

ERGO

Analysing developments impacting business

UNION BUDGET 2016-17

Contents

Direct Tax	1 – 23
Indirect Tax	24 – 44
1 March 2016	

DIRECT TAX

RATING THE LEAP DAY RELEASE OF THE YEAR			
★	★	★	Welcome
★	★	☆	Neutral
★	☆	☆	Not so welcome
☆	☆	☆	Missed
GAAR to be effective from 1 April 2017	★	★	☆
Application of POEM deferred	★	★	★
Clarification in Vodafone law	☆	☆	☆
No MAT on foreign companies	★	★	★
Concessional tax regime for patents developed in India	★	★	★
Tax incentives for start-ups	★	★	☆
Real Estate sector	★	★	★
Concessional withholding tax rate (5%) on interest on Rupee Denominated Bonds	☆	☆	☆

RATING THE LEAP DAY RELEASE OF THE YEAR

Funds sector (AIFs, Securitisation Trusts, Offshore Fund Managers)	★	★	★
Presumptive taxation regime	★	★	☆
Tax incentives for International Financial Services Centre	★	★	★
Disclosure scheme for unaccounted income	★	★	☆
BEPS captured	★	★	☆
Ambiguity re long term capital gains on unlisted shares addressed	★	★	★
Tax neutrality on conversion of a company into LLP	★	☆	☆
Dispute resolution	★	★	★
Taxing the rich	★	★	☆
Deferment of Income Computation & Disclosure Standards	☆	☆	☆
Reduction in period of holding for unlisted shares	☆	☆	☆

Some of the major proposals in the Finance Bill, 2016 (Bill) are discussed below:

TAX RATES

in line with the phased reduction in corporate tax rate, as announced by the Finance Minister (FM) last year, the Bill proposes to reduce the corporate tax rate from 30% to 29% for certain small domestic companies.

The corporate tax rate and rates of surcharge are proposed to be changed as follows:

Category	Rate ¹	
	Current	Proposed
Corporate tax rate Domestic companies	30%	29% (provided total turnover/gross receipts in the Financial Year (FY) 2014-15 does not exceed INR 50 million) Else, 30%
Corporate tax rate Newly set up domestic companies	30%	25% (at the option of the company subject to certain conditions such as: - company is setup and registered on or after 1 March 2016; - company is engaged in manufacturing business; - company, while computing its taxable income, does not claim certain

¹ Please note that the rates mentioned in the document are exclusive of applicable surcharge and education cess.

		specified tax benefits.)
Surcharge Taxpayers other than companies	12% (with income exceeding INR 10 million)	15% (with income exceeding INR 10 million)

The revised rates are proposed to be effective for FY 2016-17.

There are no changes with respect to the following:

- slab rates for resident individuals;
- corporate tax rate applicable to foreign companies;
- the rate of surcharge applicable to domestic companies and foreign companies;
- the rate of education and higher education cess applicable to all taxpayers;
- there are no changes in the Dividend Distribution Tax (DDT) rates; and
- the rate of Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT).

DIVIDENDS OVER INR 1 MILLION TAXABLE FOR NON-CORPORATE RESIDENT TAXPAYERS

Currently, dividends are subject to a DDT of 15% in the hands of the company and are tax exempt in the hands of the shareholders of the company (irrespective of whether they are resident or non-resident).

The Bill proposes that dividends received by resident taxpayer being either an individual, Hindu Undivided Family or a firm in excess of INR 1 million will be taxed at the rate of 10% in the hands of the recipient on a gross basis.

This amendment is proposed to be effective from FY 2016-17 onwards.

STT INCREASED WHERE OPTION NOT EXERCISED

Currently, the rate of securities transaction tax (STT) on the sale of an option in securities where the option has not been exercised is 0.017% of the option premium.

The Bill proposes to increase this rate to 0.05%.

This amendment is proposed to be effective from 1 June 2016.

CLARIFICATION REGARDING THE TAX RATE ON SALE OF SHARES OF A PRIVATE LIMITED COMPANY

Currently, in case of non-resident taxpayers long term capital gains (LTCG) from transfer of 'securities' are taxed at the rate of 10%. The term 'securities' has been assigned the same meaning as ascribed to it under the Securities Contracts (Regulations) Act, 1956 (SCRA).

Under SCRA, in certain rulings the courts have held that shares of a private limited company are not 'securities'. Consequently, the applicability of the concessional tax rate of 10% to LTCG from transfer of shares of a private limited company was a grey area. Resultantly such gains are considered as taxable at the higher rate of 20%.

This result was unintended and hence, to address this, the Bill has extended the concessional tax rate of 10% on LTCG arising from transfer of shares of a company in which the public are not substantially interested (essentially a closely held company, including a private company), in addition to 'unlisted securities'.

This amendment is proposed to be effective from FY 2016-17.

This amendment is a welcome move and would put to rest the controversy surrounding the taxability of gains from the sale of shares of private limited companies.

Further, the FM in his budget speech had proposed that shares of unlisted companies will be treated as long term capital asset if they are held for a period of more than two years as against three years under the existing provisions of the Income-tax Act 1961 (IT Act). However, the Bill is silent on this aspect.

This seems to be an unintentional miss and may be included at the time of enactment of the Bill.

PAVING THE WAY FOR REDUCTION IN CORPORATE TAX

In line with the announcement made last year to reduce corporate tax rate in a calibrated manner coupled with withdrawal of investment and profit linked deductions and exemptions, the Bill proposes withdrawal of certain deductions and exemptions. Some of the major provisions are as under:

- sunset clause proposed such that no profit linked deductions will be available to units in Special Economic Zones (SEZs) where the SEZ units start their operations after 1 April 2020;
- no deduction would be available in relation to development, operation and maintenance of an infrastructure facility, development of SEZs and production of mineral and natural gas if the specified activities start after 1 April 2017;
- the weighted deduction of 150% of expenditure on eligible projects and skill development projects is proposed to be reduced to 100% from 1 April 2020;
- weighted deduction for expenditure on scientific research to be reduced to 150% from 175% and 200% (in certain cases) from 1 April 2017 and further reduced to 100% from 1 April 2020;
- accelerated depreciation restricted to 40% in a FY as against 100% which can be claimed currently for certain block of assets.

There are other weighted deductions also which are being phased out or reduced only to the amount of expenditure incurred by the year 2020.

As set out in the Tax Rates section of this newsflash, there are corresponding reductions in corporate tax rates to some extent. However, the full 1% reduction for all companies which was expected has not been proposed and it is a miss.

GO START A VENTURE!

TAX HOLIDAY FOR START-UPS

The Bill proposes to introduce various provisions for promoting investments into start-ups in India. An 'eligible start-up' would be eligible for a 100% tax holiday on its profits from an 'eligible business' for a period of any three consecutive years out of the initial 5 year period.

An eligible start-up is a 'company' which is incorporated on or after 1 April 2016 but before 1 April 2019, whose turnover does not exceed INR 250 million in a year and which holds a certificate of eligible business from the Inter-Ministerial Board of Certification. Further, an 'eligible business' would be a business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.

This amendment is proposed to be effective from FY 2016-17 onwards.

BENEFITS EXTENDED TO INVESTORS

Currently the law provides an exemption from LTCG arising to individuals and Hindu Undivided Family (HUF) from transfer of residential property (i.e. house or plot of land) if the amount of such gains are invested in equity shares of certain eligible companies.

The Bill proposes to extend the benefit of this exemption to investments made into equity shares of eligible start-ups as well.

Further, the Bill proposes to provide a scheme for exemption from LTCG if such gains are invested in the units of a fund, which will be notified by the Government of India (Government). However, this benefit would only be allowed for investments up to INR 5 million during a financial year.

These amendments are proposed to be effective for FY 2016-17 and onwards.

MAT: BIG WIN FOR FOREIGN COMPANIES

GOVERNMENT SETTLES MAT ISSUE FOR FOREIGN COMPANIES

Currently, the IT Act specifies that, in case of a company, MAT at the rate of 18.5% on book profit is applicable, if the tax payable on the total income of such company as computed under the IT Act is less than 18.5% of its adjusted book profits. The Finance Act, 2015, clarified that certain incomes arising to foreign companies are not subject to MAT, which begged the question – whether MAT was applicable on such income for previous years.

Ongoing tax controversies relate to whether foreign companies including Foreign Portfolio Investors (FPIs, erstwhile Foreign Institutional Investors) who do not have any place of business in India are subject to MAT for periods prior to 2015. To address the plummeting foreign investment, the Government constituted a High Level Committee to review the issue of applicability of MAT on FPIs. Thereafter, accepting the recommendations of the aforesaid Committee, the Government clarified that for the period commencing from 1 April 2001, foreign companies and FPIs are not subject to MAT so long as they do not have a place of business in India (either under the relevant Double Taxation Avoidance Agreement (DTAA) or the IT Act).

In order to codify the above developments, the Bill proposes that a foreign company shall not be subject to MAT where:

- the country of residence of the foreign company has entered into a DTAA with India, and such company does not have a permanent establishment (PE) in India in terms of the DTAA; or
- the country of residence of the foreign company has not entered into a DTAA with India, then such company is not required to seek registration in India under any applicable law.

This amendment is proposed to be retrospectively effective from FY 2000-01 onwards.

This puts to rest the controversy created by the issuance of notices by the tax department to many FPIs who earned income upon sale of their investments several years ago. This should help establish faith in the Government's commitment not to rake up controversies.

TAKING LEAPS TOWARDS BEPS OBJECTIVE

In pursuance of its commitment to introduce measures to curb Base Erosion and Profit Shifting (BEPS), India has adopted some of the recommendations of the Organisation for Economic Co-operation and Development (OECD) BEPS Action Plans. The Bill proposes to incorporate within the domestic tax laws, certain proposals from the BEPS recommendations, such as taxation of digital economy, transfer pricing documentation and Country-by-Country (CbC) reporting, for increased transparency and accountability in the taxation regime.

TAXATION OF DIGITAL ECONOMY (EQUALISATION LEVY)

Currently, domestic tax laws do not contain specific provisions for the taxation of transactions in the digital economy. The Bill proposes to introduce an 'Equalisation Levy' of 6% in respect of certain specified services involving payments greater than INR 0.1 million in the online marketing and advertising arena rendered by non-residents who do not have a PE in India (Service Provider). This levy is in the form of a withholding obligation on the payer.

These provisions are introduced as a separate chapter in the Bill, and not as a part of the IT Act. Currently, the Bill proposes to apply this levy only on B2B transactions between the Service Provider and:

- a resident, carrying on any business or profession in India; or
- a non-resident having a PE in India, being the service recipient.

The provisions of the Bill are proposed to not apply to transactions where a non-resident having a PE in India acts as a service provider, or where the transaction is not for the purpose of carrying out any business or profession. The former would be covered under the normal provisions of the IT Act. The Bill has also specified timelines for the deposit of this levy by the payer, failure to comply with which would attract penal provisions. This is defensible on proving reasonable cause for the non-deposit of the levy.

Interestingly, this equalisation levy is proposed to be introduced as a separate code, complete with the procedural aspects of its administration including its application, penalties, appeals and resolution of disputes. The provisions of the IT Act are not made applicable

to the code, except as specifically provided. For instance, to address the issue of double taxation, it is proposed that an exemption from inclusion in total income under Section 10 of the IT Act be provided for such payment where the equalisation levy has been deducted. Further, where such a levy is not deducted by the payer, he will not be able to claim a deduction of expense for payments made for the specified services. Since, these provisions are not a part of the IT Act, provisions under Sections 90, 195, 197 of the IT Act are inapplicable, i.e. the payee may not take benefit of any reduced withholding obligations under any DTAA, or approach the tax authorities for a lower or nil withholding tax certificate etc. It is however, unclear whether the compliance requirements for payments to a non-resident will be applicable in such transactions.

This proposal is India's first step towards addressing tax leakage arising out of the lack of a statutory basis to tax digital economy transactions in concurrence with BEPS. One may expect to see a full-fledged code dealing with the taxation of digital economy transactions for services beyond the realm of advertising and marketing being introduced as is clear from the fact that the Bill provides that further services will be notified later.

These provisions will become effective upon notification from the Central Government.

TAXATION OF INCOME FROM 'PATENTS'

Currently, domestic tax laws do not contain any special regime for the taxation of patents. The Bill proposes to tax the income of any eligible taxpayer derived from royalties at the rate of 10% on a gross basis. The eligibility to claim this concessional rate of taxation is available to those taxpayers who are resident in India, and are the true and first inventors of the patents registered under the Patents Act, 1970 for the use of which they are receiving royalties.

Consistent with the 'nexus approach' under Action 5 of the BEPS recommendations, which confers the right to tax on that jurisdiction, where substantial research and development (R&D) activities are carried out, and with an aim to promote India as an R&D hub, this concessional regime of taxation of income derived from royalties, has been introduced. It is hoped that this would promote India as a centre for R&D and promote innovation.

This amendment is proposed to be effective from FY 2016-17 onwards.

CbC REPORTING

Consistent with the Action Plan 13 of the BEPS Report, and with an aim to develop rules relating to transfer pricing documentation, to enhance transparency of tax administration, CbC reporting has been introduced. The Bill proposes to ensure a robust transfer pricing analysis by mandating the maintenance of specified documents in specified forms being:

- a master file containing standardised information relevant for all multinational enterprises (MNE) group members;
- a local file referring specifically to material transactions of the local taxpayer; and
- a CbC report containing certain information relating to the global allocation of the MNE's income and taxes paid together with certain indicators of the location of economic activity within the MNE group.

The CbC report has to be submitted annually by the parent entity of an international group for each tax jurisdiction in which they do business, to the prescribed authority in its country of residence. The Bill proposes to impose the reporting regime on MNEs meeting a monetary threshold for consolidated group revenues of INR 50 billion approximately.

Separately, the Bill also proposes to impose the reporting obligation on the entities in India which belong to an international group, where the jurisdiction of the parent entity does not have an agreement for the exchange of CbC reporting or such country does not exchange such information with India. The Bill proposes to levy a penalty for failure and delay of CbC reporting, and the furnishing of inaccurate particulars in the CbC reports. However, a defensible claim for non-levy of penalty can be made on offering reasonable cause.

Given that India already has an aggressive transfer pricing regime, the introduction of CbC reporting consistent with the BEPS measures is a positive step towards accountability and transparency in structuring of transactions among MNE group entities, which will also be helpful in tackling any aggressive structuring for tax avoidance.

This amendment is proposed to be effective from FY 2016-17 onwards.

TAX INCENTIVES: TO HAVE AND TO HOLD

INTERNATIONAL FINANCIAL SERVICES CENTRE

The Government has shown its commitment to promote the development of International Financial Services Centres (IFSCs) into world class financial services hubs. It aims to do so by proposing some tax friendly measures in the IT Act with regard to capital gains tax, STT, MAT and DDT on the income of a unit located in the IFSC (where its income is earned in convertible foreign exchange).

The IT Act provides an exemption from payment of tax on LTCG arising from transfer of equity shares on which STT has been paid. Further, despite a corporate taxpayer not being subject to LTCG tax on sale of securities on a stock exchange, where STT is paid, it is required to pay MAT at the rate of 18.5%. Also, companies are required to pay DDT for distribution of profits to shareholders.

With a view to achieve the objectives for development of IFSCs, the Bill proposes the following provisions:

- exemption from tax on LTCG arising from transactions undertaken on a recognised stock exchange located in any IFSC and where the consideration is paid or payable in foreign currency, even if STT has not been paid on such transactions;
- corresponding amendments under the STT Act to exclude such transactions from the purview of STT and from the levy of commodities transaction tax; and
- where the income of a company located in an IFSC is derived solely in convertible foreign exchange then:
 - MAT will be levied at the rate of 9% compared to 18.5% in case of other companies in India; and
 - dividends declared by such company out of its current income on or after 1 April 2017 will not attract DDT either in the hands of the company or the recipient of dividends.

IFSC has been assigned the same meaning as provided under the Special Economic Zones Act, 2005. The above amendment is proposed to be effective from FY 2016-17.

These are significant tax proposals, indicating the seriousness of the Government in promoting IFSCs in India.

COMPANIES TO BENEFIT FROM GRACE PERIOD ALLOWED BETWEEN ACQUISITION AND INSTALLATION OF NEW ASSET

Currently, the IT Act specifies that, manufacturing companies may avail an investment allowance at the rate of 15% on investments made in new assets such as plant and machinery exceeding INR 250 million so long as the acquisition and installation of the asset is undertaken in the same year.

The Bill proposes to do away with the requirement that the asset should be acquired and installed in the same year. The Bill proposes to allow companies to avail the allowance so long as the assets are installed on or before 31 March 2017. Further, the deduction shall be allowed in the year of installation (of the new asset).

The introduction of the grace period for installation signifies that the Government is in sync with ground issues faced by the manufacturing sector and is a welcome move.

This amendment is proposed to be made retrospectively effective from FY 2015-16 onwards.

RUPEE DENOMINATED BONDS

Recently, the Reserve Bank of India has permitted Indian companies to issue rupee denominated bonds outside India as a measure to enable them to raise funds from outside India.

Taking cognisance of the fact that the non-resident investor in such bonds bears the risk of currency fluctuation, the Bill proposes that if there is any appreciation (gains) of rupee between the date of issue of bond and date of redemption against the foreign currency in which the investment is made, the same shall be excluded from the total sales consideration for the purposes of computing the capital gains. The amendment is proposed to be effective from FY 2016-17.

Whilst this is a welcome provision, the Bill is silent on extending concessional withholding tax of 5% on the interest coupon on such bonds, as clarified in the press release issued by the Government on 29 October 2015. It is hoped that this is an unintended lapse and will be rectified by way of amendment to the Bill.

INCENTIVISING HOUSING FOR ALL

The Bill seeks to allow taxpayers engaged in the business of developing and building housing projects a 100% deduction of the profits subject to the following principal conditions:

- The housing project is approved by the competent authority before 31 March 2019 and is completed within 3 years from the date of such approval;
- The project plot is a minimum of 1000 sq. mtrs where the project is in the vicinity of metros (2000 sq. mtrs otherwise); and
- Once a residential unit is allotted to an individual, no other unit will be allotted to the spouse or minor children of the individual in the same project.

An additional deduction for interest paid to the extent of INR 0.05 million has been proposed for first home buyers to give a boost to the real estate sector. This is in line with the Government's commitment to provide affordable housing for all and is proposed to be effective for FY 2016-17 and onwards.

ECONOMIC ACTIVITIES UNDERTAKEN IN STRATEGIC SECTORS: NO TAX FOR NON-RESIDENT

Currently, the IT Act specifies source rules of taxation whereby income arising to a non-resident through or from a 'business connection' in India is taxed in India. Essentially, a non-resident's 'real and intimate' economic nexus with India allows India to tax income arising from such connection.

The Bill proposes to introduce tax exemption in two sectors from such levy, both targeted to boost economic activity in India – viz. storage and sale of crude oil in a facility in India and the mere display of rough diamonds in a special notified zone.

The Bill proposes to exempt a foreign company's income on account of storage and sale of crude oil in a facility in India so long as (i) the Government is either party to the contractual agreement to store and sell crude oil or has approved of such agreement and (ii) the foreign company along with the agreement has been notified by the Government.

Similarly, income arising to foreign companies engaged in the business of mining diamonds that merely display uncut or un-assorted diamonds in any notified special zone in India shall not be deemed to accrue or arise in India. In the absence of such a specific provision, merely displaying the diamonds without undertaking a sale may establish a business connection in India and consequently may trigger Indian tax incidence.

The above exemptions are certainly a shot in the arm for foreign companies as well as accord the twin benefit of furthering India's interest to maintain and build reserves for crude oil which would help stabilise prices for Indian oil companies.

Though the Memorandum provides that the amendment is proposed to be effective retrospectively from FY 2015-16 onwards, the Bill is silent on the same. It is expected that foreign companies shall, unlike other times, welcome this beneficial retrospective change.

FUNDS: THE REITs, INVITs, MUTUAL FUNDS et al

PASS THROUGH STATUS TO REAL ESTATE INVESTMENTS TRUSTS (REITS) AND INFRASTRUCTURE INVESTMENT TRUSTS (INVITS) FORTIFIED - NO DDT BY SPVs

Currently, the intention to provide tax pass through to REITs and Invits (Business Trusts) as well as neutrality of tax implication whether the investment is made by Business Trusts directly in an asset or through SPV, is not achieved. The reason is that in case of investments by Business Trusts in SPVs, the latter pay tax on their income and then pay DDT on dividends that they distribute to Business Trusts. As a result, these structures have not really taken off as was expected.

The Bill proposes to exempt dividends distributed by the SPVs from DDT. Such dividends shall also be exempt from any further tax in the hands of the Business Trusts as well as the investors. Such exemption shall be available 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 another entity as per a requirement under any law or directions of the Government. Further, such exemption shall only be in respect of dividends paid out of current income after the date when the business trust acquires the prescribed shareholding in the SPV.

The interest income of the investors will continue to be subjected to withholding tax when received through the business trusts.

This is a welcome change proposed and is expected to boost this sector.

This amendment is proposed to be effective from 1 June 2016.

TAX PASS THROUGH STATUS TO SECURITISATION TRUSTS

Currently, the distributions made by a securitisation trust are subject to distribution tax levied on the securitisation trust at the rate of (i) 25% if the distribution is made to an individual or an HUF; (ii) 30% in other cases; and (iii) nil where the income is not chargeable in the hands of the investor. The income of a securitisation trust and the distributions made by it to its investors is exempt from tax. Under the current provisions, the trusts set up by reconstruction or securitisation companies established for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) are not covered by this provision. Also, currently the way levy of taxation is prescribed, it does not provide pass through status to the securitisation trusts and as the income is exempt in the hands of the investors, the expenses incurred in respect of income from securitisation trusts is disallowed.

The Bill proposes to rectify this position and introduce tax 'pass through' status for securitisation trusts, including trusts set up by the reconstruction or securitisation companies established for the purposes of the SARFESI Act. Accordingly, any income accruing or arising to an investor of a securitisation trust, out of investments made by the securitisation trust, shall be chargeable to income-tax directly in the hands of such investor. The nature of such income is proposed to be the same as if the investor had made the investment directly and not through the securitisation trust. The securitisation trust shall withhold tax in case of distributions to resident investors (i) at a rate of 25% if the distribution is made to an individual or an HUF; (ii) at a rate of 30% in other cases; and in case of distributions to non-residents at the rates in force. The Bill also enables the investors to approach the tax authorities to obtain a certificate for deduction of tax at lower or nil rate.

As regards payments to non-residents, the amendment is welcome as they will be able to benefit where the income is otherwise exempt under the IT Act (such as dividends) or under the applicable DTAA. However, in case of payments to residents, the applicability of withholding tax in relation to income which is otherwise exempt under the IT Act seems to be ambiguous.

The aforesaid amendments are proposed to be effective from FY 2016-17 onwards. The provisions relating to withholding tax are proposed to be effective from 1 June 2016.

CATEGORY I & II ALTERNATE INVESTMENT FUNDS (AIFs) - WITHHOLDING TAX ON PAYMENTS TO NON-RESIDENT INVESTORS RATIONALISED

Currently, AIFs enjoy a 'tax pass through' status in respect of income other than business income. The business income is taxable at the level of the AIFs and the other income is taxable in the hands of the investor as if the investor had made the investment directly. Further, distributions (other than business income) made by an AIF to the investors is subject to withholding tax at the rate of 10%. This gave rise to concerns where the income is otherwise exempt in the hands of the investor under the IT Act or the applicable DTAA. To address this concern, the Bill proposes that in case of payments to residents, a withholding tax rate of 10% will apply and in case of payments to non-residents, the withholding tax shall be at the 'rates in force'. The IT Act defines 'rates in force' to include rates under the applicable DTAA. The Bill also enables the investors to approach the tax authorities to obtain a certificate for deduction of tax at lower or nil rate.

This amendment in respect of payment of income to non-residents is welcome as they will be able to benefit where the income is otherwise exempt under the IT Act (such as dividends) or under the applicable DTAA. However, in case of payments to residents, the applicability of withholding tax in relation to income which is otherwise exempt under the IT Act seems to be ambiguous.

This amendment is proposed to be effective from 1 June 2016.

MOVING FUND MANAGERS TO INDIA MAY BE A REALITY?

Currently in the case of an eligible investment fund registered outside India, fund management activity carried out through an eligible fund manager in India neither gives rise to a business connection of the offshore fund in India nor creation of its POEM in India, subject to certain specified conditions. The conditions for being an eligible investment fund include conditions to the effect that the fund should be a resident of a country with which India has signed a bilateral treaty or a treaty has been signed between specified associations and that it should not carry on or control any business from India.

The existing conditions are onerous and majority of funds are unlikely to qualify as tax residents of a country with which India has a bilateral treaty on account of domestic tax laws or legal framework (such as large pension funds from USA) of the jurisdiction where the

fund is located. The Bill proposes to extend applicability of the above provisions to funds which are registered or incorporated in countries to be notified by the Government. 'Residence' criteria shall not be applicable. Further, it is also proposed that the condition relating to controlling business from India would be deleted.

These changes may make it possible for some fund managers to locate in India without worrying about the exposure of the income of the offshore fund being taxed in India.

This amendment is proposed to be effective from FY 2016-17 onwards.

CONSOLIDATION OF PLANS WITHIN MUTUAL FUND SCHEME

Currently capital gains exemption has been provided for holders of mutual fund units when the transfer takes place as a result of consolidation of mutual fund schemes. The Securities and Exchange Board of India has issued guidelines in relation to consolidation of plans of mutual funds within a scheme.

The Bill proposes to extend the benefit of capital gains tax exemption at the time of transfer of units of a mutual fund as a result of consolidation plans of the mutual fund scheme.

This amendment is proposed to be effective for FY 2016-17 and onwards.

This amendment is proposed to be effective from FY 2016-17 onwards.

A (SHORT) BREATHING FROM POEM

GOVERNMENT TO DEFER POEM FOR A YEAR AND CLARIFY ITS APPLICATION

Currently, the IT Act specifies a two-pronged test for determining corporate residence viz., if the company is an Indian company (i.e., incorporated in India) or if its 'Place of Effective Management' (POEM), in that year, is in India.

The Bill proposes to retain the above test for corporate residence but defers the application of the POEM threshold for corporate residency by a year. Importantly, the Bill proposes to introduce special provisions (vide Chapter XII-BC) that address issues relating to the applicability of current provisions of the IT Act to a foreign company that has not been an Indian tax resident before the determination of its POEM in India. Such companies shall be subject to conditions as notified by the Government. For instance, it was unclear how foreign companies, that would otherwise be regarded as Indian tax residents by virtue of their POEM being in India, would deal with issues relating to the payment of advance tax, computation of total income, transfer pricing and set off of losses.

In order to ensure that there is ease of compliance, the Bill proposes to introduce a 'transition mechanism' – the relief stands revoked for companies that have availed of any benefit or exemption under the IT Act in previous years and fail to adhere to the conditions as specified in the notification to be issued later. Further, the tax authorities shall have the power to re-compute the foreign company's total income and the 4 year period of limitation within which the tax authority must re-compute the total income shall commence from the end of the year of non-compliance.

Deferring the POEM certainly provides some respite to foreign companies who were unpleasantly surprised by the Finance Act, 2015. Emphasis is to facilitate the smooth application of POEM by providing a transition mechanism as well as requiring the notification that is proposed to be issued by the Government, under this provision to be passed by both Houses of the Indian Parliament to ensure procedural propriety and the much needed time to deliberate the implementation of the POEM threshold.

This amendment is proposed to be effective from FY 2016-17 onwards.

THE COLOUR OF MONEY STILL MATTERS!

THE INCOME DECLARATION SCHEME, 2016

In line with the disclosure window provided for declaration of foreign sourced undisclosed income last year, the Bill envisages introducing a disclosure window for declaration of domestically sourced income that has been undisclosed thus far.

The Bill proposes to introduce an "Income Declaration Scheme, 2016" to provide those resident taxpayers an option to declare any income up to FY 2015-16, for which either no return has been furnished, or which is not disclosed in the income-tax return, or which has escaped assessment due to non-disclosure of material facts necessary for assessment.

Exclusions to this disclosure window apply to taxpayers, in respect of whom:

- notices have been issued under Sections 142(1) or 143(2) or 148 or 153A or 153C of the IT Act;
- a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the IT Act has not expired;
- information is received under an agreement with foreign countries regarding such undisclosed income;
- cases covered under the Black Money Act, 2015;
- persons notified under Special Court Act, 1992; or
- cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

The Bill proposes to tax the undisclosed income at the rate of 30%, plus surcharge at the rate of 7.5% (under the Krishi Kalyan Cess) and a penalty of 7.5%, thus aggregating to an effective rate of tax and penalty on the undisclosed income of 45%. The provisions for calculation of fair market value of assets will be prescribed. No deduction in respect of any expenditure or allowance will be possible. The tax, cess and penalty will need to be paid within the time limit as will be separately prescribed and if the declarant fails to pay the sums by the notified date, the declaration made will deem to have never been made. Also, any sum paid under these provisions will not be refundable.

The amount declared will not be added as income in any other proceedings under the IT Act. The Bill proposes to exempt the declarant, from scrutiny, enquiry, penalty and prosecution under the provisions of the IT Act, Wealth Tax Act, as well as the Benami Transactions (Prohibitions) Act, 1988 in relation to the declared income.

This amnesty, if successful, would help the Government in reducing the black money, add to the tax base and increase tax revenues.

These provisions are proposed to be effective from 1 June 2016.

WHY DISPUTE WHEN YOU CAN SETTLE?

PROVIDING LEGAL FRAMEWORK FOR E-COMMUNICATION AND PAPERLESS ASSESSMENT

Currently, the provisions relating to authentication of notices and other documents sent by the tax authorities require a notice or other document issued by any income tax authority, to be signed by that authority in manuscript.

In order to digitize the assessment procedure, the Bill proposes to amend these provisions to enable the tax authorities to issue notice or other document either in paper form or electronic form. The Bill proposes similar amendment to Section 143(2) to enable communication of data and documents through electronic mode, and thereby enable a paperless communication mechanism.

These amendments are proposed to be effective from 1 June 2016.

FILING OF RETURN OF INCOME AFTER CONSIDERING EXEMPTED LTCG

Currently, the provisions of Section 139 require every person to file a return of income on or before the due date, if his taxable income during the financial year exceeds the maximum amount which is not chargeable to tax (a person having any amount of exempt income, but having taxable income below the taxable limits was not required to file tax return).

The Bill proposes to amend Section 139(1) to provide that a person would also be required to file return of income, if the total income including LTCG exempt under Section 10(38), exceeds the maximum amount which is not chargeable to tax.

This amendment is proposed to be effective from FY 2016-17 onwards.

PENALTY FOR UNDER REPORTING AND MISREPORTING OF INCOME

Currently, Section 271(1)(c) provides for levy of penalty for concealment of income or furnishing of inaccurate particulars of income (and provides for a penalty of up to three times of the tax sought to be evaded).

The Bill proposes to provide that a person who has under reported his income would be liable to pay penalty of an amount equal to 50% of the amount of tax payable on 'under-reported' income. Under the proposed Section 270A a taxpayer would be considered to have 'under-reported' his income if:

- income assessed is greater than the income determined in the processed return of income;
- 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;
- deemed total income as assessed or re-assessed under section 115JB or 115JC is greater than the deemed total income in the return of income;
- income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

Amount of 'under-reported' income is proposed to be the difference between the assessed income and income as determined under return which is processed under Section 143(1)(a) of the IT Act. In case, where no return has been furnished, the amount of 'under-reported' income is proposed to be the assessed income, for a company, firm or local authority; and difference between assessed income and maximum amount not chargeable to tax. The Bill proposes that the tax payable on 'under-reported' income shall be calculated as if the 'under-reported' income is the total income, in any other case, the tax payable shall be 30% of the 'under-reported' income.

The Bill also proposes that where under reporting of income results from misreporting of income, the taxpayer would be liable for a penalty at the rate of 200% of the tax payable on such misreported income. The cases of misreporting of income would be as under:

- misrepresentation or suppression of facts;
- failure to record investments in the books of account;
- claim of expenditure not substantiated by any evidence;
- recording of false entry in the 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.

No penalty will be levied in certain cases (where the taxpayer offer a satisfactory explanation that the claim was bona fide and all material facts were disclosed, and where the undisclosed income was on account of a search operation and penalty thereon is leviable is under Section 277AAB).

This amendment is proposed to be effective from FY 2016-17 onwards. Proceedings initiated before 1 April, 2016 would however continue to be governed by the provisions of Section 271(1)(c).

RATIONALISATION OF TIME LIMIT FOR ASSESSMENT, REASSESSMENT AND RECOMPUTATION

The Bill proposes to make the following changes in time limits for completion of assessment proceedings under the IT Act:

Assessment under Section	Time Limit (from the end of assessment year)	
	Current	Proposed
Section 143 / Section 144	2 years	21 months
Section 147	1 year	9 months
Section 153A / 153C	2 years	21 months

Provision	Time Limit	Whether Extension Can Be Granted	Treatment Of Cases Pending As On 1 June 2016
Giving effect to an order of a higher / appellate authority	3 months from the end of the month in which order is received or passed	Additional time of 6 months may be given if order cannot be given effect for reasons beyond the tax officer's control and the same is given in writing to the Commissioner / Principal Commissioner	Time limit for passing such order is proposed to be extended to 31 March 2017
Giving effect to any finding or direction contained in an order of a higher / appellate authority or an order of any court	12 months from the end of the month in which order is received	NA	Time limit for taking requisite action is proposed to be 31 March 2017 or 12 months from the end of the month in which such order is received, whichever is later
Assessment made on a partner of a firm in consequence of an assessment made on the firm under Section 147	12 months from the end of the month in which the assessment order in the case of the firm is passed	NA	Time limit for taking requisite action is proposed to be 31 March 2017 or 12 months from the end of the month in which the order in case of the firm is passed, whichever is later
Reference to transfer pricing officer in the course of assessment / reassessment	Time limit for completion of assessment / reassessment to be extended by 12 months	NA	

These amendments are proposed to be effective from 1 June 2016.

EXTENSION OF TIME LIMIT FOR TRANSFER PRICING OFFICER TO PASS ORDER

Currently, Section 92CA(3A) of the IT Act provides that a Transfer Pricing Officer (TPO) needs to pass an order within 60 days from date on which the limitation period for making an assessment expires.

The Bill proposes to amend Section 92CA(3A) so that in a case where assessment proceedings are stayed by any court order or there is a reference for exchange of information and ultimately the time available to the TPO for passing an order is less than 60 days, the time limit for passing the order will be extended to give him 60 days to pass such order.

This amendment is proposed to be effective from 1 June 2016.

PROCESSING OF RETURNS TO BE MANDATORY

Currently, the IT Act provides that where an assessment selection notice has been issued to the taxpayer, it shall not be mandatory to process the return in such a case.

The Bill proposes to amend the provisions which lays down that before making an assessment, a return has to be mandatorily processed.

This amendment is proposed to be effective from FY 2016-17 onwards.

REDUCTION IN TIME LIMIT TO FILE A RECTIFICATION APPLICATION FOR A TRIBUNAL ORDER

Currently, a rectification application can be filed within 4 years from the date of the order of the Tribunal, this time limit is proposed to be substantially reduced to 6 months from the end of the month in which the order of the Tribunal was passed.

These amendments are proposed to be effective from 1 June 2016.

REDUCTION IN TIME AVAILABLE TO FILE A BELATED RETURN

Currently, a belated return (a return filed after the lapse of time limit prescribed for filing returns under Section 139(1) of IT Act) can be filed within 2 years from the end of the financial year to which such income relates, this time limit is proposed to be reduced to 1 year from the end of the FY.

These amendments are proposed to be effective from FY 2016-17 onwards.

NO APPEAL BY DEPARTMENT SHALL LIE AGAINST DISPUTE RESOLUTION PANEL ORDER

Currently, the Department can file an appeal before the Tribunal against the order of the Dispute Resolution Panel (DRP). The relevant provisions empowering the department to file such an appeal have been proposed to be deleted and accordingly no appeal can be filed by the Department against a DRP order.

These amendments are proposed to be effective from FY 2016-17 onwards.

REASSESSMENT BASED ON INFORMATION RECEIVED FROM OTHER TAX AUTHORITIES

Currently, Explanation 2 to Section 147 of the IT Act provides for the circumstances where income is deemed to have 'escaped assessment' for the purpose of reopening of assessment under Section 147 of the IT Act.

The Bill proposes to amend the provisions of Section 147 to also include information or document received from the prescribed income tax authority under Section 133C of the IT Act as a circumstance to demonstrate income deemed to have 'escaped assessment'.

This amendment is proposed to be effective from 1 June 2016.

SO LONG AS THE CAUSE IS CHARITABLE!

INTRODUCTION OF EXIT TAX FOR CHARITABLE TRUSTS AND INSTITUTIONS IN THE EVENT OF WINDING UP OR CONVERSION INTO NON-CHARITABLE ORGANISATIONS

Currently the IT Act provides that charitable trusts or institutions (Charitable Entity/ies) are exempt from tax on their income derived from the property held under them and voluntary contributions (which is included in the definition of 'income'), subject to various conditions contained in Sections 11, 12 and 13 of the IT Act. This exemption is only available to Charitable Entities which are registered under Section 12AA of the IT Act and to Charitable Entities referred to in sub-clauses under Section 10(23C) of the IT Act. Circumstances leading to the cancellation of registration of Charitable Entities are also provided under Section 12AA of the IT Act. Further, Section 13 of the IT Act provides for the circumstances in which exemption under Sections 11 or 12 of the IT Act in respect of the whole or part of the income of such Charitable Entities would not be available.

However, currently there is no provision under the IT Act which governs taxation of Charitable Entities when they wind up their activities or when there is a change in their status from charitable to non – charitable. Resultantly, there is ambiguity with respect to the taxability of their assets created out of exempt income in the event a Charitable Entity voluntarily winds up its activities and dissolves or merges with any other charitable or non-charitable institution, or converts into a non-charitable entity.

Therefore, to fill in this lacuna, the Bill proposes to amend the IT Act to introduce a specific Chapter imposing an additional income-tax in the nature of an 'exit tax' in certain situations on the accreted income (Accreted Income).

The key features of this Chapter are as follows:

- This additional income-tax is attracted when the Charitable Entity registered under Section 12AA of the IT Act:

- converts itself into a non-charitable organisation, not eligible for a grant of registration under Section 12AA of the IT Act;
 - merges with a non-charitable organisation, not eligible for a grant of registration under Section 12AA of the IT Act; or
 - fails to transfer upon its dissolution all its assets to any other Charitable Entity registered under Section 12AA of the IT Act, or to any fund, institution, trust, university, educational institution, hospital, or any other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of Section 10 of the IT Act, within a period of 12 months from the end of the month in which its dissolution takes place.
- If any of the abovementioned situations are triggered, then in addition to the income-tax chargeable in respect of the total income of such a Charitable Entity, the Accreted Income of the Charitable Entity as on the specified date shall be charged to tax and such Charitable Entity shall be liable to pay additional income-tax on Accreted Income at the maximum marginal rate (MMR).
 - Accreted Income for this purpose means the amount by which the aggregate fair market value of the total assets of the Charitable Entity, as on the specified date, exceeds the total liability of such Charitable Entity computed in accordance with the method of valuation as may be prescribed in the proposed rules. Assets and the liabilities of the Charitable Entity which are transferred to another charitable organisation within the specified time will be excluded while calculating the Accreted Income.
 - This tax on Accreted Income shall be final tax for which no credit can be taken and no deduction under any other provision of the IT Act can be claimed by the Charitable Entity or any other person.
 - Tax on Accreted Income shall be leviable even if the Charitable Entity does not have any other income chargeable to tax in the relevant previous year.
 - The tax on Accreted Income is required to be paid within 14 days from the date on which the Charitable Entity converts or merges into a non-charitable organisation, not eligible for registration under Section 12AA of the IT Act or from the date of expiry of 12 months post its dissolution within which it was required to transfer its assets to another charitable organisation registered under Section 12AA of the IT Act or to an organisation referred to in Section 10(23C) of the IT Act as mentioned above.
 - In case of failure to pay the tax on Accreted Income within the prescribed time, a simple interest @ 1% per month or part of it shall be applicable for the period of non-payment.
 - The principal officer or trustee of the Charitable Entity shall be deemed to be 'assessee in default' for the purpose of recovery of tax and interest and all provisions related to the recovery of taxes shall apply accordingly. Further, the non-charitable recipient of assets of the Charitable Entity, shall also be liable to be held as 'assessee in default' in case of non-payment of tax and interest. However, the recipient's liability shall be limited to the extent of the assets received.

This is a measure to curb misuse of the exemption given to Charitable Entities which had later merged with or converted into non-charitable entities and had escaped tax because of their registration as tax exempt organisations. The intention of the Government is to ensure that the corpus and assets of the Charitable Entities built over time by taking advantage of exemptions are indeed used purely for charitable purposes and not syphoned off to non-charitable entities without tax incidence. This clarity in the law is expected to reduce litigation in this area.

This amendment is proposed to be effective from 1 June 2016.

A LITTLE BIT OF THIS AND LITTLE OF THAT

CLARITY IN TAX DEDUCTIBILITY OF SPECTRUM FEE

Currently, intangible assets are eligible for depreciation at the rate of 25% per annum. License fee levied by Government for operating telecommunication service is amortised over its useful life. There is lack of clarity on the tax implication of spectrum fee which has only been introduced by the Government for auction of airwaves.

The Bill proposes a new section for tax treatment of expenditure incurred for acquiring any right to use spectrum for telecommunication services by way of amortising the same over its useful life.

It is further provided that in the year of transfer of spectrum, the taxability would be as under:

- if the proceeds from the transfer are less than the balance of unamortised spectrum fee, then such difference would be allowed as a deduction;
- if the proceeds from the transfer exceed the balance of unamortised spectrum fee, then the excess (to the extent of deduction already availed in this respect) would be taxed as business income.

Further, in the event of amalgamation/demerger, the provisions of this section would apply to the amalgamated/the resulting company for the balance useful life of the spectrum.

This proposal seeks to remove the uncertainty in tax treatment of spectrum fee i.e. whether spectrum is an intangible asset and the spectrum fees paid is eligible for depreciation at the rate of 25% per annum or whether it is in the nature of a 'license to operate telecommunication business' and eligible for deduction over its useful life. This is a welcome step.

This amendment is proposed to be effective from FY 2016-17 onwards.

TAX NEUTRAL CONVERSION OF COMPANY INTO LLP – ADDITIONAL ASSET VALUE TEST

Currently, Section 47 of the IT Act provides that conversion of a company into a Limited Liability Partnership (LLP) will not be regarded as a 'transfer' if certain conditions are fulfilled, including, inter alia, that the company's gross receipts, turnover or total sales in any of the 3 years preceding the year in which the conversion takes place does not exceed INR 6 million.

The Bill proposes that in addition to the extant conditions, to avail the benefit of tax neutral conversion, the total value of the assets as appearing in the books of account of the company in any of the 3 years preceding the year in which conversion takes place, should not exceed INR 50 million.

This proposal would make it difficult for an investment holding company to convert into an LLP in a tax neutral manner.

This amendment is proposed to be effective from FY 2016-17 onwards.

NON-COMPETE FEES IN CASE OF PROFESSION NOW TAXABLE

Currently, receipt of non-compete fees and consideration for exclusivity rights in relation to a business are taxable under the heads 'Profits and gains of business or profession' and 'Capital gains' however, such amounts received in relation to a profession are not specifically covered under these provisions.

The Bill proposes to accord the same tax treatment in relation to such amounts received in relation to a profession as well. Further, it also proposes to amend the definition of cost of acquisition and cost of improvement which is relevant while computing capital gains on transfer of right to carry on any profession.

This proposal seeks to remove the ambiguity over the tax treatment in relation to receipt of non-compete fees and consideration for exclusivity rights in relation to a profession.

This amendment is proposed to be effective from FY 2016-17 onwards.

PRESUMPTIVE TAXATION REGIME EXTENDED TO PROFESSIONALS

Currently, the presumptive taxation regime provides simplified presumptive tax as a percentage of gross receipts of the business of certain eligible persons engaged in specified businesses. The current scheme does not cover persons earning professional income.

The Bill proposes to extend the presumptive taxation scheme to professionals as well. As per this scheme, if the gross receipts of a professional (engaged in professions such as legal, medical, accountancy, technical consultancy etc.) who is a tax resident in India, do not exceed INR 5 million in a year, then the income of such a professional shall be presumed to be 50% of the gross receipts. It will be deemed that in computing this income, the professional has been allowed all the deductions provided under the IT Act. When the professional opts for such presumptive taxation, it would be exempt from the requirement of maintaining books of accounts and the requirement of having a tax audit conducted in respect of such income.

While the Memorandum states that this scheme will apply only to taxpayers being individuals, HUFs or partnership firms, and not to LLPs; the Bill does not contain this restriction.

This is a welcome provision and will reduce compliance burden and associated costs for professionals.

This amendment is proposed to be effective from FY 2016-17 onwards.

RATIONALISATION OF THE PRESUMPTIVE TAXATION REGIME FOR BUSINESSES

Currently, the presumptive taxation regime applicable to businesses provides that eligible taxpayers engaged in eligible businesses having a total turnover or gross receipts not exceeding INR 10 million can opt to offer 8% of the total turnover or gross receipts to be their taxable income without maintaining books of accounts and without having a tax audit conducted in respect of such income. From such 8% presumed income, the taxpayer is allowed a further deduction in respect of the salaries and interest paid by a firm to its partners; and the provisions of advance tax are not applicable to such businesses.

The Bill proposes to increase the aforesaid threshold limit from INR 10 million to INR 20 million. Further, the Bill also proposes to discontinue the deduction in respect of the salaries and interest paid by a firm to its partners. The Bill also proposes to apply the advance tax provisions on such businesses; however, in such cases, the advance tax may be paid by 15 March of the concerned financial year to keep compliance costs low. The Bill also proposes that the benefit of this presumptive taxation regime would only be available if the taxpayer uses it for a continuous period. Once the taxpayer opts for this presumptive tax regime, then in any year, if the taxpayer chooses to offer lesser income (*Default Year*), then the taxpayer shall not be able to claim the benefit of the presumptive tax regime for a period of 5 years from the Default Year.

This is a good rationalisation measure and is expected to be beneficial for smaller businesses.

This amendment is proposed to be effective from FY 2016-17 onwards.

FULL VALUE OF CONSIDERATION OF CAPITAL ASSET TO BE STAMP DUTY VALUE AS ON DATE OF AGREEMENT

Currently, if the consideration received on the transfer of a capital asset (land or a building or both) is less than the value adopted by the stamp valuation authority for the purpose of computing stamp duty in respect of such transfer, then the value so adopted shall be the full value of the consideration of the asset.

The Bill proposes to allow for cases where the date of the agreement to transfer the immovable property and the date of registration of transfer are not the same. In such cases, the stamp duty value as on the date of the agreement may be adopted for the purposes of computing the full value of consideration for the transfer of the capital asset. This provision, however, will only be applicable if the consideration was exchanged by way of an account payee cheque, account payee bank draft or by use of an electronic clearing system on or before the agreement date.

This amendment is proposed to be effective for FY 2016-17 and onwards.

EXEMPTION FROM FURNISHING OF PAN

Currently, the IT Act provides for a higher rate of tax deduction if a person fails to furnish its permanent account number (PAN). An exemption however, was provided to a non-resident (company or otherwise) in relation to payment of interest on prescribed long-term bonds. The Bill proposes to amend this provision by extending the exemption to any other payment subject to such conditions as may be prescribed.

This is a welcome change to remove hassles to non-resident investors.

The aforesaid amendment is proposed to be effective from 1 June 2016.

ADDITIONAL DEPRECIATION - EXTENDED TO POWER TRANSMISSION BUSINESSES

Currently, the IT Act provides additional depreciation of 20% over and above the general deduction under the IT Act in respect of the cost of new plant or machinery acquired and installed by taxpayers engaged in the business of generation and distribution of power but not in the business of transmission of power.

In order to bring parity this benefit has been proposed to be extended to taxpayers engaged in the business of transmission of power as well.

This amendment is proposed to be effective from FY 2016-17 onwards.

SHARES RECEIVED BY INDIVIDUALS / HUFs PURSUANT TO DEMERGERS / AMALGAMATIONS - NOT TO BE TAXED AS INCOME FROM OTHER SOURCES

Currently, the IT Act, provides that where shares are received by an individual or HUF for consideration which is less than Fair Market Value (FMV), to be determined in prescribed manner, then the difference between such FMV and the consideration paid, in excess of INR 50,000 is chargeable to tax under the head 'Income from Other Sources'. There is no exemption from this levy of tax even if the shares are received in pursuance of a transaction which is not regarded as a taxable 'transfer'. In order to remove this anomaly, the Bill proposes that when the shares are received by an individual / HUF pursuant to a demerger or amalgamation of a company, then such receipt shall not be chargeable to income-tax under the head 'Income from Other Sources'.

This is a positive change which irons out some of the kinks in the tax provisions.

This amendment is proposed to be effective from FY 2016-17 onwards.

NBFC's ALLOWED DEDUCTION OF PROVISION FOR BAD AND DOUBTFUL DEBTS

Currently, public financial institutions, state financial corporations and state industrial corporations are allowed a deduction in respect of provision for bad and doubtful debts in computing their total income. The amount of such deduction is limited to 5% of their gross total income.

Acknowledging that Non-Banking Financial Companies (NBFCs) are also engaged in financial lending to different sectors, the Bill proposes to extend the benefit of this deduction to NBFCs as well.

This is a welcome move as NBFC's account for a big chunk of lending in the country.

This amendment is proposed to be effective from FY 2016-17 onwards.

INDIRECT TAX

- Normal period of limitation for issue of demand notice is proposed to be enhanced by a period of 1 year:

- Central Excise: 2 years
- Customs: 2 years
- Service Tax: 30 months (2.5 years)

Extended period of limitation for notices involving cases of fraud, collusion, wilful mis-statement or suppression of facts is retained at 5 years from the relevant date.

- **"Indirect Tax Dispute Resolution Scheme, 2016"** is proposed to reduce litigation involving penalty with effect from 1 June 2016. Salient features of the scheme are as follows:
 - As on 1 March 2016, a dispute must be pending before the Commissioner (Appeals).
 - The assessee should make a declaration to the designated authority in the prescribed form on or before 31 December 2016. Within 15 days of receipt of the acknowledgement, the assessee has to pay due duty and interest along with 25% of the penalty imposed in the impugned order.
 - On receipt of the proof of payment, the designated authority shall pass an order of discharge of dues which shall grant immunity to the assessee from all proceedings under the respective statute.
 - Certain categories of offences such as those relating to prohibited goods, where prosecution has been initiated etc. are barred from availing benefit of this scheme.

Central Excise law

- The standard basic excise duty (BED) remains unchanged at 12.5%.
- The concessional BED rate remains unchanged at #2% and @6%.

BED change in rates

Goods Description	Existing Rate	New Rate
Branded cotton apparels having RSP of INR 1,000 or more	#Nil, @6%	#2%, @12.5%
Branded synthetic/ blended apparels having RSP of INR 1,000 or more	#Nil, @12.5%	#2%, @12.5%
Pan Masala	16%	19%
Solar lamp	12.5%	Nil
Flavored waters, including mineral waters and aerated waters	18%	21%
Specified micronutrients under Fertilizer Control Order, 1985	12.5%	6%
Articles of jewellery (excluding silver jewellery, other than studded with diamond, ruby, emerald or sapphire)	#Nil, @6%	#1%, @12.5%
Articles of silver jewellery, other than studded with diamond, ruby, emerald or sapphire	#Nil, @6%	Nil
Gold bars manufactured from gold ore or concentrate	9%	9.5%
Gold dore bar	9%	9.5%
Silver dore bar	9%	9.5%
Gold bars and gold coins of purity not below 99.5% produced during copper smelting	9%	9.5%
Silver manufactured from silver ore or concentrate, silver dore bar and gold dore bar	8%	8.5%
Silver in any form, except silver coins of purity below 99.9%, produced during copper smelting	8%	8.5%
Silver produced during the process of zinc or lead smelting	8%	8.5%
Rubber sheets and resin rubber sheets for soles and heels	12.5%	6%
Sacks and bags of polymers of ethylene other than for industrial use	12.5%	15%
Polyester staple fibre or polyester filament yarn, manufactured from plastic and plastic waste	#2%, @6%	#2%, @12.5%
Disposable Aluminum foil	#2%, @6%	#2%, @12.5%
Specified parts required for manufacture of centrifugal pump	12.5%	6%
(a) Lithium Ion batteries, other than batteries of mobile handset	12.5%	#4%, @12.5%
(b) Parts, sub-parts, components and accessories for manufacture of such batteries	12.5%	Nil
(a) Charger/ adapter, battery and wired headsets/ speakers for use in manufacture of mobile handsets	Nil	#2%, @12.5%
(b) Inputs, parts and sub-parts used in manufacture of above mentioned	12.5%	Nil
(a) Broadband Modem	12.5%	#4%, @12.5%

Goods Description	Existing Rate	New Rate
(b) Parts, sub-parts, components and accessories for manufacture of above mentioned	12.5%	Nil
(a) Routers	12.5%	#4%, @12.5%
(b) Parts, sub-parts, components and accessories for manufacture of above mentioned	12.5%	Nil
(a) Set-top boxes for gaining access to Internet	12.5%	#4%, @12.5%
(b) Parts, sub-parts, components and accessories for manufacture of above mentioned	12.5%	Nil
(a) Digital Video Recorder or Network Video Recorder	12.5%	#4%, @12.5%
(b) Parts, sub-parts, components and accessories for manufacture of above mentioned	12.5%	Nil
(a) CCTV Camera or IP Camera	12.5%	#4%, @12.5%
(b) Parts, sub-parts, components and accessories for manufacture of above mentioned	12.5%	Nil
(a) Reception apparatus for television but not designed to incorporate a video display	12.5%	#4%, @12.5%
(b) Parts, sub-parts, components and accessories for manufacture of above mentioned	12.5%	Nil
Parts of railway or tramway locomotives or rolling stock and railway or tramway track fixtures and fittings etc.	12.5%	6%
Refrigerated Containers	12.5%	6%
Capital goods and spares, raw materials, parts, material handling equipment and consumable for repairs of ocean-going vessels by a ship repair unit	6%/ 12.5%	Nil
Tools and tool kits when imported by Maintenance Repair and Overhauls (MROs) for maintenance, repair, and over hauling	12.5%	Nil
Disposable sterilized dialyzer and micro barrier of artificial kidney	12.5%	Nil
Carbon pultrusions for manufacture of rotor blades and intermediates, parts and sub-parts of rotor blades for Wind Operated Electricity Generators (WOEG)	12.5%	6%
Specified items for manufacture of rotor blades and intermediates, parts and sub-parts of rotor blades for WOEG	Nil	6%
N-paraffin arising in the course of manufacture of linear alkyl benzene or heavy alkylate	14%	Nil
Aviation Turbine Fuel (ATF)	8%	14%
Ready Mix Concrete (RMC) manufactured at site of construction for use at such site	#2%, @6%	Nil

- Without Central Value Added Tax (CENVAT) credit on input or input services

@ - With CENVAT credit on input or input services

- An Infrastructure cess, as a duty of excise, is being imposed as follows:

Goods Description	Cess
Three wheelers, Electrically operated vehicles, Hybrid vehicles, Hydrogen vehicles, Motor vehicles that are registered for sole use as taxis, cars for physically handicapped people and Motor vehicles for sole use as ambulances	Nil
Petrol/ LPG/ CNG driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1200cc	1%
Diesel drive motor vehicles of length not exceeding 4m and engine capacity not exceeding 1500cc	2.5%
Vehicles other than above	4%

CENVAT Credit Rules, 2004 to be amended to provide that CENVAT credit cannot be used for payment of such cess, also no CENVAT credit of this Infrastructure cess would be available to the purchaser.

- BED on Gutkha, unmanufactured tobacco, Chewing tobacco, scented tobacco, paper-rolled biddis, cigars and cheroots, cigarillos, and tobacco substitutes has been increased by 15% to 25%.
- The additional duty of excise on non-filter and filter cigarettes has been increased.
- Following changes have been made to abatement percentage in respect of goods falling under Third schedule for valuation under Section 4A of the Central Excise Act, 1994 (the Excise Act) with reference to RSP :

Good description	Existing % of Abatement	New % of Abatement
All kinds of footwear	25%	30%
Wrist wearable devices (commonly known as smart watches)	Nil	35%
Aluminum foils of a thickness not exceeding 0.2mm	Nil	25%
Accessories of tyres of self-propelled machinery, fork lift trucks, trucks fitted with lifting equipment, self-propelled bulldozers, excavators etc. and pile drivers and extractors	Nil	30%

- Tariff value for readymade garments and made up textile articles has been increased from 30% to 60%.
- Clean energy cess on coal, peat and lignite has been increased from INR 300 per tonne to INR 400 per tonne. The same has been renamed as 'Clean Environment Cess'.
- Media with recorded information technology software has been exempt from the levy of excise duty equal to the value of the portion that is chargeable to service tax.
- Mixture of fertilizers made by physical mixing of chemical fertilizers on which appropriate duty of excise has been paid by cooperative societies has been exempted from levy of excise duty.
- ATF supplied to scheduled commuter airlines from regional connectivity scheme airports continues to be chargeable at excise duty rate of 8%. Supplies to all other airlines at standard rate of 14%.
- Oil Industries Development cess levied on domestically produced crude oil under Oil Industry (Development) Act, 1974 is being reduced from INR 4,500 per metric tonne to 20% ad valorem.
- Excise duty on improved cook stoves including smokeless chulahs for burning wood, agro-waste, cow-dung, briquettes and coal is being unconditionally exempted.
- Concessional duty rate of 6% granted to specified goods for use in manufacture of electrically operated vehicles and hybrid vehicles, extended without any time limit.

- As an alternative to power purchase agreement between producer and purchaser, the producer/ importer can furnish valid agreement entered into with urban local body for processing of municipal solid waste for not less than ten years from the date of commissioning of project, for claiming excise duty exemption.
- Existing area based exemptions for production and substantial expansion of gold and silver is prospectively withdrawn.
- Consequent to abolition of Duty Refund Procedure for exports to Nepal, clearances for home consumption would not include clearances made for export to Nepal.

All changes in the rate of duty including BCD, BED and clean energy cess are effective from 1 March 2016.

Legislative changes (with effect from 1 March 2016)

- Jewellery manufacturers with centralized billing and accounting system now have the option to obtain registration of a single premises from where the billing or accounting is done and where the accounts of raw materials, etc. are kept.
- Jewellery manufacturers have been exempted from physical verification of the premises at the time of registration. Jewellery manufacturers exempted from payment of excise duty on clearances upto INR 6 crore during a financial year, if the aggregate value of the clearances made in previous financial year does not exceed INR 12 crore (excluding value of silver jewellery manufactured).
- Interest on amounts determined as payable after finalization of provisional assessment would now be payable from the original due date of payment of tax.

Legislative changes (with effect from 1 April 2016)

- The assessee is now allowed to file a revised return under excise law. In case of monthly/ quarterly return, the return can be revised by the end of the calendar month in which the original return is filed. In case of annual return, the same can be amended within a period of one month from the due date of filing the original return.
- It has been clarified that for the purposes of limitation, 'the relevant date' would be date of submission of such revised return.
- Penalty proceedings against all co-noticees shall also stand concluded, if the penalty proceedings against the primary noticee are concluded due to payment of duty along with interest and penalty (if any), either prior to issuance of show cause notice or within 30 days of its issuance.
- In cases where duplicate copy of the invoice meant for transporter is digitally signed, the requirement of self-attestation by the manufacturer for transport of goods has been done away with.
- Conditions for availing rebate of duty on export of goods to all countries except Nepal and Bhutan have been rationalized to provide that the amount of rebate of duty claimed should not be less than the Indian market price of goods. Similarly, it is provided that a claim for rebate of duty paid shall be lodged by the exporter within one year from the relevant date.
- An assessee may be allowed single registration for two or more premises of the same factory, located within a close area, falling within a same range superintendent, provided the manufacturing process undertaken are interlinked and such units are not operating under any area based exemption notifications.
- Central Excise (Removal of Goods at Concessional rate of Duty for Manufacture of Excisable Goods) Rules 2016, have been introduced to simplify the procedure and to progress towards self-declaration regime, as against the permission regime mandated under erstwhile provisions.
- Procedure for claiming rebate of duty on excisable goods used in manufacture of exported goods has been simplified by mandating the applicant to produce a certificate from the chartered engineer certifying the correctness of input-output ratio.
- The Assistant or Deputy Commissioner of Central Excise may grant permission based on such certificate from the chartered engineer. Similarly, the procedure to claim such rebate has been rationalized to provide that a claim for rebate of duty paid shall be lodged by the exporter within one year from the relevant date.

Legislative changes (with effect from enactment of Finance Bill, 2016-17)

- Section 37B of the Excise Act, amended to empower the Central Bards of Excise, Customs and Service tax (CBEC) to issue order/ instructions/ directions for implementation of any provisions of the Act (which earlier was restricted to issues of classification or levy of excise duty).
- No requirement of publishing or offering for sale Notifications issued under Section 5A of the Excise Act.

Customs Law

Export Duty Rate Changes

Goods Description	Existing Rates	New Rates
Iron ore lumps of 55%-58% Fe	30%	Nil
Iron ore fines of 55%-58% Fe	10%	Nil
Bauxite (Natural), whether calcined or not	20%	15%
Chromium Ores and Concentrate	30%	Nil

Import duty rate changes

Description of goods	Existing Rates			New Rates		
	BCD	CVD	SAD	BCD	CVD	SAD
Populated Circuit Board for Mobile Phones and Tablet Computers.			Nil			2%
Inputs required for manufacture of computers			Nil			4%
O-xylene required for use in phthalic anhydride			4%			2%
Machinery, electrical equipment and their parts except PCB's required for fabrication of semiconductor wafer and Liquid Crystal Display, or for assembly, testing, marking and packaging of semiconductor chips	7.5%-10%		4%	Nil*		Nil*
Cashew Nuts in shell	Nil			5%		
Denatured Ethyl Alcohol required for manufacture of excisable goods.	5%			2.5%		
Silica Sands	10%			2.5%		
Briquettes, ovoids and similar solid fuels manufactured from coal	10%			2.5%		
Lignite and Peat	10%			2.5%		
Coke and Semi-coke of coal, lignite or peat	10%			5%		
Coal gas, water gas, producer gas and similar gases	10%			5%		
Tar distilled from coal, lignite or peat	10%			5%		
All goods classified under Heading 27.07	10%			2.5%		
Coal tar pitch and coke	10%			5%		
Specified goods required for manufacture of Brushless Direct Current Motors	10%			2.5%*		
Capacitor grade polypropylene granules or resins for manufacture of capacitor grade plastic film	7.5%			Nil		
Super Absorbent Polymer for manufacture of sanitary napkins & like	10%			5%		

Woods chips or particles for manufacture of paper, and newsprint	5%			Nil		
Pulp of wood required to manufacture sanitary napkins & like	5%			2.5%		
Specified fibres, filaments/yarns classified under Chapters 54 and 55	5%			2.5%		
Solar tempered glass/solar tempered (anti-reflective coated) glass for use in manufacture solar cells/modules/panel	Nil			5%		
Preform of silica for use in manufacture of telecommunication grade optical fibre /cables	Nil			10%		
Gold Dore Bar, containing gold < 95%		8%			8.75%	
Silver Dore Bar, containing silver < 95%		7%			7.75%	
Brass Scrap	5%			2.5%		
Aluminium Tubes, Pipes and Pipe Fittings	7.5%			10%		
Specified machinery required for construction of roads		Nil			12.5%	
Aluminium Oxide for use in the manufacture of Wash Coat for catalytic converters	7.5%			5%		
Relays for voltage exceeding 60V	7.5%			5%		
Electrolysers, membranes and their parts required by caustic soda / potash unit based on membrane cell technology	2.5%			Nil		
Disposable sterilized dialyzer and micro barrier	7.5% - 10%	12.5%	4%	Nil	Nil	Nil
Inputs required for manufacture of mobile accessories like charger, adapter, battery, wired headsets, speakers	7.5%	12.5%	4%	Nil	Nil	Nil
Parts, sub-parts components and accessories for use in the manufacture of Routers, broadband Modems, Set-top boxes, digital / network video recorder, CCTV / IP camera, lithium ion battery	7.5%	12.5%	4%	Nil	Nil	Nil
E-readers	Nil			7.5%		
Parts required for manufacture of E-readers	7.5% - 10%			5%		
Refrigerated Container	10%			5%		
Golf Cars	10%			60%		
Articles of vulcanized rubber	10%			20%		
Imitation Jewellery	10%			15%		
Aluminium unwrought, Powder & Flakes, Bars & Profiles, Wires, Plates, Sheets & Strips	5%			7.5%		
Zinc Alloys	5%			7.5%		
Boilers & Auxiliary Plant for use with Boilers	7.5%			10%		

Steam and Vapour Turbines except for marine propulsion, Gas Turbines, Hydraulic Turbines, Turbo-jets, steam engines	7.5%			10%		
Electric Transformers and Static Converters except Choke Coil Inductors	7.5%			10%		
Switch & fuse	7.5%			10%		
Tricycles and, scooters, pedal cars and similar recreational toys	10%			20%		
Articles for Christmas festivities and other festive, carnival and other entertainment articles	10%			20%		

* Subject to an end-use condition

Proposed legislative and procedural changes under Customs Law

- Select importers and exporters shall be eligible to pay customs duty in a deferred manner.
- Section 8C of the Customs Tariff Act, 1985 which empowers the Government to impose safeguard duty on import of goods from China causing or threatening to cause material injury to the domestic producers of like goods is proposed to be abolished. Safeguard duty under Section 8B is product specific whereas Safeguard duty under Section 8C is product specific as well as China specific.
- The Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996, has been replaced by a new set of rules of 2016, effective from 01 April 2016. The new rules allow for a continuity bond in place of an annual bond or consignment-wise bond in the old rules, thereby reducing the transaction cost and easing the import of goods at concessional rates. The new rules also permit use of imported goods on payment of duty foregone on such materials.
- The Baggage Rules, 1998 has been replaced by the new rules of 2016, effective from 1 April 2016. Following are the revised duty free allowances for incoming passengers:

Origin country	Eligible Passenger	Duty free allowance
Other than Nepal, Bhutan Myanmar	Passengers of Indian origin and foreigners residing in India, excluding infants	(i) Used personal effects (ii) Travel souvenirs (iii) Articles up to INR 50,000
	Tourist of foreign origin other than infant	(i) Used personal effects (ii) Travel souvenirs (iii) Articles up to INR 15,000
	Infant	Used personal effect
Nepal, Bhutan Myanmar arriving by sea/air	All passengers excluding infants	(i) Used personal effect (ii) Travel souvenirs (iii) Articles up to INR 15,000
	Infant	Used personal effects
Nepal, Bhutan Myanmar arriving by land	All passengers	Used personal effects

- Under the new rules, jewellery is excluded from the definition of personal effects. Thus, all personal jewellery brought in by the incoming passenger whether carried on person or in the accompanied baggage shall be dutiable.

- A passenger residing abroad for more than a year is allowed duty free clearance of jewellery up to 20 grams with a value cap of INR 50,000 in case of a gentleman and to 40 grams with a value cap of INR 1,00,000 in case of a lady passenger.
- Duty free allowance for transfer of residence has been enhanced depending on the duration of overseas stay with a minimum allowance of INR 60,000 (for a stay of more than 3 months up to 6 months) and INR 5,00,000 (for a stay of 2 years or more) as against the present duty free allowance for a maximum of INR 75,000.

Significant overhaul of the Customs Bonded Warehouse regime

- A Bonded warehouse can be setup anywhere. Concept of "warehousing station" to setup a bonded warehouses is proposed to be abolished.
- In addition to 'Public Warehouse' and 'Private Warehouse', a new category of "Special Warehouse" is introduced for storage of notified sensitive goods. Public warehouse and private warehouse shall be freed from 'physical control' and the 'dual lock system'. Only Special Warehouses shall be subjected to double lock and physical control.
- An importer has to execute a triple duty bond instead of double duty bond to store the imported goods in either a public, private or special warehouse without payment of duty.
- Warehouse licensee shall be liable to pay duty, interest, fine and penalties for improper removal of warehoused goods.
- The period of storage of good in bond has been rationalized as follows.

Description of the goods	Nature of Warehouse	Period of storage
Capital Goods	EOU/ EHTP/ STP / Manufacturing-in-Bond	Life, or till clearance from the warehouse
Goods (other than above)	EOU/ EHTP/ STP / Manufacturing-in-Bond	Consumption in the warehouse, or till time of clearance
All goods	Public / Private / Special	One year, subject to discretionary extensions of one year at a time

Customs Duty Rates

- The standard rate of Basic Customs duty (BCD) of 10% remains unchanged.
- The standard rate of Countervailing Duty (CVD) equivalent to central excise duty at 12.5% has also been retained in the present budget.
- The standard rate of Additional Customs Duty (SAD) of 4% also remains unchanged.

Change in rates/exemptions

- Aviation & MRO
 - Retention period for temporary import of aircraft has been extended from a maximum period of 60 days to 6 months, subject to further extension.
 - Exemption benefits for import of repaired or overhauled aircraft parts under the Standard Exchange Scheme has been extended to used aircraft parts imported for repair or overhaul.
- Defence Sector: Customs duty exemption on the following goods imported by the Government of India or a State Government or Authorised Persons has been withdrawn:
 - Goods required for construction of fitment to ships of Indian Navy or Coast Guard;
 - Aircrafts, aircraft parts, aircraft engines and aircraft engine parts;

- Production tooling including jigs, tools, fixtures, tools and gauges, ground support equipment, test / measuring equipment, scientific and technical instruments, apparatus and equipment including spare parts and components thereof, consumables;
 - Arms, ammunition and military stores;
 - Ammunition tools and gauges; ammunition chemicals; electric detonators; fire directing and fire control instruments; signal equipment including wireless equipment and component parts thereof, test equipment for radars for service use; military bridging stores and equipment; ASDIC and ECHO sounding equipment; specialised cameras for Air Force use; mines sweeping gear and parachutes;
 - Radars, torpedoes, sonar sets, mine laying gear, diving equipment and their spares, accessories, jigs, tools testing equipment and components;
 - Spare parts, accessories, jigs, tools, testing equipment, components, special raw materials and half wroughts like steel forgings and castings, to be processed into finished components for armoured and specialised vehicles peculiar to the defence services;
 - Guided weapons and their accessories;
 - Components, spares, jigs, fixtures, tools, dies, moulds and test equipment required for the manufacture and testing of guided weapons and their accessories;
 - Raw material and special materials required for the manufacture of guided weapons and their accessories;
 - Rock drills and breakers;
 - All types of ground support equipment for guided weapons and their accessories
- The ceiling for availing exemption from customs duty for import of bona fide gifts via post or courier mode has been enhanced from INR 10,000/- to INR 20,000/-.
 - Actual user condition is prescribed for import of phosphoric acid, anhydrous ammonia, liquid crystal display, light emitting diode or organic OLED panel at concessional duty.
 - Duty exemption on plans and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices is withdrawn. Such plans, drawings and design shall attract BCD @ 10%. However, such plans and drawings being originals drawn by hand; hand written texts; photographic reproduction or sensitized paper and carbon copies thereof continue to remain exempt.
 - Concessional rate of customs duty under Project Import Scheme is extended to cold chain, packhouses, sorting and grading lines.

Import of media recorded with information technology software, other than pre-packaged software with requisite declaration under the Legal metrology Act, 2009 is exempt from CVD provided that the importer, at the time of import, makes a declaration to pay service tax thereon.

Service Tax

- The rate of service tax prescribed under Section 66B remains unchanged at 14%.
- Effective rate of service tax increased to 15% due to levy of Krishi Kalyan Cess of 0.5% (effective 1 June 2016) in addition to Swacch Bharat Cess of 0.5% on the value of taxable services.

Services withdrawn from negative list

- Specified educational services under Section 66D (I). However the exemption is restored by inclusion under mega exemption notification. (effective from the enactment of the Finance Bill)
- Services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance (with effect from 1 June 2016). However the exemption restored in case of aircrafts by inclusion under mega exemption notification.
- Service of transportation of passengers, with or without accompanied belongings, by a stage carriage (with effect from 1 June 2016). Services provided by a non-air-conditioned contract carriage continue to be exempted by inclusion under mega exemption notification.

Exemptions withdrawn (effective from 1 April 2016)

- Construction, erection, commissioning or installation of original works pertaining to monorail or metro in respect of contracts entered into on or after 1 March 2016 (effective from 1 March 2016).

- Transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway.
- Legal services provided by a senior advocate to an advocate or partnership firm of advocates or to a person ordinarily carrying out activity of trade, industry, business or profession.
- Services provided by a person represented on an arbitral tribunal to an arbitral tribunal.

Exemption restored (effective from enactment of Finance Bill, 2016)

- Exemption to construction, repair, maintenance, renovation or alteration service provided to the Government, a local authority, or a governmental authority in the case of certain contracts which was withdrawn in April 2015 is restored till 31 March 2020 for the services provided under a contract entered into prior to 1 March 2015 and on which appropriate applicable stamp duty had been paid prior to that date. Refund allowed where service tax paid under such contracts for services provided during the exemption withdrawn period subject to prescribed conditions.
- Exemption to services by way of construction, erection, etc. of original works pertaining to an airport, port was withdrawn in April 2015 is restored till 31 March 2020 provided contract had been entered into prior to 1 March 2015 and on which appropriate applicable stamp duty had been paid prior to that date. Production of certificate from the Ministry of Civil Aviation or Ministry of Shipping evidencing contract date mandatory. Refund allowed where service tax paid under such contracts for services provided during the exemption withdrawn period subject to prescribed conditions.
- Exemption to services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature is restored for such services provided during the period from the 1 July 2012 to 29 January 2014. Provisions laid down for allowing the refund of service tax already paid subject to prescribed conditions.

New Exemptions (effective from 1 April 2016)

- Services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India
- Services of Information Technology Software on media bearing Retail Sale Price (RSP) exempt provided that Central Excise duty is paid on RSP in accordance with Section 4A of the Central Excise Act (effective from 01 March 2016).
- Regulatory services provided by Securities and Exchange Board of India.
- Services provided by Employees Provident Fund Organization to employees.
- Services provided by Biotechnology Industry Research Assistance Council approved biotechnology incubators to the incubatees.
- Services provided by National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer's Welfare, Government of India, by way of knowledge dissemination.
- Services provided by Insurance Regulatory and Development Authority of India to insurers under the IRDA Act.
- Services of general insurance business provided under Niramaya Health Insurance scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies.
- Services provided by way of skill/vocational training under Deen Dayal Upadhyay Grameen Kaushalya Yojana.
- Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship under Skill Development Initiative Scheme.
- 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 (HFA) (Urban) Mission / Pradhan Mantri Awas Yojana (PMAY), except in respect of such dwelling units of the projects which are not constructed for existing slum dwellers (effective 1 March 2016).
- 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 (HFA) (Urban) Mission/ PMAY (effective from 1 March 2016).
- Services by way of construction, erection, etc., of original works pertaining to low cost houses up to a carpet area of 60 square metre per house in a housing project approved by the competent authority under the "Affordable housing in partnership" component of PMAY or any housing scheme of a State Government (effective from 1 March 2016)

- Services by way of transportation of goods by an aircraft from a place outside India up to the customs station of clearance (effective from 1 June 2016).
- Service of transportation of passengers, with or without accompanied belongings, by a non-air-conditioned stage carriage. (effective from 1 June 2016).
- Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management (PGPM). (other than executive development programme), admissions to which are made through Common Admission Test conducted by IIMs, 5 year Integrated Programme in Management and Fellowship Programme in Management (effective 1 March 2016).
- Threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music, dance or theatre, is being increased from INR 1 lakh to INR 1.5 lakh per performance.

Amendment to Point of Taxation Rules, 2011

- Section 67A has been amended to empower Government to make rules regarding point in time with respect to rate of service tax. Correspondingly, POTR is aligned with Section 67A to deal with any contradiction between the two or any doubt about the applicability of service tax (effective from enactment of Finance Bill 2016)
- Rule 5 is amended to insert explanation stating that the same is applicable (i) in case of new levy on services and (ii) in situations other than those specified where new levy or tax is not payable, the new levy or tax shall be payable. (effective from 1 March 2016)

Amendment to Service Tax Rules, 1994 (effective from 1 April 2016)

- Rule 6 (1) is amended to extend the benefits of quarterly payment of service tax on receipt basis to One Person Company as defined under Section 2(62) of the Companies Act, 2013 whose aggregate value of services provided is up to INR 50 lakh in the previous financial year. The benefit of quarterly payment of service tax is also extended to HUF.
- Rule 6(7A) is amended to extend optional payment of service tax liability on single premium annuity (insurance) policies under the composition rate prescribed at 1.4% of the total premium charged.
- Rule 2(1)(d)(i) (D)(II) is amended to make legal services provided by a senior advocate liable on forward charge
- 1 April 2016 is notified as the date from which the word "support" deleted from Rule 2(1)(d)(i) (E) to provide that the liability to pay service tax on any service provided by Government or local authorities to business entities other than renting of immovable property services and services specified in Section 66D shall also be on the service recipient on reverse charge basis.
- Rule 7, 7B and 7C is amended to provide for mandatory filing of annual return for assesses above certain threshold limit to be notified. Revised annual return (if any) to be filed within one month of date of submission of such annual return. Where there is delay in filing the annual return, assessee shall be liable to pay to the credit of the Government INR 100 per day for period of delay in filing of such return subject to maximum of INR 20,000.

Reverse Charge (effective from 1 April 2016)

- No reverse charge on services provided by a mutual fund agent or distributor to a mutual fund or assets management company. Service tax will be payable by such agents or distributors who can avail small scale exemption if having threshold turnover of INR 10 lakh per year, subject to fulfilment of other conditions prescribed.
- Liability to pay service tax on any service provided by Government or a local authority to business entities shall be on the service recipient (and not only in case of support services).

Amendment to abated value and related conditions (effective from 1 April 2016)

- Abatement in respect of services by a tour operator in relation to a tours other than where only accommodation is booked or arranged for any person is being rationalized from 75% and 60% to 70% (definition of "package tour" omitted). Abatement rate remains 90% for services where only accommodation is booked or arranged for any person. There is no change in conditions.
- Abatement of 60% allowed to transport of passengers, with or without accompanied belongings by a stage carrier subject to non-availment of CENVAT credit on inputs, input services and capital goods
- Abatement of 30% prescribed for services provided by a foreman of chit fund in relation to chit subject to condition of not availing CENVAT credit on inputs, input services and capital goods.

- Explanation inserted in the case of Rent-a-cab service that fair market value of all goods (including fuel) and services should be included in the consideration charged for providing renting of motor-cab services for availing the abatement.
- A uniform abatement at the rate of 70% is now being prescribed for services of construction of complex, building, civil structure, or a part thereof, subject to fulfilment of the existing conditions.
- Credit of input services allowed on transport of passengers or goods by rail on existing abatement of 70%.
- Abatement of 60% granted on transport of goods in containers by rail by any person other than Indian Railways subject to non-availment of CENVAT credit on inputs and capital goods
- Abatement of 60% granted to service of transport of goods by vessel is now allowed with CENVAT credit on input services.
- Abatement on transport of used household goods by a Goods Transport Agency (GTA) is being allowed at the rate of 60% without availment of CENVAT credit on inputs, input services and capital goods by the service provider (as against abatement of 70% allowed on transport of other goods by GTA).

Legislative changes to the Finance Act, 1994 (effective from enactment of the Finance Bill, 2016)

- Explanation 2 in Section 65B(44) to clarify that activity carried out by a lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), is exigible to service tax.
- Assignment by the Government of the right to use the radio-frequency spectrum and its subsequent transfers is declared as a service under Section 66E (Declared Service) exigible to service tax.
- Section 67A has been amended to empower Government to make rules regarding point in time with respect to rate of service tax.
- Section 73 is amended to increase the limitation period for recovery of service tax not involving fraud, collusion, and suppression from eighteen months to thirty months.
- Interest leviable under 75 for delayed payment of tax rationalised at 15% and higher rate of 24% prescribed in case of a person who has collected service tax but not deposited the same with the Government.
- Section 78A is amended by way of insertion of an explanation to the effect that when the proceedings with respect to a notice issued under sub-section (1) of Section 73 or the proviso to sub-section (1) of Section 73 is concluded in accordance with the provisions of clause (i) of the first proviso to Section 76 or clause (i) of the second proviso to Section 78, as the case may be, the proceedings pending against a director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention shall also be deemed to have been concluded.
- Section 89 amended to enhance the monetary limit of INR 2 crore for filing complaints for punishable offences.
- Section 90 is amended by omitting sub-section (2) which hitherto provided that all offences except for the offence prescribed under clause (ii) of sub-section (1) of Section 89 shall be non-cognizable and bailable notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974). Therefore, with enactment of Finance Bill, 2016 all offences except for the offence prescribed under clause (ii) of sub-section (1) of Section 89 shall be henceforth governed by the provisions of Code of Criminal Procedure, 1973(2 of 1974).
- Section 91 is amended to withdraw the powers of arrest conferred upon the officers of Central Excise in respect of offences prescribed under clause (i) of sub-section (1) of Section 89.
- Section 93A is amended so as to enable Government to allow of rebate by way of notification as well as rules

Other Amendment

- 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 granted by Notification 01/2016- ST will be allowed retrospectively from 1 July 2012. Time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected.

CENVAT Credit Rules, 2004 (CCR) to come into effect from 1 April 2016 except where the date is otherwise mentioned;

- The definition of 'capital goods' amended to include the following:
 - Railway or Tramway wagons and goods vans, not self-propelled but having non removable sides exceeding 60 cms in height.
 - Capital goods used in the office of a manufacturer.

- Equipment used outside the factory of a manufacturer for the pumping of water for captive use in the factory.
- The definition of exempted services amended to exclude outward transportation service provided by vessels from customs stations in India to a place outside India. (to come into effect from 1 March 2016)
- The definition of 'inputs' amended to include:
 - All goods used for pumping of water for captive use.
 - Capital goods having value up to INR 10,000 per piece.
- Concept of Input Service Distributor extended to outsourced manufacturing units.
- CENVAT credit of 'National Calamity Contingent Duty' to be utilised for payment of 'National Calamity Contingent Duty' only. Similar provisions is made for Infrastructure Cess (to come into effect from 1 March 2016).
- SSI exemption provided to assessee engaged in the manufacture of articles of jewellery, other than articles of plain silver jewellery if the turnover does not exceed INR 12 crore to be computed in a specific manner as prescribed (to come into effect from 1 March 2016).
- CENVAT on tools falling under Chapter 82 of the First Schedule to the Excise Tariff Act is made available to manufacturers. It is also allowed in case a manufacturer sends these goods directly to other manufacturers or job-workers without bringing the same to his premises.
- The validity of the Order of Jurisdictional Commissioner to allow clearance of final product from the premises of a job worker has been increased from 1 to 3 financial years.
- CENVAT credit of service tax paid on the assignment of right to use any natural resources such as radio-frequency spectrum, mines etc. will have to be amortized and shall be distributed equally over the number of years for which it is assigned. In case of subsequent assignment of such rights for a consideration, the CENVAT amount in excess of the tax payable on such assignment shall be available immediately to the assignor. CENVAT credit of annual/monthly charges paid for such assignment shall be available in the same financial year.
- Clearance Rule 6 (1) of CCR is substituted to state that CENVAT credit of inputs / input services used in or in relation to the manufacture of exempted goods and their clearance up to place of removal or for provision of exempted services shall be disallowed. The amount to be paid by such manufacturer or service provider shall be computed in accordance with sub-rule (2) or (3) of Rule 6 as the case may be.
- Exempted services for the purpose of Rule 6(1) shall include an activity which is not a service under clause 44 of section 65B of the Finance Act, 1994 apart from those defined in clause (e) of Rule 2 of CCR. Exempted goods to include products defined in clauses (d) and (h) of Rule 2 along with non-excisable goods cleared for consideration.
- The value of such activity not considered as service and non-excisable goods shall be taken at contract/invoice value for this purpose. In case the same is unavailable then the value is to be determined based on reasonable means and principles of valuation.
- The existing Rule 6(2) is substituted to state that manufacturer or service provider manufacturing / providing exclusively exempted goods / exempted services shall have to pay the whole amount of credit. Effectively they shall not be eligible credit of inputs or input services.
- Rule 6(3) is substituted in respect of the following 2 types of assesses: 1) A manufacturer manufacturing exempted and non-exempted goods. 2) A service provider providing exempted and non-exempted services. These can exercise any one of the options stated below:
 - Pay an amount equal to 6% of value of exempted goods reduced by the amount of excise duty already paid on exempted goods and amount equal to 7% of the value of exempted service subject to a maximum of credit availed. The value of exempted services shall include the value of such taxable services which are exempted on the condition that no CENVAT of input or input services has been availed. In the case of transportation of goods or passengers by rail, service tax to be paid at the rate of 2% of the value of exempted service; or
 - Pay an amount as determined as per sub rule 3A as stated below.
- In sub Rule 3A the following are the meanings of following terms given as:
 - 'Non-exempted goods removed' means the final products excluding exempted goods manufactured and cleared upto the place of removal;
 - 'Exempted goods removed' means the exempted goods manufactured and cleared upto the place of removal;

- 'Non-exempted services' means the output services excluding exempted services;
- Sub Rule 3A has been substituted and the new Sub Rule 3A(a) states as follows
 - The assessee opting for payment under the said sub-rule shall make a declaration in writing to the superintendent providing details like name, address and registration number. Additionally, the following details are to be submitted on the date of exercising such option: details of input or input service used exclusively for manufacture of exempted goods removed or exempted services provided along with description thereof.
 - The details of input or input service used exclusively for the manufacture of non-exempted goods removed or non-exempted services provided along with description of such non-exempted goods or services.
 - The balance of CENVAT of input and input services lying as on the date of exercising such option.
- The new sub-rule 3A(b) provides the following formula for computation of eligible credit

$$C = T - (A + B)$$

Where:

C = Common credit;

T = Total credit availed during month;

A = CENVAT credit of inputs, input services used exclusively for manufacture of exempted goods or services;

B = CENVAT credit of inputs, input services used exclusively for manufacture of non-exempted goods or services;

Upon determination of common credit if any, the following formula shall be applied:

$$D = (E/F) * C$$

Where:

D = Common credit attributable towards exempted goods or services;

E = Value of exempted services and goods provided in the preceding financial year; and

F = Total value of non-exempted goods and services and exempted goods and services the preceding financial year.

In case where there are no final products or output services in the preceding financial year, D= 50% of C.

- Common Credit portion wherein availment is permitted is G=C-D.
- Sub-rule 3A(b) also clarified that a manufacturer or provider of output service shall have to provisionally pay the amount of ineligible credit (A) and ineligible common credit (D) failing which interest at the rate of 15% p.a. shall be charged.
- The above procedure is to be followed again for an annual computation of final computation based on actual data and the difference needs to be paid by 30 June every year failing which interest at the rate of 15% shall be charged on the differential amount.
- The aforesaid details is to be communicated within 15 days of the adjustments made.
- If a manufacturer or provider of output service fails to exercise the above options, the central excise officer may allow such payment along with interest.
- Assessee who has opted to pay an amount under clause (ii) or clause (iii) of sub-rule (3) in the financial year 2015-16, shall pay the amount along with interest or take credit for the said financial year in terms of clauses (c), (d), (l), (f), (g), (h) or (i) of sub-rule (3A), as they prevail on the day of publication of the notification and for this purpose the provisions shall be deemed to be in existence till the 30 June 2016.
- A banking company shall have the option to either follow the above referred procedure or can continue to pay an amount equal to 50% of the at present.
- A new provision of non-availing of CENVAT credit has been introduced for a period of two years where capital goods are used for the manufacture of exempted goods or provision of exempted services from the date of commencement of commercial production or provision of services. Similar provisions shall apply in cases where capital goods are installed after the date of commencement of commercial production or provision of services.

- Sub-rule 7 of Rule 6 is amended to provide that credit taken on inputs and input services used in providing a service 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 the shipping lines (to come into effect from 1 March 2016).
- Rule 7 of CCR is substituted by new Rule which provides conditions of distribution of CENVAT credit by the input service distributor in the following manner:
 - Credit being distributed against the document specified in Rule 9 should not exceed the amount of tax paid thereon
 - Service tax qualifying as input service to a particular unit should be distributed only to that unit.
 - Service tax credit qualifying to some units but not all shall be distributed amongst only those units on a pro rata basis of turnover of these units.
 - Credit of input services of all units to be distributed amongst all units on a pro rata basis of turnover.
 - Separate account is to be maintained by outsourced unit for each distributor in respect of input credit received from such distributor. Such credit to be utilized only for payment of duty on goods manufactured for such distributor.
 - Credit pertaining to goods and services availed only after 31 March 2016 can be distributed to outsourced manufacturing units.
 - Provisions of Rule 6 of CCR will not apply on Input Service Distributor.
 - In this context the outsourced manufacturing unit is defined as a job-worker who is liable to pay duty on the value determined under 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 such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act.
- A new sub rule 7B is inserted to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. A manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs. The procedure applicable to a first stage dealer or a second stage dealer would apply, mutatis mutandis, to such a warehouse of the manufacturer.
- Rule 9 sub rule 1 of CCR is amended to include an invoice issued by a service provider for clearance of inputs or capitals goods as a valid document for availing CENVAT credit.
- Rule 9A of CCR is amended which provides for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form as specified by a notification by the Board.
- The existing sub-rule (2) of Rule 14 prescribed a procedure based on First In First Out method for determining whether a particular credit was utilized. This sub-rule is now omitted. Consequently the utilisation of a particular credit shall be ascertained by examining whether the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit during such period of dispute.
- Notification 27/2012 – C.E. (NT) is amended to provide for time limit for filing of a refund application under Rule 5 of CCR to be 1 year from the date of the following:
 - Receipt of payment in convertible foreign exchange, where provision of service has been completed prior to receipt of such payment; or
 - The date of issue of invoice, where payment for the service has been received in advance prior to the date of issue of the invoice.
- The rate of interest has been reduced from 18% to 15% with effect from 1 April 2016 to align and with rationalisation with other laws.

Central Sales tax law

- Insertion of Explanation to Section 3 of the Central Sales tax Act, 1956 (CST Act) to clarify that in cases where the gas is sold or purchased and is transported through a common carrier such that it becomes co-mingled and fungible with other gases in the pipeline, then in case where the gas is introduced into the pipeline from one State and is taken out in another State, such movement would be deemed to be an inter-state movement.

For any queries please contact: editors@khaitanco.com