ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Union Budget 2016

AN ANALYSIS OF BUDGET PROPOSALS

CONTENTS

PREFACE

Dear Reader,

The Finance Minister today presented his third union budget, and continuing from where he left off in February 2015, the proposals are clearly oriented to support the "Make In India" initiative and foster entrepreneurship, attain development, especially of the poor, and those below the poverty line, galvanise infrastructure and continue tax reforms for the ease of doing business.

Various proposals have been announced in respect of direct tax laws, notable amongst these are the extension of presumptive taxation schemes for various small and medium enterprises, and the introduction of additional tax on dividends received by certain persons (in addition to DDT). Another "settlement" scheme features in the proposals at a more benign rate of interest and penalty, with a promise of no criminal prosecution; hopefully this scheme will attract far more participation than similar schemes in the past. POEM and GAAR provisions have been saved for future dates, but, commitment towards the BEPS Action Plan is showcased by announcing adoption of three action plans, viz. country by country reporting, digital economy and nexus approach, where the substantial activity has been undertaken. The settlement scheme for retrospective amendments (indirect transfers), where assessees can pay the tax to have the interest and penalty waived, provided the accompanying litigation is closed down, may be seen as double-speak and a dampener, even while the critical issue remains unresolved.

There is reaffirmation as to the commitment to introduce the GST, and some subtle steps in that direction but, the proposals focus on tax administration reforms and increase in compliance. The introduction of the Krishi Kalyan Cess @ 0.5% of taxable services, though creditable, will increase (services) cost. Similarly, introduction of the levy of Central Excise Duty on the jewelry and clothing sector will increase costs. As has been a requirement of industry and trade, the CENVAT Credit law is the subject matter of some relaxation, especially to enable credit flows.

The proposals overall have cast an intense spotlight on tax litigation with several proposals in the Minister's speech in this respect: adding benches to the CESTAT and the SAT, pre-deposit norms fixed at 15% for income tax disputes pending at first appellate level, option for assessees to pay taxes and penalties in some cases (involving disputes pending before Commissioner (Appeals)) to wind down litigation in order to achieve "settlement", computerisation within DRT for litigation management. The adoption of the Justice Easwar Committee Report on simplifications in respect of certain Income Tax provisions is welcome.

As with every Union Budget, there emerge several questions and unresolved issues of detailing. Please write in with your comments and questions. We would be glad to help on any Budget related issues that you may have.

Thank you, as always, for your support.

Warm Regards,
Rohan Shah | Managing Partner

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BUDGET HIGHLIGHTS

INDIRECT TAXES

- Series of changes in the Customs Duty and Excise Duty rates on certain inputs, intermediaries and other goods, to support the 'Make in India'– benefited sectors include information technology hardware, capital goods, defence, textiles, mineral fuels and mineral oils etc.
- Measures to enable "ease of doing business" and minimize / settle tax litigation have been introduced.

DIRECT TAXES

- BEPS Action Plan – Country by country reporting for enterprises with consolidated financial statement exceeding the threshold of EUR 750 Million (INR 5,395 Crores at current rates).
- Rationalisation of penalty provisions, to provide for graded penalties.
- Automation and paperless assessment.

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, 2016, unless otherwise specified
Changes to declared list of services	Date of enactment of Finance Bill, 2016, unless otherwise specified
Change in rates of Customs Duty	March 01, 2016, unless otherwise specified
Change in rates of Excise Duty	March 01, 2016, unless otherwise specified
Levy of Krishi Kalyan Cess (Service Tax)	June 01, 2016
Amendments to CENVAT Credit Rules, 2004 ***(Other than those specified in the relevant Notifications)***	April 01, 2016, unless otherwise specified

IMPACT OF PROPOSALS ON CRITICAL ISSUES

Issue	Amendment Proposed	ELP Comments	Page Reference
GST	–	The Budget proposals only reiterate intent to adopt this tax reform	10
Service tax rate	Introduction of Krishi Kalyan Cess of 0.5% on all taxable services w.e.f. June 01, 2016	Credit will be allowed for payment of this cess, unlike in case of Swachh Bharat Cess	24
Indirect Tax Dispute Resolution Scheme, 2016	Resolution for Excise, Customs and Service tax disputes pending before the Commissioner (Appeals)	This step of the Government is directed at reducing tax litigation	24
Interest – indirect taxes	Rate is harmonized to 15% p.a., in respect of indirect taxes, except where Service Tax is collected and not remitted to Government, where the rate will be 24% p.a.	Welcome proposal and restores the interest rate to lower percentages	23 and 39
Provisions for prosecution	Increase in limit to INR 2 crores	-	12

Issue	Amendment Proposed	ELP Comments	Page Reference
and arrest			
Amendments directed at: 1) ease of doing business, 2) reducing tax litigation	Setting up of additional benches of the CESTAT in 11 locations	Welcome move in order to deal with the large backlog of appeals; however, urgent need to also appoint members to man these benches	-
Interest on provisionally assessed excisable goods	Interest to be calculated from the first date after the due date of payment of excise duty till the date of actual payment, whether or not such amount is paid before or after issuance of order of final assessment	This provision has been included to ensure that the exchequer is compensated for interest even where provisional assessment is done	27
Duty free allowances under Baggage Rules	New Baggage Rules have been introduced wherein duty free allowances have been increased and the same have been made applicable to passengers over the age of 2 years	The distinction between a passenger returning after a stay abroad of less than 3 days or more than 3 days is proposed to be removed. Duty free allowances have also been eased partially	37
CENVAT Credit	Credit permitted in respect of office equipment, low value capital goods, goods sent directly to job worker, distribution of credit from a warehouse etc.	Welcome proposals which seek to improve Credit flows	44
CENVAT credit – revamp of Rule 6 of CCR	New rule prescribes an amended modality for ascertaining eligibility of CENVAT credit where both exempt and non-exempt activities are undertaken.	The new rule aims at providing a more rationalized approach for the determination of eligible CENVAT Credit which is based on industry's common credit principle. Further, and importantly, it provides that payment of 6 / 7 % shall not exceed the benefit availed under a scheme	45
Central Sales Tax	No change in rate	*Status quo* maintained	-
Corporate tax rate structure	- 25% - Beneficial corporate tax rates for newly set up companies; and - 29% - Companies with turnover or gross receipts less than 5 crores (29%)	This is in line with the commitment in the Budget Speech of 2015. Surcharge and cess to be applicable	79
Compliance window for undisclosed income (The Income Declaration Scheme, 2016)	30% tax, 7.5% of interest and 7.5% of penalty (totaling to 45%) to be paid on undisclosed income, in order to obtain immunity from prosecution and	The rate of payout is lower than previous instances and may attract assessees.	53

Issue	Amendment Proposed	ELP Comments	Page Reference
	no scrutiny. The scheme is to commence from June 01, 2016		
Retrospective amendments	Scheme announced whereby pending cases can be resolved by making payment of tax and, interest and penalty will stand waived	The core issue as to indirect transfers still remains, unresolved, as to whether such transactions can be taxed by the Indian income tax authorities. With this scheme, the Government, in effect, is giving the issue more a tint of a 'collection of tax issue' as opposed to the jurisdictional issue of whether tax can be lawfully levied on such transactions	51
POEM provisions	Deferred to AY 2017 – 2018	-	53
BEPS Action plans	Following plans are proposed: 1. Country by country reporting for enterprises with consolidated financial statement exceeding the threshold of Euro 750 million, (INR 5,395 crores) 2. Digital economy – equalisation levy 3. Nexus approach for taxation of intellectual property, where substantial activity is undertaken	This is in line with the recommendations of the OECD under the BEPS Project	75
General Anti Avoidance Rules (GAAR)	Reaffirmed commitment for FY 2017-18	-	-
Presumptive taxation provisions	1. Introduction of presumptive taxation for professionals 2. Increasing the threshold for presumptive taxation for business of plying, hiring or leasing goods carriages	These provisions will enable and facilitate the ease of doing business in India. This is in line with the recommendations of the 'Income Tax Simplification Committee' under the Chairmanship of Hon'ble Justice R. V. Easwar	60
Tax on dividends	In addition to DDT (paid by the corporate), resident individuals, HUFs and firms, will be liable to pay tax @10% of dividend, if their dividend income is in excess of INR 10 lakhs	This proposal will increase the tax impact on a section of the assessee-base	63
Disallowance of expenditure in relation to exempt income – 14A	Rule 8D of the Income-tax Rules, 1962 is to be amended in relation to quantification of	The amendment would reduce litigation, and is in	-

Issue	Amendment Proposed	ELP Comments	Page Reference
	expenditure	line with the recommendations of the 'Income Tax Simplification Committee' under the Chairmanship of Hon'ble Justice R. V. Easwar	

SOME JUDGEMENTS OVERCOME

Description and Particulars of Subject Overcome	Amendment Proposed	Page Reference
Amendments to form and method of publication of Notifications issued under Section 5A of CE Act / Section 25 of the Customs Act [In the case of **Union of India vs. Param Industries Ltd. [2015 (321) ELT 192 (SC)]** it was *inter alia* held that for a notification to come into effect the same shall be published in the Official Gazette as well as offered for sale by the Directorate of Publicity and Public Relations]	The condition of publishing and offering for sale of any Notifications issued under Section 5A(1) of CE Act / Section 25(1) of Customs Act or Section 5A(2A) / Section 25(2A) of Customs Act by the Directorate of Publicity and Public Relations, Customs and Central Excise , New Delhi is proposed to be done away with. Now, merely the date of publication in the Official Gazette shall be the date of effect.	26 and 37
The amount of rebate claim cannot be less than the market price of excisable goods. [In the case of **Dr. Reddy's Laboratories vs. Union of India [2014 (309) ELT (423) (Del)]** it was *inter alia* held the market price would be the market price of country where the goods are sold]	The amended condition entails that the market price would be the Indian market price.	29
Non-application of time limit under Section 11B of the CE Act to rebate claims [In the case of **JSL Lifestyle Limited vs. Union of India [2015 (326) ELT (265) (P&H)]** it was *inter alia* held that the time limit of 1 year under Section 11B of CE Act is not applicable to rebate claims.]	The time limit of 1 year under Section 11B of the CE Act will now be applicable to rebate claims.	29
Distribution of CENVAT Credit to 'outsourced manufacturing units' also, in addition to 'own manufacturing units'. [In the case of **Sunbell Alloys Co. of India Ltd. vs. CCE, Belapur [2014 (34) STR 597 (Tri-Mumbai)]** denied the availment of CENVAT Credit by a jobber against the ISD invoice issued by the principal manufacturer.	Input Service Distributer can now distribute the input service credit to an outsourced manufacturing unit also, in addition to its own manufacturing units.	48
CENVAT Credit on capital goods used exclusively for exempt activity a period of two years from the date of commercial production or provision of services [In the case of **M/s. Brindavan Beverages Pvt. Ltd Vs. CCE, Meerut [2014-TIOL-2136-**	The amendment now requires that the capital goods must be used for taxable activities with a period of two years from the stipulated date; else the credit would lapse.	47

Description and Particulars of Subject Overcome	Amendment Proposed	Page Reference
CESTAT-DEL] it was held that the simultaneous usage of the capital goods (irrespective of any time limit) for both taxable and exempted activity is not the requisite criteria to avail the CENVAT Credit on capital goods].		
Issue arose due to the decision of the Bombay High Court in the case of **Dahiben Umedbhai Patel vs. Norman James Hamilton [(1985) 57 COMP CAS 700 (Bom)]** as to whether shares of private limited company fall within the definition of securities.	Amendment proposed to Section 112(1)(c)(iii) of the IT Act to apply the beneficial tax rate to (long term capital gains arising to a non-resident) shares of companies in which public are not substantially interested. The provisions will be effective from April 01, 2017.	66

GOODS AND SERVICES TAX

"The Government shall also endeavour to continue with the ongoing reform programme and ensure the passage of the Constitutional amendments to enable the implementation of the Goods and Service Tax, the passage of Insolvency and Bankruptcy law and other important reform measures which are pending before the Parliament."

Excerpt of the Budget speech of the Finance Minister

The most awaited comprehensive indirect tax regime was conspicuous by its absence in the Budget this year.

Prior to the introduction of the Budget, the Economic Survey of FY 2016-17 identified the GST Bill as marking an unprecedented reform measure, the early implementation of which would give further thrust to the 'Make in India' program, facilitate seamless and efficient movement of goods across country, lower production costs, ease the tax burden and increase the overall output in the economy.

During his speech, the Finance Minister neither adverted to the proposed date of its implementation nor announced any measures for the gradual transition to the proposed regime.

This marks a contrast to the previous Union Budget 2015-16, when the Finance Minister spoke of the transformative role GST would play in the functioning of the economy, and stated that the Government was moving on various fronts to implement GST from the next year, i.e. April 01, 2016. A number of amendments were also effected in preparation for GST, including an increase in the effective rate of Service Tax and Excise Duty as well as the pruning of the negative list of services and exemptions.

In the last year, the Government attempted to pass the modified Constitution Amendment Bill in Parliament, without success, resulting in the April 2016 introduction of GST as a non-event.

Contrary to expectation, the Finance Minister also did not make any statements/ commitments on GST, including on the timeline for key milestones, issuance of draft model legislation etc.

SERVICE TAX

DEFINITION OF 'SERVICE'

The definition of 'service' is proposed to be amended to provide that Service Tax is payable on activities in relation to promotion, marketing, organizing, selling of lottery, facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998, carried out by a lottery distributor or selling agent on behalf of the State Government.

- Explanation 2, sub-clause (ii)(a) to the definition of 'service' under Section 65B(44) is proposed to be substituted to state that this activity will not tantamount to a 'transaction in money or actionable claim', which is excluded from the levy of Service Tax.

ELP Comments

This provision previously covered the activities 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. However, given that such activities can only be carried out by the State or through a distributor/ selling agent, this provision has now been amended to provide that the activity must be on behalf of the State Government and in accordance with the provisions of the Lotteries (Regulation) Act, 1998.

CHANGES IN DECLARED LIST

A new entry has been added to the declared list under Section 66E of the Act, in order to provide that "assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof" will be liable to Service Tax.

ELP Comments

Substantial revenue is expected to be involved in assignments of right to use / subsequent transfers of radio-frequency spectrum. In February 2015, Business Standard reported that eight telecom companies deposited INR 20,436 crore as earnest money to participate in the allocation of 2G and 3G telecom airwaves.

By this amendment, the Centre has declared that assignments and transfers of radio-frequency spectrum are liable to Service Tax.

It may be noted that in a similar context involving alleged sale of 'artificially created light energy', the Karnataka High Court by its judgement in **Bharti Airtel Ltd vs. State of Karnataka [2012 (25) STR 514 (Kar)]**, held that the energy / waves used by telecom service providers as a carrier for data / information through optical fibre cable broadband lines would not constitute 'goods', and that such transactions would accordingly attract Service Tax and not VAT.

While the Centre has now codified the position that such transactions are liable to Service Tax, it remains to be seen how the State authorities (VAT) will treat such assignments / transfers under the VAT legislations.

LEGISLATIVE CHANGES

Amendments to the Finance Act, 1994

- Section 67A of the Act provides that the applicable rate of tax would be the rate as applicable at the time when the taxable service has been provided or agreed to be provided.

  The said Section is proposed to be amended to clarify that the time or point in time with respect to rate of Service Tax shall be such as may be prescribed.

ELP Comments

The proposed amendment along with the corresponding amendment in POTR [in its preamble, referring to the powers granted in terms of Section 67A(2)], puts the conflict between the POTR and Section 67A, if any, at rest.

- Section 73 of the Act provides for a limitation period of 18 months for recovery of Service Tax not levied or paid or short levied or short paid or erroneously refunded by a Central Excise Officer, in cases not involving fraud, suppression of facts, wilful mis-statement etc. with an intention to evade duty. The said Section is proposed to be amended to increase the limitation period from 18 months to 30 months.

ELP Comments

The increase in limitation period in cases where there is no fraud, suppression etc. may cause a major setback to bona fide cases and lead to an increase in litigation. This proposal creates greater onus and exposure for the assessees.

- It is proposed to be clarified by way of Explanation that where proceedings against a Company under Section 73 of the Act have been concluded on payment of Service Tax and interest within a period of 30 days of the receipt of Show Cause Notice (in terms of Section 76 or Section 78 of the Act), the proceedings in relation to personal penalty on the directors, managers, secretary etc. of the Company under 78A of the Act will also be deemed to be concluded.

ELP Comments

This amendment settles the dispute as regards whether penalty proceedings may continue to be pursued against a director, manager, etc. where the company has accepted liability, and paid duty, interest and reduced penalty.

- Section 89 of the Act provides for imprisonment for offences relating to evasion of Service Tax, availment and utilization of CENVAT Credit without actual receipt of taxable service or excisable goods, maintenance of false books of accounts, failure to deposit Service Tax with the Central Government after collecting the same. This penal action is subject to a monetary limit of INR 50 lakhs. It is proposed to increase the monetary limit of INR 50 lakhs to INR 2 crores for filing of complaints under Section 89.
- The power to arrest under the Act is proposed to be restricted only to situations where the assessee has collected tax but not deposited it with the Central Government, and the amount of such tax is more than INR 2 crores.

ELP Comments

CBEC *vide* Circular No. 101/17/2015-CX. dt. October 23, 2015 had revised monetary limits for arrest in central excise and service tax cases to more than INR 1 crore. This increase in monetary limits, being by way of circular, may be said to have been without the authority of law. The present amendment endorses the increase in monetary limit, however prospectively. This is a welcome move towards reducing coercive litigation.

- Section 93A of the Act is proposed to be amended so as to enable allowing of rebate by way of notification as well as rules.
- Refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods allowed retrospectively, for the period July 01, 2012 to February 01, 2016.
  - W.e.f. February 1, 2016, the said refund was allowed by way of amendment to the parent

ELP Comments

On account of extension of this notification prospectively w.e.f. February 01, 2016, in various cases, refund was denied. To facilitate grant of this exemption for the past period, this exemption is being given retrospective effect.

notification. The said amendment is being given retrospective effect from the date of application of the parent notification, i.e., from July 01, 2012.

- Time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected.

EXEMPTIONS / CONCESSIONS

New Exemptions / Concessions (w.e.f. April 01, 2016 unless otherwise specified)

Sr. No.	Description of Services	ELP Comments
1.	Services provided by the Indian Institutes of Management by way of the following educational programs: ▪ 2 year full time Post Graduate Programme in Management (other than executive development programme), admissions to which are made through Common Admission Test conducted by Indian Institutes of Management; ▪ 5 year Integrated Programme in Management; and ▪ Fellowship Programme in Management [w.e.f. March 01, 2016]	-
2.	Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship	-
3.	Services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners	This exemption has been provided to boost the "Skill India" mission under which the Government aims at setting-up 1500 Multi Skill Training Institutes across the country.
4.	Services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of – (i) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (ii) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; (iii) a residential complex predominantly meant for self-use or the use of their employees or other persons [w.e.f. March 01, 2016]	In order to broaden the tax base, this exemption which was withdrawn with effect from April 01, 2015 is being restored for the services provided under a contract which had been entered into prior to March 01, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption is being restored till March 31, 2020. The exemption is proposed to be extended retrospectively during the period from April 01, 2015 to February 29, 2016 as per Section 102 of the Act.
5.	Services by way of construction, erection etc. of a civil structure or any other original works pertaining to the "In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation" component of Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana, except in respect of such dwelling units of the projects which	These exemptions are in line with the intention of the Government to boost construction sector and promote affordable housing.

Sr. No.	Description of Services	ELP Comments
	are not constructed for existing slum dwellers [w.e.f. March 01, 2016]	
6.	Services by way of construction, erection etc., of a civil structure or any other original works pertaining to the "Beneficiary-led individual house construction / enhancement" component of Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana [w.e.f. March 01, 2016]	
7.	Services by way of construction, erection, etc., of original works pertaining to low cost houses up to a carpet area of 60 sq.m per house in a housing project approved by the competent authority under the "Affordable housing in partnership" component of Pradhan Mantri Awas Yojana or any housing scheme of a State Government [w.e.f. March 01, 2016]	
8.	Services by way of construction, erection, commissioning or installation of original works pertaining to an airport or port The exemption is in respect of contracts which had been entered into prior to March 01, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to March 01, 2015 [w.e.f. March 01, 2016]	This exemption was withdrawn with effect from April 01, 2015. The exemption is being restored till March 31, 2020. The exemption is proposed to be extended retrospectively during the period from April 01, 2015 to February 29, 2016 as per proposed Section 103 of the Act.
9.	Services by way of transportation of goods by an aircraft from a place outside India up to the customs station of clearance in India [w.e.f. March 01, 2016]	The service is presently covered under the Negative List. The said Negative List entry is proposed to be omitted. However, services of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India which were under the Negative List earlier have now become taxable. With this amendment, (i) the shipping industry will be hugely affected, being saddled with taxes; (ii) the cost of imports would increase. Further, no reason has been provided for the inconsistent treatment of transportation of goods by vessels and aircrafts The Tax Research Unit (MoF) clarifies that Service Tax levied on such services shall not be part of the value for custom duty purposes.
10.	Service of transporting passengers with or without accompanied belongings by a non-air conditioned stage carriage [w.e.f. June 01,	Earlier, the exemption included an air-conditioned stage carrier as

Sr. No.	Description of Services	ELP Comments
	2016]	well, under the negative list entry under Section 66D(o)(i) of Act. The said entry is proposed to be deleted from the Act. Such services by air-conditioned stage carriage are proposed to be taxed at the same level of abatement (60%) as applicable to the transportation of passengers by a contract carriage, with same conditions of non-availment of CENVAT credit.
11.	Service of general insurance business provided under the scheme of Nirmaya Health Insurance implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999	This is a measure to boost growth and employment generation.
12.	Service of life insurance business provided by way of annuity under the National Pension System regulated by PFRDA	This is in line with the objective of the Government of promoting social security and moving towards a pensioned society.
13.	Service provided by Employees' Provident Fund Organisation to persons governed under Employees' Provident Funds and Miscellaneous Provisions Act, 1999	-
14.	Services provided by IRDA to insurers	This is line with the other exemptions provided to services provided by Government authorities.
15.	Services provided by SEBI under SEBI Act, 1992	The exemption has been provided to promote the development and regulate the securities market and protecting the interests of investors.
16.	Services provided by National Centre for Cold Chain Development by way of cold chain knowledge dissemination. The exemption is provided to the National Centre for Cold Chain Development under the Department of Agriculture, Cooperation and Farmer's Welfare, Government of India	-

Existing Exemptions / Concessions Amended (w.e.f April 01, 2016 unless otherwise specified)

Sr. No.	Taxable Service	Existing Entry	Amendments	ELP Comments
1.	Legal Services	▪ Services provided by – (a) An arbitral Tribunal to – (i) Any person other than a business entity; or (ii) A business entity with a turnover upto Rupees ten lakhs in the preceding financial year (b) A partnership firm of advocates or an individual as an advocate, by way of legal services to- (i) An advocate or partnership firm of advocates providing legal services; (ii) Any person other than a business entity; or (iii) A business entity with a turnover up to rupees ten lakh in the preceding financial year; or (c) A person represented on an arbitral tribunal to an arbitral tribunal.	Exemption in respect of a person represented on an arbitral tribunal to an arbitral tribunal has been withdrawn. Legal Services provided by senior advocates are no longer exempt (expect when provided to any person other than a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession).	The existing dispensation regarding legal services provided by a firm of advocates or an advocate, other than senior advocate is being continued. The scope of the exemption has been curtailed by withdrawing the exemption available to services provided by a senior advocate to an advocate or partnership firm of advocates or a business entity.
2.	Services by way of construction, erection, commissioning, installation	▪ Exemption is available to services by way of construction, erection, commissioning or installation of original works pertaining to – (a) Railways, including monorail or metro;	▪ Exemption to construction, erection, commissioning or installation of original works pertaining to monorail or metro has been withdrawn, in respect of contracts entered into on or after March 01, 2016	The exemption continues in respect of construction, erection, commissioning or installation of original works pertaining to railways.
3.	Services by artist by way of	▪ Services by an artist by way of a performance in	▪ The threshold exemption limit is	-

Sr. No.	Taxable Service	Existing Entry	Amendments	ELP Comments
	performance in folk/classical art forms	folk or classical art forms of (i) music or (ii) dance, or (iii) theatre, if the consideration charged for such performance is not more than one lakh Rupees have been exempt	being increased from INR 1 lakh to INR 1.5 lakh per performance	
4.	Service by way of transportation of passengers, with or without accompanied belongings	▪ Exemption to services of transportation of passengers, with or without accompanied belongings by way of ropeway, cable car or aerial tramway car	▪ This exemption is to be omitted w.e.f. June 01, 2016	-
5.	Services by way of: (i) pre-school education and education up to higher secondary school or equivalent; (ii) education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force; (iii) education as a part of an approved vocational educational course is proposed to be omitted.	▪ These services were covered under clause (l) of Section 66D of the Act ▪ Services provided by an educational institution to its students were covered under the Mega Exemption Notification. Educational institution was defined as an institution providing the services specified under clause (l) of Section 66D	▪ The said entry under the Negative list has been omitted. However, the definition of the terms 'educational institution' and 'approved vocational education course' have now been included under the Mega Exemption Notification. Hence, the services continue to be not taxable, through the exemption route.	-

EXEMPTION FOR SOFTWARE

Service Tax has been exempted w.e.f. March 01, 2016 on Information Technology Software if such software is:

- Recorded on a media which is notified under Chapter 85 of the CETA;
- On which RSP is required to be declared;
- The value of the package of such media domestically procured or imported, has been determined under Section 4A of the CE Act;
- Excise Duty / CVD has been paid by the manufacturer / importer on RSP basis

- The service provider has to make a declaration on the invoice that no amount in excess of the declared RSP has been recovered from the customer

ELP Comments

The levy of Central Excise duty/CVD and Service Tax has been made mutually exclusive. Two different modalities have been provided where the software is required to bear RSP and where it is not required to bear RSP.

In respect of software required to bear RSP, w.e.f. December 21, 2010, Central Excise duty/CVD is to be paid on the value of media recorded with Information Technology Software and the assessable value is required to be determined on the basis of the RSP. Accordingly, Service Tax is being exempted.

In certain situations like delivering customised software on media, such media is not required to bear the RSP when supplied domestically or imported. In these situations, difficulties are being experienced in the assessment of such media to Central Excise duty/CVD besides giving rise to the issue of double taxation ,i.e. levy of both Central Excise duty/CVD as well as Service Tax. In order to resolve the issue, media with recorded Information Technology Software which is not required to bear RSP is being exempted from so much of the Central Excise duty/CVD as is equivalent to the duty payable on the portion of the value of such Information Technology Software recorded on the said media – the latter is accordingly leviable to Service Tax.

ABATEMENT OF SERVICE TAX

Amendment in Notification No. 26/2012-ST dt. June 20, 2012 (with effect from April 01, 2016 unless otherwise specified)

Sr. No.	Taxable Service	Tax Base*	Conditions	ELP Comments
1.	Transportation of goods by rail (other than services in Sl. No. 2 below)	30	CENVAT credit on inputs and capital goods, used for providing the taxable services, has not been taken under the provisions of the CCR	A higher abatement is prescribed for transportation of goods by rail (other than transport of goods in containers by any person other than Indian Railways) *viz.* 70%, and 60% is prescribed for transport of goods in containers by any person other than Indian Railways. Previously, all services of transportation of goods by rail were taxable on the transaction value at 30%. Further, the restriction on taking credit on input services is being done away with.
2.	Transportation of goods in containers by rail by any person other than Indian railways	40	CENVAT credit on inputs and capital goods, used for providing the taxable services, has not been taken under the provisions of the CCR	
3	Transportation of passengers with or without accompanied belonging by rail	30	CENVAT credit on inputs and capital goods, used for providing the taxable services, has not been taken under the provisions of the CCR	The restriction on taking credit on input services is being done away with.
4	Services of goods	30	CENVAT credit on inputs, capital	

Sr. No.	Taxable Service	Tax Base*	Conditions	ELP Comments
	transport agency in relation to transportation of goods other than used household goods		goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CCR	
5	Services of goods transport agency in relation to transportation of used household goods	40	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider under the provisions of the CCR	
6	Services provided by a foreman of chit fund in relation to chit	70	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service has not been taken under the provisions of the CCR	In terms of amendments made in 2015, service provided by a foreman of chit funds was included under the definition of "service" and simultaneously, the abatement was withdrawn for such service. With this budget, the abatement is being reinstated.
7.	Transportation of passengers with or without accompanied belongings by a stage carriage	40	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CCR	Transportation of passengers by stage carriage was earlier covered under the negative list and is now being allowed abatement at par with contract carriage
8	Transportation of goods in a vessel	30	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CCR	The restriction on taking credit of taxes paid on input services is being done away with.
9	Services by a tour operator in relation to- (i) a tour, only for the purpose of arranging or booking accommodation for any person	10	(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CCR (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour	Abatement rates in relation to tour operators other than those providing services solely for arranging or booking accommodation are being rationalized from 75% or 60% to 70%. Since separate abatement for package tour is being done away with, definition of "package tour" is omitted.

Sr. No.	Taxable Service	Tax Base*	Conditions	ELP Comments
			operator, in relation to a tour, includes only the service charges for arranging or booking accommodation for any person but does not include the cost of such accommodation.	
	(ii) Tours other than (i) above	30	(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CCR (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour and the amount charged in the bill is the gross amount charged for such a tour	
10	Construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	30	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CCR (ii) The value of land is included in the amount charged from the service receiver	At present, separate abatement rates are prescribed for construction services for (1) residential units having carpet area of less than 2000 square feet and the amount charged of less than INR 1 crore and (2) other constructions. A uniform abatement rate is now being prescribed for all such constructions.

** Tax base on which tax is to be computed, post amendment in %.*

- By way of an explanation to Notification No. 26/2012-ST, it has been clarified that for the purpose of computing abatement available for renting of motor cab services, the cost of all goods (including fuel) and services supplied by the recipient should be included in the consideration charged for providing renting of motor-cab services. The value (such goods, including fuel and services supplied by the service recipient) is required to be determined in terms of the generally accepted accounting principles.

REVERSE CHARGE MECHANISM

Amendment in Notification No. 30/2012-ST dt. June 20, 2012 (with effect from April 01, 2016)

Sr. No.	Description of service	Percentage of service tax payable by service provider	Percentage of service tax payable by service recipient	ELP Comments
1.	Services provided or	100%	Nil - Services being put	Reverse charge

Sr. No.	Description of service	Percentage of service tax payable by service provider	Percentage of service tax payable by service recipient	ELP Comments
	agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company		under forward charge	mechanism has been deleted for these services and consequential amendments are made to Rule 2(1)(d)(EEA) of the STR (which defines "person liable for paying service tax").
2.	Services provided or agreed to be provided by a selling or a marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulation) Act, 1998	Nil	100%	The amendment is consequential to the proposed amendment made to the definition of "service" wherein it is being clarified that activity carried out by a lottery distributor or a selling agent in relation to promotion, marketing etc lottery of any kind in any other manner of the State Government under the provisions of the Lottery (Regulation) Act, 1998 is leviable to Service Tax.
3.	Services provided or agreed to be provided by a firm of advocates or an individual advocate other than senior advocate by way of legal services	Nil	100%	Consequential amendments are made to Rule 2(1)(d)(D) of the STR (which defines "person liable for paying service tax"). Accordingly, legal services provided by senior advocate are being made liable to Service Tax on forward charge.
3	Services provided or agreed to be provided by Government or local authority excluding (1) renting of immovable property (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of Section 66D	Nil	100%	The words *"by way of support services"* are being omitted. Accordingly, liability to pay Service Tax on any service (excluding the specified services) is being cast on the service recipient.

AMENDMENTS TO RULES

Amendments to STR (effective from April 01, 2016)

Addition / Amendment in the definition of "person liable to pay Service Tax" under Rule 2(1)(d)

- Mutual fund agent or distributors have been designated as persons liable to pay Service Tax in respect of services provided by them to a mutual fund or asset management company.

ELP Comments

Prior to this amendment, services provided by mutual fund agent or distributors were taxable on a reverse charge mechanism basis. As a result, such agents / distributors were not eligible to avail CENVAT credit of the Service Tax paid on various Input services.

- Legal services provided by a senior advocate are removed from payment under reverse charge mechanism basis.

ELP Comments

With the withdrawal of exemptions of legal services provided by a senior advocate to business entities, senior advocates will be required to obtain registration under Service Tax and will be liable to discharge Service Tax liability on their own account.

- The word support was sought to be deleted from the relevant entry clause (E) under Rule 2(1)(d)(i) vide notification No. 5/2015 –ST dated March 01, 2015 from a date to be notified. Now April 01, 2016 has been notified as the date from which any service (and not only support services) provided by Government or local authorities to business entities shall be taxable under reverse charge basis.

Periodicity of payment of Service Tax by One Person Company and HUF

- Rule 6 of the STR which deals with the payment of Service Tax and prescribes relaxation for individual or proprietary firm or partnership firm, is being amended as follows:
  - One Person Company having aggregate value of taxable services provided from one or more premises, of fifty lakh Rupees or less in the previous financial year shall be liable to discharge Service Tax on receipt basis by the 5th of the of the month immediately preceding the quarter in which the services is deemed to be provided
  - The benefit of quarterly payment of Service Tax is also extended to HUF

ELP Comments

One person Company has been defined in Section 2(62) of the Companies Act, 2013 to mean a company which has only one person as a member.

Amendment of rate of Service Tax on single premium annuity policies

- Clause (ia) has been inserted in Rule 6(7A) to provide an option to an insurer carrying on life insurance business to pay Service Tax @ 1.4% on single premium annuity policies where the amount allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service.

Submission of annual return - Rule 7

- Every assessee is now required to file annual return by 30th November of the succeeding financial year to which the return relates. A revised return can be submitted within one month from the date of submission of the annual return. Further, the assesee shall be liable to pay INR 100 per day of delay in filing of return and subject to a maximum of INR 20,000.

Amendments to POTR (effective from March 01, 2016)

- In addition to Section 94 of the Act, specific powers have now been given under Section 67A to frame rules regarding point in time of rate of Service Tax.
- Consequent to the above, Explanation 1 and 2 are added to Rule 5, which deals with payment of Service Tax on services taxed for the first time, to clarify that
  - This Rule shall also apply in case of new levies
  - New levy / tax shall be payable on all cases except where the payment is received before such service/levy became taxable for the first time and where the invoice is issued either before or within fourteen days of the date when the service/levy becomes taxable for the first time.

ELP Comments

The insertion of the Explanation is to deal with situations of introduction of new levies including Krishi Kalyan Cess. The absence of these provisions, caused controversies as regards application of Swachh Bharat Cess inserted in Budget 2015.

RATIONALISATION OF INTEREST RATES

Interest rate payable on delay in payment of Excise Duty, Customs Duty and Service Tax has been rationalized to uniform 15% p.a. However, where Service tax has been collected but not deposited with the Central Government on or before the date on which the payment becomes due, the interest rate would be 24% p.a. The said changes are depicted in the table below:

	Pre-amendment	Proposal
Delay up to 6 months:	18%	***Service Tax collected but not deposited***: 24% ***Any other case***: 15%
Delay of more than 6 months but less than 1 year:	18% for first 6 months and 24% for delay beyond 6 months	
Delay of more than 1 year:	18% for first 6 months, 24% for period beyond six months but upto 1 year and 30% for any delay beyond 1 year	

Note: For tax payers with value of taxable services less than sixty lakh Rupees in the preceding financial year, interest on delayed payment of tax will be @ 12%.

LEVY OF KRISHI KALYAN CESS

Krishi Kalyan Cess is proposed to be levied w.e.f. June 01, 2016 on all taxable services at the rate of 0.5% on the value of such taxable services.

- Credit of Krishi Kalyan Cess paid on input services shall be allowed to be used for payment of the proposed Cess on the service provided by a service provider

ELP Comments

- The Krishi Kalyan Cess would be over and above the Swachh Bharat Cess;
- The said Cess is to finance and promote initiatives to improve agriculture;
- The aggregate Service Tax rate w.e.f. June 01, 2016 would be 15%;
- The provision of the Act, as they apply in relation to the levy and collection of tax, will equally apply to the levy and collection of the Krishi Kalyan Cess.

INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

- With a view to reduce pending proceedings before the Commissioner (Appeals) in relation to indirect tax related disputes and to enable the Government to realize its dues expeditiously, the Finance Bill, 2016 has proposed to introduce Indirect Tax Dispute Resolution Scheme, 2016 w.e.f. June 01, 2016.
- The salient features of the proposed scheme are summated below:

Scope	Details
Applicability	Applies to any dispute in respect of the Customs Act or the CE Act or the Act, pending before the Commissioner (Appeals) as on March 01, 2016
Window for declaration	June 01, 2016 to December 31, 2016
Amount payable	Assessee shall be liable to pay tax / duty due along with applicable interest and penalty equivalent to 25% of penalty imposed in the impugned order which is under challenge before the Commissioner (Appeals)
Consequence of filing declaration	The authority (not below rank of Assistant Commissioner) shall pass an order of discharge of dues and the appeal pending before the Commissioner (Appeals) shall stand disposed off and assessee shall get immunity from all proceedings (including prosecution) as prescribed under the Customs Act or the CE Act or the Act
Consequence of receiving an order under the scheme	Declaration under this Scheme shall become conclusive upon issuance of an order and no matter relating to the impugned order shall be reopened. An order passed under the Scheme shall not be deemed to be an order on merits and will have no binding effect.
Scheme does not apply to certain cases	The Scheme is not applicable in following cases: ▪ Where impugned order is in respect of search and seizure proceedings; ▪ Prosecution for any offence has been instituted before June 01, 2016; ▪ Impugned order is in respect of narcotic drugs or prohibited goods or ▪ Impugned order is in respect of offences punishable under the Indian Penal Code (IPC), Prevention of Corruption Act, 1988 etc.

ELP Comments

The Scheme is essentially to reduce litigation and opens up a window for the assessee to settle the pending dispute. The constitutional validity of amnesty schemes has been upheld by the Hon'ble Supreme Court (**R.K. Garg and Ors. vs. Union of India and Ors. [AIR 1981 SC 2138]**).

Unlike the past amnesty schemes introduced by the Government, the proposed Scheme provides clearer guidelines, objectives and consequences of availing the benefit, which could incentivize the assessee to avail the benefit under the proposed Scheme. The more recent Voluntary Compliance Encouragement Scheme, 2013 (in respect of Service Tax dues), provided for waiver of interest, penalty and prosecution to the assessee, and reportedly yielded approx. INR 7,700 crore to the Exchequer. However, under the present Scheme, limited benefits have been provided (presumably as the Scheme applies to the situations where an order has already been passed). Consequently, the success of the proposed Scheme remains to be seen.

IMPORTANT CLARIFICATIONS

- It has been clarified that the incentives received by Air Travel Agents from Computer Reservation System companies such as Galileo, Amadeus etc on booking of air tickets using the software of such companies is neither covered under the negative list nor exempt by notification, therefore liable to Service Tax.

ELP Comments

There have been conflicting decisions on the issue. In cases like **International Travel House Pvt. Ltd. [2014 (33) STR 606 (Comm. Appl.)]** and **Starline Travels Ltd. [2012 (27) STR 526 (Comm. Appl.)]**, Appellate Authorities / the Tribunal have considered the incentive as a consideration and liable as Business Auxiliary Service , whereas in **M/s J. K. World Travel vs. Asst Comm (Service Tax) [V2 (ST)91/A-IV/2012]** and **M/s Shreeji Bapa Aviation vs. Asst Comm (Service Tax) [V2 (ST)127/A-IV/2012]** it was held that incentives received from Computer Reservation System Companies is not connected to services rendered to clients hence not liable to Service Tax

It is clarified that such incentives received by Air Travel Agents from Computer Reservation System Companies shall be liable to Service Tax, putting to rest the controversy. Clarification may have bearing on the past transactions of such nature.

- It has been clarified that the services by institutes of language management to various schools / institutions is liable to Service Tax as it provides services which is neither covered in the negative list nor exempt by any notification.
- Exemption from Service Tax is available in respect of services prescribed under Section 66D (l) of The Act which includes services of providing pre-school education or education up to higher secondary school (equivalent) or education for obtaining a qualification recognized by law. Further, exemption is also available for the auxiliary educational services provided to educational institution covered under Entry No. 9 of Notification No 25/2012-ST dated 20.06.2012. It is now clarified that institutes of language management does not provide any such exempt services to educational institutes, therefore is liable to Service tax.

ELP Comments

It has been clarified that services provided by the Indian Railways to Container Train Operators of haulage of their container train is a service of 'Transport of Goods by Rail' is, therefore, eligible for abatement at the rate of 70% with credit of input services.

EXCISE DUTY

LEGISLATIVE CHANGES

Amendments to CE Act

Amendments to form and method of publication of Notifications issued under Section 5A of CE Act

- The condition of publishing and offering for sale of any Notifications issued under Section 5A(1) or Section 5A(2A) by the Directorate of Publicity and Public Relations, Customs and Central Excise , New Delhi under CBEC, is proposed to be omitted.

ELP Comments

The said amendment has been proposed to overcome the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Param Industries Ltd. [2015 (321) ELT 192]**, wherein it was inter alia held that though the Notification may have been published in the Gazette on a particular date, however it was not offered for sale, which event took place much thereafter and therefore the Department was not entitled to claim differential duty in respect of the new Notification.

Extension of normal period of limitation under Section 11A of the CE Act

- Section 11A is proposed to be amended to increase the period of limitation from 1 year to 2 years in cases not involving fraud, suppression, mis-statement, etc.

Expansion of powers of CBEC to issue instructions even with respect to implementation of any provisions of the CE Act

- Under Section 37B of the CE Act in order to maintain uniformity in Department practices, it is proposed to empower the CBEC to also issue instructions with respect to implementation of any provisions of the CE Act, in addition to the already existing powers in respect of classification and levy of duties of excise on goods.

Amendment to the list of goods considered to be "deemed manufacture" under Section 2(f)(iii) of the CE Act

- Entry Nos. 40 and 41 of the Third Schedule are proposed to be amended to include all goods under CETH 3401 (soap) and 3402 (organic surface active agents), respectively.
- A new Entry No. 63A is proposed to be inserted to include all goods falling under CETH 7607 i.e. aluminium foil of thickness not exceeding 0.2 mm.
- A new Entry No. 81D is proposed to be inserted to include all goods falling under CETH 8517 62 i.e. wrist wearable devices (smart watches).
- Entry Nos. 100 and 100A are proposed to be amended to include "accessories" of vehicles in addition to the existing "parts, components and assemblies".
- Further, in view of the proposed changes vide 2017 HSN, Entry No. 58 is proposed to be amended to include glazed tiles, in addition to vitrified tiles, whether polished or not. Consequently, Entry No. 59 which covers Glazed Tiles is proposed to be omitted. However, such substitution and omission is proposed to come into effect from January 1, 2017.

Vide Notification No. 5/2016 and 6/2016–Central Excise (N.T.)

Exemption from registration of multiple premises/factories to manufacturer/producers of jewellery

- In terms of powers conferred by sub-rule (2) of Rule 9 of the CE Rules, every manufacturing factory or premises engaged in the manufacture or production of articles of jewellery other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under chapter heading 7113 of the First Schedule to the CET Act, having a centralised billing or accounting system in respect of such specified goods manufactured or produced by different factories or premises, is proposed to be exempted from registering individual factories/premises under Rule 9 of the CE Rules and instead, such manufacturer may opt for registering only the factory or premises or office, from where such centralised billing or accounting is done.
- Accordingly, Notification No.35/2001-C.E.(N.T) dated 26.06.2001 with provides for conditions, safeguards and procedures for registration and exemption in specified cases, is proposed to be amended to include aforesaid jewellery manufactures, in the exempted category, exempting them from physical verification of their premises for the purpose of registration.

ELP Comments

This amendment is a move towards removal of obtaining individual registrations for each unit and making it easier for manufacturers having multiple units to choose to operate out of one specified unit having central billing and accounting.

Vide Notification No. 7/2016–Central Excise (N.T.)

- The fixed tariff value in respect of articles of jewellery (other than silver jewellery), falling under CETH 7113 of the First Schedule to the CET Act, at the rate of 30% of the transaction value as declared in the invoice, as notified by Notification No. 9/2012-C.E.(N.T.) dated March 17, 2012 is proposed to be rescinded.

Vide Notification No. 8/2016–Central Excise (N.T.)

Amendment to CE Rules

- W.e.f March 01, 2016, Rule7(4) of the CE Rules is proposed to be substituted, vide which an assessee shall be liable to pay interest on any amount paid or payable on the goods under provisional assessment, but not paid on the due date specified under Rule 8(1) and the first proviso thereto, at a rate specified under a Notification issued under Section 11AA of the CE Act, for the period starting first day after the due date till the date of actual payment, whether such amount is paid before or after the issue of order for final assessment.
- Previously, interest was only payable on amount due to the Central Government consequent to final assessment from the first day of the month succeeding the month for which such amount was determined, till the date of payment thereof.
- W.e.f. March 01, 2016, Explanation 1 to the second proviso to Rule 8 of the CE Rules is proposed to include an assessee engaged in the manufacture or production of articles of jewellery other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under CETH 7113. Such assessee shall be eligible to avail exemption under a Notification based on the value of clearances in a financial year, and pay duty on goods cleared during a quarter of the financial year by the 6th day of the month following the quarter if the duty is paid electronically through internet banking and in any other case , by the 5th day of the month following the quarter. Further, additionally, the assessee will only be eligible if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, does not exceed INR 12,00,00,000.
- Rule 11(8) of the CE Rule is proposed to be amended, omitting the requirement of providing self attested copies of digitally signed duplicate invoices, by the manufacturer to a transporter, for the purpose of transportation of goods.

- Rules 12(2)(a)and (b) are proposed to be amended wherein the requirement of submitting "Annual Financial Information Statement" for the preceding financial year, has been substituted with the words "Annual Returns" for the preceding year. Further, Clause (c) has been inserted after Rule 12(2)(b), which provides that the provisions of this sub-rule and clause (b) shall mutatis mutandis apply to 100% EOU. Furthermore, the requirements of submitting an Annual Installed Capacity Statement along with returns, under Rule 12(2A) of the CE Rules is proposed to be done away with.
- In Rule 12(6), the words "Annual Financial Information Statement" and "Annual Installed Capacity Statement" are proposed to be omitted. The said sub-rule 6, provides for penalty of INR 100 per day, for delay in submission of returns and said statements. W.e.f. April 1, 2016, the same shall apply only to delay in the submission of returns.
- Sub-rule 12(8)(a) of the CE Rules, is proposed to be inserted, wherein it is provided that an assessee who has filed returns within the prescribed period, may file revised returns by the end of the calendar month in which the original return was filed. Further, the "relevant date" for recovery of duty in cases where revised returns are filed under Rule 12(8)(a), shall be the date on which the revised returns were filed.
- Sub-rule 12(8)(b) of the CE Rules is proposed to be inserted to provide that an assessee who has filed Annual Returns within the prescribed period, may also submit revised returns within a period of one month from the date of submission of the Annual returns. Consequential amended have also been proposed to be made to Rule 17 of the CE Rules, to reflect provision of filing revised returns and respective effect on the term "relevant date" for recovery of duties in cases where revised returns are filed.
- Rule 26 of the CE Rules which provides for penalty for certain specified offences, is proposed to be amended with the addition of a new proviso after sub-rule(1) , which states that where any proceedings in respect of a person liable to pay duty have been concluded under Section 11AC(1)(a) or (d) of the CE Act, in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall be deemed to be concluded.

Vide Notification No. 9/2016–Central Excise (N.T.)

Amendment to Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008

- Serial No.4, for item (iv) in Form 2 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 is proposed to be substituted, whereby the break-up of duty payment for apportionment between various duties, shall be revised w.e.f. the date of publication of this Notification in the Official Gazette.

Vide Notification No. 10/2016–Central Excise (N.T.)

Amendment to Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010

- Rule 5 has been proposed to be substituted, w.e.f. the date of publication of the Notification in the Official Gazette, whereby the quantity of notified goods, having retail sale price as specified in Table 1 or Table 2 mentioned therein, deemed to be produced by use of one operating packing machine, having maximum packing speed at which it can be operated for packing of notified goods, has been enhanced in respect of items specified in columns 3, 4, 5 and 6 of Table 1 and Table 2, as the case may be.
- Table 1 pertains to capacity of production per packing machine per month for Chewing tobacco including Filter Khaini (number of pouches). Table 2 pertains to the capacity of production per packing machine per month for Jarda Scented Tobacco and Unmanufactured Tobacco (number of pouches)

Vide Notification No. 11/2016–Central Excise (N.T.)

Change in rate of tariff value of articles of apparel, not knitted or crocheted falling under CETH 6201 in Notification No 20/2001-C.E. (N.T.)

- The prescribed rate of 60% of RSP of articles of apparel, not knitted or crocheted falling under CETH 6201 has been reduced to 30% of RSP.

Vide Notification No. 12/2016–Central Excise (N.T.)

Proposed changes in rates of abatement of goods in Notification No.49/2008-C.E.(N.T.) assessed under Section 4A of CE Act

Products	Entry No.	Change
Soap	39	30% abatement extended to all goods under CETH 3401
Organic surface active agents	40	30% abatement extended to all goods under CETH 3402
Footwear	56	Rate of abatement increased from 25% to 30%
Aluminium foil of thickness not exceeding 0.2 mm.	64A	New entry inserted specifying abatement of 25%
wrist wearable devices (smart watches)	87A	New entry inserted specifying abatement of 35%
Part, Components and Assemblies of Vehicles	108	Proposed inclusion of "accessories" with existing rate of 30%
Part, Components and Assemblies of goods falling under CETH 8426 41 00, 8427, 8429, 8430 10 with the proposed inclusion of accessories	109	Proposed inclusion of "accessories" with existing rate of 30%

Vide Notification No. 15/2016–Central Excise (N.T.)

Interest under Section 11AA of the Customs Act reduced to 15%

- The rate of interest under Section 11AA of the CE Act is proposed to be reduced from the earlier 18% to 15%.

Vide Notification No. 16/2016–Central Excise (N.T.) and 17/2016–Central Excise (N.T.)

- The reference of Section 11AB is proposed to be substituted with Section 11AA in consequence to the amendment made under the CE Act in Notification Nos.42/2001-C.E.(N.T.) and 31/2007-C.E.(N.T.).

Vide Notification No. 18/2016–Central Excise (N.T.)

Amendment to Notification No. 19/2004-C.E. (N.T.) dated September, 6 2004 to overcome judgments

- One of the conditions for claiming rebate of duty under Rule 18 of the CE Rules on export of goods to countries other than Nepal and Bhutan is proposed to be amended to provide that the Indian market price of the excisable goods at the time of exportation shall not be less than the amount of rebate claimed as opposed to earlier provision that referred to market price.
- In terms of the new amended notification, a claim for rebate of duty paid on all excisable goods will now be required to be lodged with the Deputy / Assistant

ELP Comments

The new condition that the market price to be considered would be the Indian market price is being introduced to overcome the judgment of the Hon'ble Delhi High Court in the case of **Dr. Reddy's Laboratories vs. Union of India [2014 (309) ELT (423)]**. The application of Section 11B of the CE Act to rebate claimed under Rule 18 of the CE Rules is being introduced to overcome the judgment of the Hon'ble Punjab and Haryana High Court in the case of **JSL Lifestyle Limited vs. Union of India [2015 (326) ELT (265)]**.

Commissioner before the expiry of the time prescribed under Section 11B of the CE Act.

Vide Notification No. 19/2016–Central Excise (N.T.)

Amendment to Notification No. 36/2001-C.E. (N.T.) dated June 26, 2001

- Notification No. 36/2001-C.E. (N.T) had provided that if two or more premises of the same factory were separated by public road, railway line or canal, a single registration could be allowed by the Central Excise Officer. In terms of the proposed amendment, the benefit of a single registration will be granted subject to the following three conditions:
  - the two or more premises of the same factory are located within the jurisdiction of a Range Superintendent; and
  - the manufacturing process is interlinked; and
  - the units are not operating under any area based exemption notifications

ELP Comments

This is a move towards a simplified process where a manufacturer who has more than one unit located within a specified jurisdiction can now avail a single registration in respect of all such units.

Vide Notification No. 20/2016–Central Excise (N.T.)

Supersession of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2001 with the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016

- The proposed Rules seek to simplify the procedure in as much as a manufacturer intending to avail the benefit of an exemption notification issued under Section 5A of the CE Act, will no longer be required to make an additional application to the Deputy / Assistant Commissioner of Central Excise, but will now only be required to make a self-declaration in duplicate in the prescribed form.

ELP Comments

Therefore, this proposed amendment is a move towards removal of obtaining permissions and making it easier for manufacturers to remove goods at concessional rate of duty.

Vide Notification No. 21/2016–Central Excise (N.T.)

Amendment to Notification No. 21/2004-C.E. (N.T.) dated September 6, 2004

- Notification No.21/2004-C.E. (N.T.) deals with the procedure for claiming rebate of duty under Rule 18 of the CE Rules of excisable goods used in the manufacture of goods that are exported. It is now proposed that the Deputy / Assistant Commissioner will no longer be required to verify the correctness of the ratio of the input and output as now in addition to the Declaration that is required to be filed, a Chartered Engineer's certificate in respect of the correctness of the ratio of input and output, would be required to be provided. However, if the Deputy / Assistant Commissioner doubts the correctness of the Declaration, he can visit the factory and verify the correctness.

CHANGES IN RATE OF CENTRAL EXCISE DUTY

There has been no change in the peak rate of Excise Duty @ 12.5%

Sr. No.	Product Tariff No.	Description of Goods	Existing Rate (%)	Revised Rate (%)
1.	2106 90 20	Pan Masala	16	19
2.	2712	N-paraffin arising in the course of manufacture of Linear Alkyl Benzene and	14	NIL

Sr. No.	Product Tariff No.	Description of Goods	Existing Rate (%)	Revised Rate (%)
		Heavy Alkylate		
3.	2710 1920	Aviation turbine fuel other than supplied to scheduled commuter airlines from the regional connectivity scheme airports	8	14
4.	28, 29 or 38	Micronutrients, which are covered under sr. no. 1(f) of Schedule 1, Part (A) of the Fertilizer Control Order, 1985 and are manufactured by the manufacturers which are registered under the Fertilizer Control Order, 1985	12.5	6
5.	31	Mixture of fertilizers (made by physical mixing of chemical fertilizers on which appropriate duty of excise has been paid, by Co-operative Societies, holding certificate of manufacture for mixture of fertilizers under the Fertilizer Control Order, 1985) supplied to the members of such Co-operative Societies	12.5	NIL
6.	38	Ready-mix concrete manufactured at the construction site for use in construction activity	12.5	NIL
7.	3923 21 00 or 3923 29	Sacks and bags of polymer of any plastics	12.5	15
8.	4008 29 10	Rubber sheets and resin rubber sheets for soles and heels	12.5	6
9.	54 or 55	Polyster staple fibre or polyster filament yarn manufactured from plastic including waste PET bottles	6	12.5
10.	61, 62 and 63 (6301 to 6308) except those falling under 6309 0000, 6310 of RSP of INR 1000 and above when they bear or sold under a brand name	Readymade garments and made up article of textiles	NIL	2 - without CENVAT 12.5 – with CENVAT
11.	Goods other than those covered under entry no. 11 and falling under 61, 62 and 63	Readymade garments and made up articles of textiles	NIL	NIL - without CENVAT 6 – with CENVAT
12.	Goods other than those covered under entry no. 11 and falling under 61, 62 and 63	In case of garments / articles of cotton not containing any other textile material	6	NIL - without CENVAT 12.5 – with CENVAT
13.	71	Gold bars manufactured from gold ore or concentrate; gold dore bar and silver	9	9.5

Sr. No.	Product Tariff No.	Description of Goods	Existing Rate (%)	Revised Rate (%)
		dore bar		
14.	71	Silver manufactured from silver ore or concentrate; silver dore bar and gold dore bar	8	8.5
15.	71	Gold bars and gold coins of purity not below 99.5%, produced during the process of copper smelting	9	9.5
16.	71	Silver produced during the process of zinc or lead smelting	8	8.5
17.	7113	Articles of jewellery excluding articles of silver jewellery, other than those studded with diamonds, ruby, emerald or sapphire	NIL – without CENVAT 6 - with CENVAT	1 - without CENVAT 12.5 – with CENVAT
18.	7323 or 7418 or 7615	Aluminium foil containers	6	12.5
19.	8413 91 or 8501 31 19	Goods such as shafts, sleeve, chamber, impeller, washer, electric motor for use in manufacture of centrifugal pumps falling under tariff item 8413 70 10 (subject to actual user condition)	12.5	6
20.	8507 60 00	Lithium-ion batteries other than batteries of mobile handsets including cellular phones	12.5	4 - without CENVAT 12.5 – with CENVAT
21.	8504	Charger or adapter for manufacture of mobile handsets including cellular phones	NIL	2 - without CENVAT 12.5 – with CENVAT
22.	8506, 8507	Battery for manufacture of mobile handsets including cellular phones	NIL	2 - without CENVAT 12.5 – with CENVAT
23.	8518 30 00	Wired headsets for manufacture of mobile handsets including cellular phones	NIL	2 - without CENVAT 12.5 – with CENVAT
24.	8518	Speakers for manufacture of mobile handsets including cellular phones	12.5	2 - without CENVAT 12.5 – with CENVAT
25.	8517 62 30	Broadband modem	12.5	4 - without CENVAT 12.5 – with CENVAT
26.	8517 6930	Routers	12.5	4 - without CENVAT 12.5 – with CENVAT
27.	8517 69 60	Set-top boxes for gaining access to internet	12.5	4 - without CENVAT 12.5 – with CENVAT
28.	8521 90 90	Digital Video Recorder (DVR) or Network Video Recorder (NVR)	12.5	4 - without CENVAT 12.5 – with CENVAT
29.	8525 80 20	CCTV camera or IP camera	12.5	4 - without CENVAT 12.5 – with CENVAT
30.	8528 7100	Reception apparatus for television but not designed to incorporate a video display	12.5	4 - without CENVAT 12.5 – with CENVAT
31.	85 or any other Chapter	Parts, components and accessories for manufacture of a. Lithium-ion batteries other than batteries of mobile handsets including cellular phones; b. Routers; c. Broadband modem; d. Set-top boxes for gaining access to	12.5	NIL (Subject to fulfillment of conditions)

Sr. No.	Product Tariff No.	Description of Goods	Existing Rate (%)	Revised Rate (%)
		Internet e. DVR or NVR; f. CCTV camera or IP camera; g. Reception apparatus for television but not designed to incorporate a video display; h. Sub-parts for manufacture of the items mentioned at (a), (b), (c), (d), (e), (f) and (g) above; i. Charger or adapter of mobile handsets including cellular phones; j. Battery of mobile handsets including cellular phones; k. Wired headsets of mobile handsets including cellular phones; l. Speakers of mobile handsets including cellular phones; m. Inputs or sub-parts for manufacture of parts mentioned at (i), (j) (k) and (l) above		
32.	8607	Parts of Railway or tramway locomotives or rolling stock	12.5	6
33.	8608	Railway or tramway track fixtures and fittings, etc.	12.5	6
34.	8609 00 00	Refrigerated containers	12.5	6
35.	Any Chapter	Engine for xEV (hybrid electric vehicle)	12.5	6
36.	Any Chapter	Engine for HV (Atkinston Cycle)	6	12.5
37.	88	Tools and tool kits for maintenance, repair, and overhauling of aircraft	12.5	NIL
38.	89 or any other Chapter	Capital goods and spare thereof, raw materials, parts, material handling equipment and consumable for repairs of ocean-going vessels by a ship repair unit	12.5	NIL
39.	90 or 84	Disposable sterilized dialyzer or micro barrier of artificial kidney	12.5	NIL
40.	38, 39 or 68	Goods specified in List 9A [i.e. Epoxy resin, Vinyl ester adhesives, Hardener for adhesive resin, Hardeners, Polyester based infusion resin and hand layup resin] used for the manufacture of rotor blades and intermediates, parts and sub-parts of rotor blades, for wind operated electricity generators	NIL	6
41.	6815 10 90	Carbon pultrusion used for the manufacture of rotor blades and intermediates, parts and sub-parts of rotor blades, for wind operated electricity generators	12.5	6
42.	9405 50 40	Solar lamps	12.5	NIL

Vide Notification No. 5/2016-CE and 6/2016-CE

- Withdrawal of area based exemption benefit available to new industrial unit [situated at Jammu and Kashmir, Assam, Tripura, Meghalaya, Mizoram, Manipur, Nagaland, Arunachal Pradesh and Sikkim] engaged in production of refined gold or silver which commences the commercial production on or after March 01, 2016 or an existing unit which undertakes substantial expansion of existing capacity

Vide Notification No. 8/2016-CE

- SSI exemption is applicable to the clearances of articles of jewellery (other than certain specified articles of Chapter Heading 7113) upto INR 6 Crores subject to the condition that clearance of such goods in preceding FY shall not exceed INR 12 Crores. However, threshold limit for the month of March 2016 for the said goods is INR 50 lakhs
- SSI exemption is applicable to the clearances of goods bearing a brand name or sold under a brand name and having a retail sale price of INR 1000/- and above , falling under Chapter 61, 62 and 63 (except laminated jute bags falling under Chapter Heading 6305, 6309 00 00, 6310), shall be restricted to INR 12.5 lakhs for the month of March 2016

Vide Notification No. 11/2016-CE

- In respect of 'media with recorded information technology software', exemption from payment of Excise Duty is provided to the extent of taxable value on which Service Tax is leviable under Section 66B read with Section 66E of the Finance Act, 1994

Vide Notification No. 12/2016-CE

- The validity period of concessional Excise Duty rate of 6% granted to specified goods for the use in manufacture of electrically operated vehicles and hybrid vehicles is being extended [without time limit]

Vide Notification No. 14/2016-CE

- Exemption from payment of Excise duty on machinery/components for setting up of power or bio gas (CNG) generation project using non- conventional materials would also be available, if there is a valid agreement (subject to the satisfaction of Deputy Commissioner / Assistant Commissioner) between importer with urban local body for processing of municipal solid waste

Vide Notification No. 16/2016-CE, 17/2016-CE and 18/2016-CE

- There have been various changes in the Excise Duty rate on tobacco products, pan masala, etc.

Vide Notification No. 1/2016-CE - Clean Energy Cess [Clean Environment Cess]

- The Clean Energy Cess has been renamed as Clean Environment Cess
- The tenth schedule to the Finance Act, 2010 dealing with Clean Environment Cess is amended to increase the schedule rate from INR 300 per tonne to INR 400 per tonne. The effective rate of Clean Environment Cess is increased to INR 400 per tonne

Vide Notification No. 2/2016-CE - Clean Energy Cess

- Exemption from payment of Clean Environment Cess on coal, lignite or peat produced or extracted as per traditional and customary rights enjoyed by local tribals without any license or lease is extended to the state of Nagaland

Vide Notification No. 1/2016-CE - Infrastructure Cess

- Clause 159 read with the Eleventh Schedule of the Finance Bill, 2016 has proposed to introduce a new levy namely Infrastructure Cess on the motor vehicles falling under Chapter Heading 8703 of CETA. The effective rates of the Infrastructure Cess prescribed vide the said Notification are as under:

Nil Rate	1%	2.5%	4%
1. Three wheeled vehicles, 2. Electrically operated vehicles, 3. Hybrid vehicles, 4. Hydrogen vehicles based on fuel cell technology, 5. Motor vehicles which after clearance have been registered for use solely as taxi (subject to prescribed conditions), 6. Cars for physically handicapped persons(subject to prescribed conditions), and 7. Motor vehicles cleared as ambulances or registered for use solely as ambulance (subject to prescribed conditions)	Petrol/LPG/CNG driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1200cc	Diesel driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1500cc	All categories of motor vehicles other than those listed – Eleventh Schedule of the Finance Bill, 2016

CUSTOMS DUTY

LEGISLATIVE CHANGES

Amendments to the Customs Act

Amendments in Chapter IX of Customs Act relating to Warehousing

- Definition of "Warehouse" is proposed to be amended to include a special warehouse under newly introduced Section 58A of Customs Act.
- Concept of "Warehousing Station" under Section 9 of the Customs Act is proposed to be done away with.
- Sections 57 and 58 dealing with appointment of public warehouses and licensing of private warehouses, respectively are being substituted to provide for licensing by the Principal Commissioner of Customs/ Commissioner of Customs instead of Deputy / Assistant Commissioner of Customs.
- Section 58A is proposed to be introduced to provide for licensing of "special warehouse" where certain classes of goods will required to be stored under physical control.
- Section 58B is being introduced to regulate the process of cancellation of licenses granted under Sections 57, 58 and 58A.
- Section 59, which deals with a Warehousing Bond, is proposed to be substituted to fix the bond amount at thrice the amount of the duty instead of twice the amount and requires the importer to furnish security in addition to the Bond.
- Section 60 which deals with permission of deposit of goods in a warehouse is proposed to be substituted to provide for the proper officer to pass an order, permitting removal of goods from a Customs Station for deposit in a Warehouse.
- Section 61 which deals with period for which goods may remain warehoused is proposed to be substituted to extend the period of warehousing not only to 100% EOUs, both also to units under EHTP and STPs. The provisions relating to period of 5 years in respect of capital goods and 3 years in respect of goods other than capital goods is proposed to be done away with. Further, the Principal Commissioner of Customs/ Commissioner of Customs will have the power to extend the warehousing period by 1 year at a time.
- Section 62 which dealt with physical control over Warehoused goods is proposed to be omitted as the conditions for licensing of Warehouses and control over the same is proposed to be provided under Sections 57, 58 and 58A.
- Section 63 which dealt with payment of rent and warehouse charges at rates fixed under any law or by the Principal Commissioner of Customs / Commissioner of Customs is proposed to be omitted. Therefore, the rates of warehouse rent and warehouse charges will no longer be fixed and will now be subject to market determination.
- Section 64 which deals with the owner's right to deal with Warehoused goods is proposed to be substituted to rationalize the rights of the owner. Further, the right of the owner to take sample of goods without entry for home consumption and without payment of duty is proposed to be omitted.
- Section 65 which deals with permission to manufacture and carry out other operations in relation to goods in the warehouse, is proposed to be amended to replace the Deputy / Assistant Commissioner of Customs with the Principal Commissioner of Customs / Commissioner of Customs. Further, the payment of fees to the custom authorities for supervision of manufacturing facilities under Bond is proposed to be done away with.
- Sections 68 and 69 which deal with clearance of warehoused goods for home consumption and exportation, respectively are proposed to be amended to omit the conditions of payment of rent and other charges.

- Section 71 which deals with goods which are not to be taken out of a Warehouse, except as provided is proposed to be amended to substitute the word "exportation" by the word "export" to bring the same in line with the definition of export under Section 2(18).
- Section 72 which deals with goods improperly removed from a Warehouse is proposed to be amended to omit the conditions of payment of rent and other charges and align the same with the amendment to Section 64 relating to taking of samples.
- Section 73 which deals with cancellation and return of Warehousing Bond, is proposed to be amended to provide for cancellation of a Bond pursuant to transfer of the goods to another person.
- Section 73A is proposed to be introduced to provide for the duties and responsibilities of the person who has been granted a Warehousing License under Sections 57, 58 and 58A.

ELP Comments

The proposed amendments to various provisions relating to warehousing vide which the Principal Commissioner of Customs/ Commissioner of Customs have been appointed as the decision making authority, is a welcome step, in as much as, it will speed up the decision making process.

Other Amendments

- The condition of publishing and offering for sale of any Notifications issued under Section 25(1) or Section 25(2A) by the Directorate of Publicity and Public Relations, Customs and Central Excise , New Delhi under CBEC, is proposed to be omitted.

ELP Comments

The said amendment has been proposed to overcome the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Param Industries Ltd. [2015 (321) ELT 192]**, wherein it was inter alia held that though the Notification may have been published in the Gazette on a particular date, however it was not offered for sale, which event took place much thereafter and therefore the Department was not entitled to claim differential duty in respect of the new Notification.

- Section 28 is proposed to be amended to increase the period of limitation from 1 year to 2 years in cases not involving fraud, suppression, mis-statement, etc. Further, the expression "duties not levied or short-levied" has been substituted with "duties not levied or not paid or short-levied or short paid" in the said Section.
- Sections 47 and 51 which deal with clearance of goods for home consumption and clearance of goods for exportation, respectively are proposed to be amended to provide for deferred payment of customs duties to importers and exporters with a proven track record. Further, where an exporter fails to pay export duty by the due date, he will be required to pay interest at the prescribed rate.
- Section 53 dealing with transit of goods without payment of goods without payment of duty is proposed to be amended to enable the Board to frame regulations in relation to the same.
- Section 156 which deals with the general power to make rules is proposed to be amended to incorporate the power to make rules relating to due date and manner of making deferred payment of duties, taxes, cesses or any other charges under Sections 47 and 51.

Vide Notification No. 30/2016-Customs (N.T.)

Substitution of the Baggage Rules, 1998

- The existing Baggage Rules are proposed to be substituted with the Baggage Rules, 2016 in order to simplify and rationalize the various slabs of duty free allowance for various categories of passengers. These new Rules will come into effect from April 01, 2016.

- The distinction between a passenger returning after a stay abroad of less than 3 days or more than 3 days is proposed to be removed.
- The new Rules propose to provide that any passenger over 2 years of age will be entitled to the duty free allowances as opposed to the earlier age limit of 10 years and above.
- The duty free allowance of INR 45,000 for passengers coming from countries other than Nepal, Bhutan or Myanmar is proposed to be enhanced to INR 50,000 in the case of an Indian resident, a foreigner residing in India or a tourist of Indian origin. In the case of a tourist of foreign origin the duty free allowance is proposed to be reduced to INR 15,000.
- The duty free allowance of INR 6,000 from Nepal, Bhutan or Myanmar is proposed to be enhanced to INR 15,000.
- In case of jewellery brought to India by a passenger who has stayed abroad for more than 1 year, an additional condition in respect of the weight is proposed to be prescribed i.e. 20 grams in case of gentlemen passengers and 40 grams if brought by lady passengers.
- A slab system of duty free allowances of personal and household articles in respect of a person transferring his residence to India is proposed to be introduced to provide for duty free allowance depending on the duration of stay abroad ranging from INR 60,000 to INR 5,00,000.

ELP Comments

In terms of the old Baggage Rules, the lower duty free allowance of INR 6,000 was applicable to countries such as Nepal, Bhutan, Myanmar and China. However, in terms of the new Baggage Rules, the lower limit of duty free allowance of INR 15,000 is applicable only to Nepal, Bhutan and Myanmar. Accordingly, in respect of a passenger returning from China, a higher duty free allowance of INR 50,000 would be applicable.

Vide Notification No. 31/2016-Customs (N.T.)

Amendment to the Customs Baggage Declaration Regulations, 2013

- The Customs Baggage Declaration Regulations, 2013 are proposed to be amended with effect from April 01, 2016, to provide that only those passengers who come to India and have anything to declare or are carrying dutiable or prohibited goods will be required to file a declaration in terms of the said amended Regulations.

Vide Notification No. 32/2016-Customs (N.T.)

Supersession of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 with the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016

- The Rules propose to simplify the procedure in as much as a manufacturer intending to avail the benefit of an exemption notification issued under Section 25 of the Customs Act will no longer be required to obtain a specific registration from the jurisdictional Central Excise Officer, to claim exemption under the aforesaid Rules.
  - A manufacturer will now only be required to make a self-declaration, setting out details such as the name, address, details of excisable goods produced and the nature and description of the imported goods used in manufacture.
- A manufacturer obtaining benefit of these Rules can re-export the unutilized or defective imported goods within 3 months from the date of import as opposed to 6 months in the earlier Rules.

ELP Comments

This proposed amendment is a move towards removal of obtaining registrations / permissions and making it easier for manufacturers to import goods and use the same in the manufacture of goods in India. However, the restriction of the time limit of 3 months as opposed to the earlier 6 months within which unutilised or defective goods may be re-exported may create practical difficulties for a manufacturer.

Vide Notification No. 33/2016-Customs (N.T.)

Interest under Section 28AA of the Customs Act reduced to 15%

The rate of interest under Section 28AA of the Customs Act is proposed to be reduced from the earlier 18% to 15%.

CHANGES IN RATE OF CUSTOMS DUTY

No change in the peak rate of BCD @ 10%

Amendments to the First Schedule to the CTA

- Separate tariff entry proposed for laboratory created, laboratory grown, manmade, cultured or synthetic diamonds (CTH 7104 90)
- Amendments to the tariff rates –

Sr. No.	Description of Goods	Existing Rate	Revised Rate
1.	Natural latex rubber made balloons falling under specified headings	10%	20%
2.	Primary aluminium	5%	7.5%
3.	Zinc alloys	5%	7.5%
4.	Imitation jewellery	10%	15%
5.	Industrial solar water heater	7.5%	10%
6.	Increase in the tariff rate of BCD for 211 specified tariff lines in Chapters 84, 85 and 90, out of which- (a) On 96 specified tariff lines, the effective rate is being increased from 7.5% to 10% (b) On remaining 115 tariff lines the effective rate will remain unchanged at 7.5%	7.5%	10%

Full exemption from BCD, CVD and SAD

- Disposable sterilised dialyzer and micro barrier of artificial kidney
- Specified goods required for exploration and production of hydrocarbon activities undertaken under petroleum exploration licenses or mining leases issued or renewed before April 01, 1999
- Foreign satellite data on storage media when imported by National Remote Sensing Centre, Hyderabad
- Inputs, parts and components, subparts for manufacture of charger / adapter, battery and wired headsets / speakers of mobile phones, subject to actual user condition
- Parts and components, subparts for manufacture of routers, broadband modems, set-top boxes for gaining access to internet, set top boxes for television, digital video recorder / network video recorder, CCTV camera / IP camera, lithium ion battery (other than those for mobile handsets)
- Tools and tool kits, when imported by maintenance, repair and overhauling entities (MROs), for maintenance, repair, and overhauling of aircraft subject to certification by the Directorate General of Civil Aviation

Full exemption from BCD

- Electrolysers, membranes and their parts required by caustic soda / potash unit using membrane cell technology
- Wood in chips or particles for manufacture of paper, paperboard and news print
- Specified capital goods and inputs for use in manufacture of micro fuses, sub-miniature fuses, resettable fuses and thermal fuses
- Braille paper

- Medical use fission molybdenum-99 imported by Board of Radiation and isotype technology for manufacture of radio pharmaceuticals
- Specified fabrics (for manufacture of textile garments for export) of value equivalent to 1% of FOB value of exports in the preceding FY subject to the specified conditions
- Polypropylene granules / resins for the manufacture of capacitor grade plastic films
- Magnetron of capacity 1 KW to 1.5 KW for use in manufacture of domestic microwave ovens subject to actual user conditions
- Machinery, electrical equipment and instrument and parts thereof (except populated PCBs) for semiconductor wafer fabrication / LCD fabrication units
- Machinery, electrical equipment and instrument and parts thereof (except populated PCBs) imported for assembly, test, marking and packaging of semiconductor chips

BCD reduced from 10% to 5%

- Cold chain including pre-cooling unit, packhouses, sorting and grading lines and ripening chambers
- Refrigerated containers

BCD reduced from 7.5% to 5%

- Aluminium Oxide for use in the manufacture of Wash Coat, which is used in the manufacture of catalytic converters, subject to actual user condition

BCD rationalised to 5%

- Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; etort carbon
- Coal gas, water gas, producer gas and similar gases, other than petroleum gases and other gaseous hydrocarbons
- Tar distilled from coal, from lignite or from peat and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars
- Pitch and pitch coke, obtained from coal tar or from other mineral tars

BCD reduced to 2.5%

- Neodymium magnet (before magnetization) and magnet resin (strontium ferrite compound/before formed, before magnetization) for manufacture of BLDC motors, subject to actual user condition
- Parts of e- readers
- Super absorbent polymer when used for the manufacture of sanitary pads, napkins and tampons
- Denatured ethyl alcohol (ethanol) subject to actual user condition
- Specified fibres and yarns
- Silica sand
- Brass scrap
- Pulp of wood for manufacture of sanitary pads, napkins and tampons

BCD rationalised to 2.5%

- Coal, briquettes, ovoids and similar solid fuels manufactured from coal
- Lignite, whether or not agglomerated, excluding jet

- Peat (including peat litter), whether or not agglomerated
- Oils and other products of the distillation of high temperature coal tar similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents
- All acyclic hydrocarbons and all cyclic hydrocarbons (other than para-xylene which attracts nil rate of BCD and styrene which attracts BCD @2%)

BCD increased from Nil to 5%

- Cashew nuts in shell
- Solar tempered glass/ solar tempered (anti-reflective coated) glass, subject to actual user condition

BCD increased from Nil to 7.5%

- E- readers

BCD increased from Nil to 10%

- Plans, drawings and designs
- Specified telecommunication equipments including soft switches and voice over internet protocol (VOIP) equipment namely VOIP phones, media gateways, gateway controllers and session border controllers, optical transport equipment etc.
- Preform of silica for manufacture of telecom grade optical fibre /cables

BCD increased from 7.5% to 10%

- Other aluminium products

BCD increased from 10% to 60%

- Golf cars

Exemption withdrawn

- Magnetic heads (of all types), ceramic / magnetic cartridges and stylus, antennas, EHT cables, level meters/level indicators/ tuning indicators/ peak level meters/ battery meter/VC meters / tape counters, tone arms, electron guns

Changes in CVD

- From 8% to 8.75% on gold dore bars
- From 7% to 7.75% on silver dore
- Imported media with recorded Information Technology software is being exempted to the extent of its value which is leviable to Service Tax, provided that for such media there is no requirement to declare retail sale price.

Changes in SAD

- Reduced from 4% to 2% on orthoxylene for the manufacture of phthalic anhydride subject to actual user condition
- Increased from Nil to 4% on populated PCBs for manufacture of personal computers (laptop or desktop)
- Increased from Nil to 2% on Populated PCBs for manufacture of mobile phone/tablet computer
- Exemption to machinery, electrical equipment and instrument and parts thereof (except populated PCBs) for semiconductor wafer fabrication / LCD fabrication units

- Exemption to machinery, electrical equipment and instrument and parts thereof (except populated PCBs) imported for assembly, test, marking and packaging of semiconductor chips

Full exemption from Export duty

- Iron ore fines with iron content below 58%
- Iron ore lumps with iron content below 58%
- Chromium ores and concentrates of all sorts

Export duty reduced from 20% to 15%

- Bauxite (natural), whether calcined or not

Other amendments

- The validity period of exemption granted to specified goods for the use in manufacture of electrically operated vehicles and hybrid vehicles is being extended without any time limit
- CVD exemption on specified machinery required for construction of roads is being withdrawn
- Direct imports of specified goods by Government of India or State Governments to attract applicable rates of BCD, CVD and SAD, with effect from April 01, 2016
- Import of specified goods for defence purposes by contractors of the Government of India, PSUs or sub-contractors of PSUs to attract applicable rates of BCD, CVD and SAD, with effect from April 01, 2016
- Exemption from BCD, CVD, SAD on charger / adapter, battery and wired headsets / speakers for manufacture of mobile phones is being withdrawn
- Simplified procedure for availment of exemption from customs duties on parts, testing equipments, tools and tool kits for maintenance, repair and overhaul of aircraft based on records and subject to actual user condition
- Removal of restriction of one year for utilisation of duty free parts for maintenance, repair and overhaul of aircraft
- Requirement to maintain detailed records and to furnish undertaking done away with for availment of exemption from BCD, CVD and SAD by ship repair units
- Introduced actual user condition for the import of phosphoric acid and anhydrous ammonia at concessional BCD and CVD for manufacture of Fertilizers
- Introduced actual user condition for import of LCD/LED/OLED panels at Nil rate of BCD for manufacture of LCD/LED/OLED televisions

INTERNATIONAL TRADE & CUSTOMS

LEGISLATIVE CHANGES

Removal of the Transitional Safeguard Mechanism as an Emergency Trade Remedial Measure

Section 8C of the Customs Tariff Act, 1975, which covers the Transitional Safeguard Mechanism as an Emergency Measure, has been proposed to be removed. This will leave the Safeguard Measures under Section 8B as the only Tariff related Safeguard Measure under the Customs Tariff Act, 1975.

- Consequently, various other notifications have also been proposed to be amended to incorporate the above change. In the following notifications, for the words, figures and letter "under sections 3, 8 and 9A", the words, figures and letters "under sections 3, 8B and 9A" are proposed to be substituted. :
  - G.S.R. 367(E), dt. the April 27, 2000 – Materials Exempted under Duty Exemption Entitlement Certificate
  - G.S.R. 292(E), dt. the April 19, 2002 – Customs Exemption Notification on Advance Licenses under EXIM Policy 2002-07
  - G.S.R. 281(E), dt. the April 10, 2003 – Amendments in the Notifications (2003-04 EXIM Policy - changes made in Advance License, DFRC, EPCG, DEPB and DEEC schemes)
  - G.S.R. 604 (E), dt. the September 10, 2004 – Exempted Materials against Advance License for Deemed Export
  - G.S.R. 606(E), dt. the September 10, 2004 – Anti-dumping Duty off on Materials against Advance License
  - G.S.R. 260(E), dt. the May 01, 2006 – Duty Free Import Authorisation

ELP Comments

The Transitional Safeguard Mechanism (under Article 16 of China's Accession Protocol) was a special emergency mechanism accorded to WTO members at the time of China's inclusion as a Member into the WTO. While general Safeguard Measures cannot be levied against specific countries, the Transitional Safeguard Mechanism allowed a member country to levy Safeguard Measures against imports from China PR. However, as per paragraph 9 of Article 16 to the China's Accession Protocol, the right to levy Transitional Measures has expired in December, 2013.

Since the expiry of the above provision, India has not levied any Transitional Safeguard Measures against imports from China. Section 8C of the Customs Tariff Act, 1975, which covered Transitional Safeguard Measures, has accordingly now been removed.

Pursuant to the above removal, some export incentive programs implemented by the Government of India which involved certain Safeguard Duties (by way of exemption, refund etc.) have also been amended to reflect the exclusion of Section 8C, now specifying only Section 8B as the provision covering Safeguard Duties (see paragraph 136 and the Second Schedule of the Finance Bill).

It is also relevant that another major provision from China's Accession Protocol i.e. Article 15(a)(ii), which allows Member Countries to treat China as a Non-Market Economy under certain conditions, shall expire in December, 2016. This is expected to have a large impact on the structure of trade remedial investigations globally.

CENVAT CREDIT RULES, 2004

AMENDMENTS IN THE DEFINITIONS UNDER RULE 2 OF THE CCR

"capital goods" - Rule 2(a)

- Wagons falling under Sub-heading 860692 have been explicitly mentioned as capital goods.
- Restriction with regard to 'the equipments and appliances used in an office' has been done away with.

ELP Comments

- The Hon'ble Tribunal in the case of **Bulk Cements Corporation (India) Ltd. Vs. Commissioner of Central Excise [2013 (294) ELT 433 (Tri-Mum)]** had held that wagons under Chapter 86 cannot be considered as capital goods.
- The omission of the expression 'but does not include any equipment or appliance used in an office' seeks to expand the ambit of the term capital goods. This is beneficial amendment.

"exempted service" - Rule 2(e)

- In the definition of the term 'exempted service' under Rule 2(e), 'services by way of **transportation of goods** by a vessel from customs station of clearance in India to a place outside India', has been excluded.

"inputs" - Rule 2(k)

- The definition of the term 'inputs' has been amended to include within its scope 'capital goods' which have a value upto ten thousand rupees per piece.
- The amendment clarifies that goods used for the 'pumping of water' would be construed as inputs.

"input services distributor" - Rule 2(m)

The scope of definition of 'input services distributor' in Rule 2(m) of the CCR has been extended to an office of an 'outsourced manufacturing unit'.

CERTAIN AMENDMENTS WITH RESPECT TO UTILISATION AND AVAILMENT OF CENVAT CREDIT

Utilization against the payment of National Calamity Contingent Duty (NCCD)

- The 5th proviso to Rule 3(4) provided that CENVAT Credit of any duty except NCCD cannot be utilized for payment of NCCD on goods falling under tariff items 8517, 12 10 and 8517 12 90. However, with effect from March 01, 2016, the 5th proviso to Rule 3(4) has been amended so as to provide that CENVAT Credit of any duty specified in sub-rule (1) except NCCD cannot be utilized for payment of NCCD leviable under Section 136 of the Finance Act, 2001 on any product.

Amendments in Rule 4

- The facility of hundred per cent CENVAT Credit of capital goods as available to small scale industrial manufacturer having clearance within the threshold limit of INR 4 Crore is also extended to the Gems and Jewellery Sector. However, the threshold limit for the Gems and Jewellery Sector has been pegged at INR 12 Crore.
- CENVAT Credit on jigs, fixtures moulds and dies or tools sent to a job worker or another manufacturer would also be allowed where such goods are sent without bringing the same to the premises of the Assessee.

ELP Comments

In **Eaton Fluid Power Ltd. vs. Commissioner [2014 (308) ELT 602 (Tri-Mum)]**, the Hon'ble Tribunal has held that availment of credit in respect of materials directly purchased/received by the job worker without receiving the goods in their premises was implied and not explicitly provided in the CCR. By the substitution of sub-rule (5) of Rule 4, this has been explicitly provided to avoid any confusion in this regard.

- Order issued under Rule 4(6) allowing the final products to be cleared from the premises of the job worker would be valid upto 3 years as against existing 1 year.
- Rule 4(7) provides that CENVAT Credit of Service Tax in respect of services provided by way of assignment of "right to use" any natural resources shall be spread over the period for which the "right to use" has been assigned under Straight Line Method.
  - Formulae:
    Amount of CENVAT Credit that shall be taken in a financial year = Service Tax paid on the charges payable for the assignment of the right to use / No. of Years for which the rights have been assigned
  - Full credit available in case such rights are further assigned to another person against a consideration
  - In respect of annual or monthly user charges, the credit shall be allowed in the same FY in which they are paid.

AMENDMENTS IN RELATION TO REVERSAL OF CENVAT CREDIT UNDER RULE 6

Rule 6 has been substantially amended with a view to remove certain ambiguities and associated litigation in relation to apportionment of credits towards manufacture of exempted goods or for provision of exempted services. The key amendments under Rule 6 are set out below:

Mechanism for reversal of CENVAT Credit towards exempted goods and exempted services

Pursuant to the amendments made in Rule 6, inadmissible credits with respect to exempted goods and services is to be calculated in terms of provisions of sub-rule (2) or, sub-rule (3) of Rule 6, summarized as follows:

- Manufacturers exclusively engaged in manufacturing of exempted goods or service providers who exclusively provide exempted services shall not be eligible for credit of any inputs and input services [sub-rule 6(2)];
- Manufacturers engaged in manufacturing both exempted and non-exempted goods or service providers engaged in providing both exempted and non-exempted services, can follow any one of the following options for reversal of ineligible CENVAT Credit [sub-rule 6(3)]
  - pay an amount equal to *six per cent* of value of the exempted goods and *seven per cent* of value of the exempted services. However, such payment is restricted up to the total credit available with the assessee at the end of the period to which the payment relates.
  - pay an amount of ineligible CENVAT Credit as determined under sub-rule (3A) (i.e. proportionate reversal) by sequentially following the steps mentioned hereunder:
    - Ineligible Credit [A]: CENVAT Credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods / exempted services to be treated as ineligible credit and shall be reversed;
    - Eligible Credit [B]: CENVAT Credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods / non-exempted services to be treated as eligible credit and shall not have to be reversed;
    - Common Credit [C = Total Credit less A less B]: CENVAT Credit left after attribution of the above eligible and ineligible credits shall be called as "common credits". Out of common credit, credit proportionately

attributable towards value of exempted goods / services is to be treated as ineligible common credit and shall be required to be reversed and balance may consequently be availed.

The formula to be applied to calculate 'ineligible common credit' denoted as D shall be D = (E/F) X C. Where E is the sum total of – (a) value of exempted services provided and (b) value of exempted goods removed; and where F is the sum total of – (a) value of non-exempted services provided, (b) value of exempted services provided, (c) value of non-exempted goods removed, and (d) value of exempted goods removed.

ELP Comments

Rule 6 has been rationalized with the view to provide more clarity. The amendment which seeks to prescribe that payment at six / seven percent would not exceed the amount of CENVAT Credit available, is a welcome step, and is in line with the decisions of the Tribunal *inter alia* in the case of **Sirpur Paper Mills Ltd. vs. Commissioner of C. Ex., Hyderabad [2006 (205) ELT 188 (Tri. - Bang.)].** However, it is worthwhile to note that even after discharging six / seven percent of the value of exempted goods / services, CENVAT Credit with respect to inputs / input services exclusively used for exempted goods / services continues to be separately ineligible in tandem with the erstwhile Rules.

The amendment necessitates identification of those input services which have been used exclusively for non-exempted goods or non-exempted services, else the CENVAT Credit towards such input services would form part of common credit pool and therefore would result in higher reversal / payment of CENVAT Credit.

Further, there were doubts as to whether for the purposes of the computation of the proportionate credit as prescribed under Rule 6(3A), the ratio is to be applied to the amount of 'total credit' or to 'common credit'. This resulted in various disputes, wherein the authorities initiated proceeding against those computing reversal based on common credit. In the case of **Thyssenkrup Industries Pvt. Ltd. vs. CCE [2014 (310) ELT 317 (Tri-Mum)],** the Hon'ble Tribunal expressed the *prima facie* view that in terms of sub-rule (3A), the ratio is to be applied on total credit and not on common credit.

It may be noted that Explanation 3 to the substituted sub-rule 6(1) provides that an activity which is not a service as defined in Section 65B(44) of the Act is also to be construed as 'exempted services'. This amendment is intended to align 'services' with last year's amendment (2015-16) qua 'goods' whereby 'non-excisable goods' were considered as exempted goods. Consequently, service providers would be required to reverse proportionate CENVAT Credit towards such activities which are not services under Section 65B(44) of the Act.

Banking and financial institutions can now exercise any of the options under the Rules for reversal of CENVAT Credit in addition to option of payment of 50% of the CENVAT Credit

- Sub-rule (3B) of the Rule 6 has been amended, whereby a banking and financial institution including non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, will have the following options for reversal of CENVAT Credit:
  - Reversal in terms of amended Rule 6(3) i.e. seven percent of value of the exempted services or
  - Proportionate reversal under Rule 6(3A) or
  - Pay for every month an amount equal to 50% of the CENVAT Credit availed on inputs and input services in the month.

Key procedural aspects regarding proportionate reversal of CENVAT Credit under Rule 6(3A)

- Similar to the existing scheme, the above payments under Rule 6(3A) is to be undertaken provisionally every month based on values of the preceding FY. An amount equal to difference between provisional ineligible credits and actual ineligible credits (based on actual values) shall be required to be paid (on or before the 30th June of the succeeding FY) along with interest at 15% (earlier 24%) with respect to shortfall, if any.

- As regards reversal on provisional basis during the year, in case where no final products were manufactured or no output service was provided in the preceding FY, CENVAT Credit attributable to ineligible common credit shall be deemed to be 50% of the common credit pool. This is in contrast with the existing scheme, where in such circumstances the manufacturer / service provider is required to undertake reversal on actual basis only on or before the 30th June of the succeeding financial year.

ELP Comments

The Hon'ble Tribunal in the case of **Mercedes Benz India Pvt. Ltd. vs. CCE, Pune -1 [2015 40 STR 381 (Tri. – Mum.)]** held that Revenue cannot insist on availment of a particular option and procedural lapse in intimation to avail option under Rule 6 would not disentitle the assessee to opt for the exercise of option as per Rule 6(3A)(ii). The new sub-rule (3AA) is in line with the said decision. However, it is subject to the discretion of the Central Excise Officer.

- Sub-rule (3AA) have been inserted under Rule 6 to provide that where a manufacturer or a provider of output service has failed to exercise the option under sub-rule (3) and follow the procedure provided under sub-rule (3A), the jurisdictional Central Excise Officer, may, at his discretion, based on amount of CENVAT Credit involved, allow proportionate reversal in terms of Rule 6(3A) with interest calculated at the rate of 15% per annum from the due date till the date of payment thereof.

No CENVAT Credit can be allowed on capital goods used exclusively for exempt activity for a period of two years from the date of commercial production or provision of services

- Sub-rule (4) of Rule 6 has been amended to provide that where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT Credit shall be allowed on such capital goods.
- Similar provision has been made for capital goods installed after the date of commencement of commercial production or provision of service.

ELP Comments

In respect of capital goods intended to be used for both exempted and non-exempted goods / services, full CENVAT Credit was earlier available in the erstwhile provisions, subject to the condition that the assessee could substantiate that he had the intention to use the capital goods for both the exempted and non-exempted goods / services. The amendment now requires that the capital goods must be used for taxable activities with a period of two years from the stipulated date else the credit would lapse. This amendment is to overcome the decision of Hon'ble Tribunal in case of **M/s. Brindavan Beverages Pvt. Ltd. vs. CCE, Meerut [2014-TIOL-2136-CESTAT-DEL],** wherein it was held that the usage of the capital goods (irrespective of any time limit) for both taxable and exempted activity is not the requisite criteria to avail the CENVAT Credit on capital goods.

Reversal not required to be undertaken for services provided by way of transportation of goods from Indian customs station to outside India

- Rule 6(7) has been amended so as to provide that credit taken on inputs and input services used in providing a service by way of "transportation of goods by a vessel from customs station of clearance in India to a place outside India" shall not be required to be reversed by shipping lines.
- That the service of transportation of goods by a vessel to a place outside India is presently not taxable in view of Rule 10 of the PPSR, which determines the place of provision of service as the place of destination of the goods. By amending Rule 2(e), services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India has been excluded from the definition of 'exempted service'.

- Thus, the amendment in sub-Rule (7) coupled with the corresponding amendment in the definition of exempted service is aimed at allowing credit of eligible inputs, input services and capital goods for providing the said service.

DISTRIBUTION OF CENVAT CREDIT ON INPUT SERVICES UNDER RULE 7

With a view to improve credit flows between different manufacturing / service locations, Rule 7 dealing with distribution of credit on input services by an Input Service Distributor is being completely rewritten by way of substitution of the existing Rule 7 of the CCR. The key features to be noted are set out below:

ISD can now distribute CENVAT Credit to 'outsourced manufacturing units' also in addition to the 'own manufacturing units'

- Rule 7 has been amended, whereby an Input Service Distributer can now distribute the input service credit to an outsourced manufacturing unit in addition to its own manufacturing units.
- 'Outsourced manufacturing unit' has been defined to mean either:
  - A job-worker who is required to pay duty on the value determined under the provisions of Rule 10A of the Central Excise Valuation (Determination of Price Of Excisable Goods) Rules, 2000, on the goods manufactured for the Input Service Distributor; or
  - A manufacturer who manufactures goods, for the Input Service Distributor under a contract, bearing the brand name of the Input Service Distributor and is required to pay duty on the value determined under the provisions of Section 4A of the CE Act.
- Outsourced manufacturing unit shall maintain separate account of credit received from each of the Input Service Distributors and shall use it for payment of duty on goods manufactured for the Input Service Distributor concerned.
  - The credit of Service Tax paid on input services, available with the Input Service Distributor as on March 01, 2016 shall not be distributed to an outsourced manufacturing unit.

ELP Comments

The Hon'ble Tribunal in the case of **Sunbell Alloys Co. Of India Ltd. vs. CCE, BELAPUR [2014 (34) STR 597 (Tri. - Mumbai)]** denied the availment of CENVAT Credit by a jobber against the ISD invoice issued by the principal manufacturer. The amendment has the effect of overcoming the impact of the said decision. The amendment is a forward step in extending the benefit to job-workers/manufacturer and ensuring the free flow of credits.

Reversal of CENVAT Credit under Rule 6 to not apply to the Input Service Distributor

- In terms of clause (g) of Rule 7, the provisions of Rule 6 of the CCR relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall not apply to the ISD.

ELP Comments

Earlier, there prevailed doubts as to the inter-play between the operation of Rule 6 and Rule 7. It was not clear whether the amounts are to be distributed firstly as per Rule 7 and then, the CENVAT Credit entitlement under Rule 6 is to be determined by the recipient unit to whom the credit has been distributed. The amendment seeks to dispel the confusion by unambiguously stating that Rule 6 is not to be applied by an ISD while distributing the credit. It is the unit to whom the credit has been distributed, is to apply Rule 6 upon receiving the distributed credit.

INTRODUCTION OF INPUT SERVICE DISTRIBUTION MECHANISM FOR GOODS VIDE RULE 7B

- Rule 7B has been inserted in the CCR to enable manufacturers with multiple manufacturing units to avail the CENVAT Credit on the basis of Excise invoice issued by the warehouse storing raw material, packing material etc. of the said manufacturer.
- Procedure as applicable to a first stage dealer or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer.

ELP Comments

Rule 7 enables distribution of CENVAT Credit on input services to manufacturing units and units providing output services. Rule 7A deals with the distribution of credit on 'inputs and capital goods by the service provider'. The introduction of Rule 7B for permitting distribution of credit pertaining to inputs (more particularly on the basis of the principles of FSD or the SSD) is intended to make the code more comprehensive.

CREDIT CAN NOW BE AVAILED BASIS INVOICE ISSUED BY A 'SERVICE PROVIDER' FOR CLEARANCE OF INPUTS OR CAPITAL GOODS AS SUCH

- Rule 9(1)(a)(i) has been amended, whereby credit can now be availed basis invoice issued by a 'Service Provider' for clearance of inputs or capital goods as such. Earlier, only the invoice issued by a 'manufacturer' for removal of inputs or capital goods as such was prescribed as valid document for availment of credit.

ANNUAL RETURN

- The existing Rule 9A, which required furnishing declaration by 30th April of each financial year by a manufacturer, has been amended. As per the amended Rule 9A, a manufacturer of final products or provider of output services, shall be required to submit to the Superintendent of Central Excise, an annual return in the prescribed format for each financial year, by the 30th day of November of the succeeding year.

REFUND OF CENVAT CREDIT UNDER RULE 5

- The time limit for filing of application for refund of Cenvat Credit in Form A of under Rule 5 of CCR has been amended vide Notification No. 14 / 2016 – C.E. (N.T) dt. March 01, 2016.
  - In case of a 'manufacturer' , the time limit to file a refund claim will be as per the period specified in Section 11B of the CE Act, 1944 (1 of 1944);
  - In case of 'services provider', the time limit will be one year from the date of;
    - Receipt of payment in convertible foreign exchange where the provision of services has been complete prior to receipt of payment; or
    - The date of issue of invoice, where payment for the service has been received in advance prior to the date of issue to invoice

ELP Comments

Earlier, the time limit for filing of the refund claim was prescribed with reference to Section 11B of CE Act. The amendment in the notification seeks to separately and explicitly provide the manner of computation of time limit in respect of service providers.

CENTRAL SALES TAX

An Explanation is proposed to be inserted in Section 3 of the CST Act to the effect that sale of gas through a common carrier pipeline or other such transportation system, which involves commingling of gases, would be deemed to be an inter-State sale in terms of the CST Act.

ELP Comments

Per the Petroleum and Natural Gas Regulatory Board (Access Code for Common Carrier or Contract Carrier Natural Gas Pipelines) Regulations, 2008 ('PNGRB Regulations'), which enable "open access" to the infrastructure of pipelines across the country, various sellers were injecting gas into common pipelines for delivery to buyers in other States.

However, VAT authorities alleged that the gas which was injected into the pipeline was being sold locally, given that the gas did not necessarily flow from one State to another and also given that the gases of various sellers / buyers effectively co-mingled once in the pipeline before being drawn out at the destination State.

The said Explanation is a welcome proposal as sellers/ purchasers of gas will be able to avail the benefits of the "open access" facility without facing additional VAT costs and/ or disputes with the VAT authorities. This provision is in line with the various international precedents under GST/ VAT regimes (including the EU, Canada etc.), where a special place of supply rule applies for such sales of goods through common distribution systems, to ensure that co-mingling of goods does not alter the position on liability to tax.

It may also be recalled that VAT authorities in destination States were demanding VAT on the basis of delivery/ ascertainment of the gas in the destination State. In this connection, the Hon'ble High Court of Allahabad dealing with this issue in the case of **Reliance Industries Limited vs. State of U.P. [2012-VIL-66-ALH]** held that so long as the seller injects the gas into the pipeline in one State, and the buyer receives an equivalent quantity of the gas in another State, the transaction would qualify as an inter-State sale liable to CST. The amendment reinforces the judgement of the Hon'ble High Court. However, it may be noted that the Revenue has thereafter preferred an appeal against the decision of the High Court, which is pending before the Hon'ble Supreme Court.

DIRECT TAXES

LEGISLATIVE CHANGES

The Direct Tax Dispute Resolution Scheme, 2016

- In order to reduce the pendency of litigation in the direct tax arena and to enable the Government to realize its dues expeditiously, the Finance Bill, 2016 has proposed to introduce a dispute resolution scheme in relation to defined 'tax arrear' or 'specified tax'.
- The salient features of proposed scheme relating to 'tax arrear' is summated below:

Scope	Details
Applicability	Applies to 'tax arrear' which has been defined to mean amount of tax, interest or penalty determined under the IT Act or Wealth Tax Act, 1957 in respect of which an appeal is pending before the Commissioner of Income Tax (Appeals) or the Commissioner of Wealth Tax (Appeals) as on February 29, 2016.
Amount payable	**In case of an appeal relating to tax and arrear** Dispute less than INR 10 lakhs – Whole of disputed tax along with interest till the date of assessment or reassessment Dispute more than INR 10 lakhs – Tax at applicable rate along with interest till the date of assessment and reassessment and 25% of minimum penalty imposable **In case of an appeal related to penalty** 25% of minimum penalty imposable along with the tax and interest payable on total income finally determined
Consequence of filing declaration	Any appeal in respect of the disputed income and disputed wealth which is pending before Commissioner of Income Tax (Appeals) shall be deemed to have been withdrawn
Consequence of receiving an order	Matter covered by an order passed by the designated authority shall not be reopened in any proceeding under the IT Act or Wealth Tax Act. The designated authority shall subject to the conditions provided in the scheme, grant immunity from instituting any proceeding for prosecution for any offence under the two acts in respect of matters covered in the declaration. Liability of interest and penalty exceeding the amount of interest and penalty payable shall be waived by the designated authority

- The salient features of the proposed scheme relating to 'specified tax' is summated as below:

Particulars	Specified Tax
Applicability	Following cases are covered 1) tax, the determination of which is in consequence of or validated by any amendment made to the IT Act or the Wealth Tax Act with retrospective effect and related to a period prior to the date on which the Act amending the IT Act or the Wealth Tax Act as the case may be, received the assent of the President; and 2) a dispute in respect of such tax is pending as on February 29, 2016 In essence, the scheme proposes that person may also make a declaration in respect of any tax determined in consequence of or is validated by an

	amendment made with retrospective effect in the Income tax Act or Wealth Tax Act as the case may before a period prior to the date of enactment of such amendment and a dispute in respect of which is pending as on February 29, 2016.
Amount payable	Whole of tax arrears. No interest and penalty under the IT Act or the Wealth Tax Act is payable
Conditions for availing benefit	1) The declarant is required to withdraw any pending litigation in any Court or tribunal or any proceeding for arbitration, mediation, etc under BIPA and is required to furnish proof of such withdrawal and 2) The declarant is required to furnish an undertaking waiving the right, to seek or persue any remedy or claim in relation to the 'specified tax' which is otherwise available to him.
Consequence of receiving an order	Matter covered by an order passed by the designated authority shall not be reopened in any proceeding under the IT Act or Wealth Tax Act. The designated authority shall subject to the conditions provided in the scheme grant immunity from instituting any proceeding for prosecution for any offence under the two acts in respect of matters covered in the declaration. Liability of interest and penalty shall be waived by the designated authority

- Where the declarant violates any of the conditions referred to in the scheme or any material particular furnished in the declaration is found to be false at any stage, it shall be presumed as if the declaration was never made under this Scheme and all the consequences under the IT Act or the Wealth Tax Act under which the proceedings against the declarant were or are pending, shall be deemed to have been revived.
- The scheme relating to 'tax arrear' or 'specified tax' is not applicable to *inter alia* the following persons:
  - Cases where prosecution has been initiated before February 29, 2016;
  - Search or survey cases where declaration is in respect of tax arrears;
  - Cases relating to undisclosed foreign income and assets;
  - Cases which have been initiated based on information received under an Agreement under Section 90 or 90A of the IT Act where the declaration is in respect of tax arrears;
  - Any person who is involved in any offence relating to transactions in securities as notified under Section 3 of the Special Courts (Trial of Offences Relating To Transactions In Securities) Act, 1992 ;
  - Any person in respect of whom prosecution for any offence punishable under provisions of IPC, the Unlawful Activities (Prevention) Act 1967, the Narcotics Drugs and Psychotropic

ELP Comments

The focus of the present Government has been to reduce tax litigation. There are about 3 lakh cases pending with the first appellate authority involving an amount of about INR 5.5 lakh crore (Approx). The scheme in relation to 'tax arrear' is essentially with a view to decrease litigation and create a more friendly tax regime.

The retrospective amendments to the IT Act through the Finance Act 2012 (w.e.f. April 01, 1962) which essentially sought to amend the law, basis which a favourable decision was rendered by the Supreme Court in the Vodafone case, has led to issues being raised as regards the certainty of tax laws and tax administration in India. Though the current Government has time and again reiterated its commitment to a stable and predictable taxation regime and its policy not to resort to retrospective amendments of such nature, the stand of the Government in devising a specific scheme for such cases affected by the 2012 retrospective amendment clearly shows that while the Government is willing to grant certain concessions (in the form of waiver of interest and penalty), the Government is not willing to forgo the tax amount and will litigate the issue if necessary.

More importantly, the core issue still remains as to whether such nature of transactions can be sought to be taxed by the Indian tax authorities even post the retrospective amendment. With this scheme, the Government in effect is giving more a tint of a 'collection of tax issue' as opposed to the core jurisdictional issue of whether tax can be lawfully levied on such transactions.

Substances Act, 1985, the Prevention of Corruption Act, 1998 has been instituted before filing of the declaration or a person who has been convicted of any offence punishable under these Acts.

The Income Tax Declaration Scheme, 2016

- This scheme has been introduced to provide an opportunity to persons who have not paid full tax in the past to declare the undisclosed income (relating to any financial year up to 2015-16) or income represented in form of any asset and pay tax, surcharge and penalty totaling to 45% of the undisclosed income.
- This is a limited period compliance window scheme which is proposed to be brought into effect from June 01, 2016 to September 30, 2016 with an option to pay amount due within two months of declaration. It may be noted that payment of tax, surcharge and penalty is an important criteria to avail the benefit under this scheme and non payment shall render the declaration made under this scheme void. In such cases, the undisclosed income is proposed to be chargeable to tax under the IT Act in the previous year in which such declaration is made.
- It is also proposed that no scrutiny or enquiry regarding income declared in these declarations under the IT Act or the Wealth Tax Act will be undertaken and the declarants will have immunity from prosecution. Immunity from Benami Transaction (Prohibition) Act, 1988 (subject to certain conditions) is also proposed to be given under this scheme.
- The following cases shall not be eligible for the scheme:
  - Notices have been issued under Sections 142(1) or 143(2) or 148 or 153A or 153C
  - Search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired
  - Where information is received under an agreement with foreign countries regarding such income
  - Cases covered under Black Money Act 2015
  - Any person who is involved in any offence relating to transactions in securities as notified under Section 3 of the Special Courts (Trial of Offences Relating To Transactions In Securities) Act, 1992
  - Cases covered under IPC, the Unlawful Activities (Prevention) Act 1967, the Narcotics Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1998

ELP Comments

This scheme is a limited period compliance window for domestic tax payers to declare undisclosed income or income represented in the form of any assets and clear up their past tax transgressions by paying tax, surcharge and penalty totaling to 45% of the total undisclosed income.

While the Scheme provides an opportunity to declare undisclosed income to the tax department, however, the cases where notices under Sections 142(1) or 143(2) or 148 or 153A or 153C have not been issued, there is a possibility that income of such persons might still go undisclosed.

Enabling provision for implementation of various provisions of the IT Act in case of a foreign company held to be a resident in India [Sections 6 and 115JH of the IT Act]

- Section 6 of the IT Act was amended by the Finance Act, 2015 to provide that a company would be resident in India if its 'Place of effective management' is in India. The provisions have been proposed to be deferred by one year and shall take effect from April 01, 2017.
- Section 115JH is proposed to be inserted in the IT Act, whereby subject to the conditions as may be notified by the Central Government, the provisions of this Act relating to computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and

ELP Comments

Provisions relating to POEM have been deferred by one year which is a welcome measure, considering that there was lot of uncertainty surrounding the interpretation of the provisions as well as the guidelines. Transition mechanism has also been proposed where certain provisions with certain modifications will apply to foreign companies which will be treated as resident pursuant to POEM provisions.

recovery and special provisions relating to avoidance of tax shall apply with such exceptions, modifications and adaptations, as may be specified.

- Every such notification shall be placed before each House of Parliament.

Modification in conditions of special taxation regime for offshore funds under [Section 9A of the IT Act]

- Section 9A of the IT Act has been proposed to be amended to include an offshore fund which is established or incorporated or registered in a country or specified territory as may be notified by the Central Government.
- It has also been proposed to provide that the condition of fund not controlling and managing any business in India or from India shall be restricted only in the context of activities in India.

Exemption to Foreign Company in relation to Display of Uncut Diamond in "Special Notified Zone" [Section 9 of the IT Act]

- A SNZ had been established by the Government of India to facilitate shifting of operations by FMC to India and to permit the trading of rough diamonds in India by the leading diamond mining companies of the world. The activity of FMC of mere display of rough diamonds even with no actual sale taking place in India may lead to creation of 'business connection' (by virtue of Section 9) of such FMC in India thereby leading to a potential tax exposure.
- Accordingly, exemption has been provided (by inserting clause (e) to Explanation 1 to Section 9(1)(i)) to a FMC whereby no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unassorted diamonds in a SNZ notified by the Central Government in the Official Gazette in this behalf.

ELP Comments

With the objective of facilitating import and trade of rough diamonds, the Government has provided a benign tax regime in the form of setting-up of SNZs. Granting of exemption to FMCs on income earned by display of uncut diamonds in SNZs is likely to give the diamond industry a strong competitive advantage against other foreign trading centres, by ensuring a steady supply of rough diamonds in the country.

Both these amendments will take effect retrospectively from April 01, 2016 and will accordingly apply in relation to AY 2016-17 and subsequent assessment years.

Exemption of Income for Foreign Company from Storage and Sale of Crude Oil Stored as Part of Strategic Reserves [Section 10 of the IT Act]

- For achieving tax neutrality for the benefit of private players including foreign national oil companies and multinational companies, it has been proposed (by inserting sub-section 48A) that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall not be included in the total income if:

  a) Such storage and sale by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government; and
  b) Having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf.

ELP Comments

As part of its long term strategy to have a 'strategic petroleum reserve' in the country, the Government of India in 2004 had rolled out a project to build a strategic storage for crude oil in partnership with foreign oil companies. For this purpose, a special purpose vehicle viz., Indian Strategic Petroleum Reserves Limited was floated under the Oil Industry Development Board to implement the project. This exemption to foreign oil companies on income derived from such storage/sale of crude oil is reflective of the Government's commitment to continue and encourage this policy of creating strategic storage reserve in the country.

Relief and Welfare Measures

- Various schemes in the nature of relief and welfare measures as discussed below have been proposed to be introduced in the IT Act. The said proposals are to be made effective from April 01, 2017 (except where specified otherwise) and are to apply in relation to AY 2017-18 and subsequent assessment years:

Sovereign Gold Bond Scheme

- Section 47 of the IT Act dealing with 'Transactions not regarded as transfer' is proposed to be amended to include 'Sovereign Gold Bond Scheme' within its scope (as Clause (viic)), the effect of which is to provide that any redemption of Sovereign Gold Bond under the Scheme, by an individual shall not be treated as transfer and therefore shall be exempt from tax on capital gains.
- Section 48 of the IT Act which deals with the 'Mode of computation' for the purpose of capital gains is also proposed to be amended (by substituting the third proviso) to provide indexation benefit to Sovereign Gold Bond.

ELP Comments

The proposed amendment is with a view to provide parity in tax treatment between physical gold and sovereign gold bonds (*which are a mode for substitution of physical gold*).

Rupee Denominated Bond

- It is proposed to amend Section 48 of the IT Act to the effect that in case of Rupee denominated bonds, capital gains arising from appreciation of rupee between the date of issue and the date of redemption of such bond shall be exempt from tax.

ELP Comments

The proposed amendment is with a view to provide relief to non-resident investors who bear the risk of currency fluctuation and is an amendment made pursuant to the recent RBI decision permitting Indian corporates to issue rupee denominated bonds outside India for raising funds.

Consolidation of 'plans' within a 'scheme' of mutual fund

- In order to give effect to the SEBI guidelines for consolidation of mutual fund plans within a scheme, it is proposed to extend the tax exemption available on merger or consolidation of mutual fund schemes, to the merger or consolidation of different plans in a mutual fund scheme by amending Section 47 of the IT Act dealing with '*Transactions not regarded as transfer'*.
- The proposed amendment provides that any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund shall not be considered transfer for capital gain tax purposes and thereby shall not be chargeable to tax.

Rationalization of limit of deduction of House Rent Allowance (HRA) allowable in respect of rents paid under Section 80GG

- The existing provisions of Section 80GG of the IT Act dealing with *'Deductions in respect of rent paid'* provide for a deduction of any expenditure incurred by an individual in excess of 10% of his total income towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence if he is not granted house rent allowance by his employer, to the extent such excess expenditure does not exceed two thousand rupees per month or 25% of his total income for the year, whichever is less, subject to other conditions as prescribed therein.
- The said provision is proposed to be amended in order to provide relief to individual tax payers by raising the maximum limit of deduction of HRA from INR 2000/- to INR 5000/- per month.

Tax Treatment of Gold Monetization Scheme, 2015

- Amendments are being proposed to ensure that the tax treatment under this scheme is akin to the tax treatment prevalent in respect of the Gold Deposit Scheme, 1999. Consequently the definition of the term 'capital asset' under section 2(14) of the IT Act is proposed to be amended to exclude Deposit Certificates issued under the Gold Monetisation Scheme, 2015 from their purview. It is also proposed to amend section 10(15) of the IT Act so as to provide that the interest on Deposit Certificates issued under the Scheme, shall be exempt from income-tax.
- These amendments are proposed to be made effective retrospectively from the 1st day of April, 2016 and shall accordingly apply in relation to AY 2016-17 and subsequent years.

Rationalization of section 56 of the IT Act

- Under Section 56 of the IT Act dealing with '*Income from Other Sources*', shares of a company received by an individual or Hindu Undivided family, as a consequence of demerger or amalgamation of a company is taxable whereas the same is not treated as a transfer if the recipient is a firm or company. With a view to bring uniformity in tax treatment, it is proposed to amend the IT Act so as to provide that any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company shall not attract the provisions of Section 56(2)(vii) of the IT Act.

Increase in time period for acquisition or construction of self-occupied house property for claiming deduction of interest

- The second proviso to Section 24(b) of the IT Act provides that a deduction of an amount of INR 2 lakh shall be allowed where a self-occupied house property has been acquired or constructed with capital borrowed on or after the April 01, 1999 and such acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed. In view of the fact that housing projects often take a long time for completion, it is proposed to increase the said time limit to 5 years from the end of the financial year in which capital was borrowed.

Simplification and rationalisation of provisions relating to taxation of unrealised rent and arrears of rent

- In order to simplify the provisions and bring uniformity in tax treatment of unrealised rent and arrears of rent, it is proposed to consolidate Sections 25A, 25AA and 25B of the IT Act in Section 25A and the new Section 25A will provide that the amount of rent received in arrears or the amount of unrealised rent realised subsequently by an assessee shall be charged to income-tax in the financial year in which such rent is received or realised, whether the assessee is the owner of the property or not in that financial year. It is also proposed that 30% of the arrears of rent or the unrealised rent realised subsequently by the assessee shall be allowed as deduction.

Taxation of Non-compete fees and exclusivity rights in case of Profession [Section 28 and Section 55 of the IT Act]

- Clause (va) of Section 28 of the IT Act is proposed to be amended to cover non-compete fees received or receivable in relation to not carrying out any 'profession', which are recurring in nature (Presently, the said provision only covers 'business'). Proviso to said provision is also proposed to be amended to clarify that receipts for transfer of right to carry on any profession which are chargeable to tax under the head "Capital gains" shall not be taxable as profits and gains of business or profession.

ELP Comments

Presently, non-compete fee received / receivable in relation to carrying out of "profession" are not covered under the above provisions. This amendment would bring in better clarity in terms of taxation of non-compete fees.

- Section 55 is proposed to be amended to provide that the 'cost of acquisition' and 'cost of improvement' for working out "Capital gains" on capital receipts arising out of transfer of right to carry on any profession shall be taken as 'nil'

These amendments will take effect from April 01, 2017.

Extending the benefit of initial additional depreciation for power sector [Section 32 (1)(iia) of the IT Act]

- The current benefit of additional depreciation of 20% in respect of new plant or machinery available to the companies engaged in the business of generation and distribution of power has also been extended to the companies engaged in the business of transmission of power.

This amendment will take effect from April 01, 2017 and will, accordingly, apply in relation to the AY 2017-18 and subsequent assessment years.

Sunset clause for deductions allowed to specified units/enterprises/undertakings notified/revised

Sl. No*	Section	Current Provisions	Proposed Amendment
1	10AA	Profit linked deductions for units in SEZ for profit derived from export of articles or things or services	No deduction available to units commencing manufacture or production of article or thing or start providing services on or after April 01, 2020. (from PY 2020-21 onwards).
2	35AC	Deduction for expenditure incurred by way of payment of any sum to a public sector company or a local authority or to an approved association or institution, etc. on certain eligible social development project or a scheme.	No deduction available w.e.f. April 01, 2017 (i.e. from PY 2017-18 and subsequent years).
3	80IA; 80IAB, and 80IB	100 % profit linked deductions for specified period on eligible business carried on by industrial undertakings or enterprises	No deduction available if the specified activity commences on or after April 01, 2017. (i.e from PY 2017-18 and subsequent years)

Restriction/Reduction in weighted deductions

Sl. No	Section	Current Provisions	Proposed Amendment
1*	35CCD	Weighted deduction of 150% on any expenditure incurred (not being expenditure in the nature of cost of any land or building) on any notified skill development project by a company.	Deduction shall be restricted to 100% from April 01, 2020 (i.e.from PY 2020-21 onwards).
2#	35(1)(ii)	Weighted deduction to the extent of 175% of any sum paid to an approved scientific research association including an approved university, college or other institution undertaking scientific research.	- Deduction to be restricted to 150% from April 01, 2017 to March 31, 2020 (i.e. from PY 2017-18 to PY 2019-20) and - Deduction to be restricted to 100 % from April 01, 2020 (i.e. from PY 2020-21 onwards).
3#	35(1)(iia)	Weighted deduction from the business income to the extent of 125% of any sum paid as contribution to an approved scientific research company.	Deduction shall be restricted to 100 % with effect from April 01, 2017 (i.e. from PY 2017-18 and subsequent years).

Sl. No	Section	Current Provisions	Proposed Amendment
4#	35(1)(iii) .	Weighted deduction to the extent of 125% of contribution to an approved research association or university or college or other institution to be used for research in social science or statistical research.	Deduction to be restricted to 100 % with effect from April 01, 2017 (i.e. from PY 2017-18 and subsequent years).
5#	35(2AA)	Weighted deduction to the extent of 200% of any sum paid to a National Laboratory or a university or an Indian Institute of Technology or a specified person for the purpose of approved scientific research programme.	- Deduction to be restricted to 150% with effect from April 01, 2017 to March 31, 2020 (i.e. from PY 2017-18 to PY 2019-20). - Deduction to be restricted to 100 % from April 01, 2020 (i.e. from PY 2020-21 onwards).
6#	35(2AB)	Weighted deduction of 200% of the expenditure (not being expenditure in the nature of cost of any land or building) incurred by a company, engaged in the business of bio-technology or in the business of manufacture or production of any article or thing except some items appearing in the negative list specified in Schedule-XI, on scientific research on approved in-house research and development facility.	- Deduction to be restricted to 150% from April 01, 2017 to March 31, 2020 (i.e. from PY 2017-18 to PY 2019-20). - Deduction to be restricted to 100 % from April 01, 2020 (i.e. from PY 2020-21 onwards).
7#	35AD	In case of a cold chain facility, warehousing facility for storage of agricultural produce, an affordable housing project, production of fertilizer and hospital weighted deduction of 150 % of capital expenditure (other than expenditure on land, goodwill and financial assets) is allowed.	In case of a cold chain facility, warehousing facility for storage of agricultural produce, hospital, an affordable housing project, production of fertilizer, deduction to be restricted to 100% of capital expenditure w.e.f. April 01, 2017 (i.e. from PY 2017-18 onwards).
8#	35CCC	Weighted deduction of 150 % of expenditure incurred on notified agricultural extension project	Deduction shall be restricted to 100 % from April 01, 2017 (i.e. from PY 2017-18 onwards).

Accelerated Depreciation - Restriction

Sl. No	Section	Current Provisions	Proposed Amendment
1#	32 read with rule 5 of IT Rules	Accelerated depreciation (100% in respect of certain block of assets) is provided to certain Industrial sectors in order to give impetus for investment.	Appendix IA to be amended to restrict to highest rate of depreciation to 40% w.e.f. April 01, 2017. (i.e from PY 2017-18 and subsequent years). The new rate is proposed to be made applicable to all the assets (whether old or new) falling in the relevant block of assets.

* These amendments will take effect from April 01, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

These amendments will take effect from April 01, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

ELP Comments

Introduction of sunset clause and limitation of quantum of deduction, above, is part of the commitment of structured phase out of exemptions under the Income Tax. The Finance Minister in Budget 2015 had indicated that the rate of corporate tax will be reduced from 30% to 25% over the next four years along with corresponding phasing out of exemptions and deductions. The CBDT had invited comments on withdrawal of deductions from the Industry vide press release CBDT dated November 20, 2015 as a step towards simplification of tax laws – expected to bring about transparency and clarity. The aforesaid amendment was expected to attain the corporate tax at 25%. However, it needs to be seen as to how much curtailment of deductions/exemptions available to the priority sector such as SEZ, infrastructure, etc will be justified.

Amendment to Section 32AC

- The existing provision under Section 32AC(1A) provides for a condition that that the acquisition of the plant and machinery and its installation has to be done in the same previous year for claiming the benefit of investment allowance at the rate of 15% on investment made in new assets (plant and machinery) exceeding INR 25 crore.
- This provision is proposed to be amended to provide that the acquisition of the plant & machinery of the specified value has to be made in the previous year but installation may be made by March 31, 2017 in order to avail the benefit of investment allowance of 15%. It is further proposed to provide that where the installation of the new asset is in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new asset is installed.

Amortization of spectrum fee for purchase of spectrum [Section 35ABA of the IT Act]

- A new Section 35ABA is proposed to be introduced to provide as follows:
  - Any capital expenditure incurred and actually paid by an assessee on the acquisition of any right to use spectrum for telecommunication services by paying spectrum fee will be allowed as a deduction in equal installments over the period for which the right to use spectrum remains in force.
  - Where the spectrum is transferred and proceeds of the transfer are less than the expenditure remaining disallowed, a deduction equal to the expenditure remaining disallowed as reduced by the proceeds of transfer, shall be allowed in the previous year in which the spectrum has been transferred.
  - If the spectrum is transferred and proceeds of the transfer exceed the amount of expenditure remaining disallowed, the excess amount shall be chargeable to tax as profits and gains of business in the previous year in which the spectrum has been transferred.
  - Disallowed expenses in a case where a part of the spectrum is transferred would be amortized.
  - Under the scheme of amalgamation, if the amalgamating company sells or transfers the spectrum to an amalgamated company, being an Indian company, then the provisions of this section will apply to amalgamated company as they would have applied to amalgamating company if latter has not transferred the spectrum.

This amendment will be effective from April 01, 2017 and will apply in relation to AY 2017-18 and subsequent years.

ELP Comments

The above proposed amendments have been introduced with a view as to provide clarity and avoid any future litigation and controversies with regard to the tax treatment of spectrum fee. It is a welcome provision especially considering the huge amount of cost incurred by telecom companies on the acquisition of 'spectrum'.

Deduction in respect of provision for bad and doubtful debts in the case of Non-Banking Financial companies. [Section 36(1)]

- Section 36(1)(viia)(c) is proposed to be amended to provide for deduction from total income (computed before making any deduction under this clause and Chapter-VIA) on account of provision for bad and doubtful debts to the extent of 5% of the total income in the case of NBFCs.

Extension of scope of Section 43B of the IT Act to cover payments made to Indian Railways

- Section 43B is proposed to be amended to provide that any sums payable to Railways for the use of railway assets shall be allowed to be deducted as business income in a PY only if the same has been paid on or before the due date of filing of return for the relevant PY. Other-wise, the deduction will be available in the PY in which such sum is actually paid.

Proposed amendment will be effective from April 01, 2017 and will apply in relation to AY 2017-18 and subsequent AYs.

ELP Comments

The proposed amendment seeks to ensure timely payments of dues to the Railways for the use of railway assets.

Introduction of Presumptive rate of taxation for persons having income from profession [Section 44ADA]

- The Finance Bill 2016 has proposed to introduce Section 44ADA which provides for estimating the income of the assessee who is engaged in a profession referred to in Section 44AA (1) and whose total gross receipts do not exceed fifty lakh rupees in a previous year, at a sum equal to 50 % of the total gross receipts of the assessee in the previous year on account of such profession or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee.
- The above provision is applicable to the assessee who is engaged in medical, legal, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration.

This amendment shall come into force from April 01, 2017 and shall apply to residents who are individuals, HUF or a partnership firm. However, this provision shall not apply to a LLP.

Increase in the threshold limit for audit for persons having income from profession [Section 44AB]

- The threshold limit of total gross receipts specified under Section 44AB for getting accounts audited by a person having income from profession is proposed to be increased from INR 25 lakhs to INR 50 lakhs.

This amendment shall come into force from April 01, 2017 and shall apply from AY 2017-18.

Increase in the threshold limit for presumptive taxation scheme for persons having income from business [Section 44AD]

- Section 44AD is proposed to be amended to increase the threshold limit for presumptive taxation scheme available to an eligible assessee doing an eligible business from INR 1 crore to INR 2 crore.
- It is also proposed that the expenditure in the nature of salary, remuneration, interest etc. paid to the partner as per clause (b) of Section 40 shall not be deductible while computing the income under Section 44AD.
- Further, it is also proposed that where an eligible assessee declares profit for any previous year in accordance with the provisions of this Section and he declares profit for any of the five consecutive assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

- Also it has been proposed that the eligible assessee shall be required to pay advance tax by March 015th of the financial year.

These amendments will take effect from April 01, 2017.

Tax Incentives for Start-ups [Section 54EE and 54GB of the IT Act]

- It is proposed to provide a deduction of 100% of the profits and gains derived by an eligible start-up from a business involving innovation development, deployment or commercialization of new products, processes or services driven by technology or intellectual property for a period of 3 consecutive years. This benefit would be available to a start-up which is setup before April 01, 2019.
- "Eligible start up" means a company engaged in eligible business which fulfils the following conditions:
  - It is incorporated on or after the April 01, 2016 but before April 01, 2019;
  - The total turnover of its business does not exceed INR 25 crores in any previous years beginning on or after April 01, 2016 and ending on March 31, 2021;
  - It holds a certificate of eligible business from the inter-ministerial board of certificate as may be notified
- Accordingly, a new Section 54EE has been inserted to provide exemption from capital gains tax, if the long term capital gains proceeds are invested by an assessee in units of funds notified by the Central Government, provided that the amount remains invested for three years. The investment in the units of the specified fund would be allowed up to INR 50 lakhs.
- Further, if an individual/HUF intends to invest (through purchase of shares) in a start-up by selling a residential property, such sale shall be exempt from long term capital gains. Such benefit is available only when such individual/HUF *inter-alia* holds more than 50% shares in the invested start up.
- The expression "new asset" has been defined to include computer or computer software, in case of technology driven start-ups so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the Official Gazette.

These amendments will take effect from April 01, 2017 and will, accordingly, apply in relation to the AY 2017-18 and subsequent assessment years.

ELP Comments

The "Action Plan" for Start-up India released by the Government of India describes it as "a flagship initiative of the Government of India" intended to build a strong eco-system for nurturing innovation and start-ups that will drive sustainable economic growth and generate large scale employment opportunities. In sync with this underlying theme, the Ministry of Finance has come-up with exemption of capital gains tax for investments upto INR 50 lakhs in the units of the specified fund. This is indeed a welcome measure and is likely to go a long way in providing an impetus to start-ups and facilitate growth in the initial phase of businesses. However, the period of exemption should be longer than 3 years as most of the start-ups would essentially start full scale operations at least after 3 years.

Clarification regarding set off of losses against deemed undisclosed income

- Section 115BBE of the IT Act is proposed to be amended to deny set off of any loss against income under sections 68/ 69/ 69A/ 69B/ 69C/ 69D.
- This amendment will be effective from April 01, 2017 and will apply in relation to AY 2017-18 and subsequent years.

ELP Comments

- The Bombay High Court in the case of **Mahendra D. Jain vs. Income-tax Officer [2008] 173 Taxman 336 (Bombay)** had taken a view that *"The expression 'income' as used in section 69A has wide meaning which means anything which came in or resulted in gain. The word 'income' used in section 69A, therefore, cannot be read only as business income as suggested by the assessee. The revenue had correctly treated the value of gold as income of the assessee from undisclosed source and the same was not entitled to deduction on the ground of business loss."*
- Thus, the proposed clarification to section 115BBE supports the views taken by various judicial forums and cases that losses shall not be allowed to be set-off against income referred in section 115BBE of the IT Act.

Incentives for Promoting Housing for All [Section 80EE and 80IBA of the IT Act]

- With a view to incentivise affordable housing sector as a part of larger objective of 'Housing for All', it is proposed to provide for 100% deduction of the profits of an assessee developing and building affordable housing projects if the housing project is approved by the competent authority before March 31, 2019 subject to certain conditions which *inter-alia*, include:

  a) The project is completed within a period of three years from the date of approval;
  b) The project is on a plot of land measuring not less than 1000 square metres where the project is within 25 Km from the municipal limits of four metros, viz. Delhi, Mumbai, Chennai and Kolkata and in any other area, it is measuring not less than 2000 square metres where the size of the residential unit in the said areas is not more than 30 square metres and 60 square metres, respectively; and
  c) Where residential unit is allotted to an individual, no such unit shall be allotted to him or any member of his family, etc.

- The existing regime provides a deduction of up to INR 1 lakh rupees in respect of interest paid on loan by an individual for acquisition of a residential house property. This benefit is available for two AYs beginning on April 01, 2014 and on April 01, 2015. An additional deduction in respect of interest on loan up to INR 50 thousand for first time buyers has been provided.
- This incentive is proposed to be extended to a house property of a value less than INR 50 lakhs in respect of which a loan of an amount not exceeding INR 35 lakhs has been sanctioned during the period from April 01, 2016 to March 31, 2017. It is also proposed to extend the benefit of deduction till the repayment of loan continues.

These amendments will take effect from April 01, 2017 and will, accordingly, apply in relation to the AY 2017-18 and subsequent assessment years.

Tax incentive for employment generation [Section 80JJAA of the IT Act]

- With a view to extend employment generation incentive to all sectors, it is proposed that the deduction shall be available in respect of cost incurred on any employee whose total emoluments are less than or equal to INR 25 thousand per month. No deduction, however, shall be allowed in respect of cost incurred on those employees, for whom the entire contribution under Employees' Pension Scheme notified in accordance with Employees' Provident Fund and Miscellaneous Provisions Act, 1952, is paid by the Government.

- It is further proposed to relax the norms for minimum number of days of employment in a financial year from 300 days to 240 days and also the condition of 10% increase in number of employees every year is proposed to be done away with so that any increase in the number of employees will be eligible for deduction under the provision. It is also proposed that in the first year of a new business, 30% of all emoluments paid or payable to the employees employed during the PY shall be allowed as deduction.

This amendment will take effect from April 01, 2017 and will accordingly apply in relation to AY 2017-18 and subsequent assessment years.

Increase in the STT rate [Section 98]

- STT on sale of option in securities where option is not exercised increased from 0.017% to 0.05% of option premium with effect from June 01, 2016.

Taxation of Income from 'Patents' [Section 115BBF of the IT Act]

- With the objective of making India a global R&D hub, additional incentive is sought to be provided to companies to retain and commercialise existing patents and to develop new innovative patented products.
- Accordingly, it is proposed that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, such royalty shall be taxable at the rate of 10% (plus applicable surcharge and cess) on the gross amount of royalty. No expenditure or allowance in respect of such royalty income shall be allowed under the IT Act.
- For the purpose of this concessional tax regime, an eligible assessee means a person resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as a patentee under Patents Act, 1970 in respect of that patent.

ELP Comments

This is indeed a welcome provision as it seeks to recognise and reward the activity of indigenous patent development and registration. This measure is based on the recommendations of the OECD in BEPS project under Action Plan 5, which prescribes the 'nexus approach', wherein income arising from exploitation of intellectual property should be attributed and taxed in the jurisdiction where substantial R&D activities are undertaken rather than the jurisdiction of legal ownership only. This provision is aligned with the provisions existing in the United States and European Union wherein similar tax treatment is accorded to indigenously developed and registered patents.

This amendment will take effect from April 01, 2017 and will, accordingly, apply in relation to the AY 2017-18 and subsequent assessment years.

Tax on dividend income [Section 115BBDA]

- By introducing Section 115BBDA income by way of dividend (exceeding INR 10 lakhs) received by individual, Hindu Undivided Family (HUF) or a firm residing in India from a domestic company is proposed to be taxed at the rate of 10%.

Amendment to be effective from April 01, 2017, applicable for assessment year 2017-18 onwards.

ELP Comments

This proposal to tax dividend in the hands of individual/HUF /firm residing in India is part of long overdue rationalization measure as under the existing provisions dividend income was exempt in the hand of the shareholder provided the company declaring the dividend paid DDT at the lower tax rate of 15%. This created inequity between two class of tax payers viz. those with high dividend income were subjected only to 15% DDT whereas the very income would have been chargeable to tax at the rate of 30%.

Clarification on applicability of MAT on foreign companies for the period prior to April 01, 2015 [Section 115JB of the IT Act]

- In view of the recommendations of the committee headed by Justice A.P Shah , it is proposed to amend the IT Act to provide that with effect from April 01, 2001, the provisions of section 115JB shall not be applicable to a foreign company if -
  - (i) the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-section (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such Agreement; or
  - (ii) the assessee is a resident of a country with which India does not have an agreement of the nature referred to in clause (i) above and the assessee is not required to seek registration under any law for the time being in force relating to companies.

ELP Comments

The Government by proactively setting up a committee headed by Justice A.P. Shah to look into the matter of applicability of MAT provisions to FIIs/FPIs and accepting and implementing the recommendations made by the Committee, has shown its willingness to bring clarity to tax issues by alternative mechanisms (*other than litigation*) with a view to ensuring clarity in tax positions for foreign investors, which is a welcome move.

- This amendment is proposed to be made effective retrospectively from April 01, 2001 and shall accordingly apply in relation to assessment year 2001-02 and subsequent years.

Tax on Distributed Income to Shareholder [Section 115QA]

- Effective June 01, 2016, additional income tax on distributed income relaxed to cover buyback of unlisted shares as per applicable Company laws
  - Rules to be framed for manner of determination of distributed income under various circumstances

ELP Comments

Vide this amendment, the earlier restriction on tax imposition on distributed income on buyback solely as per Section 77A of the Companies Act, 1956 has been withdrawn. The amendment is a positive step towards achieving clarity on issues relating to determination of consideration received by the Company at the time of issue of shares subsequently bought back.

Exemption from Dividend Distribution Tax (DDT) on distribution made by an SPV to Business Trust

- Specific taxation regime with regard to taxation of business trusts comprising of REITs and Infrastructure Investment Trust (Invits) regulated by SEBI, has been incorporated in the IT Act.
- Under this regime, the multiple taxation due to interposition of business trust is avoided.
- Under the SEBI regulation, these business trusts can hold the income generating asset either directly or through a Special Purpose Vehicle (SPV). The SPV can be a company or an LLP. Under SEBI Regulation:
  - SPV is defined to mean any company or LLP in which REIT holds or proposes to hold controlling interest which is not less than 50% of the equity share capital or interest.
  - SPV should hold at least 80% of the assets in properties and not invest in other SPV.
- It has been represented by the stakeholders that levy of DDT at the level of SPV when it distributes its current income to the business trust makes the business trust structure tax inefficient and adversely impacts the rate of return for the investor. This is more so, as under SEBI regulations both the SPV and business trust are obligated to

distribute 90% of their operating income to the investors, whereas in case of normal real estate company, there is no requirement of such annual distribution of dividends. It has been represented that because of the additional levy of DDT and associated tax inefficiency, these initiatives have not yet materialised.

- To rationalize the taxation regime for business trusts (REITs and Invits) and their investors, it is proposed to provide a special dispensation and exemption from levy of DDT. The salient features of the proposed dispensation are: —

  i) exemption from levy of DDT in respect of distributions made by SPV to the business trust;
  ii) such dividend received by the business trust and its investor shall not be taxable in the hands of trust or investors;
  iii) exemption from levy of DDT would only be in the cases where the business trust either holds 100% of the share capital of the SPV or holds all of the share capital other than that which is required to be held by any other entity as part of any direction of any Government or specific requirement of any law to this effect or which is held by Government or Government bodies; and
  iv) exemption from the levy of DDT would only be in respect of dividends paid out of current income after the date when the business trust acquires the shareholding referred in (c) above in the SPV. The dividends paid out of accumulated and current profits upto this date shall be liable for levy of DDT as and when any dividend out of these profits is distributed by the company either to the business trust or any other shareholder.

- Amendment will take effect from June 01, 2016.

ELP Comments

The exemption of DDT for SPV of REITS is a welcome move. DDT which was till date applicable on SPVs, was a huge barrier in the introduction of REITs investments, making them less attractive. The said proposal would open up avenues for institutional investors who view great potential in the Indian real estate market.

New taxation regime for securitization trust and its investors [Chapter XII-EA of the IT Act]

- The existing provisions of Chapter XII-EA of the IT Act are proposed to be revamped to rationalise taxation regime for securitisation trusts and their investors and to provide pass through treatment. The definition of 'Securitisation Trust' has been widened to include trust set up by a securitisation company or a reconstruction company formed under the SARFAESI Act within its purview. The new regime seeks to discontinue with the levy of distribution tax (at 25 / 30%) on distributions made by securitisation trusts and propose to tax income of the securitisation trust in the hands of investors.

- The new regime seeks to tax income received by an investor from securitization trust as if the investor made investment directly in the underlying assets. The exemption for income of the securitization trust as per Section 10(23DA) of the IT Act would continue.

- Further, a new Section 194LBC is proposed to be inserted in the IT Act to provide for the following TDS for payment of income by securitization trusts to an investor (facility of lower / no TDS certificate eligible):

Residential status of payee	Type of payee	Rate of TDS
Resident	Individual or HUF	25%
	Other than above	30%
Non-resident	Any	Rates in force

- The above amendments have been made effective from June 01, 2016 and would apply to distributions made by securitisation trusts from the said date.

ELP Comments

The new scheme of taxation for securitisation trusts would be beneficial for the investors of the trusts, primarily foreign and domestic institutional investors.

Clarification regarding the definition of the term 'unlisted securities' [Section 112(1)(c) of the IT Act]

- Section 112(1)(c)(iii) has been proposed to be amended to apply the beneficial tax rate to shares of companies in which public are not substantially interested. The provisions will be effective from April 01, 2017.

ELP Comments

- The reduced rate of taxation as applicable to non-residents was introduced by the Finance Act, 2012. The amendment applies to "unlisted securities", and the term "securities" means as defined under Securities Contract Regulations Act, 1956. The term securities includes "other marketable securities of a like nature". In terms of the Hon'ble Bombay High Court judgement in the case of **Dahiben Umedbhai Patel vs. Norman James Hamilton [1985] 57 COMP. CAS. 700 (BOM.)**, private limited company shares are not marketable and hence do not fall within the ambit of the term "Securities". Thus, a view was taken that the provisions of Section 112(1)(c)(iii) are not applicable to shares of a private limited company.
- With the proposed amendment, the beneficial rate will be applicable to shares of private limited company which is a welcome measure and puts at rest the ambiguity raised in this behalf.

Assumption of jurisdiction of Assessing Officer

- Section 124(3) of the IT Act is proposed to be amended to specifically provide that in cases where search is initiated under Section 132 or books or accounts, other documents or any assets are requisitioned under section 132A, no person shall be entitled to question the Jurisdiction of an AO after the expiry of one month from the date on which he was served with a notice under Section 153A(1) or Section 153C(2) or after the completion of the Assessment, whichever is earlier.

This amendment will take effect from the June 01, 2016.

Legislative framework to enable and expand the scope of electronic processing of information

- Section 133C is proposed to be amended to provide adequate legislative backing for processing of information .
- It is also proposed to amend Explanation 2 to section 147 to provide for reopening of cases by the AO on the basis of such information so received.
- To remove the mismatch between the return and the information available with the Department, it is proposed to expand the scope of adjustments that can be made at the time of processing of returns under section 143(1). It is proposed that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. However, before making any such adjustments, in the interest of natural justice, an intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within 30 days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

These amendments will take effect from the June 01, 2016.

Time Limit for Assessment, Reassessment and Recomputation (Section 153 of the IT Act)

- Section 153 of the IT Act is proposed to be substituted to provide as follows:
  - Period for completion of an assessment under Section 143 or Section 144 is proposed to be changed from existing 2 years to 21 months from the end of the AY in which the income was first assessable;

- Period for completion of assessment under Section 147 is proposed to be changed from existing one year to 9 months from the end of the FY in which the notice under Section 148 was served.
- Period for completion of fresh assessment pursuant to an order under Sections 254 / 263 / 264 setting aside or cancelling an assessment is proposed to be changed from existing one year to 9 months from the end of the FY in which order under Section 254 is received or the order under Sections 263 or 264 is passed.
- Period for giving effect to an order under Sections 250 / 254 / 260 / 262 / 263 / 264 (i.e. an Order in the Appellate stream) or an order of the Settlement Commission where re-assessment or fresh assessment is not required, is proposed to be 3 months from the end of the month in which order is received or passed.
  - Additional time of six months may be granted to give effect to the said order in a case where it is not possible for the AO to give effect to such order within the aforesaid period for reasons beyond his control. In respect of cases pending as on June 01, 2016, the time limit for passing such order is proposed to be extended to March 31, 2017.
- Where assessment, reassessment or recomputation is made in consequence of or to give effect to any finding or direction contained in an order under Sections 250 / 254 / 260 / 262 / 263 / 264 (i.e. an Order in the Appellate stream) or in an order of any court in a proceeding otherwise than by way of appeal or reference under the IT Act, then the same shall be made on or before the expiry of 12 months from the end of the month in which such order is received by the Principal Commissioner or Commissioner.
  - However, for cases pending as on June 01, 2016, the time limit for taking requisite action is proposed to be March 31, 2017 or 12 months from the end of the end of the month in which order in case of firm is passed, whichever is later.
- Consequential changes are proposed in time limit for completion of assessment or reassessment by the AO in accordance with the extension of time limit provided to the Transfer Pricing Officer in certain cases by amendment in sub-section (3A) to Section 92CA of the IT Act

ELP Comments

The Proposed amendments seek to expedite the finalization of proceedings under the IT Act.

The amendment will take effect from June 01, 2016.

Rationalization of time limit for assessment in search cases (Section 153B of the IT Act)

- Section 153B of the IT Act is proposed to be substituted to provide as follows:
  - Limitation for completion of assessment under Section 153A for past 6 AYs and in respect of the AY relevant to the previous year in which search is conducted under Section 132 or requisition is made under Section 132A is proposed to be changed from existing 2 years to 21 months from the end of the FY in which the last of the authorisations for search under Section 132 or for requisition under Section 132A was executed.
  - Limitation for completion of assessment in case of 'other person' referred to in Section 153C is proposed to be changed from existing 21 years to
    - 21 months from the end of the FY in which the last of the authorisation for search under Section 132 or requisition under Section 132A was executed

      or
    - 9 months (changed from the existing one year) from the end of the FY in which the books of account or documents or assets seized or requisition are handed over under Section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

ELP Comments

The proposed amendments to Section 153B of the IT Act have been made with the object to expeditiously finalize the proceedings under the Act.

The amendment will take effect from June 01, 2016.

Payment of interest on refund (Section 244A)

- Section 244A is proposed to be amended to provide as follows:
  - Where the return is filed after the due date, the period for calculating interest on refund shall begin from the date of filing of return (instead of April 01 of AY) upto the date on which refund is granted.
  - Where the refund is out of any tax paid under Section 140A of the IT Act (i.e. self-assessment tax), the assessee shall be eligible for interest on the refund from the date of furnishing of return of income or payment of tax, whichever is later, upto the date on which refund is granted .
  - Where a refund arises out of an appeal and is delayed beyond the time prescribed under sub-section (5) of Section 153 (i.e. 90 days from the receipt of the order by concerned authorities), the assessee shall be entitled to receive an additional interest at the rate of 3% per annum (total interest rate 9%), for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted.

ELP Comments

The above proposed amendments have been introduced pursuant to the recommendations of the 'Income Tax Simplification Committee' under the Chairmanship of Hon'ble Justice R. V. Easwar. This is a progressive step towards ensuring timely filing of returns and promptness of the tax administration to expeditiously settle refund claims arising out of appeals. The proposal to grant interest on refund arising out of self-assessment tax is also a welcome move as the assessees were earlier deprived of such interest.

This amendment will be effective from June 01, 2016 and will apply from AY 2017-18.

Rationalization of TDS provisions [Sections 192A to 194L of the IT Act]

The existing threshold limits for TDS in certain specified cases are proposed to be revised as follows:

Section	Income Heads	Existing Threshold Limit (INR)	Proposed Threshold Limit (INR)
192A	Payment of accumulated balance due to an employee	30,000	50,000
194BB	Winnings from Horse Race	5,000	10,000
194C	Payments to Contractors	Aggregate annual limit of 75,000	Aggregate annual limit of 1,00,000
194LA	Payment of Compensation on acquisition of certain Immovable Property	2,00,000	2,50,000
194D	Insurance commission	20,000	15,000
194G	Commission on sale of lottery tickets	1,000	15,000
194H	Commission or brokerage	5,000	15,000

[w.e.f. June 01, 2016]

The existing rates for TDS in certain specified cases are proposed to be revised as follows:

Section	Income Heads	Existing Rate of TDS (%)	Proposed Rate of TDS (%)
194DA	Payment in respect of Life Insurance Policy	2%	1%
194EE	Payments in respect of NSS Deposits	20%	10%
194D	Insurance commission	Rate in force (10%)	5%
194G	Commission on sale of lottery tickets	10%	5%
194H	Commission or brokerage	10%	5%

[w.e.f. June 01, 2016]

The following provisions which are not in operation are proposed to be omitted:

Section	Income Heads	Proposal
194K	Income in respect of Units	Proposed to be omitted w.e.f. June 01, 2016
194L	Payment of Compensation on acquisition of Capital Asset	

ELP Comments

The above proposed amendments have been introduced pursuant to the recommendations of the 'Income Tax Simplification Committee' headed by Hon'ble Justice R.V. Easwar. However, only few recommendations of the said Committee are proposed to be adopted. Certain key recommendations for rationalization of TDS related provisions (eg: reduction in TDS rates for individuals and HUFs to 5% from 10%) have been over-looked.

Rationalization of TDS provisions relating to payments made by Category I and II AIF to investors [Sections 194LBB and 197 of the IT Act]

- Section 194LBB of the IT Act is proposed to be amended to provide that the AIF required to deduct tax on payments to investor shall make such deduction at the following rates:
  - Where the payee is a resident – 10%
  - Where the payee is a non-resident or a foreign company – rates in force
  - A corresponding amendment has also been made in Section 197 of the IT Act to include Section 194LBB in the list of Sections for which a lower / no TDS certificate can be obtained.

This amendment will be effective from June 01, 2016 and will apply from AY 2017-18.

ELP Comments

Finance Act, 2015 had introduced a special taxation regime in respect of Category I and II AIF registered with SEBI, whereby such AIF were granted a pass through status and their income was made taxable in the hands of investor. In this regard, Section 194LBB of the IT Act had mandated a 10% TDS on income paid or credited by such AIF to investors. The said mandatory 10% TDS resulted into denial of lower / nil rate TDS to non-resident investors eligible under the relevant tax avoidance treaty. The present amendment is intended to set right this anomaly.

This amendment is a welcome step especially when the Government has taken a definitive step *qua* the regulatory regime by allowing foreign investments into Alternate Investment Funds. This amendment is in line with the provisions currently applicable to the REIT and Invit.

Exemption from requirement of furnishing PAN under section 206AA to certain non-resident.

- The existing provisions of Section 206AA requires a person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVIIB of the IT Act to furnish his PAN to the person responsible for deducting such tax, failing which tax shall be deducted at the rate mentioned in the relevant provisions of the Act or at the rate in force or at the rate of 20%, whichever is higher.
- The Finance Act 2016 proposes to amend the said section 206AA to provide that "the provisions of this section shall also not apply to a non-resident, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, subject to such conditions as may be prescribed."
- This amendment will take effect from June 01, 2016.

Tax Collection at Source [Section 206C]

- Section 206C amended with effect from June 01, 2016 - Tax at the rate of 1% to be collected at source by the seller on:
  - Sale of motor vehicle of value exceeding INR 10 lakhs
  - Sale in cash of any goods (except bullion and jewellery)
  - Provision of services of value exceeding INR 2 lakhs (excluding services on which payment is subject to TDS under Chapter XVII-B)
- Not applicable to certain class of buyers subject to fulfillment of prescribed conditions

Rationalization of advance tax payment schedule [Section 211 and Section 234C of the IT Act]

- Section 211 is proposed to be amended to provide that all asseesses (other than an eligible assessee in respect of an eligible business referred to in Section 44AD of the IT Act) shall be liable to pay advance tax in 4 installments as follows:

Due date of instalment	Amount Payable
On or before 15 June	Not less than 15% of such advance tax
On or before 15 September	Not less than 45% of such advance tax as reduced by the amount, if any, paid in the earlier instalment
On or before 15 December	Not less than 75% of such advance tax as reduced by the amount or amounts, if any, paid in the earlier installment or instalments
On or before 15 March	The whole amount of such advance tax, as reduced by the amount or amounts, if any, paid in the earlier installment or installments.

- Eligible assessee opting for computation of profits or gains of business on presumptive basis under Section 44AD shall be required to pay advance tax in one installment on or before 15th day of the month of March of each FY.
- Consequential amendments have also been proposed under Section 234C providing for payment of interest in case of short-fall in payment of advance tax.

ELP Comments

The proposed amendments seeks to increase the onus on non-company assessees and seeks to treat them at par with company assessee for payment of advance tax.

This amendment will be effective from June 01, 2016 and will apply from AY 2017-18.

Rationalisation of proceedings before the Appellate Tribunal [Sections 253, 254 and 255 of the IT Act]

- Sub-sections (2A) and (3A) of Section 253 proposed to be omitted shall do away with the option available to the AO to file an Appeal against the order of the DRP. Thus, the Order of the DRP will be binding on the Assessing officer.
- Sub-Section (2) of Section 254 is proposed to be amended to reduce the time period within which the Appellate Tribunal may rectify any mistake apparent on the record to 6 months as compared to the existing time period of 4 years from the end of the month in which the order was passed.
- Sub-section (3) of Section 255 is proposed to be amended to provide that a single member bench may dispose of a case where the total income as computed by the Assessing Officer does not exceed INR 50 lakh as compared to INR 15 lakh at present.

ELP Comments

The proposed amendments have been introduced with the object to minimize litigation and to expedite the process of dispute resolution under the IT Act. The increase in monetary limit of the ITAT was recommended in the report of the 'Income Tax Simplification Committee' under the Chairmanship of Justice R.V. Easwar for speedy disposal of appeals.

- Proposed amendments will be applicable w.e.f. June 01, 2016.

Tax Incentives to International Financial Services Centre

- With a view to provide tax incentives to International Financial Services Centre, the Finance Bill 2016 has proposed the following amendments:
  - Section 10 is amended to provide for exemption from tax on capital gains to the income arising from transaction undertaken in foreign currency on a recognised stock exchange located in an International Financial Services Centre even when securities transaction tax is not paid in respect of such transactions.
  - Section 115JB is amended to provide that in case of a company, being a unit located in International Financial Services Centre and deriving its income solely in convertible foreign exchange, the MAT shall be chargeable at the rate of 9%.
  - Section 115-O is amended to provide that no tax on distributed profits shall be chargeable in respect of the total income of a company being a unit located in International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the April 01, 2017 out of its current income, either in the hands of the company or the person receiving such dividend.
  - Section 113A of the Finance Act is amended to provide that the provisions of Chapter VII shall not apply to taxable securities transactions entered into by any person on a recognized stock exchange located in International Financial Services Centre where the consideration for such transaction is paid or payable in foreign currency, thereby exempting such transaction from securities transaction tax. This amendment is proposed to take effect from June 01, 2016.
  - Section 132A is proposed to be inserted in Chapter VII of the Finance Act, 2013 to provide that the provisions of chapter VII shall also not apply to taxable commodities transactions entered into by any person on a recognized association located in unit of International Financial Services Centre where the consideration for such transaction is paid or payable in foreign currency, thereby exempting such transaction from commodities transaction tax. This amendment is proposed to take effect from June 01, 2016.

Amendment to existing penal provisions

- Section 271AAB(1) (c) of the IT Act dealing with *'Penalty where search has been initiated'* provides that in a case not covered under the provisions of clauses *(a) (assessee admits the undisclosed income in a statement during search, substantiates the manner in which undisclosed income was derived and furnishes returns disclosing such income and pays the tax with interest) and (b) (assessee does not admit the undisclosed income but files returns and pays tax with interest)* of Section 271 AAB(1), a penalty in the range of 30% to 90% of the undisclosed income of the specified previous year shall be levied in case where search has been initiated under section 132 on or after the July 01, 2012. The said provision is proposed to be amended to reduce the discretion and to provide for levy of penalty on such undisclosed income at a flat rate of 60% of such income.

- Section 272A(1) of the IT Act dealing with *'Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc'*, is proposed to be amended to include the following further penalty:
  - Levy of penalty of INR 10 thousand rupees for each default or failure to comply with a notice issued under Section 142(1) (*'Inquiry before assessment')* or Section 143(2) (*'Assessment')* or failure to comply with a direction issued under Section 142(2A) of the IT Act. Such penalty shall be imposed by the officer issuing notice or direction.

- Section 288 of the IT Act which deals with '*Appearance by Authorised representative'* is proposed to be amended to stipulate that no person convicted under Section 272A(1)(d) of the IT Act shall be qualified to represent an assessee.

Rationalization of penalty provisions [Section 270A of the IT Act]

- New Section 270 A is proposed to be inserted under the IT Act to provide for imposition of penalty in cases of 'under reporting' and 'misreporting of income' as follows:
  - A person shall be considered to have 'under reported' his income under the following situations:
    - Income assessed is greater than the income determined in the return processed under clause (a) of sub-Section (1) of Section 143;
    - Income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;
    - Income reassessed is greater than the income assessed or reassessed immediately before such re-assessment;
    - Amount of deemed total income assessed or reassessed as per the provisions of Section 115JB or 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of Section 143;
    - Amount of deemed total income assessed as per the provisions of Section 115JB or Section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;
    - Income assessed or reassessed has the effect of reducing the loss or converting such loss into income
  - Proposed rate of penalty payable on under-reported income is **50% of the tax payable on under-reported income**. However, where the under reporting is as a result of 'misreporting of income of the assessee, proposed rate of penalty payable shall be **200% of the tax payable on such misreported income**. The amendment will take effect from April 01, 2017.
  - A person shall be considered to have 'misreported' his income under the following situations:
    - Misrepresentation or suppression of facts;
    - Non-recording of investments in books of account;
    - Claiming of expenditure not substantiated by evidence;
    - Recording of false entry in books of account;
    - Failure to record any receipt in books of account having a bearing on total income;
    - Failure to report any international transaction or deemed international transaction under Chapter X.
- Consequential amendments have been proposed in Sections 119, 253, 271A, 271AA, 271AAB, 273A and 279 to provide reference to section 270A.

ELP Comments

Penalty provisions under section 271 of the IT Act gave vide powers to the tax authorities to impose penalty for failure to furnish returns, comply with notices, concealment of income, etc. In fact, majority of the litigation (in terms of penalty cases) revolved around the provisions of section 271(1)(c) of the IT Act which dealt specifically with the concealment of particulars of income and furnishing inaccurate particulars of such income. The tax authorities have vide discretion under these provisions to impose penalty (especially under section 271(1)(c)) to the extent of 100% to 300% of the tax sought to be evaded. The proposed amendment would rationalize and bring objectivity, certainty and clarity in the penalty provisions. The proposed amendment also clarifies that the existing Section 271 shall not apply to and in relation to any assessment for the AY commencing on or after April 01, 2017 and subsequent AYs.

Immunity from penalty and prosecution in certain cases by inserting new section 270AA

- It is proposed to provide that an assessee may make an application to the AO *(within one month from the end of the month in which the order of assessment or reassessment is received*), for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C, subject to the following conditions:

  a) He pays the tax and interest payable as per the order of assessment or reassessment within the period specified in such notice of demand.

b) Does not prefer an appeal against such assessment order.

The AO shall, on fulfilment of the above conditions and after the expiry of period of filing appeal as specified in sub-section (2) of section 249, grant immunity from initiation of penalty and proceeding under section 276C if the penalty proceedings under section 270A has not been initiated on account of the following, namely:—

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in books of account having a bearing on total income; or

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction to which the provisions of Chapter X apply.

- The AO shall pass an order accepting or rejecting such application within a period of one month from the end of the month in which such application is received. However, in the interest of natural justice, no order rejecting the application shall be passed by the Assessing Officer unless the assessee has been given an opportunity of being heard. It is proposed that order of Assessing Officer under the said section shall be final.
- It is proposed that no appeal under section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment referred to in clause (a) of sub-section (1), in a case where an order under section 270AA has been made accepting the application.

These amendments will take effect from the April 01, 2017 and will, accordingly, apply in relation to the assessment year 2017 - 2018 and subsequent years.

ELP Comments

Various changes have been proposed seeking to modify the entire scheme of penalty by providing different categories of misdemeanor with graded penalty and thereby substantially reducing the discretionary power of the tax officers. As a part of the larger scheme, remission is proposed in certain cases where tax has been paid and appeal is not preferred by the assessee.

Amendment to Section 273A, 273AA or 220(2A) for providing time limit for disposing applications made by the assessee

- It is proposed to amend Section 220 to provide that an order accepting or rejecting application of an assessee shall be passed by the concerned Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner within a period of 12 months from the end of the month in which such application is received.
- It is proposed to amend section 273A and section 273AA to provide that an order accepting or rejecting the application of an assessee shall be passed by the Principal Commissioner or Commissioner within a period of 12 months from the end of the month in which such application is received.
- It is also proposed to provide that no order rejecting the application of the assessee under section 220 or 273A, 273AA shall be passed without giving the assessee an opportunity of being heard. However, in respect of applications pending as on June 01, 2016, the order under said sections shall be passed on or before May 31, 2017.

These amendments will take effect from June 01, 2016.

Bank Guarantee under Section 281B of the IT Act

- Under the existing Section 281B of the IT Act ('*Provisional attachment to protect revenue in certain cases*'), the Assessing Officer may provisionally attach any property of the assessee during the pendency of assessment or reassessment proceedings, for a period of 6 months for the purpose of protecting the interests of the revenue. The Income Tax Simplification Committee (Easwar Committee) has recommended in para 27.1 and 27.2 of their report that provisional attachment of property could be substituted by a Bank Guarantee (BG) subject to fulfilment of certain conditions.
- Considering the said recommendation, it is proposed that if BG is furnished for an amount not less than the fair market value of such provisionally attached property (to determine which the assistance of Valuation Officer may be availed) or for an amount which is sufficient to protect the interests of the revenue, then the AO may revoke the provisional attachment of property.
- It is further proposed that where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay such sum within the time specified in the notice, the AO may invoke the BG, wholly or partly, to recover the said amount.
- It is also proposed that in a case where the AO is satisfied that the BG is not required anymore to protect the interests of the revenue, he shall release that BG.

Providing legal framework for automation of various processes and paperless assessment

- It is proposed to amend sub-section (1) of section 282A to provide that notices and documents required to be issued by income-tax authority under the Act shall be issued by such authority either in paper form or in electronic form in accordance with such procedure as may be prescribed.
- It is proposed to amend sub-section (2) of section 143 to provide that notice under the said sub-section may be served on the assessee by the Assessing Officer or the prescribed income-tax authority, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return.
- This amendment is proposed to be made to ensure timely service of notice.
- It is also proposed to amend the existing provision of section 2 by inserting new clause (23C) to define the term "hearing" to include communication of data and documents through electronic mode.

These amendments will take effect from the June 01, 2016.

Equalisation Levy [Chapter VIII Finance Bill 2016]

- Chapter VIII of the Finance Bill introduces the concept of Equalization Levy for taxation of specified digital services at the rate of 6% on consideration (exceeding INR 1 lakh) received by a non-resident (without any PE in India) from (i) a person resident in India and carrying on business or profession, or (ii) non-resident with a PE in India. It has been *inter alia* provided that no Equalisation Levy shall be charged if the service is rendered by (i) non-resident from its PE in India, which is effectively connected with the rendition of service, or (ii) PE of the Indian resident is not for the purposes of carrying out business or profession.
- Specified services has been defined to cover online advertisement, digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government.
- Income subject to Equalisation Levy shall be exempt under Section 10A of the IT Act. Further, expense towards specified services would not be available as a deduction in case this levy is not deducted/deposited by the payee.

- Compliance mechanism and interest/penalty implications for the assessee

Particulars	Obligation
Liability to pay	Person making payment for specified services
Time of payment	7th day of the month immediately following the month in which deduction is made
Filing of Annual Statement	Every person deducting Equalised Levy is required to file Annual Statement within the prescribed time
Delay in payment of Equalisation Levy	Simple interest at the rate of 1% in case of delay in/short payment of Equalisation Levy
Failure to deduct Equalisation Levy	Penalty equal to the amount of levy
Failure to deposit the amount collected as Equalisation Levy	Penalty of INR 1000 for each day of failure not exceeding the amount of levy
Annual statement not filed within time prescribed	Penalty of INR100 per day for each day of failure
Reasonable Cause	No penalty in case reasonable cause is established by the assessee

- Appellate mechanism for resolving disputes has been prescribed. However, Rules for carrying out the provisions of this Chapter is yet to be notified.

Levy to be applicable from a date to be notified.

ELP Comments

Equalisation Levy has been introduced in the form of withholding tax under Chapter VIII of the Finance Bill to combat direct tax challenges faced in the digital economy. This is in line with the recommendation of OECD under BEPS Project Action Plan 1 (issued in October 2015) and is equally applicable to domestic and foreign entities in respect of specified digital transactions.

Equalisation Levy proposed in the Finance Bill seeks to create a presumption of nexus based economic presence for specified services. With introduction of this levy, India joins the league of various other countries with similar levies for providing a level playing field to domestic businesses. In addition, avoidance of double taxation of such transactions has been secured by creating a specific Income tax exemption for specified services chargeable to this levy. However, it needs to be pointed out that as Equalisation Levy has not been introduced by amending the IT Act (but through a Chapter in the Finance Bill 2016), ability of non-resident to claim credit in its jurisdiction may be suspect as even under the Tax Avoidance Agreements, credit of taxes paid under the IT Act is available.

Exit Tax on Charitable Organizations

- New Chapter introduced in IT Act to provide for levy of additional income tax in case of accretion in income on conversion into/merger with non-charitable institution or transfer of assets/ dissolution of charitable institution

Levy to be applicable from June 01, 2016.

TRANSFER PRICING

BEPS Action Plan - Legislative Changes

- Under Section 92D of the IT Act, there is a requirement of maintenance of prescribed information and document in relation to the international transaction and specified domestic transaction entered into by every person. The said section is being amended to insert a proviso which specifies that the person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed.

- The OECD Report on Base Erosion and Profit Shifting ('BEPS') Action Plan 13 provides for revised standards for transfer pricing documentation and a template for Country-by-Country reporting ('CbC reporting') of income, earnings, taxes paid and certain measure of economic activity. In order to implement the international consensus, it is proposed to provide a specific reporting regime in respect of CbC reporting and also the master file. The CbC reporting requirement arises only if the consolidated revenues of the preceding year of the group, based on the consolidated financial statement exceeds the threshold of Euro 750 Million, the equivalent of which would be INR 5,395 Crores (at current rates). The amendment will be effective from April 01, 2017, i.e. AY 2017-18 and subsequent assessment years.

- A new Section 286 is proposed to be inserted w.e.f April 01, 2017 which deals with furnishing of report in respect of International Group. The elements relating to CbC reporting requirement(s) and matters related to it proposed to be included through amendment of the IT Act are:—

  a) the parent entity of an international group, if resident in India, shall be required to furnish the report in respect of the group to the prescribed authority on or before the due date of furnishing of return of income for the Assessment Year relevant to the Financial Year (previous year) for which the report is being furnished;
  b) the parent entity shall be an entity which is required to prepare consolidated financial statement under the applicable laws or would have been required to prepare such a statement, had equity share of any entity of the group been listed on a recognized stock exchange in India;
  c) every constituent entity in India, of an international group having parent entity that is not resident in India, shall provide information regarding the country or territory of residence of the parent of the international group to which it belongs. This information shall be furnished to the prescribed authority on or before the prescribed date;
  d) the report shall be furnished in prescribed manner and in the prescribed form and would contain aggregate information in respect of revenue, profit & loss before Income-tax, amount of Income-tax paid and accrued, details of capital, accumulated earnings, number of employees, tangible assets other than cash or cash equivalent in respect of each country or territory along with details of each constituent's residential status, nature and detail of main business activity and any other information as may be prescribed. This shall be based on the template provided in the OECD BEPS Report on Action Plan 13;
  e) an entity in India belonging to an international group shall be required to furnish CbC report to the prescribed authority if the parent entity of the group is resident;-

     i) in a country with which India does not have an arrangement for exchange of the CbC report; or
     ii) such country is not exchanging information with India even though there is an agreement; and
     iii) this fact has been intimated to the entity by the prescribed authority;

  f) If there are more than one entities of the same group in India, then the group can nominate (under intimation in writing to the prescribed authority) the entity that shall furnish the report on behalf of the group. This entity would then furnish the report;
  g) If an international group, having parent entity which is not resident in India, had designated an alternate entity for filing its report with the tax jurisdiction in which the alternate entity is resident, then the entities of such group operating in India would not be obliged to furnish report if the report can be obtained under the agreement of exchange of such reports by Indian tax authorities

- With regard to maintenance of master file and furnishing it, the proposed amendments are: -

  a) entities being constituent of an international group shall, in addition to the information related to the international transactions, also maintain such information and document as is prescribed in the IT Rules. The IT Rules shall thereafter prescribe the information and document as mandated for master file under OECD BEPS Report on Action Plan 13;
  b) information and document shall also be furnished to the prescribed authority within such period as may be prescribed and the manner of furnishing shall be provided for in the IT Rules

- Further, the following penalty structure shall apply for non-furnishing of the report by an entity

Sr. No.	Default	Penalty prescribed
I	For non-furnishing of report by an entity obligated to furnish it	
	a) If default is not more than a month	INR 5 thousand per day
	b) If default is beyond one month	INR 15 thousand per day for the period exceeding one month
	c) For any default that continues even after service of order levying penalty either under (a) or (b)	INR 50 thousand per day for default continuing beyond date of service of order
II	a) Timely non-submission of information before prescribed authority when called for	INR 5 thousand per day
	b) If default continues even after service of penalty order	INR 50 thousand per day for default beyond date of service of penalty order
III	Provision of any inaccurate information in the report and,- ▪ entity knows of the inaccuracy at the time of furnishing the report but does not inform the prescribed authority; or ▪ entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of 15 days of such discovery; or ▪ entity furnishes inaccurate information or document in response to notice of the prescribed authority	INR 5 lakhs

ELP Comments

The OECD/G20 BEPS package published in October, 2015 which has been divided into 15 Action Plans (of which one Action Plan deals with Transfer Pricing Documentation and CbC reporting), contains measures to improve the coherence of international tax rules, to reinforce their focus on economic substance and to ensure a more transparent tax environment. The OECD-BEPS report contains a three-tiered standardised approach to transfer pricing documentation, including a minimum standard on CbC reporting.

- First, the guidance on transfer pricing documentation requires multinational enterprises (MNEs) to provide tax administrations with high-level information regarding their global business operations and transfer pricing policies in a "master file" that is to be available to all relevant tax administrations.
- Second, it requires that detailed transactional transfer pricing documentation be provided in a "local file" specific to each country, identifying material related-party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made with regard to those transactions.
- Third, large MNEs are required to file a CbC report that will provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued and other indicators of economic activities. CbC reports should be filed in the ultimate parent entity's jurisdiction and shared automatically through government-to-government exchange of information.

The proposed provisions, in line with the recommendations made in the OECD BEPS Action Plan 13 for providing a specific reporting regime in respect of CbC reporting shall give the tax department a global picture of the operations of multinational enterprises. Consistency and transparency will therefore be significant in how companies report transfer pricing data worldwide. Accordingly Indian MNEs as well as global players with operations in India would be required to have a relook at their tax reporting structure and review their global supply chain for inter-company transactions. While this transparency is welcome from a governance perspective, it is yet to be seen whether the taxpayers would be prepared for this level of transparency. Transfer pricing documentation and global reporting though time consuming, shall be an important criteria going forward.

Extension of time limit to TPO in certain cases

- In terms of section 92CA(3A) of the IT Act, the TPO has to pass his order 60 days prior to the date on which the limitation for making assessment expires. The said provision is proposed to be amended to provide that where

assessment proceedings are stayed by any court or where a reference for exchange of information has been made by the competent authority, the time available to the TPO for making an order after excluding the time for which assessment proceedings were stayed or the time taken for receipt of information, as the case may be, is less than 60 days, then such remaining period shall be extended to 60 days.

- The amendment will take effect from June 01, 2016.

INCOME TAX RATES

For Individuals, HUFs, AOPs and BOIs

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

Notes:

Sr. No.	Particulars	Existing	Proposed
1	Surcharge	12% is levied if the total income exceeds INR 1 crore	12% is levied if the total income exceeds INR 1 crore (For firms, cooperative society) 15% is levied if the total income exceeds INR 1 crore (For individual, HUF, AOP, BOI, artificial juridical person)
2	Cess - Education cess and Secondary Education cess	3%	
3	Basic Exemption Limits	▪ INR 3 lakhs for individuals, resident of India, of the age of 60 years or more but less than 80 years ▪ INR 5 lakhs for individuals, resident of India, of the age of 80 years or more.	
4	Alternate Minimum Tax	▪ 19.06% (including cess) - If adjusted total income exceeds INR 20 lakhs but less than INR 1 crore ▪ 21.34% (including surcharge and cess) - If adjusted total income exceeds INR 1 crore	▪ 19.06% (including cess) - If adjusted total income exceeds INR 20 lakhs but less than INR 1 crore ▪ 21.34% (including surcharge and cess) - If adjusted total income exceeds INR 1 crore (For firms, cooperative society) ▪ 21.91% (including cess) - If adjusted total income exceeds INR 1 crore (For individual, HUF, AOP, BOI, artificial juridical person)

OTHER RATES - CORPORATE

Sr. No.	Description	Existing Rates (%) (Including Surcharge and Cess)			Proposed Rates (%) (Including Surcharge and Cess)		
A	Domestic Companies	Net income does not exceed INR 1 crore	Net Income is between INR 1 crore and INR 10 crore	Net income exceeds INR 10 crore	Net income does not exceed INR 1 crore	Net Income is between INR 1 crore and INR 10 crore	Net income exceeds INR 10 crore
1	Regular tax	30.90	33.063	34.608	30.90	33.063	34.608
	Regular tax for companies whose total turnover or gross receipts in previous year 2014-15 does not exceed INR 5 crores	30.90	33.063	34.608	29.87	31.97	33.45
	Regular tax for companies covered under section 115BA	-	-	-	25.75	27.55	28.84
2	MAT (Rate to be applied on book profits)	19.06	20.39	21.34	19.06	20.39	21.34
3	BDT	23.072 (Includes surcharge of 12% and cess of 3%)			23.072 (Includes surcharge of 12% and cess of 3%)		
4	DDT	17.304 (Includes surcharge of 12% and cess of 3%)			17.304 (Includes surcharge of 12% and cess of 3%)		

B	Foreign Companies	Net income does not exceed INR 1 crore	Net Income is between INR 1 crore and INR 10 crore	Net income exceeds INR 10 crore
1	Regular tax	41.20	42.024	43.26

C	Firms and LLP	Net income does not exceed INR 1 crore	Net income exceeds INR 1 crore	Net income does not exceed INR 1 crore	Net income exceeds INR 1 crore
1	Regular tax	30.90	34.608	30.90	34.608
2	Alternate Minimum Tax	19.06	21.34	19.06	21.34

Notes - Surcharge rates

Particulars	Existing and Proposed
For resident companies	▪ NIL - If the Net income does not exceed INR 1 crore ▪ 7% - If the Net Income is between INR 1 crore and INR 10 crores ▪ 12% - If the Net income exceeds INR 10 crores
For non-resident companies	▪ NIL - If the Net income does not exceed INR 1 crore ▪ 2% - If the Net Income is between INR 1 crore and INR 10 crores ▪ 5% - If the Net income exceeds INR 10 crores

BANKING, FINANCE, INFRASTRUCTURE, CAPITAL MARKETS AND INVESTMENT UPDATE

"Credit" is the lifeline of an economy and is also the thrust of this part of the Union Budget 2015-16. The biggest user of the credit would be the infrastructure sector. Accordingly, through capital markets, encouraging use of the corporate bond market, allowing sponsors to retain 100% stake in ARCs, allowing long term funds (such as insurance and pension funds) to hold more than 49% stake in Indian companies, there are no shortage of routes available to fund the credit required. Additionally, such alternate routes are being streamlined and encouraged to increase investments and reduce dependency on the stressed banking sector. Each of the following heads, therefore contain the specific movement to help procure long term capital at affordable rates. In addition, the Government has been mature enough to allow for renegotiation of infrastructure contracts. This should hopefully re-instill the much needed confidence within the infrastructure sector and accordingly help bring in the required investments.

BANKING AND FINANCE

Recapitalization of the public sector banks

The Finance Minister mentioned that the government stands behind the banking system and re-emphasized on the need for a strong and well-functioning banking system. To support the banks in their efforts for recovery of stressed assets as well as to support credit growth, the Union Budget proposed an allocation of INR 25,000 crores in this FY towards re-capitalization of public sector banks.

ELP Comments

This Union Budget was considered to be extremely critical for the banking industry, especially the public sector banks. The RBI had conducted an asset-quality review across the banking sector and had asked banks to recognize visibly stressed assets as non-performing assets (NPAs) and provide for them. Twelve of the public sector banks posted net losses in the December quarter as they needed to set aside funds for rising bad assets even as their gross NPAs rose by INR 1.3 trillion in the three months ended December to a total of INR 3.93 trillion. This is the first step towards phased capitalization of the public sector banks. This is also in pursuance to a larger comprehensive 'Plan for Revamping of Public Sector Banks', INDRADHANUSH, which was launched in 2015. However, the bigger question is whether such an infusion would be adequate in addressing the situation being faced by the public sector banks. There have also been discussions on the negative implications on the privatization of the public sector banks. The real issue to be deliberated is the reason for such increase of stressed assets. It needs to be investigated as to why there should be so many write-offs and why should the borrowers be allowed to receive such settlements. Taking into cognizance such an issue even the Supreme Court of India on February 16, 2016 has requested RBI to furnish details of companies that have each defaulted on loans amounting to more than INR 500 crores.

Amendment to SARFAESI Act, 2002

Recognising the importance of Asset Reconstruction Companies ('ARCs'), the Finance Minister has proposed to make necessary amendments in the SARFAESI Act, 2002 to enable the sponsor of an ARC to hold up to 100% (from 50% allowed presently) stake in the ARC and permit non-institutional investors to invest in Securitization Receipts.

ELP Comments

Considering the increase of the stressed assets of the banking industry, it became necessary to review the functional effectiveness of ARCs. As recent as last week, RBI had sought the finance ministry's approval to ease the sponsor holding limit for ARCs as such institutions will assist in cleaning the bank balance sheets.

With a view to empower ARCs to achieve the aforesaid objectives, the Government has proposed to amend the SARFAESI Act, 2002 to remove the sponsor holding restriction of 50% and to allow 100% equity stake in the ARCs to be held by sponsors. This will enable specific promoters/ funds to retain the entire pie of the ARCs and not have to mandatorily share the rewards with other investors. This may also be viewed favourably by foreign investors, knowing that they will have a comfort of exiting by selling the entire stake to the sponsor. Permission to non-institutional investors to invest in security receipts would increase the investor base and lessen the burden on the qualified institutional buyers under SARFAESI Act, 2002. These would have a direct impact on the functional effectiveness of ARCs and would further aid in reducing the outstanding gross NPAs of the banking system.

Code on Resolution of Financial Firms

The Finance Minister has announced that a comprehensive Code on Resolution of Financial Firms ('Code') will be introduced as a bill in the Parliament during FY 2016-17. This Code will be providing a specialized resolution mechanism to deal with bankruptcy situations in banks, insurance companies and financial sector entities.

ELP Comments

Amidst growing stress on banks and financial institutions and a greater awareness in the industry that even financial firms might be biting the bullet, such a code for handling bankruptcy situations of financial firms is a welcome move. As the nation moves towards adopting the Insolvency and Bankruptcy Code, 2015, which promises resolution of insolvency matters in a speedier and time-bound manner, the enactment of the Code will provide a comprehensive bankruptcy resolution mechanism for our economy. It is important to note that the Financial Sector Legislative Reforms Commission (FSLRC) was also tasked to provide clear suggestions for addressing insolvency, stress and bankruptcy issues faced by financial firms. It will be very important to understand the manner in which the Code will be dealing with the underlying assets/ securities held by the financial firms and the manner in which liquidation concepts will be applied to financial assets.

Disinvestment in IDBI Bank Limited

The Finance Minister mentioned that the process of transformation of IDBI Bank has already started and that the Government will take it forward and also consider the option of reducing its stake to below 50%.

ELP Comments

The Government made its first official announcement on this move stating that the transformation process of IDBI Bank has already started and the stake in the bank (which is presently more than 80%) shall be reduced below 50%. In pursuance to the INDRADHANUSH plan, the case of IDBI Bank would be the first case of the Government reducing stakes in public sector banks. However, the Government has also given enough indications to emphasize on the importance of Government support to the banking sector and therefore we do not believe that there will be a large amount of disinvestment yet.

Bank Board Bureau

The Finance Minister has announced that the Bank Board Bureau will be operationalised during 2016-17 and a roadmap for consolidation of public sector banks will be spelt out.

ELP Comments

The Bureau will further assist the ailing public sector banks in dealing with personnel issues. The Bureau is to recommend appointment of directors in public sector banks and advice on the ways of raising funds and dealing with issues of stressed assets. The Bank Board Bureau is to start functioning from April 01, 2016. Vinod Rai, former comptroller and auditor general of India, has been named the first chairman of the Banks Board Bureau. The other members of the board include Anil K. Khandelwal, a former Chairman of Bank of Baroda; H.N. Sinor, a former joint Managing Director of ICICI Bank Ltd; and Roopa Kudva, a former Managing Director of rating company CRISIL Ltd. With a not so generous fund allocation towards recapitalisation of the public sector banks, the role of the Bank Board Bureau would be vital.

Amendment to RBI Act

The Finance Minister mentioned that the RBI Act, 1934 would be amended to provide a statutory basis for a Monetary Policy Framework and a Monetary Policy Committee through the Finance Bill, 2016. The amendment suggested in the Finance Bill, 2016 is to bring in certain definitions like "Consumer Price Index", "inflation" and "Monetary Policy Committee". The amendment also deals with the constitution, powers and operations of the Monetary Policy Committee.

ELP Comments

In pursuance to the Urjit R. Patel committee report, the Union Budget 2014-15 had mentioned that there was a requirement to have a monetary policy committee. The Ministry of Finance and RBI entered into a Monetary Policy Framework Agreement ('Agreement') on February 20, 2015 with the primary objective of maintaining price stability and bringing down inflation. The amendment provides a statutory basis for the committee. It is important to note that the Agreement seeks to impose an obligation on RBI to achieve the relevant percentage of inflation. However, in the amendment proposed one of the clauses clearly state that *"the Central Government shall, in consultation with the Bank (Reserve Bank of India), determine the inflation target in terms of the Consumer Price Index, once in every five years;"*. The Central Government also retains the power to appoint the Monetary Policy Committee.

Deepening of corporate bond market

Keeping up with the trend to revive the ailing debt market, the following specific measures have been announced to facilitate deepening of corporate bond market:

a) LIC of India will set up a dedicated fund to provide credit enhancement to infrastructure projects.

b) RBI will issue guidelines to encourage large borrowers to access a certain portion of their financing needs through market mechanism instead of the banks.

c) Investment basket of foreign portfolio investors will be expanded to include unlisted debt securities and pass through securities issued by securitisation SPVs.

d) For developing an enabling eco system for the private placement market in corporate bonds, an electronic auction platform will be introduced by SEBI for primary debt offer.

e) A complete information repository for corporate bonds, covering both primary and secondary market segments will be developed jointly by RBI and SEBI.

f) A framework for an electronic platform for repo market in corporate bonds will be developed by RBI.

ELP Comments

All these measures reflect the growing concern of the government of the stifled debt market and the need to find alternate sources of financing. The stressed situation of banks has already been discussed and highlighted in details. Along with that, the borrowers are unable to service high cost debt from financial institutions. Accordingly, it is a welcome measure wherein entities with liquidity such as LIC would be providing the impetus to the infrastructure sector. Further, the Government is now encouraging corporates, who have the capabilities of having high rated bonds, to explore such an option. It has been seen that corporate bonds that have a high credit rating will inevitably be cheaper than rupee debt from financial institutions. Additionally, the Government is yet again emphasizing the importance of foreign portfolio investors accessing the corporate bond market.

Both RBI and SEBI will need to provide robust regulations to enable such measures and allow effective implementation of the same.

INFRASTRUCTURE

Infrastructure has always been a point of focus of this Government and the Finance Minister has named it as one of the nine pillars of the Budget in his speech. Surprisingly, the total amount allocation for infrastructure and energy in this year's Budget is lower than that of the previous year at INR 2,21,46 crores. Further, rather than the announcement of big ticket projects or reforms, an impetus has been given to policy measures proposed through various consultative processes as well as regulatory reforms earlier proposed. There is also an increased focus on social and rural infrastructure in line with the entire theme of the Budget. Therefore, there appears to be a recalibration in the approach of the Government with respect to infrastructure with a focus on inclusive growth and capacity augmentation.

Regulatory Reforms and PPP

The requirement for reforms in the infrastructure has been an oft-discussed issue, given the difficulties faced by developers by reason of several institutional and environmental issues that are beyond their control. These difficulties have led to delays and almost inevitable disputes that in turn have made investments in the infrastructure space less attractive. Given this, two regulatory reform measures have been announced:

- **Renegotiation of Contracts**: It has been proposed to develop and introduce guidelines for the renegotiation of PPP Concession Agreements. This is to be done keeping in view the long term nature of such contracts and potential uncertainties of the real economy, without compromising transparency. PPP contracts, due to their very nature as long duration contracts often require revisiting the terms of the contract due to bounded rationality and the inability to predict changes in project environment. The request for renegotiation differs depending on the party seeking such renegotiation - private sector players have generally argued that unforeseen changes have resulted in making projects commercially unviable. On the other hand, the Government and regulators generally dispute concession agreements on the basis of protection of public welfare, unfair profit motive, inefficiency and/or mismanagement of projects by the private participants. Further, it believed that if maturity is increased or premium is reduced, the same could be a violation of original bid conditions.

ELP Comments

It will be interesting to see how the Government lays out parameters within which a concession agreement may be renegotiated, whether there will be a lock-in period within which no changes may be made or whether changes may be made subject to certain conditions, whether the renegotiation will be triggered on the basis of financial or social welfare implications. A balance will need to be arrived at to protect the interests of the private participant, the government authority as well as for public stakeholders.

The Ministry of Finance has issued a Report on Developing a Framework for Renegotiation of PPP Contracts in December 2014 wherein the inflexibility of the existing concession agreements has been acknowledged. The issues range from renegotiations required due to lack of site availability, variations in scope, delay of approvals, delays in financial close, traffic risk and general macroeconomic shocks. However, the procedure for amendments as proposed requires engagement with the same authority as would have awarded the concession. If the provisions for renegotiations are inbuilt within the concession agreements or in a separate legislation, public authorities may be more amenable to be flexible and allocate risks depending on changing circumstances.

- **Public Utility Disputes Resolution**: The introduction of a Bill for resolution of disputes with public utilities has been proposed for the upcoming FY. This Bill would aim to streamline institutional arrangements for resolution of disputes in infrastructure related construction contracts, PPP and public utility contracts. A similar announcement was made in the previous Budget, however no such legislation was introduced. There definitely is an urgent requirement for a dispute resolution mechanism which is separate from the usual dispute resolution process given that the Government is the counterparty and that there is public interest involved in such disputes.

ELP Comments

Any such legislation proposed should take into account the various other stakeholders involved. Especially in case of complex projects where the developer (whether a contractor or a PPP concessionaire) would also need to involve other stakeholders such as subcontractors, suppliers and other such persons. Further, given that existing contracts with Government entities often already include dispute resolution provisions by arbitration, changes may be required to the Indian Arbitration and Conciliation Act, 1996 to avoid any confusion with respect to jurisdiction to resolve disputes.

It may be pertinent to note that the Commercial Courts, Commercial Division and Commercial Appellate Divisions of High Courts Act, 2015 also includes disputes arising out of infrastructure contracts and tenders as a commercial dispute that may be resolved under the legislation. Public utility contracts would need to be expressly excluded therefrom.

- **Changes to the Motor Vehicle Act, 1988**: Changes to the Motor Vehicle Act, 1988 are proposed in order to streamline the permitting process and easing the road transport sector for passengers. The details of these amendments are awaited but the aim is to increase investment in the passenger road transport system. Start-ups may be encouraged to operate buses on various routes, subject to safety and efficiency norms.

Capacity Augmentation – Sector Specific Allocations and Reforms

- **Roads and Railway:** There is a major focus on roads and highways in this Budget with an allocation of INR 55,000 crores. Additionally, an amount of INR 15,000 crores is to be raised by NHAI through bond issuances.

  This is in addition to the various announcements under the Railway Budget wherein various capacity augmentation measures for both stations as well as connectivity were announced. The total allocation for the Road and Highway sector is INR 97,000 crores.

- **Oil and Gas:** For oil and gas sector, the Finance Minister emphasized the need to move towards self sufficiency for hydrocarbons and to achieve this, the need for further exploration and exploitation. The Finance Minister said that there was a need to incentivize the gas production from deep-water, ultra deep-water and high pressure-high temperature areas, which are presently not exploited on account of higher cost and higher risks. The Budget reiterated the proposal which is under consideration for new discoveries and areas which are yet to commence production. The first is to provide calibrated marketing freedom and second is to do so at a pre-determined ceiling price to be discovered on the principle of landed price of alternative fuels.

ELP Comments

It is to be noted that gas pricing has had a chequered past in India. From the comments on the consultation paper prepared by the Kelkar Committee issued in September, 2014 (Kelkar Committee Comments) to the consultation paper to invite comments from stakeholders on new fiscal and contractual regime for award of hydrocarbon acreages issued in November, 2015, the intention of the Government is to push for freedom of pricing on arms length basis. To elucidate, in the Kelkar Committee Comments, one of the pricing alternatives suggested was liquid fuel linked prices. While this mechanism of market determined pricing has evolved globally, it remains to be seen whether it will incentivise gas production in this era of global slowdown in the oil and gas sector.

- **Power:** It has been proposed that in the power sector, there is a requirement to diversify the sources of power generation for long term stability. Government is drawing up a comprehensive plan, spanning next 15 to 20 years, to augment the investment in nuclear power generation. Budgetary allocation up to INR 3,000 crores per annum, together with public sector investments, will be leveraged to facilitate the required investment for this purpose. Further, an ambitious target of 100% electrification of all villages by May 01, 2018 has been set.

ELP Comments

No further details were provided on such a comprehensive plan. Given that the Government has been pushing for augmenting foreign investment in nuclear power generation, it is not surprising that the focus on this sector supersedes the Government's previous proposals in other arenas of the power generation sector. Further, in order to meet all these ambitious targets, strengthening the transmission and distribution infrastructure would be critical.

- **Civil Aviation:** The Finance Minister's focus on the civil aviation sector was to revive unserved and underserved airports. The Finance Minister has announced that the Central Government will partner with the respective State Governments to revive about 160 airports and air strips across the country. The cost for such revival has been indicated to be INR 50 crores to INR 100 crores each. The Finance Minister also mooted a proposal for developing 10 of the 25 non-functional air strips with the Airport Authority of India.

ELP Comments

The recommendations of the Finance Minister to revive airports and airstrips are in line with the draft National Civil Aviation Policy, 2015. One of the principal objectives of the draft National Civil Aviation Policy, 2015 is to enhance regional connectivity through infrastructure development.

- **Ports.** The Government, with an aim to modernize and increase the efficiency of port sector, has proposed to develop green-field projects in eastern and western coasts. The work on the National Waterways is being expedited. An amount of INR 800 crores has been allocated for these initiatives.

Financing and Investment

- **Issuance of Bonds**: Apart from the proposal for the NHAI to raise funds through issuance of bonds, further bond issuances by the NHAI, PFC, REC, IREDA, NABARD and the Indian Water Authority to the tune of INR 31,300 crores would be permitted.
- **Credit Rating**: For the purpose of loans to infrastructure companies, a separate rating system for infrastructure projects is proposed that would take into account in-built credit enhancement structures instead of reliance of standard risk perception.

CAPITAL MARKETS

Comprehensive central legislation to deal with illicit deposit taking schemes

Noting the menace caused by illicit deposit taking schemes, the Finance Minister has proposed the enactment of a comprehensive central legislation in 2016-17 to deal with such schemes. The suggestion comes in light of the fact that such schemes are often spread across various states in the country and mostly impact the poor and financially illiterate people.

ELP Comments

The SEBI has in the past initiated actions against various persons for floating collective investment schemes. Though the SEBI Act, 1992 along with the SEBI (Collective Investment Schemes) Regulations, 1999 and the Companies Act, 2013, contain stringent provisions to curb such fraudulent deposit taking schemes, instances of people being defrauded by such schemes have been on the rise. It would be important to see the manner in which the proposed legislation is enacted and synchronized with the present legislations. The proposal should help strengthen the enforcement mechanism in relation to such illicit schemes, which will go a long way in protecting the interests of investors.

Securities Appellate Tribunal

The Finance Minister has proposed to amend the SEBI Act, 1992 to provide for members and additional benches of the Securities Appellate Tribunal.

ELP Comments

Presently, the Securities Appellate Tribunal functions through a bench situated in Mumbai. The bench is composed of one presiding officer and two other members as prescribed under the SEBI Act, 1992. The increase in the number of members and benches will enable faster disposal of cases. It would however be important to ensure that any vacancy of members' posts on benches is duly filled from time to time.

New derivative products to be introduced

The Finance Minister proposed that new derivative products will be developed by the SEBI in the commodity and derivatives market.

ELP Comments

In September, 2015, the Forwards Market Commission was subsumed into the SEBI. In light of this development, the market participants were expecting the derivatives and commodities markets to be opened up significantly. In furtherance of this, new products such as trading in options in relation to commodities and derivative products in relation to commodity indices are expected to be introduced by the SEBI. We are expecting that the RBI will make corresponding changes in its regulatory framework in order to allow non-residents to participate in the commodities market to give it more depth.

REITs and InvITS

The Finance Minister has proposed that any distribution made out of income of a special purpose vehicle to REITs and InvITs with a specified shareholding will not be subjected to dividend distribution tax.

ELP Comments

Tax incentives for REITS and InvITs were proposed by the Finance Minister in his budget speech of July, 2014. However, due to the lack of clarity on numerous issues the same have not been successfully used as investment instruments. One of the major concerns of investors was from the aspect of taxation in relation to such instruments. The announcement by the Finance Minister will help bring about clarity from the tax angle. Further, clarity on issues such as stamp duty will help popularize REITs and InvITs.

INVESTMENTS

Investment in Marketing of Food Products Produced and Manufactured in India

It is proposed that 100% FDI will be allowed through Foreign Investment Promotion Board (FIPB) route in marketing of food products produced and manufactured in India. Relevant regulations and guidelines in this regard are yet to be notified.

Proposed Increase in Sectoral Caps

- **Insurance and pension sectors:** Under the extant FDI Policy, foreign investment in the insurance and pension sector is capped at 26% under automatic route, with 49% composite cap for total foreign investment. The investment under the automatic route is proposed to be increased to 49% from 26%.
- **ARCs:** Under the extant FDI Policy, foreign investment in ARCs is capped at 49% under automatic route, with 100% composite cap for total foreign investment. The investment under the automatic route is proposed to be increased to 100% from 49%. Further, FPIs will be allowed up to 100% of each tranche in securities receipts issued by ARCs subject to sectoral caps.
- **Exchanges:** As per the extant laws, a person resident outside India, directly or indirectly, either individually or together with persons acting in concert, cannot acquire or hold more than 5% of the paid up equity share capital in an exchange. This limit is proposed to be increased to 15%.

- **Central Public Sector Enterprise:** The existing 24% limit for investment by FPIs in Central Public Sector Enterprises, other than banks will be increased to 49% to obviate the need for prior approval of Government for increasing the FPI investment.

New Instruments Proposed to be Introduced

As per the extant FDI Policy, foreign investments can be made in equity shares; fully, compulsorily & mandatorily convertible preference shares; fully, compulsorily & mandatorily convertible debentures, warrants and partly-paid up shares. The instruments in which foreign investment can be made is further proposed to include hybrid instruments. The nature of such instruments and regulations are expected to be announced separately.

New Non-Banking Financial Activities to be Opened for Foreign Investment

As per the extant FDI Policy, foreign investment can be made in 18 NBFCs. It is proposed that more NBFCs activities are introduced for investment under the automatic route.

Amendment to the FCRA

It has been clarified that where investment in share capital of an Indian company has been made as per the FEMA, such company will not be treated as a foreign source for the purposes of the FCRA.

ELP Comments

One of the pillars for the mentioned proposals in the Budget is governance and ease of doing business and to enable the people to realise their full potential. As we are aware that in view of the same, the Government has been amending the statutes like Companies Act, 2013 to ease doing of business and has accordingly proposed the above-mentioned changes to enable foreign investment in sectors which are cash-crunch like, insurance and pension sector. The move in relation in 100% foreign investment in marketing of food products produced and manufactured in India is a welcome move as this will benefit farmers and local manufacturers, allow growth to the highly potential food processing industry and create vast employment opportunities. Also, inclusion of hybrid instruments for foreign investment will bring the country at par with other global jurisdictions and help the foreign investor to invest in various other modes than the existing traditional instruments.

GLOSSARY OF TERMS

Abbreviation	Meaning
AE	Associated Enterprise
AIF	Alternative Investment Fund
AIM	Atal Innovation Mission
ALP	Arms Length Price
AO	Assessing Officer
AOP	Association of Persons
ARC	Asset Reconstruction Companies
AY	Assessment Year
BDT	Buy-back Distribution Tax
BIPA	Bilateral Investment Protection Agreement
BOE	Bill of Entry
BOI	Body of Individuals
CBDT	Central Board of Direct Taxes
CBEC / Board	Central Board of Excise and Customs
CCR	CENVAT Credit Rules, 2004
CE Act	Central Excise Act, 1944
CE Removal Rules	Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001
CE Rules	Central Excise Rules, 2002
CET Act	Central Excise Tariff Act, 1985
CETH	Central Excise Tariff Heading
CMD	Chairman and Managing Director
CST	Central Sales Tax
CST Act	Central Sales Tax Act, 1956
CTA	Customs Tariff Act, 1975
CTH	Customs Tariff Heading
Customs Act	Customs Act, 1962
DDT	Dividend Distribution Tax
DTAA or Tax Treaty	Double Taxation Avoidance Agreement entered into by India
DTC	Direct Taxes Code Bill, 2013
E Cess	Education Cess
ECS	Electronic Clearing System
EHTP	Electronic Hardware Technology Park
EOU	Export Oriented Unit
EPC	Engineering Procurement Construction
FCRA	Foreign Contribution (Regulation) Act, 2010
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FERA	Foreign Exchange Regulation Act, 1973
FII	Foreign Institutional Investors
FIPB	Foreign Investment Promotion Board
FMC	Forward Market Commission
FOB	Free on Board
FPI	Foreign Portfolio Investor
FSLRC	Financial Sector Legislative Reforms Commission
FTS	Fees for Technical Services
FY	Financial Year
GIFT	Gujarat International Finance Tec-City
GST	Goods and Services Tax
GTA	Goods Transport Agency
HC	High Court

Abbreviation	Meaning
HRA	House Rent Allowance
HSN	Harmonized System of Nomenclature
HUF	Hindu Undivided Family
ICT	Information and Communication Technology
INR	Indian Rupees
InvITS	Infrastructure Investment Trusts
IRDA	Insurance Regulatory and Development Authority
IREDA	Indian Renewable Energy Development Agency Limited
IT Act	Income Tax Act, 1961
ITAT	Income Tax Appellate Tribunal
KYC	Know Your Customer
LIC	Life Insurance Corporation of India
LLP	Limited Liability Partnership
MAT	Minimum Alternate Tax
MSMEs	Micro, Small and Medium Enterprises
NABARD	National Bank for Agriculture and Rural Development
NBFC	Non-Banking Financial Company
NHAI	National Highways Authority of India
NPA	Non Performing Asset
OECD	Organization for Economic Co-operation and Development
PE	Permanent Establishment
PFC	Power Finance Corporation
PFRDA	Pension Fund Regulatory and Development Authority
POEM	Place of Effective Management
POTR	Point of Taxation Rules, 2011
PPP	Public Private Partnership
PPSR	Place of Provision of Service Rules, 2012
PSU	Public Sector Undertaking
PY	Previous Year
QFI	Qualified Foreign Investor
RBI	Reserve Bank of India
REC	Rural Electrification Corporation Limited
REIT	Real Estate Investment Trust
RSP	Retail Sale Price
SARFAESI Act, 2002	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SC	Scheduled Caste
SDT	Specified Domestic Transaction
SEBI	Securities and Exchange Board of India
SETU	Self-Employment and Talent Utilisation
SHE Cess	Secondary and Higher Education Cess
SPV	Special Purpose Vehicle
ST	Scheduled Tribe
STP	Software Technology Park
STR	Service Tax Rules, 1994
TDS	Taxes Deducted at Source
The Act	Finance Act, 1994
TP	Transfer Pricing
TPO	Transfer Pricing Officer
TReDS	Trade Receivables Discounting System
TreDS Guidelines	Guidelines for setting up and operating the TreDs
UFA	Unified Financial Agency
UK	United Kingdom

Abbreviation	Meaning
UNCITRAL	United Nations Commission on International Trade Law
Wealth Tax Act	Wealth Tax Act, 1957
w.e.f.	with effect from
w.r.t.	With respect to
WTO	World Trade Organisation

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