

E-Flash

Amendments Proposed by The Finance Bill, 2016



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

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Message from the President



Hon'ble Union Finance Minister Shri Arun Jaitley presented the Union Budget 2016-17, i.e. his third Union Budget, on 29th February 2016. Overall, the budget appears to be a progressive and growth-oriented one while keeping the economic targets realistic and aiming to provide a level-playing field to domestic manufacturers and promoting the cause of manufacturing in India. Let us too accept that our economy is right on track. Quite evidently, the agriculture and education sectors get an extra boost from the Government. Banks also get a boost towards recapitalisation of public-sector banks.

Union Finance Minister has declared the 9 pillars of his budget as agriculture and farmers' welfare, rural sector, social sector (including healthcare), education, skill development and job creation, infrastructure, financial sector reforms, ease of doing business, fiscal discipline and tax reforms, which will be the focus areas of the Government this year to boost India's economic growth.

Upholding the cause of inclusive growth, various benefits have been given to small taxpayers, investors and develop entrepreneurship in the country. With a view to provide impetus to start-ups and facilitate their growth in the initial phase of their business tax incentives have been given to eligible start-ups. Things have been made convenient for professionals with gross receipts up to 50 lakhs also stand to gain with the extension of presumptive taxation.

The Institute of Chartered Accountants of India (ICAI) has always been proactive in disseminating relevant information to all its stakeholders including its members. Continuing with its endeavours in this direction, the ICAI has come up with an e-publication on the features of Union Budget 2016-17 that will aptly provide us a crisp highlight of the Budget.

I take this opportunity to sincerely congratulate CA. Naveen N. D. Gupta, Chairman, and CA. Sanjiv Kumar Chaudhary, Vice-Chairman, Direct Taxes Committee (DTC), CA. Madhukar Narayan Hiregange, Chairman and CA. Sushil Kumar Goyal, Vice-Chairman, Indirect Taxes Committee (IDTC), CA. Nihar N. Jambusaria, Chairman and CA. Sanjiv Kumar Chaudhary, Vice-Chairman, Committee of International Taxation (CITAX), CA. Prafulla Premasukh Chhajed, Chairman, and CA. Manu Agrawal, Vice-Chairman, Committee on Public Finance and Government Accounting (CPF&GA), and other members of respective committees in sincere appreciation of their concerted efforts and respective valuable contribution in bringing out this material in such a short span of time. I am sure this publication would prove very useful for the members in their endeavours.

Best Wishes

CA. M. Devaraja Reddy
President, ICAI

9th March 2016

Message from the Vice-President

Union Budget 2016-17, presented on 29th February 2016 by Union Finance Minister of India Shri Arun Jaitley, is indeed a very progressive and balanced budget. It has set the agenda of growth before the country while promoting the domestic manufacturing sector, agriculture and education whilst keeping the fiscal deficit under control. Citing the example of falling CPI (consumer pricing index) inflation from 9-plus per cent to 5.4, Union Finance Minister has rightly declared that the economy is back on track. Govt. of India has provided additional privilege to senior citizens in healthcare cover. Union Budget 2016-17 sets its focus to boost irrigation, ground water sustainability and education scenario of the nation and the ICAI welcomes these moves of the Government. Entrepreneurship training, multi-skill development, digital literacy and higher education get a much-desired boost from the Government. Union budget aims to bring in economic stability, better governance and constant development across the sectors whilst focusing on fiscal management, Tax Regime stability, dispute resolution mechanisms, ease of doing business and lot more.

Let me sincerely appreciate the concerted efforts of the four Committees—Indirect Taxes Committee (IDTC), Direct Taxes Committee (DTC), Committee on International Taxation (CITAX) and Committee on Public Finance and Government Accounting (CPF&GA) of The Institute of Chartered Accountants of India that have put in their best in bringing this e-publication in the interests of all stakeholders of accountancy profession. I would also like to extend my best compliments to the Chairmen of all the aforementioned four Committees, respectively, namely CA. Madhukar Narayan Hiregange, CA. Naveen N. D. Gupta, CA. Nihar N. Jambusaria and CA. Prafulla Premasukh Chhajed, for their valuable contribution. This e-publication aims to bring out the crux of the Finance Bill, 2016. I sincerely wish that the e-flash will provide enriching information to all stakeholders (including members).

Best wishes
CA. Nilesh Shivji Vikamsey
Vice- President, ICAI

8th March 2016





Chairmen Speak



In the backdrop of Global Economy facing a downturn, the Budget 2016-17 has been presented with hope and the Indian Economy poised to attain the growth rate of 7.6%. The fiscal deficit and revenue deficit is pegged at the rate 3.9% and 2.5% respectively for the year 2015-16. The Finance Minister stress on continuing fiscal prudence, fiscal consolidation and effective expenditure management policy are steps in the right direction. Stress on Education, Health, Direct Benefit Transfer in fertilizer on pilot basis and creation of world class educational institutions are some of the other thrust areas in the Union Budget.

I sincerely hope that the e-Flash will apprise our readers with the broader view of the Union Budget 2016-17.

CA. Prafulla P. Chhajed

Chairman, Committee on Public Finance and Government Accounting

The Hon'ble Union Finance Minister has announced Union budget 2016-17 on 29th Feb, 2016. The biggest challenge in this budget was to set aside enough money to kick-start the economy without constraining the government's finances. The main agenda of the budget is to "Transform India" based on the nine pillars namely - Agriculture and Farmers' Welfare, Rural Sector, Social Sector including Healthcare, Education, Skills and Job Creation, Infrastructure and Investment, Financial Sector Reforms, Governance and Ease of Doing Business, Fiscal Discipline and Tax Reforms. A reform-oriented budget of a stable government can really deliver the promised good days to the country.



CA. Naveen N. D. Gupta

Chairman, Direct Taxes Committee



The Union Budget 2016-17 has addressed many areas of concern including rural development, education, social security to include the neglected. This inclusive movement was needed to rejuvenate the farmers and the villages.

In Indirect tax attempts to make the administration of law simple and minimize the litigations was clear. Further the attempt to enhance ease of doing business with measures like enabling revision of excise returns, rationalization of abatement rates under service tax, were seen. Numbers of steps have been taken to reduce litigations like changes made in the CENVAT Credit Rules and a dispute resolution scheme. Most of these measures may need to be relooked at as they may have limited or opposite impact.

The real welcome step was the reduction in interest for short payment of taxes/ duties uniformly at 15% p.a., restriction of arrest powers, increasing the number of CESTAT benches etc. Under customs the increase in products with inverted duty structure of raw material having a lower customs duty than the finished product would help the Make in India initiative. The revamping of warehouse provisions, deferred payment of custom duty are also good measures.

The increasing the time limit for issue of notices in bonafide cases from 1 year to 2 years in excise and customs cases and 18 months to 30 months in Service Tax cases is definitely a backward step for which journey was initially started with 6 months and 12 months period respectively.

This publication is developed with an objective to acquaint the readers with amendments in taxation brought in by Union Budget 2016-17.

CA. Madhukar N. Hiregange

Chairman, Indirect Taxes Committee



With the increasing cross border trade, the world economies have become more interdependent. This budget has been placed in the midst of the challenging times being faced by the Government both nationally and globally due to various reasons like global slowdown, declining exports, increasing NPAs, declining Rupee, weaker oil/commodity prices, declining real estate sector, loss of investor confidence and so on. Keeping fiscal stability over growth as a priority, the Honbl'e Finance Minister has through this budget made a remarkable effort to strive balance amongst all required demands. Through this e-flash, an ongoing effort has been made to update all members regarding budget proposals.

CA. Nihar Niranjana Jambusaria

Chairman, Committee on International Taxation



State of the Economy

Union Budget 2016-17 Highlights

Committee on Public finance and Government Accounting

The Union Budget has been presented when the Global Economy is facing a downturn, while Indian Economy is poised to attaining the growth rate of 7.6%. The fiscal deficit is targeted at 3.9% for 2016 while it has been put at 3.5% for 2017. The revenue deficit is pegged at 2.5% of GDP for the year 2015-16. The Current Account deficit has declined from 18.4 billion US dollars in the first half of last year to 14.4 billion this year. It is projected to be 1.4% of GDP at the end of this year. Foreign Exchange Reserve is at comfortable position at 350 billion US dollar.

Nine Pillars for transforming India is identified as

- Agriculture
- Rural Sector
- Social sector
- Education, skill and Job creation
- Infrastructure investment and Investment
- Financial sector reforms
- Governance reforms and ease of doing business
- Fiscal discipline
- Tax reforms

The finance minister stressed upon the need of continuing fiscal prudence and fiscal consolidation and effective expenditure management Policy. Committee for review of FRBM Act, removal of Plan /Non Plan classification from 2017-18 are some of the major highlight of the budget. Plan Expenditure pegged at ₹5.50 Lakh Crore for 2016-17 an increase at 15.3 %. Non Plan Expenditure is kept at ₹14.28 Lakh Crore for 2016-17. CPI inflation has come down to 5.4%.

Special emphasis to sector such as agriculture irrigation, social sector including health, Women and child development, Welfare of SC/ST, minorities and infrastructure. Another highlight includes rationalising and restructured more than 1500 Central Plan Scheme into about 300 Central Sector and 30 centrally sponsored scheme. Every New Scheme will have a sunset date and outcome review.

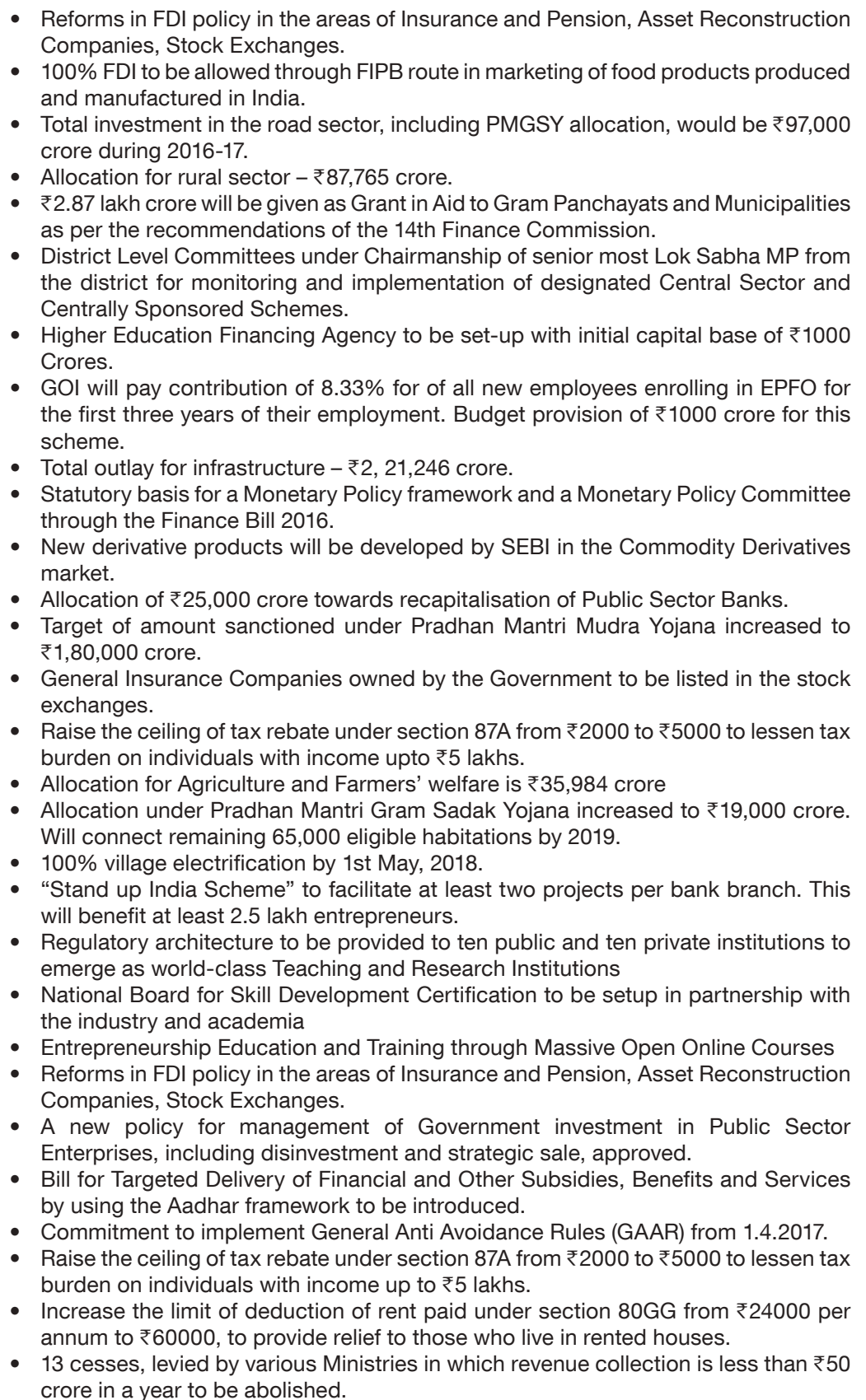
The Finance Minister said that the Government has also to priorities its expenditure for the year 2016-17. He also added that the Government shall enact significant economic reforms like changes in the legislative frame work relating to transport sector, incentivising gas discovery exploration, enactment of law to deal with resolution with financial firms, legal frame work dispute resolution in PPP project and public utility contracts.

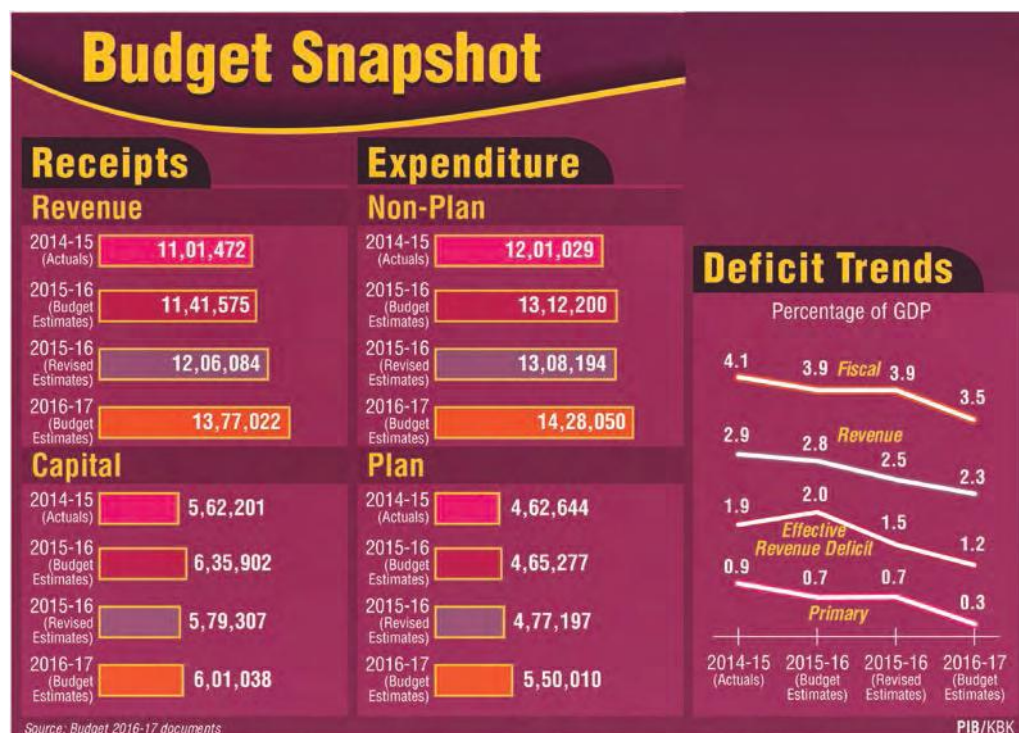
The govt dream project Make in India and skill India have been further bolstered in the present budget .Stress on Education, health DBT in fertilizer on pilot, govt will pay EPF contribution of 8.33% for all new employee for first three years, 10 public and 10 private educational institutions to be made world class, ₹9000cr allocated for Swachh Bharat Abhiyan are steps in the right direction.

Major Highlights

- Mobilisation of additional finances to the extent of ₹31,300 crore by NHAI, PFC, REC, IREDA, NABARD and Inland Water Authority by raising Bonds.
- A Task Force has been constituted for rationalisation of human resources in various Ministries.
- RBI to facilitate retail participation in Government securities.
- A Financial Data Management Centre to be set up.



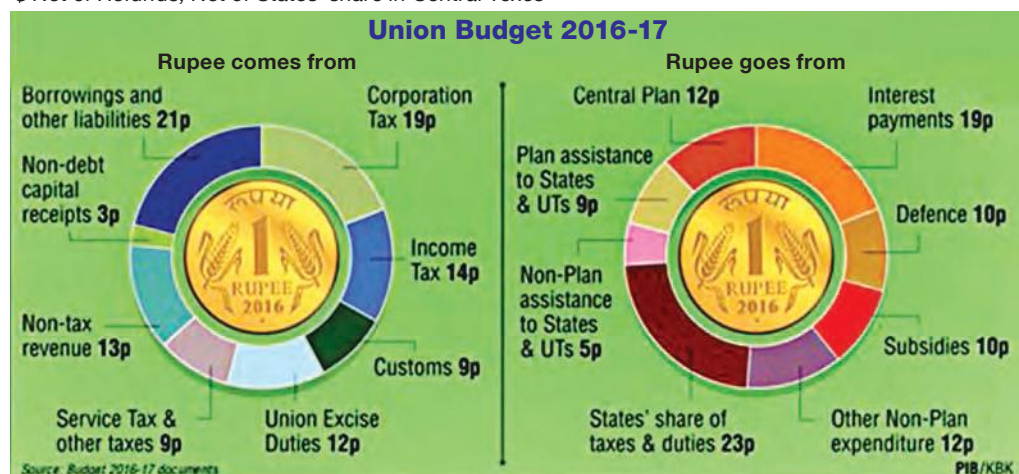




Government of India's Fiscal Balances

	₹billion			Growth	
	2014-15 Actual	2015-16 RE	2016-17 BE	2015-16 RE	2016-17 BE
Revenue Receipts	11,014.7	12,060.8	13,770.2	9.5%	14.2%
Tax Revenues\$	9,036.2	9,475.1	10,541.0	4.9%	11.2%
Non Tax Revenues	1,978.6	2,585.8	3,229.2	30.7%	24.9%
Revenue	14,669.9	15,476.7	17,310.4	5.5%	11.8%
Expenditure					
Revenue Deficit	3,655.2	3,415.9	3,540.2		
% of GDP	2.9%	2.5%	2.3%		
Capital Receipts (Non Debt)	514.8	442.2	671.3	-14.1%	51.8%
Capital Expenditure	1,966.8	2,377.2	2,470.2	20.9%	3.9%
Fiscal Deficit	5,107.3	5,350.9	5,339.0		
% of GDP	4.1%	3.9%	3.5%		

Source: Gol Budget Documents; CGA; ICRA Research
\$ Net of Refunds, Net of States' share in Central Taxes





Amendments Proposed by Finance Bill, 2016 in Direct Taxes

Direct Taxes Committee

1. Relief to small tax payers

- (a) **Rebate under Sec 87A:** With the objective of providing relief to resident individuals in the lower income slab i.e. total income not exceeding ₹5,00,000, section 87A is proposed to be amended so as to increase the maximum amount of rebate available from existing limit of ₹2,000 to ₹5,000.
- (b) **Maximum limit of deduction under section 80GG increased:** The maximum limit of deduction under section 80GG, in respect of rent paid by individuals who do not get any house rent allowance from the employer and who do not own any house, proposed to be increased from ₹2,000 p.m to ₹5,000 p.m.
- (c) **Increase in threshold limit for persons other than companies /LLP having income from business opting presumptive taxation under Section 44AD:** In order to reduce the compliance burden of the small tax payers and facilitate the ease of doing business, the threshold limit for availing the benefit of presumptive taxation scheme proposed to be increased from ₹1 crore to ₹2 crore, in respect of eligible businesses. The threshold limit proposed to be increased to bring relief to large number of assesses in the Micro Small and Medium Enterprises (MSME) category.
- (d) **Presumptive taxation scheme extended to professionals:** In order to rationalize the presumptive taxation scheme and to reduce the compliance burden of the small tax payers having income from profession and to facilitate the ease of doing business, the presumptive taxation regime proposed to be extended to professionals having gross receipts not exceeding ₹50 lakhs in the previous year at a sum equal to 50% of such gross receipts.
- (e) **Threshold limit increased for tax audit for persons having professional Income:** The threshold limit for tax audit under section 44AB, for getting accounts audited proposed to be increased from ₹25 lakhs to ₹50 lakhs, in case of persons carrying on profession.

2. Measures to boost growth and employment generation

(a) Corporate Tax proposals:

- (i) The Corporate Tax rate was proposed to be reduced from 30% to 25% over a period, accompanied by rationalization and removal of various tax exemptions and incentives. The following are some of the tax exemptions and incentives which are proposed to be withdrawn in phased manner:
- The accelerated depreciation under Income-tax Act will be limited to 40% from 01.04.2017
 - The benefits of deductions for Research would be limited to 150% from 01.04.2017 and 100% from 01.04.2020, in certain cases.
 - The benefits of Section 10AA to new SEZ units will be available to those units which commence activity before 31.03.2020.
 - Weighted Deduction under section 35CCD for skill development will continue up to 01.04.2020
- (ii) Manufacturing companies incorporated on or after 1.03.2016 are proposed to be given an option to be taxed at 25% plus surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation etc.
- (iii) For relatively small enterprises i.e., companies with turnover not exceeding ₹5 crore (in the financial year ending March 2015), the rate of corporate tax reduced from 30% to 29% plus surcharge and cess, for the next financial year.
- (iv) Tax Incentives to start ups: With a view to providing an impetus to start-ups and



facilitate their growth in the initial phase of their business, a deduction of 100% of the profits and gains derived by an eligible start-up from a business involving innovation development, deployment or commercialization of new products, processes or services driven by technology or intellectual property proposed to be provided. Such benefit would be available to an eligible start-up which is setup before 01.04.2019.

The deduction may, at the option of the assessee, be claimed by him for any three consecutive assessment years out of five years beginning from the year in which the eligible start-up is incorporated. MAT will apply in such cases and Capital Gains will not be taxed if invested in regulated/notified Fund of Funds by individuals in notified startups, in which they hold majority shares.

- (b) **Concessional Tax Regime for income from patents:** In order to encourage indigenous research & development activities and to make India a global R & D hub, the Government has decided to put in place a concessional taxation regime for income from patents. A concessional rate of 10% proposed for taxing income from world exploitation of patents developed and registered in India.
- (c) **Complete Pass through status securitization trust:** In order to encourage more investment in Asset Reconstruction Companies (ARC), it is proposed to provide complete pass through of income to securitization trust. Consequently, the income will be taxed in the hands of investors instead of the trust. However the trust will be liable to deduct tax at source.
- (d) **Deferment of POEM:** The determination of residency of foreign company on the basis of place of effective management (POEM) is proposed to be deferred by one year.

3. Measures for moving towards a pensioned society

- (a) (i) **Recognised provident fund and superannuation fund:** In order to bring greater parity in tax treatment on different types of pension plans, it is proposed to provide in respect of the contributions made on or after 1st April 2016 by an employee participating in a recognised provident fund and superannuation fund, upto 40% of the accumulated balance attributable to such contribution on withdrawal shall be exempt from tax. In effect, the 100% exemption has been reduced to 40%.
- (ii) **Annuity Plan:** Any payments in commutation of any annuity purchased out of contributions made on or after 1st day of April, 2016 which exceeds 40% of the annuity, to be chargeable to tax.
- (iii) **National Pension System:** It is also proposed to provide any payment from National Pension System Trust to an employee on account of closure or his opting out of the pension scheme referred to in Section 80CCD, to the extent it does not exceed 40% of the total amount payable to him at the time of closure or his opting out of the scheme, to be exempt from the tax.
Also annuity fund which goes to the legal heir after the death of pensioner will not be taxable in all the three cases (i.e., (i), (ii) & (iii) above).
- (iv) **Monetary limit for employer contribution to EPF:** Also, a monetary limit for contribution of employer in recognized provident fund and superannuation fund of ₹1.5 lakh per annum for taking tax benefit is proposed.

4. Measures for promoting affordable housing

- (a) **100% deduction of the profits of an assessee developing and building affordable housing projects:** With a view to incentivise affordable housing sector as a part of larger objective of 'Housing for All', it is proposed that 100% deduction of the profits would be allowed to an assessee developing and building affordable housing projects, if the housing project is approved by the competent authority before the 31st March, 2019 and completed within 3 years of approval.
- (b) **Additional deduction of interest to "first home buyers":** In furtherance of the





goal of the Government of providing 'housing for all, it is proposed to incentivise first-home buyers availing home loans, by providing additional deduction of ₹50,000 in respect of interest on loan taken for residential house property from any financial institution.

This incentive is proposed to be available to a house property of a value less than ₹50 lakhs in respect of which a loan of an amount not exceeding ₹35 lakh has been sanctioned during the Financial Year 2016-17. Further, this benefit proposed to be extended till the repayment of loan continues.

- (c) **SPV would be exempted from Dividend Distribution Tax (DDT) on distribution made to Business Trust:** In order to rationalize the taxation regime for business trusts (REITs and Invits) and their investors, it is proposed to provide a special dispensation and exemption from levy of dividend distribution tax. Accordingly, the SPV would not be liable to pay DDT on the income distributed to business trusts. Such dividend received by the business trust and its investor shall not be taxable in the hands of trust or investors.

5. Additional resource mobilization for agriculture, rural economy and clean environment

- (a) Gross Dividend would be taxable in the hands of recipients: The income by way of gross dividend, to be chargeable to tax in the case of an individual, Hindu undivided family (HUF) or a firm, who is resident in India @ 10%, if the same is in excess of ₹10 lakh
- (b) Rate of surcharge increased from 12% to 15%: The surcharge rate to be raised from 12% to 15% on persons, other than companies, firms and cooperative societies having income above ₹1 crore.
- (c) Scope of Tax Collection at Sources (TCS) expanded to include sale of luxury cars and other goods and services: In order to reduce the quantum of cash transaction in sale of any goods and services and for curbing the flow of unaccounted money in the trading system and to bring high value transactions within the tax net, it is proposed to provide that the seller shall collect the tax @1% from the purchaser on sale of motor vehicle of the value exceeding ₹10 lakhs and sale in cash of any goods (other than bullion and jewellery), or providing of any services (other than payments on which tax is deducted at source under Chapter XVII-B) exceeding ₹2 lakhs.
- (d) Equalisation levy of 6% on the non-residents from e-commerce transactions: In order to tap tax on income accruing from e-commerce transactions to non-residents from India, it is proposed that a person making payment to a non-resident, who does not have a permanent establishment, exceeding in aggregate ₹1 lakh in a year, as consideration for online advertisement, will withhold tax at 6% of gross amount paid, as Equalization levy. The levy will only apply to B2B transactions.

6. Reducing litigation and providing certainty in taxation

- (a) **Limited period Compliance Window to be introduced:** For domestic taxpayers to declare undisclosed income or income represented in the form of any asset and clear up their past tax transgressions, the Income Declaration Scheme, 2016 proposed to be introduced as limited period compliance window for taxing such undisclosed income paying @ 30%, plus surcharge at 7.5% and penalty at 7.5%, which is a total of 45% of the undisclosed income. There will be no scrutiny or enquiry regarding income declared in these declarations under the Income-tax Act, 1961 or the Wealth-tax Act, 1957 and the declarants will have immunity from prosecution.
- (b) **The Direct Tax Dispute Resolution Scheme, 2016:** In order to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously, the Direct Tax Dispute Resolution Scheme, 2016 proposed to be introduced in relation to tax arrear and specified tax. Under this scheme, the declarant would be



required to pay tax at the applicable rate plus interest upto the date of assessment and no penalty would be leviable for disputed tax upto ₹10 lakhs. However, in case of disputed tax exceeding ₹10 lakhs, 25% of the minimum penalty leviable shall also be required to be paid.

(c) One time Dispute Resolution scheme for cases ongoing under retrospective amendment: Under the Direct Tax Dispute Resolution Scheme, 2016, person may also make a declaration in respect of any tax determined in consequence of or is validated by an amendment made with retrospective effect in the Income-tax Act, 1961 or Wealth-tax Act, 1957, as the case may be, for a period prior to the date of enactment of such amendment and a dispute in respect of which is pending as on 29.02.2016, subject to their agreeing to withdraw any pending case lying in any Court or Tribunal or any proceeding for arbitration, mediation etc.. Consequently, they can settle the case by paying only the tax arrears in which case liability of the interest and penalty shall be waived.

(d) Penalty leviable for concealment of income rationalised: The entire scheme of penalty proposed to be modified by providing different categories of misdemeanour with graded penalty and thereby substantially reducing the discretionary power of the tax officers. The penalty rates will now be 50% of tax in case of underreporting of income and 200% of tax where there is misreporting of facts.

7. Simplification and rationalization of taxation

(a) Exemption from requirement of furnishing PAN under section 206AA to certain non-resident: In order to reduce compliance burden, section 206AA proposed to be amended so as to provide that the provisions of this section shall not apply to a non-resident, on furnishing of alternative documents, subject to such conditions as may be prescribed.

(b) Rationalization of tax deduction at Source (TDS) provisions: In order to rationalise the rates and base for TDS provisions, the existing threshold limit for deduction of tax at source and the rates of deduction of tax at source are proposed to be revised in the case of Winnings from Horse Race, Payments to Contractors, Insurance commission, Commission on sale of lottery tickets etc. This would improve cash flow of small tax payers.

8. Use of Technology for creating accountability

(a) Scope for e-assessment proposed to be expanded: Expansion in the scope of e-assessments to all assesses in 7 mega cities in the coming years, reducing face to face contact with the assesses.

(b) Rate of interest on refunds to be increased: The rate of interest on the refunds to be increased from 6% p.a. to 9% p.a., in case there is delay in giving effect to Appellate order beyond ninety days.

(c) E-sahyog project to be expanded: Income-tax Department (ITD) will fully expand the pilot initiative of 'e-Sahyog' with a view to reduce compliance cost, especially for small tax payers. The e-Sahyog' pilot project is to provide an online mechanism to resolve mismatches in income-tax returns without requiring taxpayers to attend the Income-tax office.





Amendments Proposed by Finance Bill, 2016 in Indirect Taxes

Indirect Taxes Committee

CENTRAL EXCISE

Amendments made effective immediately

- The Clean Energy cess is to be renamed as Clean Environment cess. The effective rate of Clean Energy cess proposed to be increased from ₹200 per tonne to ₹400 per tonne .
- Infrastructure cess is to be levied on motor vehicles under heading 8703 subject to certain exceptions. Further, this cess is not CENVATable and CENVAT credit cannot be utilized for its payment.

Amendments to be effective from the date on which Finance Bill receives the assent of the President

Amendments in the Central Excise Act, 1944

- Requirement of publishing and offering for sale any notification issued, by the Directorate of Publicity and Public Relations of CBEC under section 5A proposed to be done away with.
- The time-limit for issuance of show cause notice under section 11A for recovery of service tax not levied/paid/short levied/short paid/erroneously refunded, for non-fraud cases is proposed to be enhanced by 1 year, i.e. from 1 year to 2 years.
- It is proposed to empower the Board under section 37B to issue orders, instructions and directions for the implementation of any other provision of the Central Excise Act, 1944.

Amendments effective from 01.03.2016

- Excise duty of 1% without CENVAT credit and 12.5% with CENVAT credit on articles of jewellery (excluding articles of silver jewellery other than those studded with diamonds, ruby, emerald or sapphire). With a higher threshold exemption upto ₹6 crore in a year and eligibility limit of 12 crore.
- Excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit) is being levied on readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff except those falling under 6309 and 6310 of retail sale price (RSP) of ₹1000 and above when they bear or are sold under a brand name.
- The tariff value for readymade garments and made up articles of textile is also being increased from 30% to 60%

Amendments effective from 01.04.2016

Amendments in the Central Excise Rules, 2002

The Central Excise Rules, 2002 are proposed to be amended as follows:

- (a) Reduction of the number of returns to be filed by a central excise assessee above a specified threshold to 13, from 27, that is, 1 annual return required to be filed by the 30th Day of November of the succeeding financial year and 12 monthly returns. The said annual return is also required to be filed by the service tax assessee above a specified threshold. Thus, now three service tax returns need to be filed instead of two.
- (b) Like under service tax, the facility of revision of return to be available under central excise also.
- (c) Manual attestation of copy of invoice, meant for transporter, is not required in cases where invoices are digitally signed.

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- (d) In case of finalization of provisional assessment, the interest will be chargeable from the original date of payment of duty
- (e) Instructions issued to Chief Commissioner of Central Excise for withdrawal of prosecution by filling application to courts in those cases which are pending for more than 15 years and have duty of less than 5 lakh rupees

Amendments made to CENVAT CREDIT RULES

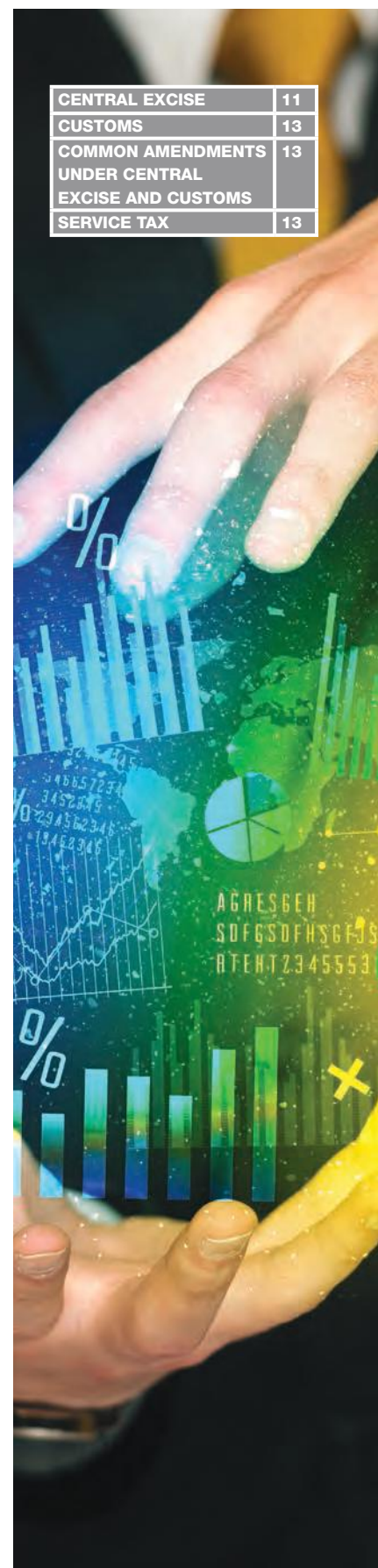
Amendments effective from 01.04.2016

Amendments in the CENVAT Credit Rules, 2004

The CENVAT Credit Rules, 2004 have been simplified and rationalized with an endeavor to improve CENVAT credit flow, reduce the compliance burden and associated litigations, predominantly those relating to apportionment of credit between exempted and non-exempted final products/services. Primary amendments include:

- Equipment and appliance used in an office located within a factory are being included in the definition of capital goods so as to allow CENVAT credit on the same.
- CENVAT credit on inputs and capital goods used for pumping of water, for captive use in the factory, is being allowed even where such capital goods are installed outside the factory.
- All capital goods having value up to ₹10,000 per piece are being included in the definition of “inputs” which would enable an assessee to take whole credit on such capital goods in the same year in which they are received.
- In order to allow shipping lines to take credit on inputs and input services, service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of “exempted service”.
- CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer who manufactures the goods as per specification of manufacturer of final products is also being allowed. These tools can be sent directly to such other manufacturer or job worker without bringing the same to manufacturers premises.
- Validity of the permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance there from on payment of duty has been extended to 3 years as against present one year.
- CENVAT credit of Service Tax paid on amount charged for assignment by Government or any other person of a natural resource such as radio-frequency spectrum, mines etc. shall be spread over the period of time for which the rights have been assigned. Further, if in any financial year, the manufacturer of goods or provider of output service having such rights further assigns them to another person against a consideration, balance CENVAT credit not exceeding the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. Also, CENVAT credit of annual or monthly user charges payable in respect of such assignment shall be allowed in the same financial year.
- An invoice issued by a service provider for clearance of inputs or capitals goods is also listed as a valid document for availing CENVAT credit.
- FIFO method of utilizing credit as specified in Rule 14(2) has been done away with. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

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Amendment in Rule 6: Reversal of CENVAT Credit

Rule 6 of CENVAT Credit Rules is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit. The changes are as follows:

- Inputs and input services used in an activity which is not a 'service' under the Finance Act, 1994 also to attract reversal provisions under rule 6.
- For the capital goods used for the manufacture of exempted goods or provision of exempted service, no CENVAT credit shall be allowed for two years from the date of commencement of commercial production or provision of service.
- CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service.
- A manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall reverse the entire credit and is not be eligible for credit of any inputs and input services used.
- When a manufacturer/provider of output service manufactures/provides two classes of goods/services for clearance upto the place of removal, i.e. exempted goods/services and final products/output services excluding exempted goods/services then manufacturer or provider of output service has following 2 options:
 - Pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.
 - Option (ii) (Rule 3A) provides the procedures and conditions for calculation of credit allowed and credit not allowed and directs that such credit not allowed shall be paid, provisionally for each month. The four key steps for calculating the credit required to be paid are :-
 - Credit of Inputs/Input Services used exclusively in manufacture of exempted goods or provision of exempted services is not available
 - Full credit is available of input or input services used exclusively in final products excluding exempted goods or output services excluding exempted services.
 - Balance Common Credit shall be attributed as follows:

Credit Attributable to Exempted Goods/ Services	== Common X	Value of exempted goods/services total turnover of exempted and non-exempted goods and exempted and non-exempted services in the previous financial year
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 - Final reconciliation and adjustments are provided for after close of financial year by 30th June of the succeeding financial year, as provided in the existing rule.
- On failing to follow the procedure of giving intimation a manufacturer/provider of output service may be allowed by competent Central Excise Officer to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of 15% per annum.
- The existing rule 6 of CCR would continue to be in operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.
- Banks and other financial institutions are to be allowed to reverse credit in respect of exempted services, on actual basis also, in addition to the option of 50% reversal.



- Credit taken on inputs and input services used in providing a service by way of “transportation of goods by a vessel from customs station of clearance in India to a place outside India” shall not be required to be reversed by the shipping lines.

Amendment in Rule 7: Input Service Distributor (ISD)

- An ISD can now distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units.
- As against the present method of distribution of Credit based on turnover, now an ISD will distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, inter alia, the following conditions:
 - i) Credit attributable to a particular unit shall be attributed to that unit only.
 - ii) Credit attributable to more than one unit but not all shall be attributed to those units only and not to all units.
 - iii) Credit attributable to all units shall be attributed to all the units.
- Credit shall be distributed pro rata on the basis of turnover as is done in the present rules.
- An outsourced manufacturing unit shall maintain separate account of credit received from each of the ISD and shall use it for payment of duty on goods manufactured for ISD concerned.
- Provisions of Rule 6 will apply to units availing the CENVAT credit distributed by ISD and not to the ISD.
- Now, manufacturers with multiple manufacturing units are allowed to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units.

SERVICE TAX

Amendments effective from 01.03.2016

Exemption withdrawn

- Exemption with respect to construction, erection, commissioning or installation of original works pertaining to monorail or metro in respect of contracts entered into on/after 01.03.2016, has been withdrawn. Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.

New Exemptions

Following services have been exempted:

- Services by way of construction, erection, commissioning, etc. in respect of-
 - a) housing projects under Housing For All (HFA) (Urban) Mission/Pradhan Mantri Awas Yojana (PMAY)
 - b) low cost houses up to a carpet area of 60 m² in a housing project under “Affordable housing in Partnership” component of PMAY
 - c) low cost houses up to a carpet area of 60 m² in a housing project under any housing scheme of the State Government.
- Services provided by the Indian Institutes of Management (IIM) to their students, by way of the specified educational programmes.

Other Amendments

- CENVAT credit is being allowed to service providers providing services by way of transportation of goods by a vessel from India to abroad
- Rule 5 of the Point of Taxation Rules, 2011 has been amended so as to clarify that this rule shall apply mutatis mutandis in case of new levy on services and new levy



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or tax shall be payable on all the cases other than specified in said rule.

- Information Technology Software (IT Software) on media bearing RSP is exempted from service tax provided central excise duty is paid on RSP in accordance with section 4A of the Central Excise Act.

Further, IT Software recorded on media which is “NOT FOR RETAIL SALE” is exempted from so much of the Central Excise duty/CVD as is equivalent to the duty payable on the portion of the value of such IT Software recorded on the said media, which is leviable to service tax. In such cases, manufacturer/importer would therefore be required to pay Central Excise duty/CVD only on that portion of value representing the value of the medium on which it is recorded along with freight and insurance.

Thus, levy of excise duty and service tax is mutually exclusive.

Amendments effective from 01.04.2016

Exemptions withdrawn

With a view to broaden the tax base, following exemptions are to be withdrawn:

- services provided by-
 - (i) a senior advocate to an advocate, partnership firm of advocates providing legal service; and
 - (ii) a person represented on an arbitral tribunal to an arbitral tribunal.
 Service tax would be payable under forward charge on such services. However when a senior advocate provides a service to an individual who is not in business or profession, the same shall be exempt.
- transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway

New Exemptions

Exemption has been provided with respect to the following services:

- Services of life insurance business provided by way of annuity under the National Pension System.
- Services provided by SEBI by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
- Services provided by Employee Provident Fund Organisation (EPFO) to employees.
- Services provided by Biotechnology incubators approved by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees.
- Services provided by National Centre for Cold Chain Development by way of knowledge dissemination.
- Services provided by Insurance Regulatory and Development Authority (IRDA) of India.
- 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 by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners.
- Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship.

Amendments in existing exemptions

- Hitherto, service tax payable on a performance in folk or classical art forms of music/dance/theatre is exempt provided the consideration therefor exceeds

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₹1,00,000. This limit has been increased to ₹1,50,000.

Rationalisation of abatements alongwith the conditions for availing such abatements

- Abatement at the existing rate of 70% will continue to be available on transport of passengers and goods by rail and on transport of goods by vessel, with the CENVAT credit of input services now to be allowed [presently, the credit of input services is not allowed with the abatement being claimed].
- A lower rate of abatement of 60% for transport of goods in containers by rail by any person other than Indian railway, with the CENVAT credit of input services being allowed.
- For renting of motor-cab services, Cost of fuel should be included in the consideration charged for providing renting of motor-cab services for availing the abatement.
- Uniform rate of abatement of 70% on services by way of construction of residential complex, building, civil structure, or a part thereof, irrespective of the carpet area of the units and amount charged for such units.
- Abatement on services by a tour operator in respect of a tour only for the purpose of arranging or booking accommodation for any person, retained at the existing rate of 90%. However, abatement in respect of any other tour is rationalised from 75% and 60% to 70%.
- A lower rate of abatement of 60% on shifting of used household goods by a Goods Transport Agency (GTA) without CENVAT credit on inputs, input services and capital goods.
- Abatement of 70% on services of a foreman to a chit fund restored, without CENVAT credit on inputs, input services and capital goods.

Amendments in Service Tax Rules, 1994

- Rule 6 of the Service Tax Rules, 1994 to be amended to extend the benefit of quarterly payment of service tax to One Person Company (OPC) whose aggregate value of services provided is up to ₹50 lakh in the previous financial year and an HUF. Further, payment of service tax on receipt basis is also extended to such OPC.
- With respect to services provided by mutual fund agents/distributor to a mutual fund or asset management company, service tax to be payable under forward charge provisions, i.e. service provider to be liable to pay service tax.
- Rule 6(7A) of the Service Tax Rules, 1994 to be amended to provide that an insurer carrying on life insurance business to have an option to pay tax at 1.4% of the total premium charged on single premium annuity (insurance) policies, in cases where the amount allocated for investment/savings on behalf of policy holder is not intimated to such policy holder at the time of providing of service.
- With effect from 01.04.2016, any service (and not only support services) provided by Government or local authorities to business entities are leviable to service tax. Consequently, service tax would be payable on any (and not only support services) service by the service recipient on reverse charge basis from said date.

Amendments to be effective from the date on which Finance Bill, 2015 receives the assent of the President

- Finance Act, 2015 had inserted Explanation 2 to the definition of “service” under section 65B(44) of the Finance Act, 1994 to specifically state that service tax is leviable on activities undertaken by lottery distributors and selling agents, in relation to lotteries.
The said explanation is proposed to be amended to clarify that it is the activity in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner, of the State Government as

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per the provisions of the Lotteries (Regulation) Act, 1998, carried out by a lottery distributor/selling agent, which is leviable to service tax.

- The Negative List entry under section 66D(l) covering 'educational services is proposed to be omitted. The said benefit would continue by way of exemption under mega exemption *Notification No. 25/2012 ST* dated 20.06.2012 (Sl. No. 9)
- Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof is proposed to be declared as a service under section 66E(j) so as to state that those are not sale of intangible goods and liable to service tax.
- Section 67A is proposed to be amended to obtain specific rule making powers in respect of Point of Taxation Rules, 2011.
- The time-limit for issuance of show cause notice under section 73, for recovery of service tax not levied/paid/short-levied/short paid/erroneously refunded, for non-fraud cases is proposed to be enhanced by 1 year, i.e. from 18 months to 30 months. For cases involving fraud etc. the time limit of 5 years is unchanged.
- Interest rates on delayed payment of duty/tax across all indirect taxes are proposed to be made uniform at 15% p.a. However, under service tax, in case where any amount is collected as service tax but amount so collected is not paid to the credit of the Central Government on/before the date on which such payment becomes due, proposed interest rate is 24% p.a. In case of assesseees, whose value of taxable services in the preceding year/years covered by the notice is less than ₹60 Lakh, the rate of interest on delayed payment of service tax will be 12%. Power to arrest under section 91 proposed to be restricted only in case where the tax payer has collected the tax of more than ₹2 crore, but not deposited it to Government. The monetary limit for launching prosecution under section 89 proposed to be increased to ₹2 crores from ₹50 lacs of the amount of service tax collected but not deposited to the credit of the Central Government beyond a period of 6 months from the date on which such payment becomes due.
- Section 93A of the Finance Act, 1994 proposed to be amended so as to allow rebate by way of notification as well as rules.
- Section 101 is proposed to be inserted for granting retrospective exemption for the service provided to Governmental Authority by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works for the period 01.07.2012 to 30.01.2014. This exemption is proposed for that period which had missed exemption but were believed to be exempted by the industry.
- Section 102 is proposed to be inserted for granting exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of –
 - (i) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
 - (ii) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
 - (iii) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;under the contract which was entered prior to 01.03.2015 subject to the condition that appropriate stamp duty was paid on the contract. The exemption is being restored till 31.03.2020. The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax.
- Section 103 is proposed to be inserted for granting exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port was withdrawn with effect from 1.4.2015. The same is being restored for the services provided under a contract which had been entered into prior to



01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to 01.03.2015. The exemption is being restored till 31.03.2020. The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax.

Amendments to be effective from 01.06.2016

• Krishi Kalyan Cess


It is proposed to levy a Krishi Kalyan Cess on **ANY OR ALL** the taxable services at the rate of 0.5% of the value of taxable services. It is important to note here that unlike Swachh Bharat Cess, service provider shall be allowed to utilize the CENVAT credit of Krishi Kalyan Cess paid on input services for payment of such cess on the output service provided by it. The objective behind implementing KKC is to fund financing & promotion initiatives to improve agricultural related activities.

- The Negative List entry under section 66D(O) covering 'Service of transport of passengers with or without accompanied belongings by stage carriage' is proposed to be omitted. However exemption of services by non-air-conditioned contract carriage would continue vide mega exemption Notification No. 25/2012 ST dated 20.06.2012
- The Negative List entry under section 66D(P) covering 'Services by way of transportation of goods by an aircraft or a vessel from a place outside India upto the customs station of clearance' is proposed to be omitted. Service tax would be payable by the domestic shipping vessels registered in India while a business entity availing services of foreign shipping lines would be required to pay services tax under Reverse Charge. Services by an aircraft would continue to be exempted under mega exemption Notification No. 25/2012 ST dated 20.06.2012.

CUSTOMS

Amendments to be effective from the date on which Finance Bill, 2015 receives the assent of the President/Amendments effective from 01.04.2016

- Section 2(43) has been amended so as to include Special Warehouse licensed under Section 58A for enabling storage of specific goods under physical control of the department, as control over the other types of warehouses would be only record based.
- The provision relating warehousing station is now omitted which would resolve unnecessary compliances to a great extent. Further, by deletion of the said provision EOU's would be benefited, as every EOU had to make registration of their premises as warehousing station and thereafter clear goods.
- The provision for transit of goods in the same conveyance without payment of duty has been amended to state that henceforth only a proper officer may allow the goods and the conveyance to transit without payment of duty subject and no *suo moto* transit can take place. Further conditions may also be prescribed.
- Section 25 is being amended so as to omit the requirement of publishing and offering for sale any notification issued, by the Directorate of Publicity and Public Relations of CBEC. For this purpose, it has been proposed to provide that every notification issued shall unless otherwise provided come into force on the date of its issue by the Central Government for publication in the official Gazette.
- The period of limitation has been increased from one year to two years in case of bonafide error assessment.
- Amendments have been proposed in section 28, 47, 51 and 156 of the Customs Act to provide for deferred payment of customs duties for importers and exporters with proven track record. It will reduce the cargo release time and transaction cost



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of EXIM trade. The details changes in this regard would be prescribed by Rules.

- The Principal Commissioner or Commissioner are proposed to be empowered to license a public and private warehouses in place of Deputy/Assistant Commissioner, subject to such conditions as may be prescribed. Further, they would also be empowered for licensing of special warehouse wherein dutiable goods may be deposited and be locked by the proper officer and no person would enter the warehouse or remove any goods therefrom without his permission.
- The bond amount for the warehousing bonds submitted by importers availing duty deferred warehousing has been increased to thrice the duty amount as against earlier requirement of twice the duty amount. In addition to furnishing of bond, security may also be required. In case of ownership of such goods being transferred to another person, the transferee would need to execute bond and security
- The provisions of Section 61 relating to period of warehousing has been extended to all goods used by Export Oriented Undertakings, Units under Electronic Hardware Technology Parks, Software Technology Parks, Ship Building Yards and other units manufacturing under bond. Additionally Principal Commissioners and Commissioners have been empowered to extend the warehousing period upto one year at a time.
- Provisions relating to control over warehousing goods and payment of rent and warehousing charges are proposed to be done away with. Further, free samples from the warehouse can no longer be taken away.
- The payment of fees to Customs for supervision of manufacturing facilities under Bond is no longer required. Principal Commissioner or Commissioner of Customs empowered to license such activities.
- As a step towards Make in India, the rates of customs and excise duty have been changed on certain inputs to reduce costs and improve competitiveness of domestic industry in sectors like Information technology hardware, capital goods, defence production, textiles, mineral fuels & mineral oils, chemicals & petrochemicals, paper, paperboard & newsprint, Maintenance repair and overhauling [MRO] of aircrafts and ship repair.
- Customs Single Window Project to be implemented at major ports and airports starting from beginning of next financial year.
- The rate of interest on delayed payment of duty has been revised to 15% from earlier rate of 18%.
- Increase in free baggage allowance for international passengers. New Simplified Baggage Rules, 2016 has been notified which would be effective from 1st April, 2016. Further Customs Baggage declaration regulation 2013 is also being amended so as to provide for custom declaration only for those passengers who carry dutiable and/or prohibited goods.



Amendments Proposed by Finance Bill, 2016 in International Taxation

Committee on International Taxation

1. Increase in Surcharge

Surcharge is increased from 12% to 15% in case of non-resident individuals

2. Exemption in respect of certain activity related to diamond trading in "Special Notified Zone". -Exemption u/s 9(1)(i) to Foreign Mining Companies through or from the activities which are confined to display of uncut and unassorted diamonds in a Special Zone notified by the Central Government in the Official Gazette in this behalf

Earlier, the activity of Foreign Mining Companies (FMC) of mere display of rough diamonds even with no actual sale taking place in India may lead to creation of business connection in India of the FMC making it taxable u/s 9(1)(i) of the Income Tax Act, 1961.

In order to facilitate the FMCs to undertake activity of display of uncut diamond (without any sorting or sale) in the special notified zone, it is proposed to amend section 9 of the Act to provide that in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unassorted diamonds in a Special Zone notified by the Central Government in the Official Gazette in this behalf.

This amendment will take effect retrospectively from 1st April, 2016 and will accordingly apply in relation to assessment year 2016-17 and subsequent assessment years.

3. Exemption u/s 10(48A) in respect of income of Foreign company from storage and sale of crude oil stored as part of strategic reserves.- Income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall not be included in the total income on fulfilment of certain conditions

Exemption is to encourage foreign national oil companies (NOCs) and multinational companies (MNCs) storing and selling crude oil from outside India to build up strategic oil reserves.

Thus it is proposed that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall not be included in the total income, if, -

- i. such storage and sale by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government; and
- ii. having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf.

Since the storage of oil is expected to begin in the current financial year, this exemption would be available from the previous year 2015-16, i.e. assessment year 2016-17.

4. Implementation of POEM based residence rule deferred for 1 year and applicable from AY 2017-18- It is proposed to defer the applicability of POEM based residence test by one year It is also proposed to provide a transition mechanism for a company which is incorporated outside India and has not earlier been assessed to tax in India.

Reasons for such deferment

- A company may be claiming to be a foreign company not resident in India but in





the course of assessment, it is held to be resident based on POEM being in fact in India.

- This determination would be well after closure of the previous year and it may not be possible for the company to undertake many of procedural requirements relating to
 - o Advance tax payment,
 - o applicability of TDS provisions,
 - o computation of total income,
 - o set off of losses a
 - o manner of application of transfer pricing regime
 - o issues of computation of depreciation also arise when in earlier years it has not been subject to computation under the Act.
- This may be due to absence of above requirements under tax laws of country of incorporation of such company.

5. Amendment in section 206AA - Exemption from requirement of furnishing PAN to certain non-resident- No higher withholding tax if non-resident does not have PAN but furnishes an alternative document

It is proposed to amend the said section 206AA so as to provide that the provisions of this section shall also not apply to a non-resident, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, subject to such conditions as may be prescribed.

This amendment will take effect from 1st June, 2016.

6. Non-Applicability of Minimum Alternate Tax (MAT) on foreign companies for the period prior to 01.04.2015 subject to conditions

Vide Finance Act, 2015 of the provisions of section 115JB were amended to provide that in case of a foreign company any income chargeable at a rate lower than the rate specified in section 115JB shall be reduced from the book profits and the corresponding expenditure will be added back.

However, since this amendment was prospective w.e.f. assessment year 2016-17, the issue for assessment year prior to 2016-17 remained to be addressed.

Thus, it is proposed to provide that with effect from 01.04.2001, the provisions of section 115JB shall not be applicable to a foreign company if -

- (i) the assessee is a resident of a country or a specified territory with which India has **DTAA u/s 90(1)** or the Central Government has adopted any **agreement u/s 90A(1)** and the assessee does not have a permanent establishment in India in accordance with the provisions of such Agreement;
or
- (ii) the assessee is a resident of a country with which India **does not have DTAA** and the assessee is not required to seek registration under any law for the time being in force relating to companies.

This amendment is proposed to be made effective retrospectively from the 1st day of April, 2001 and shall accordingly apply in relation to assessment year 2001-02 and subsequent years.

7. Clarification regarding the definition of the term 'unlisted securities' for the purpose of Section 112 (1) (c)- In case of non-resident long-term capital gains arising from the transfer of a shares of private company, shall be chargeable to tax @ 10 per cent

Earlier, in case of non-resident if unlisted shares are transferred, the longterm capital gains is taxable @ 10% from AY 2013-14. A view has been taken by the courts that shares of a private company are not "securities".

Thus, with a view to clarify the position so far as taxability is concerned, it is proposed to amend the provisions of section 112(1)(c) so as to provide that long-



term capital gains arising from the transfer of shares of private company, shall be chargeable to tax @ 10 per cent.

These amendments are proposed to be made effective from the 1st day of April, 2017 and shall accordingly apply in relation to assessment year 2017-18 and subsequent years.

8. Proposed Amendment in section 92CA(3) -Extension of time limit to Transfer Pricing Officer (TPO) in certain cases to 60 days if the time available to the TPO for making an order is less than 60 days

It is proposed to amend sub-section (3A) of section 92CA to provide that in following situations, if the time available to the TPO for making an order after excluding the time for which assessment proceedings were stayed or the time taken for receipt of information, as the case may be, is less than 60 days, then such remaining period shall be extended to 60 days.

- where assessment proceedings are stayed by any court or
- where a reference for exchange of information has been made by the competent authority,

The amendment will take effect from 1st day of June, 2016.

9. Insertion of new section 194LBC- TDS will be deducted on any Income to non-resident individual or foreign company in respect of investment in securitisation trust.

Where any income is payable to an investor, being a non-resident individual or a foreign company, in respect of an investment in a securitisation trust specified in clause (d) of the *Explanation* occurring after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, **at the rates in force**.

10. Amendment in section 194LBB- Tax is required to be deducted at the rates in force, where the payee is a non-resident (not being a company) or a foreign company

Earlier, the tax was required to be deducted @ 10% if a business trust distributed any income referred to in section 115UB (not being business income of the nature referred to in section 10(23FBB)) to its unitholders.

Section 194LBB is proposed to be amended to provide that :

Tax is required to be deducted:-

- (i) 10%, where the payee is a resident;
- (ii) **at the rates in force**, where the payee is a non-resident (not being a company) or a foreign company."

11. Insertion of Chapter VIII - EQUALISATION LEVY- Equalisation levy at the rate of 6% of the amount for any specified service received by a non-resident from a resident person and non-resident having PE in India

There shall be charged an equalisation levy at the rate of 6% of the amount of consideration for any **specified service** received or receivable by a person, being a non-resident from—

- (i) a person resident in India and carrying on business or profession; or
- (ii) a non-resident having a permanent establishment in India.

No such levy shall be made if the aggregate amount of consideration for specified services received or receivable by a the above mentioned non-resident **does not exceed 1 lakh rupees** in any previous year.

"Specified service" **MEANS**

- a. online advertisement,





- b. any provision for digital advertising space or
- c. any other facility or service for the purpose of online advertisement **AND INCLUDES**
- d. any other service as may be notified by the Central Government in this behalf;

Key points to be noted:-

- a. **Exemption in section 10-** In order to avoid double taxation, it is proposed to provide exemption under section 10 of the Act for any income arising from providing specified services on which equalisation levy is chargeable.
- b. **Disallowance if Equalisation levy not deducted and deposited u/s 40(a)(ib)-** It is further proposed to provide that the expenses incurred by the assessee towards specified services chargeable under this Chapter shall not be allowed as deduction in case of failure of the assessee to deduct and deposit the equalisation levy to the credit of Central government.
- c. **Deposit of Equalisation levy-** The equalisation levy so deducted during any calendar month shall be paid by every assessee to the credit of the Central Government by the **7th day of the month immediately following the said calendar month.**

The further provisions in relation to this chapter are provided in detail in Finance Bill 2016.

This Chapter will take effect from the date appointed in the notification to be issued by the Central Government.

12. Amendment in 3rd Proviso to Section 48

Forex gain on redemption of rupee denominated bond of an Indian company shall be ignored for the purposes of computation of full value of consideration under this section

13. Amendment in Section 92D

Proviso to section 92D(1) is inserted wherein person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed.

Sub-section 4 to section 92D inserted wherein it is provided that the person referred in the above mentioned section shall furnish the information and document referred to in the said proviso to the authority prescribed under sub-section (1) of section 286, in such manner, on or before the date, as may be prescribed."

Constituent entity is defined u/s 286

14. Amendment in Section 271AA

If any person fails to furnish the information and the document as required under 92D(4) the prescribed income-tax authority referred to in the said sub-section may direct that such person shall pay, by way of **penalty**, a sum of **5 lakh rupees**.

15. BEPS action plan - Country-By-Country Report and Master file

The OECD report on Action 13 of BEPS Action plan provides for revised standards for transfer pricing documentation and a template for country-by-country reporting of income, earnings, taxes paid and certain measure of economic activity. India has been one of the active members of BEPS initiative and part of international consensus.

In order to implement the international consensus, it is proposed to provide a specific reporting regime in respect of country by country reporting and also the master file. It is proposed to include essential elements in the Act while remaining aspects can be detailed in rules.