S.No.336 of Notification No.12/2012-CE]. The condition is being amended so as to provide that if imported goods are eligible for Nil BCD and CVD subject to certain conditions, then the said conditions shall also apply *mutatis mutandis* to such goods when manufactured domestically and supplied against ICB.
- Excise Duty is exempted on goods meant for setting-up of Ultra Mega Power Project specified in List No. 10 [S. No. 337 of Notification No. 12/2012-CE]. In case of goods for a Project for which certificate regarding Ultra Mega Power Project status is provisional, the exemption is subject *inter alia* to the condition that the CEO of the Project furnishes a bank guarantee or fixed deposit receipt for a term of 36 months or more. This condition is amended to prescribe furnishing of bank guarantee or fixed deposit receipts for a period of 42 months.
- Excise Duty is exempted on goods meant for setting-up of Mega Power Project specified in List No. 11 [S. No. 338 of Notification No. 12/2012-CE]. In case of goods for a Project for which, certificate regarding Mega Power Project status is provisional, the exemption is subject *inter alia* to the condition that the CEO of the Project furnishes a bank guarantee or fixed deposit receipt for a term of 36 months or more. This condition is being amended to prescribe furnishing of bank guarantee or fixed deposit receipts for a period of 66 months.

# CUSTOMS DUTY

## LEGISLATIVE CHANGES

### Amendments to the Customs Act

- An amendment has been proposed in Section 28 by inserting a proviso to the effect that in cases which do not involve fraud, collusion, willful mis-statement or suppression of facts or contravention of the Act or Rules with intent to evade payment of duty, no penalty shall be imposed, if the Noticee from whom duty is demanded, pays the same in full along with interest within 30 days of the receipt of the Show Cause Notice. On such payment, proceedings against the Noticee and all other co-noticees will stand concluded.
- Sub-section (5) of Section 28 is proposed to be amended to reduce the penalty from 25% to 15% in cases where an assessee opts to make payment of the dues within 30 days from the date of receipt of a Show Cause Notice. Therefore, in cases involving fraud, collusion, willful mis-statement or suppression of facts or contravention of the Act or Rules with intent to evade payment of duty, the Noticee from whom duty is demanded, would now be required to pay the same in full along with interest and penalty of only 15% as against the earlier 25%.
- An Explanation is proposed to be added to Section 28 to provide that in respect of SCN pending adjudication, either for the normal period of limitation or the extended period of limitation, the proceedings will be deemed to be concluded if the Noticee makes payment of the duty, interest and penalty (as per proviso to sub-section (2) or under sub-section (5)) within 30 days of the Finance Bill, 2015 receiving the assent of the President.

#### ELP Comments

The above amendments seek to encourage assessees to come forward and make payment of dues, to avoid payment of penalty altogether (in normal period cases) or on payment of a penalty of 15% (in extended period cases), to reduce litigation between assessees and the Department.

### Penal Provisions:

- Section 112(b)(ii) is proposed to be substituted so as to cap the maximum penalty imposable in respect of goods other than prohibited goods, to 10% of the duty sought to be evaded or INR 5,000, whichever is higher. Further, a proviso is proposed to be added to provide that in cases of demands raised under the extended period of limitation, if the duty as determined by the proper officer under sub-section (8) of Section 28 is paid along with interest within 30 days from the date of receipt of the order of the proper officer, the penalty liable to be paid under Section 112(b)(ii) shall be 25% of penalty so determined.

#### ELP Comments

While the earlier penal provisions provided for a maximum penalty equivalent to the duty sought to be evaded, the amended provisions seek to cap the maximum penalties to 10% of the duty sought to be evaded.

- Section 114(ii) is similarly proposed to be amended to cap the maximum penalties, in case of improper exportation of goods. Further, an identical proviso, as above, is proposed to be added.

### Settlement Commission:

- Amendments have been proposed in respect of the Settlement Commission provisions as under :
  - ♦ Proviso to Clause (b) of Section 127A is proposed to be amended to provide that when any proceeding is referred back, whether in appeal or in revision **or otherwise** by any Court or Tribunal or any other authority, to the adjudicating authority for a fresh adjudication/decision, such case will not be entitled for settlement.
  - ♦ The following provisions have been omitted on account of having become redundant :
  - ♦ Sub-section (1A) to Section 127B which provided for payment of amounts ordered by the Settlement Commission in respect of applications made prior to June 1, 2007, within 30 days from June 1, 2007 has been omitted, having become redundant.
  - ♦ Sub-section (6) of Section 127C which provided a time limit for disposal of applications which were filed before May 31, 2007 by February 29, 2008, all such applications having been disposed of, has been omitted, having become redundant.
  - ♦ Section 127E which provided for re-opening of completed proceedings in respect of applications filed on or after June 1, 2007, has been omitted, having become redundant.
  - ♦ Explanation to sub-section (1) of Section 127H, which provided for disposal of applications filed on or before May 31, 2007 by the February 29, 2008, has been omitted as all such applications have been disposed of by the prescribed date.
- Section 127L which provides for bar on subsequent application for settlement in certain cases has been proposed to be amended to delete certain provisions which have become redundant.

#### ELP Comments

No significant changes have been proposed to be made in the provisions relating to settlement of cases by the Settlement Commission, except to delete certain provisions which have become redundant.

### Notification No. 27 / 2015 - Customs (N.T)

In exercise of the powers conferred by sub-clause (iii) of clause (c) of section 28E of the Customs Act a “resident firm” has been notified as a class of persons who can make an application to the Authority for Advance Rulings. The term ‘firm’ has been defined to have the same meaning as under Section 4 of the Indian Partnership Act, 1932 and includes a Limited Liability Partnership, a sole proprietorship and a one person company.

## CHANGES IN RATE OF CUSTOMS DUTY

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No change in the peak rate of BCD @ 10%.

### Full exemption from BCD

- Parts and components of cash dispensers and automatic bank note dispensers
- Parts, components and accessories for use in the manufacture of tablet computer and sub-parts for use in manufacture of such parts, components and accessories
- High Density Polyethylene for manufacture of telecommunication grade optical fibres or optical fibre cables
- Black Light Unit Module for manufacture of LCD/LED TV panels, subject to actual user condition
- Evacuated tubes with three layers of solar selective coating for use in the manufacture of solar water heater and system, subject to actual user condition
- Artificial hearts (left ventricular assist device)
- Life saving drugs and medicines imported by an individual for personal use, subject to specified condition

### BCD reduced from 55% to 10%

- Reduction in Tariff rate of Bituminous coal – effective rate of BCD continues to be 2.5%

### BCD reduced from 10% to 7.5%

- Water Blocking Tape, Ethylene–propylene–non-conjugated diene rubber and mica glass tape for use in the manufacture of insulated wires and cables (except sub-heading 8544 11), subject to actual user condition
- Metal parts for use in manufacture of electrical insulators, subject to actual user condition

### BCD reduced from 10% to Nil

- Digital Still Image Video Cameras capable of recording video with minimum resolution of 800x600 pixels, at minimum 23 frames per second, for at least 30 minutes in a single sequence, using the maximum storage (including the expanded) capacity
- Organic LED TV panels



**BCD reduced from 7.5% to 5%**

- C- Block Compressor, crank shaft and over load protector and positive thermal co-efficient for use in the manufacture of refrigerator compressors
- Ceria zirconia compounds, cerium compounds and zeolite for use in manufacture of washcoat, which is used in catalytic converters, subject to actual user condition
- Sulphuric acid for manufacture of fertilizers
- Butyl acrylate

**BCD reduced from 7.5% to 2.5%**

- Specified components of cnc lathe machines and machining centres, namely ball screws, linear motion guides and CNC systems is being reduced from 7.5% to 2.5%, subject to actual user condition
- Anthraquinone

**BCD reduced from 5% to 2.5%**

- Isoprene
- Antimony metal and antimony waste and scrap
- CCD/CMOS camera sensor, main printed circuit board and objective lens of CCD/CMOS camera sensor, light guide/image guide optical fiber bundle, ultrasound transducer and main printed circuit board of ultrasound transducer for use in the manufacture of flexible medical video endoscope
- Liquefied butane

**BCD reduced from 5% to Nil**

- Parts and components for use in the manufacture of Digital Still Image Video Cameras capable of recording video with minimum resolution of 800x600 pixels, at minimum 23 frames per second, for at least 30 minutes in a single sequence, using the maximum storage (including the expanded) capacity
- Magnetron (upto 1 KW) used for the manufacture of domestic microwave oven

**BCD reduced from 2.5% to 2%**

- Styrene, ethylene dichloride and vinyl chloride monomer

**BCD reduced from 2.5% to Nil**

- Ulexite ore

**BCD increased from 2.5% to 5%**

- Metallurgical coke

**BCD increased from 10% to 15%**

- Increase in Tariff rate on iron and steel and articles of iron and steel covered under Chapter 72 and 73 – effective rate of BCD on these goods to continue

**BCD increased from 10% to 40%**

- Increase in Tariff rate for commercial vehicles covered under 8702 or 8704; however, 10% effective BCD rate applicable on import in CKD kits and 20% effective BCD rate for import in any other form

**Exemption from CVD**

- Parts, components and accessories for use in the manufacture of tablet computer and sub-parts for use in manufacture of such parts, components and accessories subject to actual user condition
- Battery, titanium, palladium wire, eutectic wire, silicone resins and rubbers, solder paste, reed switch, diodes, transistors, capacitors, controllers, coils (steel), tubing (silicone) for use in the manufacture of pacemakers, subject to actual user condition
- Artificial hearts (left ventricular assist device)

**SAD reduced from 4% to 2%**

- Naphtha for use in manufacture of excisable goods
- Styrene, ethylene dichloride and vinyl chloride monomer
- Melting scrap of iron or steel, stainless steel scrap for the purpose of melting, copper scrap, brass scrap and aluminium scrap

**Exemption from SAD**

- Parts, components and accessories for use in the manufacture of tablet computer and sub-parts for use in manufacture of such parts, components and accessories subject to actual user condition

- All goods (except populated PCBs) for use in the manufacture of ITA bound goods covered by Notification Nos. 25/1998-Customs dated June 2, 1998, 24/2005-Customs dated March 1, 2005, 25/2005-Customs dated March 1, 2005, subject to actual user condition
- All inputs for use in the manufacture of LED driver or Metal Core Printed Circuit Board for LED lights and fixtures or LED Lamps, subject to actual user condition
- Battery, titanium, palladium wire, eutectic wire, silicone resins and rubbers, solder paste, reed switch, diodes, transistors, capacitors, controllers, coils (steel), tubing (silicone) for use in the manufacture of pacemakers, subject to actual user condition

### **Exemption withdrawn**

- Exemption from CVD and SAD withdrawn on specified goods imported for use by Security Printing and Minting Corporation of India Limited

### **Export duty reduced from 5% to 2.5%**

- Ilmenite, upgraded (beneficiated ilmenite including ilmenite ground)

### **Other Amendments**

- Education Cess and Secondary & Higher Education Cess not leviable on CVD
- Concessional BCD rate of 5% is being extended to AEC (Active Energy Controller) for manufacture of Renewable Power System (RPS) inverters, subject to certification by Ministry of New and Renewable Energy
- Electrically operated vehicles including in CKD condition, for transport of persons falling under heading 8702 would continue to attract 10% BCD
- Scheduled rate of Additional Duty of Customs levied on imported Motor Spirit (Petrol) and High Speed Diesel Oil (HSD), commonly known as Road Cess is being increased from INR 2 per litre to INR 8 per litre. Effective rate of Additional Duty of Customs on Motor Spirit and HSD is being increased from INR 2 per litre to INR 6 per litre
- In case of imports for a project for which the certificate regarding Mega Power Project status is provisional, exemption from BCD and CVD on specified goods imported for setting up a Mega Power Project / specified power projects covered Sl. No. 508 of Notification No. 12/2012-Cus. dated March 17, 2012 the period for which the bank guarantee or fixed deposit receipt is to be furnished is extended from 36 months or more to a period of 66 months.
- Notification No. 12/2012-Customs [Sr. No.148(C)] fully exempts BCD and CVD leviable on life saving drugs and medicines imported by an individual for personal use subject to importer producing a certificate (in prescribed form) issued by the Director General or Deputy Director General or Assistant Director General, Health Services, New Delhi, Director of Health Services of the State Government or the District Medical Officer/Civil Surgeon of the

district, in each individual case, that the goods are life saving drugs or medicines. The prescribed Form is being amended so as to provide that such certificate shall be valid for a period of one year in case of patients who have to import such drugs and medicines on a regular basis.

- Validity period of concessional duties granted to specified goods for use in the manufacture of hybrid and electrically operated vehicles is being extended to March 31, 2016.

### **Important Clarifications**

- Benefit of exemption from BCD available to parts and components of cash dispenser and automatic bank note dispensers, in accordance with CBEC Circular No. 9/96-Customs dt. February 13, 1996.
- Compliance with Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 for the purposes of availing of the CVD exemption under Notification No.12/2012-CE not required, if the importer is in conformity with the procedure laid down in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rule, 1996 for availing exemption / concession from BCD on the same bulk drug.

## CENVAT CREDIT RULES, 2004

### Time limit for availing CENVAT Credit on inputs and input services increased to one year

- Time limit for availing CENVAT Credit on inputs and input services is being extended from six months to one year from the date of issue of invoice/ challan/ other documents as specified in Rule 9(1) of CCR.

The amendment shall take effect from March 1, 2015.

#### ELP Comments

Vide Union Budget 2014-15, effective September 1, 2014, time limit for taking CENVAT Credit on inputs and input services was introduced, being six months from date of issuance of prescribed documents. The said amendment ran contrary to the decision of Hon'ble Supreme Court in **Collector of Central Excise, Pune vs. Dai Ichi Karkaria Ltd [1999 (112) ELT 353 (SC)]**, wherein CENVAT Credit, as a right, was held to be indefeasible.

Whereas, the proposed amendment does not address the industry request to do away with time limits for availment of CENVAT Credit, it does provide a breathing space by enhancing the time limit by another six months. The proposed limitation period of one year is also in line with the decision of **Shayona Pulp Conversion Mills Pvt. Ltd vs. Commissioner of Central Excise, Aurangabad [TS-241-Tribunal-2014-EXC]** wherein, the Hon'ble Tribunal held that the CENVAT Credit should be availed within a reasonable time of one year.

### Reversal of CENVAT Credit under Rule 6 now required for non-excisable goods as well

An Explanation to Rule 6(1) of the CCR has been inserted to provide that 'exempted goods' would also include 'non-excisable' goods sold for a consideration.

- Consequently, the manufacturers of excisable and non-excisable goods would be required to reverse the proportionate CENVAT Credit on inputs used for manufacture of such non-excisable goods.
- Value of non-excisable goods for the purpose of this rule shall be the invoice value and where such invoice value is not available, such value shall be determined using reasonable means as envisaged in the CE Act and rules made thereunder.

The amendment shall take effect from March 1, 2015.

#### ELP Comments

The amendment will lend clarity and remove anomalies in respect of CENVAT Credit on non-excisable goods. It is pertinent to note that in the past, there have been rulings, for instance in the case of **Sahni Strips & Wires (P) Ltd. Vs CCE [2012 (283) ELT 418 (Tri. Del)]**, wherein it was held that reversal of CENVAT Credit under Rule 6(2) shall not be required in case of 'non-excisable' goods. Now, by virtue of this amendment, the CENVAT Credit proportionate to the inputs used in manufacture of non-excisable goods would be required to be reversed under Rule 6.

### CENVAT Credit in respect of partial reverse charge services

Rule 4(7) of the CCR has been amended to provide that CENVAT Credit in respect of services falling under partial reverse charge mechanism can be availed immediately on payment of Service tax.

- Accordingly, condition of availing CENVAT Credit only on payment to the Service Provider, has been done away with.

The amendment shall take effect from March 1, 2015.

### CENVAT Credit in respect of inputs and capital directly sent to job worker

- Rule 4(1) of CCR is being amended to provide that where inputs are directly sent to the job worker, CENVAT Credit on such inputs can be availed at the time of receipt of such inputs at the job workers premises.
- Suitable amendment has also been made in Rule 4(2) CCR for capital goods.

The amendment shall take effect from March 1, 2015.

### Definition of 'Export Goods'

- Definition of the term 'Export Goods' has been introduced to mean as '*any goods which are to be taken out of India to a place outside India*'.

### CENVAT Credit on the basis of invoice issued by the importer

- Rule 9(4) of CCR has been amended to provide that, the invoice issued by an importer indicating payment of duty on inputs or capital goods, shall be an eligible document for availing CENVAT Credit of such duty paid.

### Recovery of CENVAT Credit availed but not utilised

Rule 14 CCR has been amended to provide for recovery of CENVAT Credit wrongly availed or erroneously refunded but not utilised.

- In such case, the provisions of Section 11A of the CE Act or Section 73 of the Act, as the case may be, shall apply *mutatis mutandis* for effecting recoveries.
- For the purpose of this Rule, all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner-
  - ♦ the opening balance of the month has been utilised first;
  - ♦ credit admissible in terms of CCR taken during the month has been utilised next;
  - ♦ credit inadmissible in terms of CCR taken during the month has been utilised thereafter.

The amendment shall take effect from March 1, 2015.

**Provisions w.r.t. Removal of goods to job worker without payment of Excise Duty / Reversal of CENVAT Credit has been rationalised**

- Inputs can be sent to multiple job-workers
  - ♦ In case inputs are sent directly to the job-worker the count of 180 days would start from the date of receipt of input by the job worker
- The benefit has also been extended to capital goods
  - ♦ Capital goods sent to job worker must be received within 2 years from the date of removal by the principal manufacturer
  - ♦ In case capital goods are sent directly to the job worker, the count of 2 years would start from the date of receipt of capital goods by the job worker

The amendment shall take effect from March 1, 2015.

## CENTRAL SALES TAX

Trade and industry has long desired elimination of CST, which is a cost in the chain of transactions and abolishing CST should have been a pre-cursor to introduction of GST. However, no steps in this direction were taken. Moreover, the provision for additional GST @ 1% on inter-State supply of goods under the imminent GST regime will continue such tax costs even under the GST regime.



## DIRECT TAXES

### LEGISLATIVE CHANGES

#### Indirect transfers (Section 9, 47, 285A of the IT Act)

Section 9 of the IT Act is proposed to be amended by insertion of new Explanation(s) 6 and 7 to Section 9(1)(i). The proposed provisions provide that:

- The share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets located in India, if on the specified date, the value of Indian assets,-
  - a) exceeds the amount of INR 10 Crores; **and**
  - b) represents at least 50% of the value of all the assets owned by such company or entity.
- Value of an asset as on the specified date shall mean the fair market value of such asset without reduction of liabilities, if any. The manner of determination of fair market value of the Indian assets *vis-a-vis* global assets of the foreign company shall be prescribed in the rules.
- The taxation of gains arising on transfer of a share or interest deriving, directly or indirectly, its value substantially from assets located in India will be on proportional basis. The method for determination of proportionality are proposed to be provided in the rules.
- Exemption shall be available to the transferor of a share of, or interest in, a foreign entity if he along with its associated enterprises
  - a) neither holds the right of control or management,
  - b) nor holds voting power or share capital or interest exceeding 5% of the total voting power or total share capital,
 in the foreign company or entity directly holding the Indian assets (direct holding company).

#### ELP Comments...

The Finance Act, 2012 inserted certain clarificatory amendments in the provisions of Section 9. The amendments, *inter alia*, included insertion of Explanation 5 in Section 9(1)(i) with retrospective effect from April 1, 1962. The Explanation 5 clarified that an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. The amendments as proposed to Section 9 and 47 of the IT Act, which are based on the recommendations of the Expert Committee under the Chairmanship of Dr. Parthasarathi Shome and after considerations of concerns raised by various stakeholders, is a progressive step towards clarifying the law in relation to taxation of 'indirect transfers' and re-inforces the intent of the current Government to ensure certainty, predictability and stability of tax laws in India. The proposed amendment also seeks to re-inforce the position in law set out in the decision of the Delhi High Court in the case of **DIT (International Tax) vs Copal Research Limited, [TS-509-HC- 2014(DEL)]** wherein the Court on the issue of taxability of 'indirect transfers' and interpretation of Explanation 5 to Section 9(1)(i) of the IT Act has held that gains arising from sale of a share of a company incorporated overseas, which derives less than 50% of its value from assets situated in India would certainly not be taxable under Section 9(1)(i) of the IT Act.

- Exemption is available to the transferor, in case the transfer is of shares or interest in a foreign entity which does not hold the Indian assets directly, and the transferor along with its associated enterprises:

- a) neither hold the right of management or control in relation to such company or the entity,
- b) nor hold any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power exceeding five percent in the direct holding company or entity.

Amendments have been proposed to Section 47 of the IT Act which prescribes that the provisions relating to 'capital gains' under Section 45 will not apply to transfers specified under such Section. In terms of the proposed amendments, exemption shall be available in respect of any transfer, subject to certain conditions, in a scheme of amalgamation, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company. Further exemption shall also be available in respect of any transfer, subject to certain conditions, in a demerger, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company.

A new Section 285A of the IT Act is proposed to be introduced in the IT Act, whereby the Indian entity shall be obligated to furnish information relating to the offshore transactions having the effect of directly or indirectly modifying the ownership structure or control of the Indian company or entity.

In case of non-compliance, a penalty is also proposed to be imposed by inserting Section 271GA in the IT Act.

The above amendments are effective from April 1, 2016 and will apply in relation to AY 2016-17 and subsequent assessment years.

#### ...ELP Comments

However, as the proposed amendments are to be introduced effective from April 1, 2016, they would not strictly apply to transactions which have already been impacted by the retrospective amendment to Section 9 of the IT Act.

One of major recommendations of the Expert Committee under the Chairmanship of Dr. Parthasarathi Shome was that due to retrospective amendment, no person should be treated as an assessee in default under Section 201 or a representative assessee of a non-resident. This recommendation was made on the basis that such treatment would amount to the imposition of a burden of impossibility of performance. However such recommendation has not been given effect to in the current budget proposals. Further, there is no clarity in relation to a situation where there is a DTAA with the country of residence of the non-resident or foreign company and its hoped there is some clarity issued by way of clarificatory circular.

The Memorandum to the Finance Bill, 2015 which discusses the direct tax proposals indicates that a clarificatory circular could be issued in due course to give effect to some of the recommendations made by the Expert Committee and it needs to be seen whether such circular, when issued, contains any guidance in relation to taxation of past transactions.

## Taxability of interest payable by a PE of a non-resident engaged in the business of banking (Section 9 of IT Act)

- An Explanation has been proposed to be inserted after Section 9(1)(v), stating that the payment of interest by a PE in India of a non-resident, where such non-resident is engaged in business of banking, to the head office or any PE or any other part of such non-resident outside India shall be chargeable to tax. Such PE in India shall be deemed to be a separate person and independent of the non-resident of which it is a PE and provision relating to the computation of total income, determination of tax, collection and recovery shall apply to such interest payments.
- The aforesaid amendment will be effective from April 1, 2016 (AY 2016-17) and subsequent assessment years.

### ELP Comments

- The taxability of interest paid by Indian branch of an overseas banking entity, to its head office and overseas branches, and consequently deduction of tax at source by such Indian branch on interest payments so made, has been the subject matter of litigation.
- This amendment overturns the position taken in various judicial precedents such as **Mitsubishi Ltd. vs. Director of Income-tax, International Taxation, Mumbai [2015, 53 taxmann.com 105 (Calcutta)]**, **Deutsche Bank AG vs. Assistant Director of Income-tax (International Taxation)-1(2), Mumbai [2014, 47 taxmann.com 105 (Mumbai-Tribunal)]**, wherein it was held that in case of an assessee, being a non-resident bank, interest paid by Indian branch to Head Office and overseas branches were not taxable in India on principles of mutuality and, therefore, tax was also not required to be deducted at source while making said payments.
- This amendment has been brought in line with:
  - ♦ CBDT Circular No. 740 dated April 17, 1996 which had clarified that branch of foreign company in India is to be considered as a separate entity for purpose of taxation and TDS provision would apply along with separate taxation of interest paid by such branch to its head office or other branches of non-resident.
  - ♦ Sub-clause (3) of Article 14 of the India-USA DTAA dealing with Permanent Establishment Tax.
- The amendment has brought in necessary clarity and certainty to the issue on whether interest paid by Indian branch to head office and overseas branches is taxable in India and whether tax was required to be deducted at source while making said payments.

## Presence of fund managers in India not to create a business connection (Section 9A of the IT Act)

- Section 9A is proposed to be inserted in the IT Act, and a specific regime has been proposed in line with international best practices to facilitate location of fund managers of off-shore funds in India. In terms of the proposed provisions:
  - ♦ The fund management activity carried out through an eligible fund manager acting on behalf of an eligible investment fund shall not constitute 'business connection' in India of the said fund.
  - ♦ An eligible investment fund shall not be said to be a resident in India merely because the eligible fund manager, undertaking the fund management activities on its behalf, is situated in India.
- The benefit under this new regime is subject to the fulfillment of certain specified conditions by the eligible fund and the fund manager. The conditions to be fulfilled by the fund are as under:

- ♦ the fund is not a person resident in India;
- ♦ the fund is a resident of a country / specified territory with which India has entered into an agreement referred to under Section 90(1) or 90A(1) of the IT Act;
- ♦ the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed 5% of the corpus of the fund;
- ♦ the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;
- ♦ the fund has a minimum of 25 members who are, directly or indirectly, not connected persons;
- ♦ any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%;
- ♦ the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%;
- ♦ the fund shall not invest more than 20% of its corpus in any entity;
- ♦ the fund shall not make any investment in its associate entity;
- ♦ the monthly average of the corpus of the fund shall not be less than INR 100 Crores;
- ♦ the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India;
- ♦ the fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;
- ♦ the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity.

#### ELP Comments

The Finance Minister in his previous Budget Speech (in July 2014) had mentioned that fund managers of foreign investors remain outside India under the apprehension that their presence in India may have adverse tax consequences. With a view to put an end to this uncertainty and to encourage these fund managers to shift to India, the Finance Minister had proposed to provide that income arising to foreign portfolio investors from transaction in securities will be treated as capital gains. The proposed amendment can be seen as a move in continuation of the stated intent of the Government to facilitate location of fund managers of offshore funds in India, and will give a boost to fund management and related industries in India.

- The conditions to be fulfilled by the fund manager are as under:
  - ♦ the person is not an employee of the eligible investment fund or a connected person of the fund;
  - ♦ the person is registered as a fund manager or an investment advisor in accordance with the specified regulations;
  - ♦ the person is acting in the ordinary course of his business as a fund manager;
  - ♦ the person along with his connected persons shall not be entitled, directly or indirectly, to more than 20% of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through the fund manager.
- The proposed regime requires all eligible Funds to furnish, within 90 days from the end of the respective financial year, a statement of compliance to the prescribed authority in the prescribed form. Penal consequences are proposed for failure to file the statement.

- The above amendments will take effect from April 1, 2016 and will accordingly apply in relation to AY 2016-17 and subsequent assessment years.

### Deferment of provisions relating to GAAR (Chapter X-A of IT Act)

- The implementation of the provisions pertaining to GAAR, introduced by the Finance Act, 2013, has been deferred by two years and has been made applicable from FY 2017-18 (AY 2018-19) and subsequent years of the Act. Further, these provisions have been made applicable prospectively.

#### ELP Comments

- The Finance Act, 2012 had inserted Chapter X-A, dealing with the provisions of GAAR to be effective from April 1, 2014. Subsequently, Finance Act 2013, amended provisions of Chapter X-A and the current GAAR provisions would come into force with effect from April 1, 2016 (AY 2016-17). The CBDT has also notified certain rules relating to application of GAAR.
- Industry and FIs expected deferment of GAAR
  - ♦ Shoring up of Tax administration for implementation;
  - ♦ Adequate safeguard against misuse of provisions by tax authorities;
  - ♦ Clarity on application/coverage of transactions to be probed.
- In light of the awaited report from the OECD, an active participant on the project, on various aspects of the BEPS project and recommendations regarding the measures to counter it, the Ministry of Finance has proposed that the GAAR provisions should be implemented as a part of comprehensive regime to deal with BEPS and aggressive tax avoidance.

### Steps to counter evasion of taxes (Section 269SS and 269T of IT Act)

- Section 269SS and Section 269T of the IT Act have been proposed to be amended with effect from June 1, 2015. These provisions would now cover within its ambit, transactions relating to acceptance or repayment of any loan or deposit or any sum of money, whether advance or otherwise in relation to immovable property transactions exceeding INR 20,000. Such transaction will have to be undertaken through account payee cheque/ draft or by ECS through a bank and not by cash. The penalty provisions under Section 271D and 271E of IT Act have also been proposed to be amended accordingly.

#### ELP Comments

An immovable property transaction is one such transaction wherein cash mode of payment is very prevalent. The provisions have been amended to curb the movement of black money in such transactions.

## POEM (Section 6 of IT Act)

- The conditions for determining residential status of companies under Section 6(3) of the IT Act have been proposed to be amended by introduction of the concept of POEM. The place of effective management is proposed to be defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as whole are, in substance, made.
- After introduction of POEM, a company shall be said to be resident in India in any previous year if –
  - ♦ It is an Indian company; or
  - ♦ Its place of effective management, at any time in that year, is in India.
- The aforesaid amendment will be effective from April 1, 2016 (AY 2016-17) and subsequent assessment years.

### ELP Comments

- POEM is an internationally recognized concept and an effective measure to deal with cases of creation of shell companies outside India but controlled and managed from India.
- The concept is in line with the OECD and DTC, 2013.
- The guidelines setting out the principles to be followed in the determination of POEM, which are proposed to be issued, will bring more clarity on its applicability.

## Reduction in rate of tax on Income by way of Royalty and Fees for technical services in case of non-residents (Section 115A of the IT Act)

It is proposed to amend Section 115A of the IT Act, to reduce the rate of tax on Income by way of Royalty and Fees for technical services in case of non-residents from the current 25% to 10%.

The amendment is to take effect from April 1, 2016, i.e. AY 2016-17.

### ELP Comments

The rate of tax was increased from 10% to 25% vide the Finance Act, 2013 and the reversion of tax rates to 10% is a welcome move which will reduce the hardship faced by small entities due to the current high rate of tax of 25%, and will help promote the 'Make in India' initiative, as also curtail treaty shopping exercises.

## AIF Taxation (Section 10(23FBA), 10(23FBB), 115UB, 194LBB of the IT Act)

- Section 10(23FBA) is proposed to be inserted in the IT Act, whereby any income of an investment fund other than the income chargeable under the head "Profits and gains of business or profession" shall be exempt in the hands of the fund. Investment fund would mean AIF Category I and II, whether in the form of a trust or a company or an LLP or a body corporate.
- Section 10(23FBB) is proposed to be inserted in the IT Act, whereby any income in the hands of the investor which is of the same nature as income by way of profits and gains of business at investment level shall be exempt in the hands of the investor. Section 194LBB is proposed to be inserted in the IT Act, wherein any income, other than income referred to in Section 10(23FBB), is payable to a unit holder, then the person responsible for making the payment shall deduct tax at the rate of 10%.

- Section 115UB is proposed to be inserted in the IT Act, whereby income of a person, being a unit holder of an investment fund, out of investments made in the fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to such person had the investments, been made directly by the unit holder.
- If the net result of computation of income of the investment fund is a loss under any head of income and such loss cannot be or is not wholly set-off against income under any other head of income, in such a case, such loss shall be allowed to be carried forward and can be set off by the investment fund against future profits.
- These amendments will take effect from April 1, 2016 and will accordingly apply in relation to the AY 2016-17 and subsequent assessment years.

#### ELP Comments

The amendment has been proposed to rationalize the taxation of AIF Category-I and Category-II funds and proposes to provide pass through status to all sub-categories of category-I and also category-II AIFs governed by the regulations of Securities and Exchange Board of India ('SEBI').

### MAT (Section 115JB of IT Act)

- The definition of 'book profit' under Explanation 1 to Section 115JB of the IT Act has been proposed to be amended with effect from April 1, 2016 (AY 2016-17) so as to exclude the following:
  - ♦ Income from share of member of AOP on which no income-tax is payable in accordance with the provisions of Section 86 of the IT Act and expenditure relatable to such income;
  - ♦ Income from transactions in securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) arising to a Foreign Institutional Investor and expenditure relatable to such income.

#### ELP Comments

- Section 86 of the IT Act provides that no income-tax is payable on the share of a member of an AoP, in the income of the AoP in certain circumstances. However, under the present provisions, a company which is a member of an AoP is liable to MAT on such share also, since such income is not excluded from the book profit while computing the MAT liability of the member. The amendment has been brought into the computation of book profits by excluding AoP from its ambit to bring them at par with a partner of a firm, whose share in the profits of the firm is exempt in the hands of the partner as per Section 10(2A) of the Act and no MAT is payable by the partner on such profits.
- The income arising to a Foreign Institutional Investor from transactions in securities is taxable as capital gains under Section 115AD of the IT Act. The Finance Act (No. 2), 2014 had amended the definition of 'capital asset' to include securities held by Foreign Institutional Investor within its ambit. The above amendment has brought in to benefit the Foreign Institutional Investors, earning income from capital gains, from the ambit of MAT.

### Balance 50% additional depreciation for assets acquired and put to use for less than 180 days [Section 32(1)(ii) of the IT Act]

- A third proviso is proposed to be inserted under Section 32(1)(ii) of the IT Act to provide that where an asset acquired by an assessee is put to use for business for a period of less than one hundred and eighty days, then the deduction for the balance fifty per cent of additional depreciation for such asset shall be allowed in the immediately succeeding previous year.

#### ELP Comments

The proposed amendment seeks to do away with the existing discrimination between assets acquired and put to use for less than 180 days and assets acquired and put to use for 180 days or more by allowing, in effect, 100% depreciation on new assets acquired in the second half of the year as usually it was felt that non-availability of full 100% of additional depreciation for new plant or machinery used less than for 180 days prompted the assessee to defer such investment to the next year. The proposed amendment is in conformity with the Government's agenda to incentivize investment in the manufacturing sector wherein now the first year additional depreciation split over two years in addition to the normal deduction for depreciation available in succeeding year.

### Incentives for the State of Andhra Pradesh and the State of Telangana [Section 32AD and Section 32(iia)]

- A new Section 32AD of the IT Act is proposed to be inserted under the IT Act, to provide for an additional investment allowance of 15% of the cost of new assets acquired and installed by an assessee, provided that the following conditions are fulfilled:
  - ♦ He sets up a new undertaking or enterprise for manufacture or production of any article, in the notified backward areas of Andhra Pradesh and Telangana during the period April 1, 2015 to March 31, 2016;
  - ♦ The new assets are acquired and installed for the purposes of the said undertaking or enterprise during the period beginning from the April 1, 2015 to March 31, 2020.
- Section 32(iia) is proposed to be amended to provide for an additional depreciation of 35% (as against the normal additional depreciation of 20%) on new plant or machinery.

#### ELP Comments

The proposed Section is reflective of the commitment of the Central Government to provide special dispensation/ incentive to investors investing in the newly created States of Telangana and Andhra Pradesh as in terms of Section 94 of the Andhra Pradesh Reorganisation Act, 2014, it was agreed that the Central Government shall take appropriate fiscal measures, including offer of tax incentives to the State of Andhra Pradesh and the State of Telangana, to promote industrialization and economic growth in both the States. Undoubtedly, the proposed Section would encourage setting up of new manufacturing undertakings in the State of Andhra Pradesh and the State of Telangana.



## Tax Neutrality on merger / consolidation of similar scheme of Mutual Funds [Section 2(42A), Section 47(xviii)]

- Clause (xvii) is proposed to be inserted under Section 47 to exclude from the purview of capital gains any transfer of units pursuant to a consolidating scheme of a mutual fund where the consolidation is of two or more schemes of an equity oriented fund or two or more schemes of a fund other than equity oriented fund.
- A new sub-clause (hd) is proposed to be inserted in Explanation 1 to Section 2(42A) to provide for inclusion of the period for which the unit or units in the consolidating scheme of the mutual fund were held by the assessee when determining whether the period of holding of the consolidated unit.

### ELP Comments

This is a long awaited exemption to facilitate the policy of SEBI seeking consolidation of different schemes having similar features so as to have simple and fewer numbers of schemes for greater transparency and accountability. With the introduction of this provision, going forward, the unit holder seeking merger or consolidation of units will not be subjected to Capital Gains.

## Cost of acquisition of capital asset in case of demerger (Section 47 of IT Act)

- The cost of acquisition of capital asset acquired by resulting company, being an Indian company, in scheme of demerger, shall be the cost at which demerged company acquired the capital asset, as increased by cost of improvement incurred by demerged company.
- The period of holding of such assets in hands of resulting company would include period for which the such assets was held by demerged company.

### ELP Comments

This provision has been introduced to provide for a mechanism for valuation and period of holding, of assets transferred from the demerged company to the resulting company, in case of a demerger. Though, currently any capital asset transferred by demerged company to resulting company, being an Indian company, in scheme of demerger, is not regarded as transfer.

## Residential status of a crew member on a foreign bound ship [Section 6]

- Explanation 2 is proposed to be inserted under Section 6(1) of the IT Act to provide that the residential status of a crew member, being a citizen of India, on a foreign bound ship where the destination of the voyage is outside India shall be determined in the manner and subject to the conditions as may be prescribed.
- ♦ The amendment shall take effect retrospectively from April 1, 2015 and will apply in respect of AY 2015-16 and subsequent assessment years.

### ELP Comments

In the case of foreign-bound ships where the destination of the voyage is outside India, there is uncertainty with regard to the manner and basis of determination of the period of stay in India for crew members of such ships who are Indian citizens. The Rules to be prescribed by the CBDT will provide the manner and procedure for computing period of stay in India.

## Taxation regime for REIT and Invit (Section 2(13A) and Section 10(23FCA))

- Section 2(13A) of the IT Act is proposed to be amended, whereby business trust as defined will include an InvIT and REIT, the units of which are required to be listed on recognized stock exchange.
- The sponsor would get the same tax treatment on offloading of units under an Initial offer on listing of units as it would have been available had he offloaded the underlying shareholding through an IPO.
- Section 10(23FCA) is proposed to be inserted in the IT Act to provide that any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust shall be exempt.
- In relation to withholding, in case of a resident unit holder, tax shall be deducted @ 10%, and in case of distribution to a non-resident unit holder, the tax shall be deducted at the rate in force as applicable for deduction of tax on payment to the non-resident of any sum chargeable to tax.
- No deduction shall be made under Section 194-I of the IT Act where the income by way of rent is credited or paid to a business.
- The above amendments will take effect from April 1, 2016 and accordingly apply in relation to AY 2016-17 & subsequent assessment years.

### ELP Comments

In respect of REITs and INVITs, it is proposed to provide that the sponsor will be given the same treatment on offloading of units at the time of listing as would have been available to him if he had offloaded his shareholding of special purpose vehicle at the stage of direct listing. Further, the rental income arising from real estate assets directly held by the REIT is also proposed to be allowed to pass through and to be taxed in the hands of the unit holders of the REIT.

## Revision of orders prejudicial to revenue (Section 263)

- Section 263 (1) of the IT Act is proposed to be amended to include Explanation 2 whereby it is declared that an order passed by the AO shall be deemed to be erroneous to the extent it is prejudicial to the interests of the revenue, if, the order is passed without making inquiries or verification which should have been made; or any relief is allowed without due inquiry or the order is not in accordance with any other order, direction or instruction issued by the Board under Section 119 or the order passed is not in accordance with a judgement prejudicial to the assessee, which is passed by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

## Abolition of levy of Wealth Tax (Wealth Tax Act, 1957) & an increase in additional surcharge of 2% on tax payers earning high income

The levy of wealth tax under the Wealth Tax Act, 1957 is proposed to be abolished w.e.f. April 1, 2016. It is also proposed that the objective of taxing high networth individuals shall be achieved by levying an additional surcharge of 2% on taxpayers earning higher income as levy of surcharge is easy to collect and monitor and also does not result into any compliance burden on the taxpayer and administrative burden on the Department.

The revised rate of surcharge to be levied (including the additional surcharge of 2%) would be as follows:

- @ 7% on domestic companies having an income between INR 1 Crores and INR 10 Crores.
- @ 12% on individuals earning INR 1 Crores and above annually and on domestic companies with an annual income of INR 10 Crores or more.

The proposed amendment is to take effect from April 1, 2016, i.e. AY 2016-17.

### ELP Comments

The levy of wealth tax created a significant amount of compliance burden on the taxpayer as well as administrative burden on the Department as the cost of collection of wealth tax was high and only a nominal amount of revenue was collected. The said amendment shall lead to tax simplification and enable the Department to focus more on ensuring tax compliance and widening of the tax base.

Further, to track the wealth held by individuals and entities, the information regarding the assets which are currently required to be furnished in the wealth tax return shall be captured in the income tax returns. This shall ensure that the abolition of wealth tax does not lead to escape of any income from the tax net and infact the present move is expected to yield greater revenues to the Government.

## Appeal by revenue where an identical question of law pending before Supreme Court [Section 158AA]

- A new Section 158AA is proposed to be inserted so as to provide that where any question of law is pending before Supreme Court against an order of High Court in favour of the assessee, then for an identical question of law for the subsequent period, the Commissioner or Principal Commissioner may direct the Assessing office to make an application to Appellate Tribunal that the Appeal will be filed when the decision on question of law becomes final in the earlier case pending before the Supreme Court.
- The Commissioner or Principal Commissioner shall direct the Assessing Officer to make an application only if an acceptance is received from the assessee that the question

### ELP Comments

The proposed Section empowers the Revenue Authorities (similar to the benefit already available to the assessee under Section 158A of the IT Act) that where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year pending before the Supreme Court, against the order of the High Court in favour of the assessee, the Commissioner or Principal Commissioner may, direct the AO to make an application to the Appellate Tribunal stating that an appeal arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case. The proposed Section shall pre-empt multiple appeals / litigation on the same question of law for the same assessee. It will help in reducing multiplicity of prolonged litigation between the Revenue Authorities and the assessee.

of law in the other case is identical to that arising in the relevant case.

- It is further proposed to provide that if the Supreme Court decides the question of law against the assessee, then the Commissioner or Principal Commissioner may direct the Assessing Office to file an appeal before the Appellate Tribunal.

### Penalty for concealment [Section 271(1)(c)]

- Section 271(1)(c) of the IT Act provides for levy of penalty on the amount of 'tax sought to be evaded' where there is concealment of income or furnishing inaccurate particulars of income.
- The aforesaid provision is proposed to be amended to extend its applicability to cases where tax has been computed under Section 115JB/ Section 115JC of the IT Act.

#### ELP Comments

In a catena of Judgments including **Nalwa Sons Investment Ltd vs CIT [2010-TIOL-890-HC-DEL-IT]** it was held that "there was concealment but that had its repercussions only when the assessment was done under the normal procedure". It was held that when income is assessed under Section 115JB, the question of concealment does not arise in respect of additions made while computing income. The Special Leave Petition filed by the Department against the above judgment of was dismissed by the Hon'ble Supreme Court. Similar view has been adopted in a catena of judgments. The proposed amendment seeks to overcome the aforesaid judgments.

### Amendments in relation to Settlement Commission proceedings [Chapter XIX-A]:

Explanation (i) to Section 245A(b) is proposed to be substituted to provide as follows:

- Where notice under Section 148 is issued for any AY, an assessee can approach Settlement Commission for other assessment years as well even if notice under Section 148 for other AYs has not been issued. Provided that the assessee should have filed a return under Section 139 or pursuant to a notice under Section 142.

#### ELP Comments

- Presently, the assessee is eligible to approach Settlement Commission only for the AY for which notice under Section 148 has been issued.
- Issues relating to escapement of income are often relate to more than one AY and therefore, the proposed relaxation would obviate the need for issuing a notice for other AYs.

### Rectification of mistake apparent from the record [Section 245D]

- Sub-section (6B) of Section 245D of the IT Act is proposed to be substituted to provide that the Settlement Commission can rectify any mistake apparent from the record within six months from the end of the month in which an application for rectification has been made by the Applicant or the Principal Commissioner or Commissioner, when such application is made before the end of six months from the end of the month in which order is passed.

### Power of Settlement Commission to grant immunity from prosecution [Section 245H]

- Section 245H(1) of the IT Act which currently provides immunity from prosecution to any assessee who co-operates and makes full and true disclosure of his income is proposed to be amended to provide that the Settlement Commission while granting immunity from prosecution or penalty to any person shall record the reasons in writing in the order passed by it.

### Bar on subsequent application for settlement [Section 245K]

- Section 245K of the IT Act currently debar a person from making any subsequent application of Settlement under Section 245C *inter alia* if an earlier application made by such person has been allowed to be proceeded with and an order under Section 245D(4) of the IT Act is passed imposing penalty.
- It is proposed to amend Section 245K of the IT Act to debar even a “related person” of such person from approaching the Settlement Commission subsequently on any other matter.
- The term “related person” has been defined to mean as follows:
  - ♦ Where such person is an individual, any company in which such person holds more than 50% of the shares or voting power at any time, or any firm or association of person or body of individual in which such person is entitled to more than fifty percent of the profits at any time, or any Hindu undivided family in which such person is a karta;
  - ♦ Where such person is a company, any individual who held more than 50% of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person;
  - ♦ Where such person is a firm or association of person or BOI, any individual who was entitled to more than 50% of the profits in such firm, association of person or body of individual, at any time before the date of application before the Settlement Commission by such person;
  - ♦ Where such person is an HUF, the karta of that HUF.

### Application of seized or relinquished assets Section 132B of the IT Act

- ♦ Section 132B of the IT Act is proposed to be expanded to provide that even liability out of an application made under Settlement Commission can be recovered from assets seized under Section 132 or requisitioned under Section 132A.

### Extension of the eligible period of concessional TDS rate [Section 194LD]

- Concessional rate of 5% TDS on interest earned by FIIs and QFIs investing in Rupee denominated corporate bonds and Government securities has been extended from June 30, 2015 to June 30, 2017.

## Amendment to the definition of charitable purpose [Section 2(15)]

- Clause (15) of Section 2 of IT Act is proposed to be amended to include “yoga” in the definition of charitable purpose on the same lines as education, medical relief, etc.
- Clause (15) is further proposed to be amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless:
  - ♦ such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
  - ♦ the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year.

## Other Key Amendments

- It is proposed to amend Section 255(3) of the IT Act, wherein the income-limit of cases to be decided by single member bench of ITAT has been increased from the existing amount of INR 5 lakhs to INR 15 lakhs. The amendment is to take effect from June 1, 2015.
- It is proposed to amend the provisions of Section 194C of the IT Act to expressly provide that the relaxation under Section 194C (6) of the IT Act from non-deduction of tax shall only be applicable to the payment in the nature of transport charges (*whether paid by a person engaged in the business of transport or otherwise*) made to a contractor who is engaged in the business of transport, i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of Section 44AE of the IT Act (i.e. a person who does not own more than 10 goods carriage at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN. The amendment is to take effect from June 1, 2015.
- The CBDT has been granted the power to frame rules in relation to foreign tax credit which will provide the procedure for granting relief or deduction of foreign taxes to be notified under the IT Act.

## INCOME TAX RATES

### For Individuals, HUF's, AOP's and BOI's

Existing and Proposed	
Income (INR)	Rate (%)
0 -2,50,000	NIL
2,50,001 - 5,00,000	10
5,00,001 - 10,00,000	20
10,00,001 and above	30

Sr. No.	Particulars	Existing	Proposed
1	Surcharge	10% is levied if the total income exceeds INR 10 million	12% is levied if the total income exceeds INR 10 million
2	Cess - Education cess and Secondary Education cess	3%	
3	Basic Exemption Limits	<ul style="list-style-type: none"> <li>INR 3,00,000 for individuals, resident of India, of the age of 60 years or more but less than 80 years</li> <li>INR 5,00,000 for individuals, resident of India, of the age of 80 years or more.</li> <li>unchanged</li> </ul>	
4	Alternate Minimum Tax	<ul style="list-style-type: none"> <li>19.06% (including cess) - If adjusted total income exceeds INR 2 million but less than INR 10 million</li> <li>20.96% (including surcharge and cess) - If adjusted total income exceeds INR 10 million</li> </ul>	<ul style="list-style-type: none"> <li>19.06% (including cess) - If adjusted total income exceeds INR 2 million but less than INR 10 million</li> <li>21.34% (including surcharge and cess) - If adjusted total income exceeds INR 10 million</li> </ul>

## OTHER RATES

Sr. No.	Description	Existing Rates (%) (Including Surcharge and Cess)			Proposed Rates (%) (Including Surcharge and Cess)		
A	Domestic Companies	Net income does not exceed INR 10 million	Net Income is between INR 10 million and INR 100 million	Net income exceeds INR 100 million	Net income does not exceed INR 10 million	Net Income is between INR 10 million and INR 100 million	Net income exceeds INR 100 million
1	Regular tax	30.90	32.45	33.99	30.90	33.063	34.608
2	MAT (Rate to be applied on book profits)	19.06	20.01	20.96	19.06	20.39	21.34
3	BDT	22.66 (Includes surcharge of 10% and cess of 3%)			23.072 (Includes surcharge of 12% and cess of 3%)		
4	DDT	16.995 (Includes surcharge of 10% and cess of 3%)			17.304 (Includes surcharge of 12% and cess of 3%)		
B	Foreign Companies	Net income does not exceed INR 10 million		Net Income is between INR 10 million and INR 100 million	Net income exceeds INR 100 million		
1	Regular tax	41.20		42.024	43.26		
C	Firms and LLP	Net income does not exceed INR 10 million	Net income exceeds INR 10 million	Net income does not exceed INR 10 million	Net income exceeds INR 10 million		
1	Regular tax	30.90	33.99	30.90	34.608		
2	Alternate Minimum Tax	19.06	20.96	19.06	21.34		

## SURCHARGE RATES

Particulars	Existing	Proposed
For resident companies	<ul style="list-style-type: none"> <li>NIL - If the Net income does not exceed INR 10 million</li> <li>5% - If the Net Income is between INR 10 million and INR 100 million</li> <li>10% - If the Net income exceeds INR 100 million</li> </ul>	<ul style="list-style-type: none"> <li>NIL - If the Net income does not exceed INR 10 million</li> <li>7% - If the Net Income is between INR 10 million and INR 100 million</li> <li>12% - If the Net income exceeds INR 100 million</li> </ul>
For non-resident companies	<ul style="list-style-type: none"> <li>NIL - If the Net income does not exceed INR 10 million</li> <li>2% - If the Net Income is between INR 10 million and INR 100 million</li> <li>5% - If the Net income exceeds INR 100 million</li> </ul>	

## TRANSFER PRICING

### Raising the threshold for 'SDT'

Section 92BA of the IT Act, which deals with 'SDT' has been proposed to be amended so as to increase the threshold limit for applicability of transfer pricing regulations to 'SDT' from INR 5 Crores to INR 20 Crores. The amendment is to take effect from April 1, 2016, i.e. AY 2016-17.

#### ELP Comments

The objective of introducing domestic transfer pricing regulations *vide* the Finance Act, 2012 was to reduce tax leakages whereby domestic entities framed tax structures in order to minimize their tax obligations. The increase in threshold limit for applicability of SDT to INR 20 Crores (from INR 5 Crores), addresses the issue of increase in compliance costs / compliance obligations faced by small and medium enterprises as a consequence of the current low threshold limit of INR 5 Crores.



## BANKING, FINANCING, INFRASTRUCTURE, CAPITAL MARKETS AND INVESTMENT UPDATE

The Government, in its first comprehensive budget, has sought to set the tone for far reaching and bottom up revamp on a plethora of issues ranging from public procurement to fiscal legislation. The plinth of the current budget proposals seek to address the continuing issues of invigorating infrastructure development, financial inclusion and transparency, revitalizing investment appetite into India, and reducing long term dependence on state run institutions. The Government also recognizes that this is but the beginning of progress and to achieve its decidedly ambitious aims for which, it must lead the way. This 'lead the way' approach is probably the most welcome change, and the lens through which the following proposals should be viewed.

### BANKING

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#### SARFAESI Benefit to NBFCs

Under this year's Budget Speech, the Finance Minister has proposed that NBFCs registered with RBI and having asset size of INR 500 Crores and above will be considered for notifications as 'Financial Institution' in terms of the SARFAESI Act, 2002. With the growing levels of non-performing assets, this provides such NBFCs the long awaited respite qua enforcement of securities provided to support the credit facilities. The NBFCs have been resorting to arbitration as means of dispute resolution, which was not always effective and also have differentiated them from the enforcement options available to banks. This has been one of the primary reasons, which has led to reduced amounts of syndication of loans to NBFCs and have also dissuaded them from joining the joint lenders forum or the corporate debt restructuring packages. This change now brings such NBFCs at par with banks and 'Financial Institutions' and should provide them equal protection during joint enforcement actions.

#### Bankruptcy Code

Identifying the long overdue need for reforms in the bankruptcy laws in India, the Finance Minister has recognized the redundancy of the outmoded Sick Industrial Companies Act, 1985 and the process followed through the Bureau for Industrial and Financial Reconstruction and has proposed introduction of a Bankruptcy Code in FY 2015-16. This is a welcome move for institutional lenders in India who have been voicing their concerns for the need to have a bankruptcy code. Insolvency laws in India have not been clearly legislated upon for a considerable period of time. Subsequent legislation has empowered various creditors with varied enforcement actions, which has only increased the complexities faced at the time of enforcement and increased the number of claimants. It would be important to check whether the proposed Bankruptcy Code provides the much needed ammunition to banks and financial institutions in India and whether it clarifies a clear process of division of assets in case of bankruptcy. Additionally, such a Bankruptcy Code would also be required to be in line with the recent legislative enactments such as Companies Act, 2013.

The Code is expected to take into consideration the suggestions made by the Bankruptcy Law Reform Committee that was set up by the Department of Economic Affairs, Ministry of Finance, under the Chairmanship of Mr. T. K.

Vishwanathan (former Secretary General, Lok Sabha and former Union Law Secretary) by an office order dated August 22, 2014 to study the “corporate bankruptcy legal framework in India”, which submitted a report to the Government recently.

### Micro Units Development Refinance Agency (“MUDRA”) Bank

With the motive of providing the much needed impetus to small scale entrepreneurs and existing small business, the Government has proposed setting up of MUDRA bank with a corpus of INR 20,000 Crores and a credit guarantee corpus of INR 3,000 Crores. The MUDRA bank will be refinancing the micro-finance Institutions through a Pradhan Mantri Mudra Yojana. The MUDRA bank will be focusing primarily on SC/ ST enterprises. Previously, such entrepreneurs and businesses merely had access to high interest money lenders, who provided cash. With an attempt to curtail such harsh lending and the practice of dealing in cash, such institutional credit would definitely be helpful for the small scale entrepreneurs and existing small business. Moreover, it will help India further achieve the concept of ‘cashless India’, as proposed by the Finance Minister in his Budget Speech this year.

### TReDS

Recognizing the need for optimisation of the receivables of MSMEs, the Finance Minister has highlighted the initializing of the process of establishing an electronic TReDS financing of trade receivables of MSMEs, from corporate and other buyers, through multiple financiers. This is in conformity with the recently issued ‘*Guidelines for setting up of and operating Trade Receivables Discounting System*’ dated December 3, 2014 issued by the RBI which specifies in detail the working of the TReDS. Keeping in mind the business needs, the TReDS Guidelines provides for ‘without recourse’ basis transactions. This is also in line with the regulations proposed in the Factoring Regulation Act, 2011. The guidelines also suggest that such trade receivables will also be easily traded between financial institutions, thereby parcelling the risk between entities.

### Monetary Policy Framework

The Finance Minister had identified in his Budget Speech of 2014-2015 that there was a requirement to have a monetary policy framework agreement with RBI. It had been clearly mentioned that a clear framework will lead to better control on issues such as liquidity and inflation. Such a requirement had also been specified by various committees such as in the Urjit R. Patel committee report.

In this year’s Budget Speech, the Finance Minister has mentioned that such a monetary policy framework agreement has been concluded. It has been proposed that a monetary policy committee would be set up. It was indicated that an amendment to the Reserve Bank of India Act, 1934 would be made to provide for such a committee. A monetary policy committee is in line with the systems existent in countries such as the United Kingdom, China, Indonesia and Mexico. One would be able to ascertain the composition and the decision making process of such a committee only post the amendment of the Reserve Bank of India Act, 1934.

## Governance of Public Sector Banks

Recognising the difficulties faced by public sector banks, especially as regards governance and capital requirements, the Finance Minister has stated that the Government intends to set up an autonomous bank board bureau. Given the large number of retirees of CMDs of PSU Banks, there has occurred a significant gap in appointment of the next generation of bank CMDs. There have also been proposals of splitting the roles of chairman and managing director to lure talent. In case of certain PSU Banks, such splits have already been implemented. The bureau proposed to be set up would nominate heads of public sector banks and enable them to devise different development and capital raising strategies in line with the suggestions made in the Report of the Committee to Review Governance of Boards of Banks in India by the P.J. Nayak committee.

Further, in terms of the P.J. Nayak committee report, the Finance Minister has announced that this would be an interim step for setting up of a Bank Investment Company, which would eventually hold the Government's equity stake in public sector banks. Such a concept has worked well in the United Kingdom, wherein the UK Financial Investments Ltd was set up.

## Financial Redressal Agency

The Finance Minister has proposed to create a task force in order to facilitate in the establishment of a Financial Redressal Agency. The intent is to set up a sector neutral agency to adequately address grievances of customers, across all financial sectors. This is a precursor to achieving a consolidated financial sector, as envisaged in the Financial Sector Legislative Reforms Commission by Justice B.N. Srikrishna and in regulations for a uniform Indian Financial Code. This will also help achieve a single point contact for redressal.

## Monetising Gold

Recognising the fact that despite India being one of the largest consumers of gold in the world with estimated stocks of gold being 20,000 tonnes, gold in India is neither traded nor monetised, the Finance Minister has announced several steps for monetising gold. A Gold Monetisation Scheme is proposed to be introduced which will allow depositors of gold to earn interest in their metal account. Further, such a scheme would also enable jewellers to obtain loans in their metal accounts.

The Gold Monetisation Scheme would replace the prevalent Gold Deposit Scheme and the Gold Metal Loan Scheme and it would be important to see the manner in which the Government proposes the shift from the present schemes to the Gold Monetisation Scheme. Usually, banks offer gold deposit receipts pursuant to the deposits. It would be interesting to understand whether there is legislation around taking such deposit receipts as security for the lending.

Further, to provide the customers with an alternative to purchasing metal gold, the Finance Minister proposes to introduce a Sovereign Gold Bond. Such bonds would be redeemable in cash in terms of the face value of the gold and would serve as a viable investment option for consumers since they would carry a fixed rate of interest.

## Black Money

Announcing the proposal to introduce a new law in India on black money, the Finance Minister pointed out that even banks and financial institutions abetting offences relating to concealment of income and assets and evasion of tax in relation to foreign assets, would be liable for prosecution and penalty. This would entail banks and financial institutions reinforcing their KYC compliances and strengthening their internal monitoring systems.

## Real Estate

Keeping with the intent of the Finance Minister to curb black money, the Finance Minister has proposed to introduce a Benami Transactions (Prohibition) Bill in the current session of the Parliament, in order to replace the present law as regards benami transfers in India. The proposed law is aimed to be more comprehensive than its predecessor and enable confiscation of benami property and prosecution for offences. These measures would be effective in obviating the generation of black money in real estate transactions.

## Corporate Bond Market

A majority of the developed economies have large, deep, liquid and active debt markets, equivalent to their equity markets in terms of widespread retail participation. The Finance Minister's announcement of developing a similarly robust bond market in India is both long overdue and very welcome.

There have been a slew of changes easing bond market participation over the last few years with the fungibility of limits of the USD 51 billion cap, the removal of purchase controls for buying of limits to a monitoring mechanism, introduction of the new FPI regulations and a consolidation of all stripes of foreign investors (FII, QFI) into a single category of FPI.

Under this budget, the Government has announced the formation of the PDMA with a view to regulate its borrowings, both domestic and foreign and for issuance, management and monetization of Central Government securities. It would appear that the debt raising by states and their instrumentalities would be regulated independently, e.g. municipal bond regulations proposed to be issued by the SEBI.

Further, the Government's announcement of tax free bonds for road, rail and irrigation sectors is a clear indication to take this forward, as infrastructure has been the largest beneficiary, geographically, of a mature and robust bond market. This also becomes imperative, as Banks seek to become BASEL III compliant, giving them a larger platform to exit from long term, cash hostage lending by refinancing through the bond market.

The indication for FDI and FPI consolidation appears to be for rationalization of equity investments and would exclude debt instruments. It would be pertinent to note that historically the success of any securities market has been the ease of participation of all types of investors, especially foreign investors. Keeping in mind the Prime Minister's clarion call to the world to invest in India and the Finance Minister's statement to develop a world class bond market, it would be important to ensure that there is comity amongst all the interested regulators RBI, SEBI and Income Tax authorities to realize this promise.

## INFRASTRUCTURE

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The Finance Minister has sought to implement institutional changes in India's infrastructure sector to provide an impetus to its growth. Apart from the requirement of funding, the Budget also highlighted the importance of an adequate framework for clearances, redressal of disputes and a rationalization of the risk sharing profile of the extant PPP regime. The Finance Minister also spoke of legislations to streamline the sector. The key highlights of the speech are below:

### Regulatory Reform Initiatives

While economic reforms through market oriented policies have made India an attractive destination, certain aspects such as multiple permissions, institutional deficiencies, bureaucratic delays in grant of permissions and lack of investor friendly regulatory framework, act as major impediments to India becoming an investment destination.

Identifying the importance for a time efficient approval process is important to facilitate India in becoming an investment destination. The Finance Minister has proposed the setting up of an expert committee to examine the possibility of forming a unified legislation replacing the need for multiple prior permissions by pre-existing regulatory mechanisms. It is heartening to note that in addition to the initiatives proposed by the Government in the Budget, the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India has set up a portal enable fast and efficient access to Government-to-Business (G2B) services and reduce unnecessary delays in various regulatory processes required to start and run businesses.

The Finance Minister has proposed the introduction of **Regulatory Reform Bill** to bring about a cogency of approach across various sectors of infrastructure.

It is no secret that many infrastructure projects are delayed due to failure to comply with the obligations in the concession agreements. Private sector entities end up taking recourse to arbitration which ends up imposing heavy burden on such entities. Further, such arbitrations often have panels including representatives or employees of the concessioning entity, leading to litigation on the ground of bias. The previous Government had conceptualised the idea of bills for resolution of disputes in public contracts, regulatory reforms and public procurement; the planning commission was given the task to formulate the bills but the bills failed to see the light of the day. Additionally, despite last year's announcement of 3P India, a body that was supposed to develop dispute redressal mechanisms in PPP projects, no such institution has been introduced. The Finance Minister has announced that a Public Contracts (Resolution of Disputes) Bill would be introduced to streamline the institutional arrangements for resolution of disputes in public contracts, thereby reducing time and costs implications.

ELP believes that any redressal mechanism in PPP needs to take into account the roles of the various stakeholders. The redressal system in an infrastructure project is bound to involve not just the concessionaire but also to involve the engineering procurement construction (EPC) contractor and the operator of the infrastructure facility. They all operate under separate contracts and not one contract and therefore the law of arbitration would need to take into account that disputes may be related and hence legislative change would need to be brought in, to ensure that there is no multiplicity of parties and proceedings on the same project.

**Public Procurement Law** is the need of the hour with the Government intending to contain malfeasance in public procurement. The Finance Minister has sought for a view of the legislature on the scope of such law. It is proposed that such law have an institutional structure consistent with the UNCITRAL Model Law on Public Procurement 2011.

### Public- Private- Partnership and Public Investment in Infrastructure

Despite the emphasis placed on its importance for the revival of infrastructure sector, the PPP model has failed to garner any impetus. The failure of the PPP model can largely be attributed to the skewed equilibrium of risk allocation and financial gain between private investment and public investment. Accordingly, the Government has highlighted a need for further Government outlay.

The Budget has addressed the issue as follows:

- The Finance Minister has called for greater public sector involvement by increasing public investment;
- To increase public investment, the outlays on the roads and gross budgetary support to the railways has been increased by INR 14,031 Crores and INR 10,050 Crores respectively. Investment by the Government in infrastructure is set to go up by INR 70,000 Crores;
- More projects in roads, ports, rail lines and airports would be on a 'plug and play' basis, i.e. all clearances and linkages will be in place before the project is awarded by a transparent auction system;
- In order to rebalance the risk allocation, the sovereign is required to bear a major part of the risk without, absorbing it entirely.

The unpopularity of the current form of the PPP model has greatly impacted the growth of the infrastructure sector in India. The risk allocation, far from ideal, had left the private participants disinterested in investments in this sector. With the Budget announcement to rebalance risk allocation, we can anticipate an increase in private participation for PPP projects. Some of the areas that are likely to be addressed in the revamped PPP regime are:

- The differential tariff regimes that are followed in sectors ranging from airports to highways will need to be rationalised. One example could be that the "guaranteeing" of a 16% return on equity with a pass through of all debt may not survive or be feasible and liken the other sectors auctioning or bidding against one or two parameters is likely to be the norm.
- Given that projects are bleeding today because of the inappropriate allocation of risk between the public and private sectors, the new contracts will strive to redress this situation on the basis that risk will fall on the party who is best placed to manage the risk. The principle that UK adopts, i.e. "value for money", will be the determining factor. For example, if the Government takes on the risk of the pre-existing conditions of the soil, the bidding cost for that particular project is bound to reduce because the Government is better placed and knowledgeable to determine that risk rather than a third party.
- It is likely that if the concession contracts are also subject to a specific regulator for that sector, then an exemption from the Competition Act, 2002 would also be available to that particular project.

- With the need for long term contracts, dynamic effects of technology and raw material costs and service providers that are constantly having to deliver a better service, year on year and given that economies of scale and newer technology are likely to bring prices down, it is quite likely that even within the long term contract, there may be intervals of say 5 years when the Government can provide for benchmarking or market testing so that it is always able to ascertain whether or not the consumer is getting value for money in exchange for a monopoly by the Government to a concessionaire.
- In order to make banks more accountable and to encourage them to assess projects far more diligently, the concession contracts may, in due course, get rid of the safety provisions that are given to lenders thereby their debt is secured in the case of termination.

The road transport and highways ministry recently conceived a new “hybrid PPP” model where the Government will bear 40% of the construction cost and the developer will invest the remaining. Furthermore, the Government would also bear the revenue risk in projects with a low anticipation of traffic flow. Though not discussed in the Budget Speech, similar models could ensure increase in public investment as well as appropriate risk allocation. In this context, the plug-and-play model proposed for 5 new Ultra Mega Power Projects, discussed below, may be considered for other projects, thereby lessening the risk as allocated to the private sector.

## Power and Ports

- **Power:** It has been proposed that 5 new Ultra Mega Power Projects, each of 4000 MW, will be implemented in the plug-and-play mode. All clearances and linkages will be in place before these projects are awarded by a transparent auction system.

While no further information was provided on the location of these projects, it is anticipated that the Government will have the regulatory framework in place for bringing together all the clearances and coal linkages required for the plug and play mode. It is to be noted that in the financial year of 2014-15, a scheme was approved for setting up of Ultra Mega Solar Power Projects with financial support from the Central Government.

- **Ports:** After the decision to wind down the Tariff Authority for Major Ports, to garner further momentum in the ports sector, the Finance Minister stated that ports in public sector will be encouraged to become companies under the Companies Act, 2013. No details were provided as to how the migration of the ownership of ports from the public trust structure to the corporate structure would occur. Corporatization would bring with it more stringent governance requirements and make available to the public information about the port company in line with other corporates in India.

## Financing and Investments

- **National Investment and Infrastructure Fund:** The Budget proposed to set up a National Investment and Infrastructure Fund, and find monies to ensure an annual flow of INR 20,000 Crores to it. In the event, the Government is successful in obtaining additional resources during the year from tax buoyancy, then over and above the budgetary allocation, there may be an enhancement to the initial inflow of INR 5,000 Crores. NIIF would be used to raise debt which would be invested in infrastructure finance companies that would leverage such equity infusions to fund their operations.

- **Infra bonds:** To boost the funding available for infrastructure projects, the Finance Minister announced tax free infrastructure bonds for the projects in the rail, road and irrigation sectors.
- **InvITs:** Building on the steps taken in the previous Budget to encourage Infrastructure Investments Trusts it was proposed to rationalize the capital gains regime for the sponsors exiting at the time of listing of the units of InvITs, subject to payment of Securities Transaction Tax.
- **Road Cess:** The Finance Minister proposed the conversion of existing Excise Duty on petrol and diesel to the extent of INR 4 per litre into road cess to fund investment in roads and other infrastructure.

### Atal Innovation Mission at the National Institution for Transforming India

The Finance Minister announced the launch of AIM as an innovation promotion platform involving academics, entrepreneurs, and researchers and draw upon national and international experiences to foster a culture of innovation, R&D and scientific research in India. The platform will also promote a network of world-class innovation hubs and grand challenges for India. A sum of INR 150 Crores is earmarked for this purpose.

### SETU (Self-Employment and Talent Utilization)

The Finance Minister announced the launch of SETU, a techno-financial, incubation and facilitation programme to support all aspects of start-up businesses, and other self-employment activities, particularly in technology-driven areas. INR 1,000 Crores has been allocated for this purpose.

### Gujarat International Finance Tec-City (GIFT)

The Finance Minister announced the operationalisation of the first phase of GIFT and issuance of appropriate regulations in March. The new financial and technological hub, i.e. GIFT, has been feted as one of the first smart cities in the country. A large part of the infrastructure of the city was in the form of PPP where projects such as power, sanitation, civil construction and ICT have been bid out to private players. ELP represented a member of the winning consortium for the ICT for the entire GIFT city during the bid process.

Apart from the above that have a direct impact on the infrastructure sector, other reforms relating to investment, capital markets and tax laws also have great potential to impact the Infrastructure Sector.

## CAPITAL MARKETS ---

### Merger of FMC with SEBI

The move to merge FMC with SEBI would help in improving the regulatory architecture for the futures commodity trading. The Financial Sector Legislative Reforms Commission had recommended that SEBI, IRDA, PFRDA and FMC should be merged into a single entity being a unified financial agency. The next step will be to amend the SEBI Act, 1992. Merger should be smooth, considering that, both FMC and SEBI is under the same ministry. After the INR 5,600



Crores NSEL (National Spot Exchange Limited) payment crisis, FMC was brought under the administrative control of the Finance Ministry from the Consumer Affairs Ministry.

## Indian Financial Code

Indian Financial Code, suggested by FSLRC, lays out clear objectives for financial regulations. It provides clear objectives for financial regulation where Government intervention is required and the areas include consumer protection, systemic risk reduction, debt management, capital controls and micro-prudential regulation.

## INVESTMENTS

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### Composite cap for FDI and FPI

Last year, the Finance Minister while presenting the Union Budget for the year 2013-14, *inter alia*, also made a budget proposal that, *"In order to remove the ambiguity that prevails on what is Foreign Direct Investment (FDI) and what is Foreign Institutional Investment (FII), I propose to follow the international practice and lay down a broad principle that, where an investor has a stake of 10 percent or less in a company, it will be treated as FII and, where an investor has a stake of more than 10 percent, it will be treated as FDI."* The composite cap and doing away with FPI and FDI proposed in the Budget Speech is pursuant to the recommendation of SEBI Committee (June 2013) on 'Rationalisation of Investment Routes and Monitoring of Foreign Portfolio Investments' under the Chairmanship of Shri. K.M. Chandrasekhar. This report also made recommendations for a harmonized model of investment routes designed to overcome the shortcomings of multiple routes that exist today.

A composite cap will lead to investment classification and tracking easier through Designated Depository Participants. The aforesaid proposal will streamline the foreign investment regime in India and remove ambiguity on application of sectoral caps, conditions and approval requirements in different sectors. The sectors which are already on a 100% automatic route would not be affected.

### Foreign Investment in AIFs

The Finance Minister has proposed allowing foreign investment in alternative investment funds. This move will result in higher foreign money inflow as it will potentially increase investment from all sources including foreign HNI's and hedge funds investors who are mainly in the listed space.

### Amendment to Section 6 of FEMA

The Finance Bill amends Section 6 of the FEMA to provide that regulations in relation to capital account transactions, not involving debt instruments, will be provided by the Central Government, in consultation with the RBI. Pursuant to the said amendment, RBI will now only regulate capital account transactions in relation to transaction involving debt instruments. This change will now mitigate any risk of conflict between RBI and the Government as was the case in the past with regard to the conflicting position taken on number of policy matters including the stand taken in respect of validity of put options.

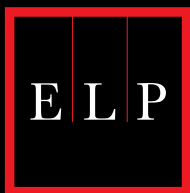
### **Confiscation of Indian Assets for violation qua foreign property**

The Finance Bill also amends and introduces Section 37A in FEMA to the effect that if any foreign exchange, foreign security or any immovable property situated outside India is held in contravention of the provisions of this Act, then action may be taken for seizure and eventual confiscation of assets of equivalent value situated in India. These contraventions are also being made liable for levy of penalty and prosecution with punishment of imprisonment up to five years (though such a provision of punishment does not yet form part of the Finance Bill). Unlike FERA, FEMA presently has no criminal consequence in case of any violation. However, with a view to curb generation of black money and deter residents from concealing foreign assets, the Finance Minister has proposed to introduce a comprehensive new law and consequently to amend FEMA and the Prevention of Money Laundering Act, 2002 to provide for harsh punishment to enable administration of the new legislation on black money.

## GLOSSARY OF TERMS

Abbreviation	Meaning
<b>AE</b>	Associated Enterprise
<b>AIF</b>	Alternative Investment Fund
<b>AIF</b>	Alternative Investment Fund
<b>AIM</b>	Atal Innovation Mission
<b>ALP</b>	Arms Length Price
<b>AO</b>	Assessing Officer
<b>AoP</b>	Association of Persons
<b>AOP</b>	Association of Persons
<b>AY</b>	Assessment Year
<b>BDT</b>	Buy-back Distribution Tax
<b>BOE</b>	Bill of Entry
<b>BOI</b>	Body Of Individuals
<b>CBDT</b>	Central Board of Direct Taxes
<b>CBEC / Board</b>	Central Board of Excise and Customs
<b>CCR</b>	CENVAT Credit Rules, 2004
<b>CE Act</b>	Central Excise Act, 1944
<b>CE Act</b>	Central Excise Act, 1944
<b>CE Removal Rules</b>	Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001
<b>CE Rules</b>	Central Excise Rules
<b>CE Rules</b>	Central Excise Rules, 2002
<b>CMD</b>	Chairman and Managing Director
<b>CST</b>	Central Sales Tax
<b>Customs Act</b>	Customs Act, 1962
<b>DDT</b>	Dividend Distribution Tax
<b>DTAA or Tax Treaty</b>	Double Taxation Avoidance Agreement entered into by India
<b>DTC</b>	Direct Taxes Code Bill, 2013
<b>E Cess</b>	Education Cess
<b>ECS</b>	Electronic Clearing System
<b>EPC</b>	Engineering Procurement Construction
<b>FDI</b>	Foreign Direct Investment
<b>FEMA</b>	Foreign Exchange Management Act, 1999
<b>FERA</b>	Foreign Exchange Regulation Act, 1973
<b>FII</b>	Foreign Institutional Investors
<b>FIPB</b>	Foreign Investment Promotion Board
<b>FMC</b>	Forward Market Commission
<b>FOB</b>	Free on Board
<b>FPI</b>	Foreign Portfolio Investor
<b>FSLRC</b>	Financial Sector Legislative Reforms Commission
<b>FTS</b>	Fees for Technical Services
<b>FY</b>	Financial Year
<b>GIFT</b>	Gujarat International Finance Tec-City
<b>GST</b>	Goods and Services Tax
<b>GTA</b>	Goods Transport Agency
<b>HC</b>	High Court
<b>HUF</b>	Hindu Undivided Family
<b>ICT</b>	Information and Communication Technology
<b>INR</b>	Indian Rupees
<b>Invit</b>	Infrastructure Investment Trusts

Abbreviation	Meaning
<b>InvITS</b>	Infrastructure Investment Trusts
<b>IRDA</b>	Insurance Regulatory and Development Authority
<b>IT Act</b>	Income Tax Act, 1961
<b>ITAT</b>	Income Tax Appellate Tribunal
<b>KYC</b>	Know Your Customer
<b>LLP</b>	Limited Liability Partnership
<b>MAT</b>	Minimum Alternate Tax
<b>MSMEs</b>	Micro, Small and Medium Enterprises
<b>NBFC</b>	Non-Banking Financial Company
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>PE</b>	Permanent Establishment
<b>PFRDA</b>	Pension Fund Regulatory and Development Authority
<b>POEM</b>	Place of Effective Management
<b>PPP</b>	Public Private Partnership
<b>PPSR</b>	Place of Provision of Service Rules, 2012
<b>PSU</b>	Public Sector Undertaking
<b>PY</b>	Previous Year
<b>QFI</b>	Qualified Foreign Investor
<b>QFI</b>	Qualified Foreign Investor
<b>RBI</b>	Reserve Bank of India
<b>REIT</b>	Real Estate Investment Trust
<b>SARFAESI Act, 2002</b>	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
<b>SC</b>	Scheduled Caste
<b>SDT</b>	Specified Domestic Transaction
<b>SDT</b>	Specified Domestic Transaction
<b>SEBI</b>	Securities and Exchange Board of India
<b>SETU</b>	Self-Employment and Talent Utilisation
<b>SHE Cess</b>	Secondary and Higher Education Cess
<b>ST</b>	Scheduled Tribe
<b>STR</b>	Service Tax Rules, 1994
<b>TDS</b>	Taxes Deducted at Source
<b>The Act</b>	Finance Act, 1994
<b>TP</b>	Transfer Pricing
<b>TReDS</b>	Trade Receivables Discounting System
<b>TReDS Guidelines</b>	Guidelines for setting up and operating the TReDs
<b>UFA</b>	Unified Financial Agency
<b>UK</b>	United Kingdom
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>w.e.f.</b>	with effect from
<b>w.r.t.</b>	With respect to



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