India Budget 2016

. . . the essence

K C Mehta & Co.

Chartered Accountants

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. . . the essence

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The provisions contained in the Finance Bill, 2016 are the proposals and are likely to undergo amendments while passing through houses of Parliament before being enacted.

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“The Budget should be balanced,
The Treasury should be refilled,
public debt should be reduced,
the arrogance of officialdom should be
tempered and controlled,
and the assistance to foreign lands should be curtailed,
lest Rome will become bankrupt.
People must again learn to work instead of living on public
assistance.”

- Cicero, 55 B.C.

Reflections

The expectations of the people were soaring high for this Government to present this year's Union Budget due to the excellent performance of the economy, despite challenges and India taking a leadership position on the econcomic growth front. Ambitious projects like "Make in India", "Start-up India", "Stand Up India" together with concerns expressed by the Government about need to improve rank of India in "Ease of Doing Business" was a pre-cursor for the things to come in this Budget.

Key economic indices presented positive outlook of India and was duly supported by upgradation of outlook by majority of international funding and adivsory agencies.

Set-backs on implementation of Goods and Service Tax (GST), challenges in implementation of new Companies Act, 2013, issues in the banking, power, real-estate and infra-structure sectors would have loomed large on the Government. This was compounded partially by weakening of the Indian Currency, Global eoncomic slow-down and uncertainties in crude price with recent production controls.

Scheme for declaration of Black Money did not yield expected results and the issue is still at large and it is essential for the Government to deal with the issue more sternly and definitively.

The Government had two alternatives and i.e. either to make big ticket changes or to continue with the same basic frame-work and focus more on better implementation and address the focussed issues. It appears that the present Government prefers not to make any knee jerk alterations in the policy frame-work and wishes to focus on better implementation. An attempt is made for addressing domestic black money and reducing the backlog of tax litigation and mechanism to avoid tax litigation in future. The focus is to make the tax governance more Assessee friendly. Steps which will yield very rich dividends in future.

The implementation for various announcements have started boldly and in no unclear way. Let us wait for the times to come for its results. This publication brings out the essence of the budget for your consumption.

Milin Mehta

India Budget 2016

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Direct Tax

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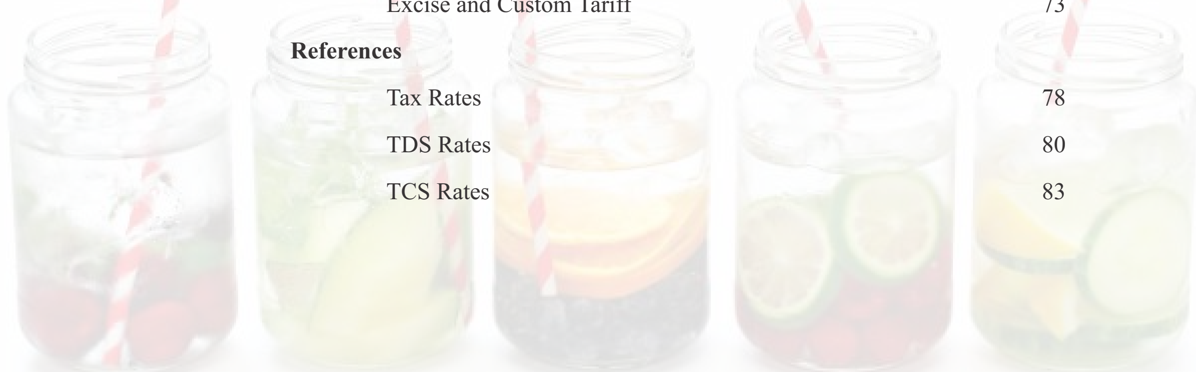

State of Economy

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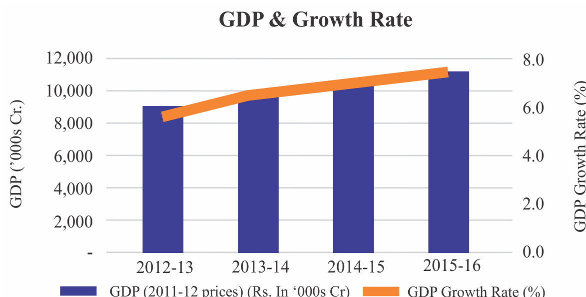
Economic Indicators

Highlights

The major economies of the world are seeing turmoil in the financial and commodities market leading to volatile exchange rates which are putting further pressure on the economic growth. In all this economic turmoil, India stands out as the beacon of hope with major macro-economic fundamentals looking robust and poised for sustainable growth trajectory.



In spite of global economic weakness and a sub-normal monsoon, India clocked a growth of 7.2% in 2014-15 and 7.6% in 2015-16 making it the fastest growing major economy in the world.

India's share in world GDP has increased from an average of 4.8% during 2001-07 to 6.1% during 2008 - 13 and further to an average of 7.0% during 2014 to 2015 in current PPP terms (IMF).

Headline inflation based on the consumer price index (CPI) fell to below 6% much ahead of the January 2016 target.

Current account deficit has fallen to 1.4% of gross domestic product (GDP) in April - September 2015 against a peak of 6.7% in 2012-13.

The growth rates in agriculture have been fluctuating at 1.5% in 2012-13, 4.2% in 2013-14, (-) 0.2% in 2014-15 and a likely growth of 1.1% in 2015-16 due to erratic monsoons.

The growth of the industrial sector was 5.9% during 2014-15 against a 5.0% during 2013-14, showing the positive impact of reforms initiated by the incumbent government.

India showed the fastest service sector growth with a CAGR of 8.6% during the post crisis period (2010-14) against a 2.5% growth rate seen in world services during the same period.

India's foreign exchange reserves at US$ 351.5 billion as on 5 February 2016 mainly comprised foreign currency assets amounting to US$ 328.4 billion, accounting for about 93.4% of the total.

Trade deficit (on BoP basis) declined from US$ 74.7 billion in 2014-15 (April - September) to US$ 71.6 billion in 2015 - 16 (April - September).

Fiscal Policy

The fiscal policy for 2015-16 as proposed in the last General Budget was prepared with three main objectives (i) to accelerate the growth revival with greater emphasis on public investment to offset sluggish private investment; (ii) to institutionalize the changing structure of cooperative federalism; and (iii) to continue the commitment to fiscal consolidation.

Budget 2015-16 envisaged a growth of 15.8% in gross tax revenue (GTR) over the revised estimates (RE) of 2014-15 which are likely to be surpassed.

The Budget for 2015-16 estimated a total expenditure at R17.77 lakh crore, which was 5.7% higher than the 2014-15 Revised Estimates (RE) and 8.1% higher than the provisional estimates (P) of 2014-15.

The accounts for April-December 2015-16, released by the Controller General of Accounts show that the fiscal deficit of the Union government at end-December 2015, as a percentage of Budget Estimates (BE), is lower than in the corresponding period of the last year.

Significant increase in revenue receipts, led by buoyant indirect tax collections, higher level of capital expenditure on the plan side, lower level of subsidies on petroleum products helped in a large measure by declining international prices of crude oil, and enhanced untied resources transferred to the states following the acceptance of the recommendations of the Fourteenth Finance Commission (FFC).

Monetary Policy

With the global commodity prices easing along with the consistent decline in the headline inflation, the Reserve Bank of India has on easing of the monetary policy rates. Indian stock

markets are the safe haven for global portfolio flows with Indian becoming the leading investment destination. However on the flip side the Banking sector performance has been sluggish on lower capital investments by private sector as well as the increasing levels of non-performing assets.

The RBI reduced the statutory liquidity ratio by 0.50% to 21.50% in February 2015 and further eased the policy repo rate during the year to 6.75%, in all making a substantial cut of 125 basis points (bps) between January 2015 and September 2015.

During the current financial year, the year-on-year growth in gross bank credit outstanding has remained around 10 per cent which is much lower than 20% plus seen in 2011-12.

The asset quality of SCBs have come under stress in recent times. Gross non-performing advances (GNPA) of Scheduled Commercial Banks (SCBs) as a proportion of gross advances increased to 5.1% from 4.6% between March and September 2015.

The number of new basic savings bank deposit accounts (BSBDAs) reached 441 million for the period ended September 2015 as against 398 million for the year ended March 2015.on account of the government's initiative under the Pradhan Mantri Jan Dhan Yojana (PMJDY) of financial inclusion.

The net investment by FPIs/ foreign institutional investor (FII) in Indian markets has been to the tune of Rs. 63,663 crore in 2015 as compared to Rs. 2,56,213 crore in 2014, showing the effects of global risk aversion and flee to safety.

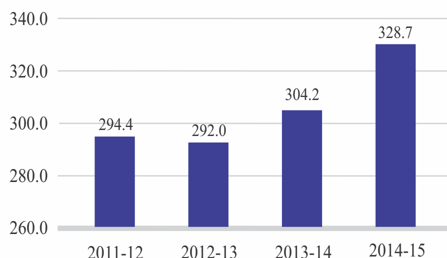
External Sector

The global growth recovery has been tepid and the weak outlook going forward is primarily attributed to a decline in emerging economies, particularly due to re-balancing in the Chinese economy. The weakness in the global business has been reflected in India's exports declining since December 2014.

During the current financial year (April - January), growth in India's exports declined year-on-year by 17.6% and they stood at US$ 217.7 billion. The decline owed to sluggish global demand and low global commodity prices, particularly of petroleum.

On similar lines to exports, imports into India declined by 0.5% to US$ 448.0 billion in 2014 - 15 as compared to US$ 450.2 billion in 2013 - 14, on account of a fall in POL imports by 16.0%.

In 2014-15, the trade deficit was marginally higher at US$137.7 billion than US$135.8 billion in 2013-14.



In the backdrop of declining exports, the government has taken various measures to boost exports through the new Foreign Trade Policy (FTP). The new FTP aims to increase India's exports to US $900 billion by 2019-20.

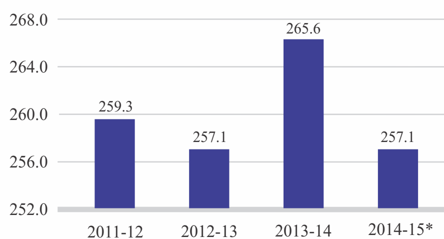
The new concepts "Ease of Doing Business" and aligning them with the "Make in India" and "Digital

India" programmes are designed to ease trade and encourage businesses.

Commodity Prices and Agriculture

Headline inflation, based on the consumer price index (combined) series, dipped to 4.9% during April-January 2015-16 as against 5.9% in 2014-15. The significant decline in the price of the Indian basket of crude oil has contributed partly to the decline in general inflation for the second successive year. The declining growth in agriculture is primarily on account of two consecutive drought years along with a decline in production and area sown of major crops.

The decline in global commodity prices has resulted in a drop in the WPI-based core inflation from 2.9% in 2013-14 to 2.4% in 2014-15 and further to - 1.5% in April-December 2015.



CFPI-based inflation averaged 11.8% during 2012-13 to 2013-14 and thereafter declined sharply to 6.4% in 2014-15 and further eased to 4.6% in April-December 2015-16.

The decline in food articles inflation during 2015-16 so far was mainly on account of a fall in the prices of cereals, vegetables, fruits, milk, egg, fish and meat.

Industrial Performance

Industrial sector plays a vital role in achieving economic growth in the country. Many policy measures taken by the government over the past year have started showing their impact on increased FDI inflows and better performance of infrastructure sector. Some out of the box initiatives like Make in India, Ease of Doing Business, Start Up India, Digital India, and Smart Cities, etc. are expected to provide further impetus to industries and the industrial sector is expected to be the key driver of economic growth in the country.

As per IIP, the industrial sector broadly comprising mining, manufacturing and electricity attained 3.1% growth during April - December 2015-16 as compared to 2.6 % during the same period of 2014-15 due to the higher growth in mining and manufacturing sectors.

In terms of use based classification, consumer durable goods have witnessed a remarkable growth at 12.4% during April-December 2015-16.

While some sectors like electricity, coal, fertilizers, cement and passenger cars have shown positive growth, sectors like steel and aluminium have shown negative growth during April – December 2015.

Gross Capital Formation (GCF) at current prices is estimated at Rs. 42.76 lakh crore for 2014-15 as compared to R39.12 lakh crore during 2013-14.

Contribution to the central exchequer by Central Public Sector Enterprises (CPSE), however, decreased from Rs. 2,20,981 crore in 2013-14 to Rs. 2,00,584 crore in 2014-15.

Service Sector

Services sector is the key driver of India's economic growth, contributing almost 66.1% of its gross value added growth in 2015-16, important net foreign exchange earner and the most attractive sector for foreign direct investment inflows.

As per the first revised estimates (RE) of real gross value added (GVA) released by the Central Statistical Office (CSO) for the year 2014-15, basic prices, services sector growth accelerated to 10.3% from 7.8% in the previous year.

The share of the services sector in the Gross Capital Formation (GCF) has increased consistently over the last four years from 53.3% in 2011-12 to reach 58.3% in 2014-15, with services GCF growing at 8.7% in 2014-15 compared to total GCF growth of 5.6%.

The share of the services sector in the GCF has increased consistently over the last four years from 53.3% in 2011-12 to reach 58.3% in 2014-15, with services GCF growing at 8.7% in 2014-15 compared to total GCF growth of 5.6%.

India's services imports at 81.1 billion grew by 3.3% in 2014-15. They grew by 4.2% in H1 of 2015-16, which is lower than in the corresponding period of the previous year.

Social Infrastructure, Employment and Human Development

Though the Economic Survey delves on the gross domestic product, gross capital formation and per capita incomes, the overall development of the country is defined in terms of the social development of the weaker sections, education, health and sanitation which are not always quantifiable. Increase in literacy ratios, lowering of infant and pregnant mothers' mortality, immunisation programmes and others define the rounded development of the country.

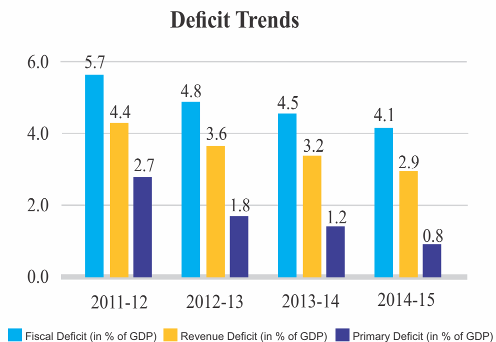
As a proportion of the Gross Domestic Product (GDP), expenditure on education has hovered around 3% during 2008-09 to 2014-15.

According to the India Labour and Employment Report 2014 [prepared by the Institute for Human Development (IHD), New Delhi], the low labour force participation in India is largely because the female Labour Force Participation Rate (LFPR) being one of the lowest in the world, matching Pakistan.

According to the National Skill Development Corporation (NSDC), there is a severe quality gap and lack of availability of trainers in the vocational education and training sector.

Current Fiscal Outlook

Reflecting India's growing globalization, the correlation between India's growth rate and that of the world has risen sharply to reasonably high levels. For the period 1991-2002 this correlation was 0.2. Since then, the correlation has doubled to 0.42. In other words, a 1 percentage point decrease in the world growth rate is now associated with a 0.42 percentage point decrease in Indian growth rates.



Real GDP growth for 2015-16 is expected to be in the 7 to 73/4 range, reflecting various and largely offsetting developments on the demand and supply sides of the Indian economy.

India's long-run potential GDP growth is substantial, about 8-10 percent. But its actual growth in the short run will also depend upon global growth and demand.

After all, India's exports of manufactured goods and services now constitute about 18 percent of GDP, up from about 11 percent a decade ago.

Direct taxes grew by 10.7 per cent in the first 9 months (9M) of 2015-16. Indirect tax revenues grew by 10.7 per cent without Additional Revenue Measures (APMs) and 34.2 per cent (with ARMs). This reflects excise taxes on diesel and petrol and an increase in the Swachh Bharat cess. The central excise duty collection from petroleum products during April to December 2015-16 recorded a growth of 90.5 per cent and stood at Rs. 1.3 lakh crore as against Rs. 0.7 lakh crore in the same period last year.

As of January 2016, there were 19,400 technology-enabled startups in India, of which 5,000 had been started in 2015 alone. No less than 2000 of the startups have been backed by venture capital/angel investors since 2010, of which 1005 were created in 2015 alone. Indian start-ups raised $3.5 billion in funding in the first half of 2015, and the number of active investors in India increased from 220 in 2014 to 490 in 2015. As of December 2015, eight Indian startups belonged to the 'Unicorn' club

Budget Highlights

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Direct Tax

Business Taxation

New companies incorporated after March 1, 2016 would have an option to be taxed at the reduced corporate tax rate of 25% instead of 30% if the company is engaged in the business of manufacturing and the income is computed without claiming any benefit of incentives or weighted / accelerated deductions except certain employment linked incentives.

Corporate tax rate is proposed to be reduced from 30% to 29% in case of companies having gross receipts / turnover less than or equal to Rs. 5 crores.

100% profits derived from by eligible start-up entities incorporated after April 1, 2016 would be deductible for consecutive 3 years out of first 5 years of incorporation. However, the profits will be subjected to Minimum Alternate Tax.

Patent box regime is proposed to be introduced for taxation of eligible royalty income of residents at the rate 10% of gross receipts.

The Finance Bill, 2016 ("the Bill") proposes to phase out weighted deductions on research and development related expenditure, expenditure for extension of agricultural projects and skill development projects.

Profit-linked exemptions and deductions in relation to SEZ units, development of SEZ, production of mineral oil and natural gas proposed to be phased out by inclusion of sunset clause.

Incentives for infrastructure facility proposed to be shifted from profit-linked incentives to investment linked incentives.

Employment linked incentives under Section 80JJAA are proposed to be revamped and rationalised and extended to employees other than workmen also.

Amendments have been proposed in relation to presumptive taxation applicable to non-corporate small taxpayers engaged in eligible business and provisions relating to presumptive

taxation is proposed to be introduced for those engaged in profession.

International Taxation

Amendment to residence test for foreign companies, wherein foreign companies will be considered resident if its Place of Effective Management is in India deferred by one year.

Foreign Companies not having permanent establishment in India would not be liable to (MAT) with retrospective effective from AY 2001-02.

Equalisation levy at the rate of 6% of gross receipts is proposed to be levied on online advertisement income arising to non-residents.

Filing obligations under Country by Country Reporting (CbCR) proposed to be introduced in line with the Base Erosion and Profit Shifting Project of OECD and G20 member countries.

Long term capital gains arising to non-residents on transfer of shares of closely held companies is proposed to be taxed at the rate of 10%.

Personal Taxation

No change is proposed in slab rates and tax rates applicable to individuals. Only change being increase in surcharge from 12% to 15%, applicable in case of individuals having income more than Rs. 1 crore.

Dividend income received by resident individuals, HUFs and firms in excess of Rs. 10 Lakhs from domestic companies, which is currently exempt, is proposed to be taxed at the rate of 10%.

Amendments have been proposed with respect to taxation in relation to withdrawals from national pension scheme, superannuation fund and employer and employee contributions to provident fund.

Exemption from capital gains tax proposed to be introduced on investment in notified units or for investment in start-ups.

Thresholds with respect to deductions available in case of interest on housing loan, rent, relief u/s 87A proposed to be increased.

Other Direct Tax amendments

Due dates for payment of advance tax for non-corporate Assessee are proposed to be aligned with that of corporate assesses with certain exceptions.

Rates and thresholds of tax deductible at source (TDS) is proposed to be rationalised.

Belated return can be filed only up to end of Assessment Year (time curtailed by one year) and it can also be revised.

Amendments are proposed to change time limits for completion of assessment, order giving effect to appellate orders, rectification of orders passed by Income Tax Appellate Tribunal, waiver / compounding /

reduction in penalty application, etc.

Electronic hearings are proposed to be implemented, starting with seven cities.

Additional interest of 3% per annum on refund due to taxpayer is proposed to be introduced in case of delay in passing order giving effect to appellate orders.

Interest on refund of excess self-assessment tax is proposed to be introduced.

Provisions relating to stay of demand are proposed to be rationalised. Automatic stay of demand is proposed to be granted on payment of 15% of disputed tax.

Penal provisions are proposed to be revamped and rationalised.

Introduction of Income Declaration Scheme for voluntary declaration of undisclosed assets / income by the tax payers is proposed.

Bill proposes to introduce Dispute Resolution Scheme for settlement of pending litigations.

Other Announcements in Budget Speech / Memorandum

Period of holding for classification of a capital asset as long term capital asset is proposed to be reduced from 3 ears to 2 years.

Computation mechanism for identifying amount of disallowance of expenditure incurred in relation to exempt income under Rule 8D is proposed to be rationalised.

The CbCR reporting requirement is to be applicable in case of entities where consolidated turnover of the group exceeds EUR 750 million equivalent to Rs. 5,395 crores.

Highest rate of depreciation is proposed to be restricted to 40%.

Indirect Tax

Service Tax

Krishi Kalyan Cess at 0.5% on value of all taxable services.

Quarterly payment of service tax for One Person Company & HUF

Annual return will have to be submitted for the financial year by 30th November of subsequent year

Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfer thereof – is a taxable service

Services by SEBI, IRDA and PRFDA are exempted

Exemption for Specific services provided by Institutes of Management (IIM) and services for specific training to Ministry of Skill Development & Entrepreneurship

Services provided by National Center for Cold Chain Development is exempted

Services provided by mutual fund agent/distributor to a mutual fund or asset management company, being tax under forward charges

Any services provided by Government to Business entity is taxable under RCM

Exporter of goods can claim refund for services of beyond the place of factory with retrospective effect within one year from date of enactment of the Bill,

Change in rate of interest for delay / nonpayment

Time limit for issuance of notice for tax recovery is increased from 18 months to 30 months

Ceiling limit of Penalties is increased from Rs. 50 Lakhs to Rs. 200 lakhs

Excise

Levy of Infrastructure cess, as a duty of excise on motor vehicles. Credit not admissible

Duty of 1% imposed on branded articles of jewellery, excluding silver

Excise rate increased from10 to 15 % on tobacco products other than beedis

Clean Energy Cess levied on coal, lignite and peat, is renamed to Clean Environment Cess

Levy 2% excise on ready made garment on retail price more than Rs. 1000

Tools can be delivered directly to the job-worker or other manufacturer. Time limit to return tools is increased from one year to three years.

Rate of interest for delay payment is reduced from eighteen percentages to fifteen percentage.

Monthly return (ER-1) and an annual return (ER- 4) are continued to be furnished and all other returns are redundant.

All capital goods which have a value up to Rs. 10,000 per piece are to be treated as an "Input"

Change in time limit to file a refund claim under Export of Goods and Services

Proposed new formula for reversal of CENVAT Credit under rule 6 of CENVAT Credit Rules, 2004

Outsourced manufacturing unit is now included in the definition of Input service distributor

Custom

Baggage Rules, 1998 being substituted with Baggage Rules, 2016

Increased in limit of Duty Free Allowances

Duty will have to be paid within two days from the date of bill of entry and any default will attract interest

Value of bond is increased from twice to three times of amount of duty

Proposed to increase the period of storage in Warehouse till clearance for home consumption

Direct Tax

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Rates of Tax

Corporate Tax

25% Tax for New Corporates

Taking a step towards reduction of corporate rates of tax, the Bill, by inserting new Section 115BA, proposes to provide a tax rate of 25% on the total income of a domestic company if such company is setup and registered on or after March 1, 2016. Further, such company should be engaged in the business of manufacture or production of any article or thing. Before availing the tax rate of 25%, the company should exercise the option in the prescribed manner before the due date of furnishing the return of income under Section 139(1).

However, the company shall be eligible to opt for the reduced corporate tax of 25% on the condition that in computing its total income, it shall not claim any benefit under section 10AA, additional depreciation, investment allowance for new plant and machinery, weighted deductions under Section 35, etc. and any deduction in respect of certain income under Part-C of Chapter-VI-A other than the provisions of section 80JJAA. In addition to this, no set off of any loss carried forward from any earlier assessment year or subsequent years would be available if the same is attributable to any of the aforesaid deductions taken.

This would act as an incentive to increase investment to provide relief to newly set up companies, thereby increasing manufacturing activities, contribution to GDP and employment opportunities in the country. The Government has initiated the lower tax regime for the new companies and with phasing out of exemptions, this is expected to be extended to the existing companies as well.

29% Tax for SME Corporates

Apart from above, corporate tax rate for companies having turnover up to Rs. 5 crores have been reduced to 29% from 30%. Corporate tax rate continues to be 30% for other domestic companies.

Surcharge and education cess applicable to all companies have remained unaltered. Tax Rate Table for other corporates is provided in Appendix.

Reduced MAT for unit in International Financial Services Centre

The Bill also proposes that in case of a company, being a unit of an International Financial Services Centre and deriving its income solely in convertible foreign exchange, the rate of tax under section 115JB shall be 9% (instead of 18.5%).

Personal Tax

Personal Tax rates largely continued in same way.

No changes have been proposed in basic rate of personal taxation. Surcharge applicable on income exceeding Rs. 1 crore has been raised to 15% from current 12%. Thus, maximum marginal rate of tax for High Net-worth Individual would now be 35.54%.

It is also important to mention that relief under Section 87A (available to resident Individuals having total income up to Rs. 500,000) has been increased to Rs. 5,000. Thus, for resident individuals with total income up to Rs. 500,000, will effectively not liable to tax on income up to Rs. 300,000.

Tax Rate Table is provided in Appendix.

Presumptive Taxation

Enhancing threshold for Businesses for Presumptive Taxation

Under the existing provisions of Section 44 AD, the persons carrying on business is entitled to opt for the presumptive tax scheme, wherein an income at the rate of 8 % of his turnover will be imputed as presumptive income and would be liable to pay tax accordingly. This scheme is applicable in case of persons having turnover up to Rs. 1.00 Crore.

The current threshold limit for presumptive taxation under Section 44AD is proposed to be increased from Rs. 1 crore to Rs. 2 crores. This will reduce the compliance burden on small taxpayers. However, to preclude selective application of the provisions, it has been proposed that if an assessee paying tax under the presumptive taxation scheme chooses to maintain books of accounts and pay tax as applicable under the normal provisions of the Act (instead of 8% of turnover), such assessee shall not be allowed to claim benefit of Section 44AD for subsequent five consecutive assessment years.

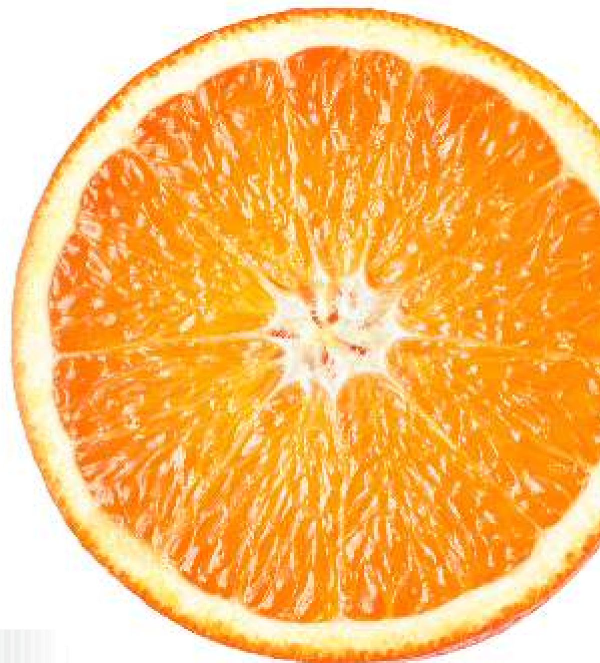
It has also been proposed to do away with additional deduction available to partnership firms for payment of salary and interest to its partners.

It may be mentioned that while requirements of maintenance of books of accounts has been removed for assessee with turnover up to Rs. 2 crores, however, the threshold for mandatory audit u/s. 44AB has remained unaltered at Rs. 1 crore. A person covered under presumptive taxation should not be required to get accounts audited if he declares income in accordance with provisions of Section 44AD. This seems to have been accidentally missed and while passing the Bill, the threshold for mandatory audit for business u/s. 44AB should be increased to Rs. 2 crores.

Presumptive taxation for professionals introduced

A new section 44ADA is proposed to be introduced for presumptive taxation of income of specified professionals with a threshold limit of Rs. 50 lakhs, wherein a sum equal to 50% of the total gross receipts shall be deemed to be income chargeable to tax.

Professions currently covered by the above said provisions are legal, medical, engineering, architects, accountancy, technical consultancy, interior decoration,



authorised representative, film artist, company secretary, information technology, etc.

Consequent to the same, the current threshold limit of Rs. 25 lakhs for applicability of tax audit for professionals is now increased to Rs. 50 lakhs.

Business Income

Taxation of non-compete fees / exclusivity rights for profession

Under the existing provisions of Section 28, non-compete fees and consideration for exclusive rights received or receivable in case of any business are chargeable to tax. It is proposed to amend the Section to include non-compete fees and consideration for exclusive rights received in case of profession in the purview of the Section.

However, such sum received or receivable in case of transfer of right to carry on profession shall not be chargeable to tax under business income but shall be chargeable to tax under capital gains.

Securitization Trust

Pass Through Status for Securitization Trusts

As per the provisions of Section 10(23DA) of the Act, income received by securitisation trusts is exempt in the hands of the trust. Further, as per the provisions of Section 115TA, at the time of distribution from the trust to the investors, securitisation trusts are required to pay additional income tax at the rate of 25% on income distributed to individuals or HUF and at the rate of 30% on income distributed to any other person.

The Bill proposes to introduce pass through status for securitisation trusts with effect from June 1, 2016.

The existing provisions would be replaced with Section 115TCA and the investors would be subject to tax on their proportionate share in income of securitisation trusts on accrual basis i.e. in the year in which the trust earns the income, whether or not the same is distributed to the investors in that year.

Accordingly, the income accruing to the trust would be taxable in the hands of the investors in the same manner as if it would have been earned by the investors themselves. The investors will not be subject to tax again on the said income upon subsequent distribution from the trust. Accordingly, it is proposed that securitisation trusts would not be subject to additional income tax on distribution as per the provisions of Section 115TA.

Accordingly, the income of the trust continues to be exempt. However, income is taxable in the hands of the investors in the year of accrual at the tax rates applicable to investors instead of tax levied on the trust at 25% / 30% in the year of distribution from the trust.

The Bill further provides that the Securitization Trust shall be responsible to deduct tax at source at the time of credit or payment to the account of the investor (and if the income is not distributed during the year, then such income shall be deemed to have been paid at the end of Financial Year). Tax is required to be deducted at source at 25% in case of payment to resident Individual / HUF and 30% in case of other residents. Tax would need to be

deducted at rates in force in case of payment to non-residents.

Further, the Bill also proposes to expand the definition of securitisation trust so as to also include the trusts set up by reconstruction companies or securitisation companies for the purpose of SARFAESI Act, 2002 or as per the directions issued by the Reserve Bank of India.

Business Deductions

Additional depreciation for companies engaged in transmission of power

Currently, benefit of additional depreciation for companies engaged in power sector is available only to companies engaged in the business of generation or distribution of power. the Bill proposes to extend this benefit to companies engaged in transmission of power and provide additional depreciation of 20% on actual cost of new plant and machinery installed in the previous year.

Rationalisation of investment allowance under Section 32AC

Section 32AC provides for an investment allowance of 15% for investment made in new plant and machinery in excess of Rs. 25 crores for manufacturing companies. A plain reading of the current provision suggest that acquisition and installation of the plant and machinery are to be completed in the same year. To remedy the hardship faced by companies to install the plant and machinery in the same year as its acquisition, the Bill clarifies that in case where plant and machinery is installed in a year other than the year of acquisition, the allowance shall be allowed in the year of installation, subject to the installation of plant and machinery being completed on or before 31st March 2017.

It may also be mentioned that the threshold of Rs. 25 crores would need to be fulfilled in the year of acquisition of asset and not installation.

Deduction to NBFCs in respect of provision for bad and doubtful debts

Currently, only Indian scheduled or non-scheduled bank, foreign bank and public financial institution / state financial corporation or a state industrial investment corporation are eligible for deduction in respect of provision for bad and doubtful debts.

However, the Bill proposes to include Non-Banking Financial Companies within the ambit of these provisions and allow a deduction of an amount not exceeding 5% of the total income computed before making any deduction under Chapter VI-A.

Disallowance of expense in case of non-payment of Equalization Levy

The Bill proposes to levy Equalisation Levy for payments made for online advertisement and digital advertisement space and related activity. Where payment of equalization levy is applicable in case of payments to non-residents, no deduction shall be allowed in respect of such payments if equalisation levy

is not deducted or deducted but not paid before the due date of filing of return of income. Deduction shall be allowed in respect of such payment in the previous year in which equalisation levy is actually paid.

Inclusion of dues to Indian Railway under purview of Section 43B

Under the extant provisions of Section 43B, deduction is allowed only on actual payment made before the due date of filing of return of income in respect of various taxes, duties and other sums, leave encashment, employer's contribution to PF fund, tax, cess duty, interest, etc. The Bill proposes to include dues to Indian Railway for use of the railway assets within its ambit and hence, deduction will be allowed only on actual payment made before the due date of filing of return of income in respect of such dues.

New provisions for amortization of spectrum fees

Current provisions of the Act provides for amortisation of fees for telecom-munications license. However, there are different views with respect to amortisation of capital expenses incurred for purchase of spectrum license. In order to inhibit litigation, a new Section 35ABA is proposed to be inserted for amortisation of such capital expenditure, which is summarised as under:

- capital expenditure incurred for purchase of spectrum shall be amortised over the life of spectrum
- if the spectrum is transferred and consideration received is less than unamortised amount, the whole of unamortised amount shall be written off in the year of transfer
- if the spectrum is transferred and consideration received is more than unamortised amount, the excess amount shall be taxed as business income
- if a part of license is transferred, unamortised amount on that part shall be amortised over life of remaining part of the spectrum
- transfer of spectrum under a scheme of amalgamation shall not be considered as transfer for the purpose of capital gains.

Deductions / Incentives

Patent Box Regime – Concessional Tax Rate on Royalty Income

With a view to encouraging research and development activity in India, the Government has decided to charge tax on patent income at a concessional rate. Accordingly, a new section 115BBF has been inserted which provides that royalty income from patent developed and registered in India will be taxed at a concessional rate of 10% on its gross value plus applicable surcharge and cess value.

It is important to note that the benefit will be available to Indian residents only and that also only in respect of patents developed and registered in India. Further, the recipient of royalty should the true and first inventor, whose name is entered on the patent register as the patentee. The tax will

be calculated on gross royalty income without any deduction of expenses.

Royalty in respect of patent would include consideration for use of any patent, transfer of all or any rights in respect of a patent, imparting of any information concerning working of, or use of, patent or rendering services in relation to above. However, it shall not include income of the recipient chargeable under the head 'Capital Gains'.

With phasing out weighted deduction for research and development but introduction of Patent Box Regime, the direction appears to be to grant concessions to tangible output generated through research upon its commercial exploitation.

In order to effectively tax the royalty income at 10%, royalty income and expenditure relatable to such income has also been proposed to be excluded in computation of Book Profit for the purpose of computation of MAT.

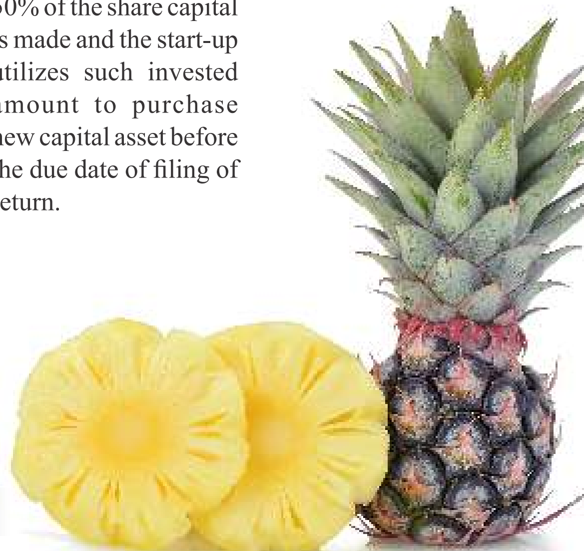
Three Years Tax Holiday for Start-ups

In January 2016, Government of India introduced the Start-up India Action Plan which aims at providing a conducive environment for technology-based start-up ventures. The Government proposed easy regulatory clearances, legal support, fast-track patent clearances, etc. in addition to various tax incentives. The Bill proposes these tax incentives for start-ups incorporated on or after 1st April 2016 but before 1st April 2019.

The Bill proposes to insert a new Section 80-IAC to provide a profit-linked deduction of 100% to eligible businesses for any 3 consecutive years out of the first 5 years upon incorporation of the start-up. The deduction is subject to several conditions (i) it holds a certificate of eligible business from the prescribed Board (ii) the total turnover does not exceed Rs. 25 crores in any of the previous years from 1st April 2016 to 31st March 2020 (iii) it is not formed out of reconstruction / splitting up an existing business (iv) it is not formed by transfer of plant and machinery by existing business to a new one. Other preventive conditions similar to existing Section 80-IA shall apply.

However, it is important to mention that such Start-up companies will be subjected to MAT provisions and thus would be required to pay 18.5% (plus applicable surcharge and education cess) of Book Profits even during 3 year tax holiday. This would effectively curtail the incentive significantly.

Further, to boost investment in start-ups, exemption from long-term capital gain earned from transfer of residential property shall be available if such amount is invested in subscription of shares of an eligible start-up provided that an investment of more than 50% of the share capital is made and the start-up utilizes such invested amount to purchase new capital asset before the due date of filing of return.



100% Deduction of Profits from Affordable Housing Project

In order to encourage affordable housing projects, the Bill proposes to insert a new Section 80-IBA, which provides 100% deduction on profits from business of developing and building housing projects, subject to the conditions that (i) the project is approved on or after 01.06.2016 but before 31.03.2019 and (ii) the project is completed within 3 years of date of approval.

The deduction is available only to housing projects meeting the specified conditions and unit-size not exceeding 30 sq.mts. in Chennai, Delhi, Kolkata or Mumbai or 60 sq. mts. in any other jurisdiction. No deduction shall be available to work-contractor under this Section.

If the project is not completed within 3 years of approval, any deduction claimed under this Section shall be deemed to the income of the assessee in the year in which the time limit for completion expires. The proposed amendment also requires that the project should fulfil the following additional conditions for claiming the deduction:

(a) The Project should be approved between 1st June, 2016 and 31st March, 2019

(b) The built up area of shops and other commercial places should not exceed 3 % of the total built up area of the Project;

(c) The Project should be on a plot of land not less than 1,000 Sq. Mtr if it is situated in the above said metros and 2,000 Sq,. Mtrs. if it is situated elsewhere

(d) The total construction should consume at least 90 % of the available FSI if situated in above metros (80 % in other cases)

Tax incentive to boost Employment Generation

Currently, Section 80JJAA of the Act provides tax incentive to boost employment generation only to assessees in the manufacturing sector. Presently, an additional deduction of 30% of the employee cost is provided for three assessment years where at least 10% new workmen are employed in a previous year.

To extend this benefit, the Bill propose to provide an additional deduction of 30% of employee cost for 3 years to all assessees to whom the provisions of tax audit apply. Thus, the benefit can now be claimed even by the service entities. Further, current condition of increase of at least 10% employee is also proposed to be done away with. Therefore, even if there is increase of only one employee on last day of the Financial Year as compared to last day of preceding Financial Year, the assessee shall be eligible for the said deduction.

However, salaries paid to following employees shall not be eligible for claim of additional deductions:

(a) employee whose salaries (excluding contribution to statutory funds and retirement benefits) exceeds Rs. 25,000 per month;

(b) employee employed for a period of less than 240 days during the Financial Year;

(c) employee for whom entire pension contribution is paid by the Government;

(d) employee who does not participate in recognized Provident Fund.

Apart from above, salaries paid otherwise than through credit in bank account would also not be eligible for deduction.

Developing and / or maintaining and operating Infrastructure Facility now eligible for investment-linked incentive scheme

Currently, Section 80-IA provides 100% profit-linked deduction to eligible businesses engaged in developing and / or maintaining infrastructure facility. The Bill proposes to withdraw such profit-linked incentive and provide an investment-based deduction thereon. Assessee commencing developing and / or maintaining infrastructure facility up to March 31, 2017 would still be eligible for profit-linked incentive and any assessee commencing developing and / or maintaining infrastructure facility on or after April 1, 2017 shall be eligible for investment-linked incentive u/s. 35AD.

Consequently, an eligible business shall be eligible to claim 100% deduction on capital expenditure incurred in the year in which it incurs the expenditure. In case such expenditure is incurred prior to commencement of business, it shall be allowed in the year of commencement of business.

It may be noted that although the Company shall be eligible for 100% deduction on any capital expenditure incurred and may accumulate a substantial carried forward business loss, the Company shall be liable to pay Minimum Alternate Tax under Section 115JB once it starts earning Book Profits.

Phasing out deductions and exemptions

The Finance Minister had indicated in his budget speech in 2015 about reduction of corporate income-tax rate from 30% to 25%. To achieve this end, The Bill proposes to phase out deductions and exemptions which can offset the revenue loss by reduction in corporate rate of tax.

In respect of certain activities, which were eligible for profit-linked incentives, no sunset dates were prescribed under the statutes. The Bill proposes sunset date for those clauses, which are as under:

Section	Particulars	Current Deduction [% of profits]	Sunset date for commencing activity
10AA	Deductions from profits for newly established units in SEZ	100% / 50%*	March 31, 2021
80-IA	Deduction in respect of profit derived from development, operation and maintenance of infrastructure facility	100%	March 31, 2017
80-IAB	Deduction in respect of profit derived from development of special economic zone	100%	March 31, 2017
80-IB(9)	Deduction in respect of profit derived from production of mineral oil and natural gas	100%	March 31, 2017

*subject to condition

Similarly, certain expenditure (including capital expenditure) were eligible for weighted deductions for computing total income. With a view to reduce the difference between headline rate of tax and effective rate of tax, weighted deductions are proposed to be phased out as mentioned below:

Section	Particulars	Current Deduction	Proposed deduction	Effective from
35(1)(ii)	Amount paid to research association / educational institute with objective of scientific research	175%	150%	AY 2018-19
			100%	AY 2021-22
35(1)(iia)	Amount paid to a company which has a business objective of scientific research	175%	100%	AY 2018-19
35(1)(iii)	Amount paid to research association / educational institute with an objective of research on social science or statistical research	175%	100%	AY 2018-19
35(2AA)	Amount paid to National Laboratory / University / IIT for approved scientific research	200%	150%	AY 2018-19
			100%	AY 2021-22
35(2AB)	Expenditure incurred by Company engaged in bio-technology / manufacturing (except negative list as per Schedule XI).	200%	150%	AY 2018-19
			100%	AY 2021-22
35AD	Expenditure on specified businesses (cold storage, warehousing, agricultural storage, affordable housing project, production of fertilizer, hospital)	150%	100%	AY 2018-19
35CCC	Expenditure for extension of agricultural project	150%	100%	AY 2018-19
35CCD	Skill development project	150%	100%	AY 2021-22
35AC	Deduction for expenditure by way of payment to public sector company / local authority / or an approved association or institution on eligible social development project or scheme	100%	0%	AY 2018-19

It is important to mention that while weighted deductions have been eliminated, capital expenditure would continue to be allowed in full, wherever it was eligible for deduction under above provisions.

Set of and carried forward loss of Specified business u/s. 35AD

The existing provisions of section 73A of the Act provide that any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business.

Section 80 and Section 139 generally provides that business losses would be allowed to be carried forward only if the return is filed within the time limit prescribed u/s. 139(1) under the Act. However, loss of specified business u/s. 35AD was not subject to requirement of filing Tax Return within due date for claiming carry forward of the loss.

Accordingly, it is proposed to amend section 80 so as to provide that the loss determined as per section 73A of the Act shall not be allowed to be carried forward and set off if such loss has not been determined in pursuance of a return filed in accordance with the provisions of Section 139(1).

Undisclosed Income

Set off losses against undisclosed income

As per the existing provision of section 115BBE, the undisclosed income is taxable at the rate of 30% without providing for any deduction in relation to expenditure or allowances. However, there were lot of uncertainty on set off of losses against such undisclosed income while imposing tax. In order to avoid unnecessary litigations, the Bill specifically provides that no set off of any losses shall be allowable in respect of undisclosed income.

Non-Resident Taxation

Residential Status of Foreign Companies

Place of Effective Management test deferred by one year

Finance Act 2015 had amended the provisions of Section 6 of the Act relating to determination of residential status of Companies with effect from assessment year 2016-17 relating to Financial Year 2015-16. As per the said amendment, a company is to be considered as resident if (i) it is an Indian Company or (ii) its place of effective management, during the year, is in India.

Place of effective management (POEM) has been defined as a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. The memorandum to the Finance Bill 2015 acknowledged that POEM is a fact dependant exercise and to bring clarity and certainty to the same, guiding principles for determination of POEM need to be prescribed. The CBDT issued draft guiding principles for determination of on December 23, 2015 which were open for general public comment till January 9, 2016.

While the law was in effect for the financial

year beginning from April 1, 2015, the guiding principles have not been prescribed till date. In light of the same, the amendment to Section 6(3) and introduction of POEM as residence test for foreign companies has been proposed to be deferred to Assessment Year 2017-18 (financial year 2016-17). Accordingly, for assessment year 2016-17, the foreign companies will be considered as resident only if its control and management is wholly situated in India during the year.

Special Provisions for Foreign Companies becoming Resident in India for first time

Resident assesses are liable to tax in India on their world-wide income, whereas, non-residents are subject to tax on income received, accrued, arisen or deemed to be received, accrued or arisen in India. Accordingly, as a consequence of change in residential status, apart from change in tax liability, various provisions of the Act relating to computation of income, set off of losses, computation of depreciation, compliance procedures, advance tax payments, applicability of TDS provisions, etc. become applicable to the assesses.

Considering that the test for determination of residential status of the foreign companies is being amended, foreign companies which have not been resident in India till date may now become resident in India. Also, there could be cases where the foreign companies consider itself to be non-resident but during the course of its assessment proceedings, it is concluded that POEM is in India and therefore becomes residents in India.

In such cases, the foreign companies may not have complied with the requisite computation and compliance provisions during the year. Accordingly, the Bill proposes to introduce guidelines for transition provisions to enable foreign companies which were non-residents in preceding years but become resident during the assessment year to comply with these provisions as applicable to residents.

Minimum Alternate Tax

Non-applicability of MAT to Foreign Companies absent Permanent Establishment

The issue of applicability of MAT to foreign companies have been subject matter of significant debate in recent times. Considering recommendation of A. P. Shah Committee, the Government had issued a Press Release dated 24.09.2015 that the foreign companies not having Permanent Establishment in India shall not be subject to MAT provisions.

In line with Press Release dated 24-09-2015 by CBDT, the amendment proposes to insert new explanation to sub-section (2) of

section 115JB with retrospective effect from 01.04.2001 which provides that provisions of section 115JB shall not be applicable to a foreign company if that foreign company is a resident of a country / territory having DTAA with India and such foreign company does not have a permanent establishment within definition of that term in relevant DTAA. It also provides for non-applicability of said provisions of section 115JB in case where the foreign company is a resident of a country / territory which does not have a DTAA with India and such foreign company is not required to seek registration under Section 592 of the Companies Act 1956 or Section 380 of the Companies Act 2013.

Business Connection

Mere presence of Fund Managers in India not to constitute business connection

Offshore Funds such as Foreign Institutional Investors (FII) have been investing in India through Fund Managers in India. There was ambiguity whether presence of fund managers in India could create taxable presence of the offshore funds in the form of business connection or permanent establishment in India and whether the income arising to such Funds should be taxable in India as capital gains or business income. Finance Act 2015 introduced Section 9A to remove the ambiguity and clarified that the offshore funds will not be considered (i) to be resident in India or (ii) to be having business connection in India merely due to presence of fund manager in India, subject to fulfilment of various conditions by the offshore funds and the fund managers.

One of the conditions under Section 9A is that the Fund should be a resident of a country with which India has entered into a Double Tax Avoidance Agreement (DTAA) to be an eligible investment fund for the purpose of the Section. The Bill proposes to also include a fund established or incorporated or registered outside India in a country or a specified territory notified by the Central Government in this behalf as eligible investment fund.

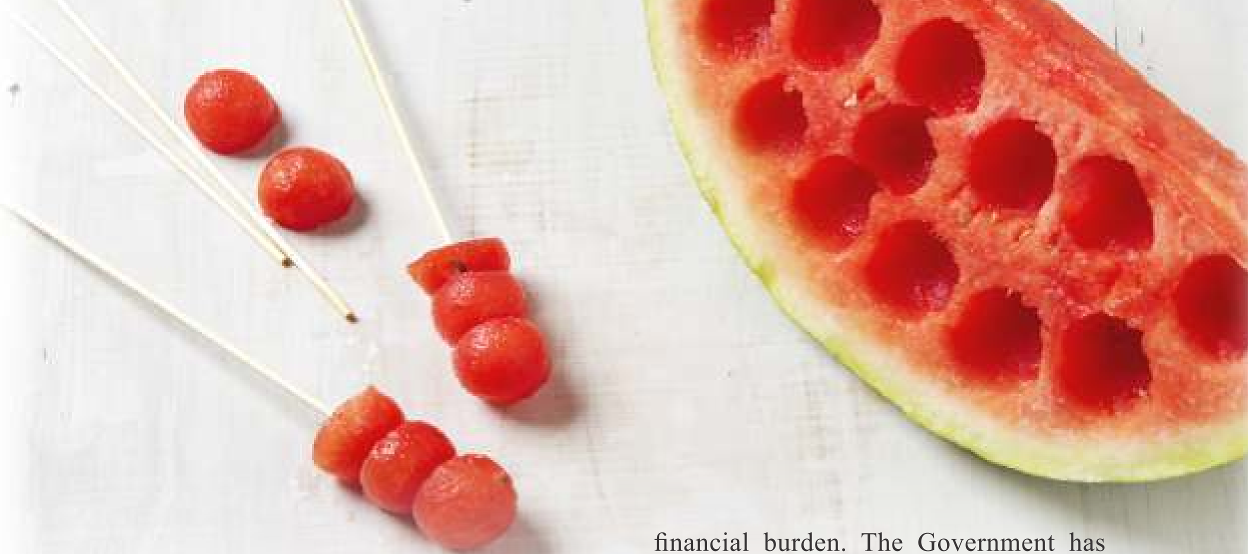
Section 9A also provides that the 'fund shall not carry on or control and manage, directly or indirectly, any business in India or from India'. The Bill proposes to remove the phrase 'or from India', thus restricting the said condition to business activities of the fund in India.

New exception to Income deemed to accrue or arise in India

In case of non-resident person, the taxation of income in India happens only if the income accrues or arises in India or is deemed to accrue or arise in India or is received in India.

As per the current provisions of Section 9(1)(i) of the Act, income shall be deemed to accrue or arise in India if the same is connected to a business connection in India, or is a result of any property situated in India, an asset or a source of Income in India, or from the transfer of a capital asset situated in India. Explanation 1 to the above referred Section provides clarification by listing out specific cases wherein no income shall be deemed to accrue or arise in India.

A new clause '(e)' has been added to Explanation 1 which provides that no



income shall be deemed to accrue or arise in India in case of foreign companies (engaged in the business of mining diamonds) from its activity of display of uncut and un-assorted diamonds (without any sale) in any 'Special Notified Zone' (SNZ), which is notified by the Central Government.

This move by the Government will act as an incentive for the world's major Foreign Mining Companies (FMC) to set up their trade offices in India for trading in rough diamonds. Since, setting up trading offices in India has always been alarming for all the diamond mining giants in the world as only the activity of displaying these uncut diamonds, without actually selling the same, could lead to a creation of business connection in India.

Exemption of income of Foreign company from storage and sale of crude oil

The Indian Strategic Petroleum Reserves Limited (ISPRL) is in the process of setting up underground storage facility for storage of crude oil as part of strategic reserves. The maintenance of strategic reserves is in India's national interest and ensures price stability for Indian oil companies. The filling cost of such facility entails huge financial burden. The Government has explored the possibility of meeting a substantial part of the financial burden through participation of private players including foreign national oil companies (NOCs) and multinational companies (MNCs) storing and selling crude oil from outside India. However, the storage of crude oil by NOCs/MNCs and its sale in India would create tax liability for these entities.

In order to achieve neutrality in terms of taxation to encourage the NOCs & MNCs to store their crude oil in India and to build up strategic oil reserves, it is proposed to amend the provisions of section 10 of the Act to provide 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, -

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

having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf.

Equalisation Levy

Background

The digital business fundamentally challenges physical presence-based permanent establishment rules. If Permanent Establishment (PE) principles are to remain effective in the new economy, the fundamental PE components developed for the old economy i.e. place of business, location, and permanency must be reconciled with the new digital reality.

The Organization for Economic Cooperation and Development (OECD), in Base Erosion and Profit Shifting (BEPS) project under Action Plan 1, has recommended imposition of a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider or imposition of an equalisation levy on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state.

In a recent decision, the Kolkata Tribunal, in the case of ITO vs Right Florists (P.) Ltd. 32 taxmann.com 99 held that the payment made to foreign search engine portals for online advertising services is not taxable in India, since it did not accrue or arise in India due to absence of permanent establishment of such foreign search engine companies in India. The Tribunal also held that such payment is neither in the nature of Royalty or Fees for technical services but is business profit of the recipient. The Tribunal placed reliance on the cases of Yahoo India (P.) Ltd. v. DCIT [2011] 46 SOT 105 (URO), Pinstorm Technologies (P.) Ltd. v. ITO [2012] 54 SOT 78, CIT v. Bharti Cellular Ltd. [2009] 319 ITR 139, DIT v. Guy Carpenter & Co Ltd.[2012] 207 Taxman 121 and CIT v. De Beers India Minerals (P.) Ltd.[2012] 208 Taxman 406.

In view of the above decisions, the payment made to foreign web portals for online advertising went completely tax free in India. In order to make these services taxable in India, the Government, in the Bill, proposes to introduce Equalisation Levy on the payment received by non-resident for rendering online advertising services to a resident, carrying out business or profession, or a non-resident having PE in India.

Introduction

The Bill proposes to insert a new Chapter titled "Equalisation Levy" to provide for an Equalisation Levy (“EL”) of 6 % of the amount of consideration for specified services received or receivable by a non-resident not having PE in India, from a resident in India who carries out business or profession, or from a non-resident having PE in India. This Chapter shall come into force on such date as the Central Government, may by notification in the Official Gazette, appoint.

This Chapter shall apply to consideration received or receivable for specified services provided on or after the commencement of this Chapter. Hence, the withholding tax shall be deducted at the time of credit to the account of the payee or at the time of making payment, whichever is earlier.

Specified services means online advertisement services. Online advertisement services mean provision of digital advertising space or any other facility or service for the purpose of online advertisement and shall include any other service as may be notified by the

Central Government in this behalf.

Chargeability

EL at a rate of 6% shall be levied on the consideration received or receivable by a non- resident, on account of provision of specified services, from (a) a person resident in India and carrying on business or profession; or (b) a non-resident having a permanent establishment in India.

However, EL shall not be charged, where the non-resident, providing the specified service - (i) has a PE in India and the specified service is effectively connected with such PE or (ii) the aggregate amount of consideration for specified service received or receivable in a previous year does not exceed Rs. 1 Lakh; or (iii) the payment for the specified service is not for the purposes of carrying out business or profession. EL is levied on consideration, received or receivable from a resident person carrying out business or profession.

It is not necessary that the business or profession is also to be carried out in India. Even if the business or profession is carried outside India, but person carrying out such business or profession is resident in India, EL shall be charged on payment made by such person to a non-resident, rendering specified services.

Procedure, Penalty and Prosecution

Where the consideration paid or payable for providing specified service is chargeable to EL, the payer, shall deduct EL from the amount paid or payable to the non-resident. The EL so deducted shall be paid by the Assessee, to Central Government, within 7 days from the end of the month in which EL is deducted. Even where an Assessee fails to deduct the EL in accordance with this Chapter, he would be still liable to pay to the Central Government, the amount of EL which was to be deducted, within 7 days from the end of the month in which EL is deductible. Simple interest at the rate of 1% of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed, shall be payable.

Every Assessee shall after the end of every financial year, within a prescribed period, furnish to the Assessing Officer("AO") or other authority, as authorised by the Board, a verified statement of particulars of all specified services rendered during the financial year. It is to be noted that particulars of specified services have to be furnished in the statement, even if no EL has been charged on such services. The Assessee may furnish a belated statement or a revised statement within 2 years from the end of the financial year in which specified services were provided. Where the Assessee fails to furnish the statement within time prescribed, the AO may serve a notice upon the Assessee to furnish verified statement within prescribed time.

Where a Statement has been furnished, it shall be processed in the similar manner as statement of tax deducted at source is processed u/ s 200A of the Income Tax Act, 1961. Intimation shall also be generated and sent to the Assessee. No intimation shall be sent after expiry of 1 year from the end of the Financial Year in which the statement is furnished. Facility of centralised processing of such statements shall be made available by the Board to expeditiously determine the tax payable or refund due to the Assessee. The AO may

amend a mistake apparent from record, in the intimation, within period of 1 year from the end of the FY in which the intimation sought to be amended was passed.

In case of failure to deduct whole or any part of EL, the Assessee shall pay the amount of such EL as penalty. In case of failure to pay EL to the Central Government, penalty shall be paid at Rs. 1000 per day for which the failure continues but shall not exceed the amount of EL that the Assessee has failed to pay. For failure to furnish the statement within prescribed time, penalty at Rs. 100 per day of failure. No penalty if reasonable cause is shown by the Assessee and no order imposing penalty shall be made unless reasonable opportunity of being heard is given to the Assessee. A Penalty order of the AO shall be appealable to Commissioner of Income Tax (Appeals).

Furnishing of false statement in any verification shall be a non-cognizable offence, punishable with imprisonment of term which may extend to 3 years and fine.

Other Provisions

The provisions of sections 120, 131, 133A, 138, 156, Chapter XV and sections 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 280A, 280B, 280C, 280D, 282 and 288 to 293 of the Income-tax Act shall so far as may be, apply in relation to EL, as they apply in relation to income-tax.

Transfer Pricing

Country by Country Report and TP Documentation

Radical changes have been introduced in the arena of TP documentation to implement OECD's BEPS Action Plan 13.

India has been an active member of the Base Erosion and Profit Shifting (BEPS) initiative and has accordingly proposed to adopt OECD guidelines in relation to Action Plan 13 on Country-by-Country Reporting (CbCR) in its tax regime. Accordingly, a new Section has been inserted in the Act: 'Section 286 – Furnishing of report in respect of International Group'.

This section would enable the tax authorities to have a snapshot of the entire MNE group – financial and operational overview of all the countries in which the MNE operates. It provides a reporting template i.e. CbCR which the MNE would have to file if Consolidated Group Revenue exceeds a prescribed limit. While the Bill does not prescribe the threshold, the Finance Minister in his budget speech mentioned to align with the threshold of EUR 750 million prescribed under BEPS.

MNE would have to report entities whose information it has to consolidate while preparing consolidated financials. Hence this may even apply to Associates and Joint Ventures. Special reference is made to Permanent Enterprise whose information is to be reported separately in CbCR.

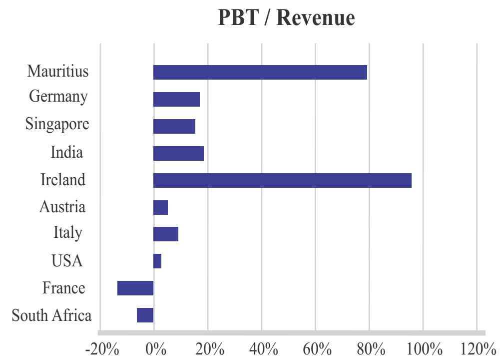
CbCR shall contain the following country wise information:

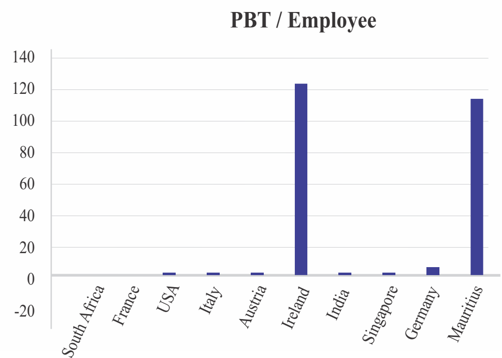
- Revenue
- PBT
- Income Tax [Paid and Accrued]
- Stated Capital [i.e. the nominal capital]
- Accumulated Earnings
- Number of employees
- Tangible Assets [Except: Cash and Cash Equivalents]

It also requires providing details relating to main business activities of each constituent entity, the country in which each of them is incorporated or established and the country where it is a resident and any other information as may be prescribed.

CbCR would be filed by the Ultimate Parent in its resident country and would be available to the tax authorities of all the relevant countries.

CbCR would enable tax authorities to easily find out if the MNE engages in ploughing chunk of its profits in no / low-tax countries. Mixing up information from the report would give interesting results like the following charts (prepared based on assumed numbers). It can find out of there are any jurisdictions having an exorbitant PBT / Revenue or PBT per employee or an extremely low / zero effective tax in a country, etc.





CbCR is a very important tool for the Tax Authorities to identify riskiness of a group and this amendment makes it very important for the MNE to evaluate its entire structure, especially in cases where there is a lack of substance in a country.

Additional requirements for TP Documentation under Section 92D

Additional documentation requirements have been introduced for the entities forming part of the multinational group – however the information is yet to be prescribed.

The amendment provides that a Constituent Entity of an International Group shall also be required to keep and maintain information & documents in respect of the International Group. For this purpose 'Constituent Entity'

and 'International Group' have been defined in the newly inserted Section 286. Under the BEPS Project, Action Plan 13 also required countries to follow 'Master File' and 'Local File'. Since documentation requirements are contained in Rule 10D, it is expected that the requirements of 'Master File' and 'Local File' would come via amendment in Rule 10D.

A new sub-section 4 to Section 92D has been inserted to provide that in case where authority prescribed under Section 286(1) calls for information & documents, as required by it, the Constituent Entity shall furnish the same within such time as may be prescribed.

Personal Taxation

Social Security Taxation

Under the existing provisions of the Act any accumulated balance in recognised provident fund due and payable to an employee is considered as exempt from tax u/s. 10(12) of the Act on fulfilment of certain conditions stated in rule 8 of Part A of the Fourth Schedule.

It is now proposed that employee contribution to recognised provident fund would be exempt only to the extent of 40% of contribution made by an employee on or after 1st April 2016. Contributions made by an employee before 1st April 2016 would not be affected by the proposed amendment.

However, if the balance is transferred from recognized provident fund to National Pension Scheme (“NPS”) it is not subject to tax.

Further, it is also proposed that any payment from the National Pension Scheme Trust to an employee on closure of his account or on his opting out of the pension scheme referred to in section 80CCD to the extent it does not exceed forty per cent of the total amount payable to him at the time of such closure or his opting out of the scheme shall not be taxable.

Under the existing provisions, any payment from an approved superannuation fund made to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on

his becoming incapacitated prior to such retirement is exempt from tax.

It is proposed to amend the said provisions so as to provide that any payment in commutation of an annuity purchased out of contributions made on or after the 1st day of April, 2016, which exceeds forty per cent of the annuity, shall be chargeable to tax.

Rule 6 of the Recognized Provident Funds rules deals with employer's annual contributions when deemed to be income received by employee. As per the existing rule 6 that portion of annual accretion in any previous year to the balance at the credit of any employee participating in a recognized provident fund as consists of contributions made by the employer in excess of 12% of the salary of the employee shall be liable to tax. As per the proposed amendment in rule 6 any contribution made by an employer in excess of 12 % or Rs. 1,50,000 whichever is less shall be deemed to be the income of the employee liable to tax.

Contribution to Superannuation fund by the employer

Under the existing provisions of Section 17(2)(vii), any contribution made to an approved superannuation fund by an employer exceeding Rs. 1,00,000 was taxable in the hands of the Assessee as perquisites. The said threshold limit is proposed to be increased to Rs. 1,50,000

Deduction of interest under house property

As per the existing provision of Clause (b) of section 24, interest payable on capital borrowed for acquisition or construction of a house property shall be deducted while computing income from house property. The second proviso to the said clause provides that a deduction of an amount of Rs. 2,00,000 shall be allowed where a house property referred to in sub-section (2) of section 23 (self-occupied house property) has been acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed. The said time limit is proposed to be increased from three years to five years. In view of the proposed amendment, if any capital is borrowed for acquisition or construction of a house property on or after the 1st day of April, 1999 and such acquisition or construction is completed within five years from the end of the financial year in which capital was borrowed, deduction of an amount of Rs. 2,00,000 will be allowed.

Uunrealized rent and arrears of rent

The existing provisions of sections 25A, 25AA and 25B relate to special provisions on taxation of unrealised rent / rent arears under the head "Income from House Property". It is proposed to simplify these provisions and merge them under a new single section 25A and bring uniformity in tax treatment of unrealised rent and arrears of rent. It is proposed to provide that the amount of rent received in arrears or the amount of unrealized rent received subsequently shall be charged to income-tax in the financial year in which such rent is received or realised, whether the assessee is the owner of the property or not in that financial year. It is also proposed that thirty per cent of the arrears of rent or the unrealised rent realised subsequently shall be allowed as deduction.

Taxability in the hands of nominee of contribution to pension scheme notified by Central Government u/s 80CCD

Where any amount received by the nominee of assessee of any amount standing to the credit in pension scheme of assessee on account of closure or his opting out of the pension scheme, as per the existing provision the whole of the amount was taxable in the hands of the nominee. Now as per the proposed amendment the amount received by the nominee on account of death of the assessee shall not be deemed to be the income of the nominee.

Deduction of Rent Paid

The existing provisions of Section 80GG provide for a deduction of any expenditure incurred by an individual in excess of 10% of his total income towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence if he is not granted house rent allowance by his employer, to the extent such excess expenditure does not exceed Rs. 2,000 per month or 24% of his total income for the year, whichever is less, subject to other conditions as prescribed therein.

In order to provide relief to the individual tax payers, it is proposed to amend section 80GG so as to increase the maximum limit of deduction from existing Rs. 2,000 per month to Rs. 5,000 per month.

Deduction of Housing Loan Interest

The existing provisions of section 80EE provide a deduction of up to Rs. 1 lakh in respect of interest paid on loan by an individual for acquisition of a residential house property. This benefit is available for the two assessment years beginning on the 1st day of April 2014 and on the 1st day of April 2015.

In furtherance of the goal of the Government of providing 'housing for all', it is proposed to incentivize first-home buyers availing home loans, by providing additional deduction in respect of interest on loan taken for residential house property from any financial institution up to Rs. 50,000. This incentive is proposed to be extended to a house property of a value less than Rs. 50 lacs in respect of which a loan of an amount not exceeding Rs. 35 lacs has been sanctioned during the period from the 1st day of April, 2016 to the 31stday of March, 2017. It is also proposed to extend the benefit of deduction till the repayment of loan continues.

The deduction under the proposed section is over and above the limit of Rs. 2,00,000 provided for a self-occupied property under section 24 of the Act.

Relief u/s. 87A

Rebate u/s. 87A of Rs. 2,000/- is provided to an Resident Individual whose total tax income is Rs. 5,00,000/- or less. Bill proposes to extend the amount of rebate from Rs. 2,000/- to Rs. 5,000/- for the benefit of individuals who are falling under the first slab of the income tax. Therefore income of an Resident Individual up to Rs. 3,00,000/- will not be chargeable to tax as per the rebate of Rs. 5000/-.

Dividend received by resident Individual, HUF or a Firm

As per the existing provision, the dividend

income on which Dividend Distribution Tax ("DDT") u/s. 115-O has been paid are exempt under section 10(34) of the Act. The proposed amendment is intended to tax the dividend income at the rate of 10% in case the dividend received exceeds Rs. 10 lacs. The tax on such dividend income is levied on gross basis, meaning thereby no deduction of expenses or otherwise would be available while computing the taxability. It may be noted that in such cases provisions of section 14A dealing with disallowance of expenses incurred in relation to income not includible in total income cannot be invoked.

Capital Gains

Long term capital gain on unlisted securities

The current provision of section 112 provides tax rate at ten percent on long term capital gain arising from transfer of 'unlisted securities' by non-resident. However, Supreme Court in case of Bhagwati Developers Private Limited v. Peerless General Finance and Investment Company Limited (Civil Appeal No. 7445 of 2004) had held that securities derive its meaning from Securities Contract (Regulation) Act, 1956 and it does not cover the shares of a private limited company. In view of the said decision, concessional rate of 10% on sale of unlisted securities would not be available to non-residents.

In order to remove anomaly caused by the said judgement, the Bill proposes to amend this section so as to tax the transfer of unlisted securities or shares of a company not being a company in which the public are substantially interested at the rate of ten percent. Thus consequentially, the long term capital gain, arising to a non-resident, on transfer of unlisted securities or shares of all the companies will be taxable at the rate of 10%.

Capital gains exemption for investment in Notified units

The proposed deduction u/s. 54EE is linked with the start-up India action plan. In order to promote the start-up ecosystem in the country, it is envisaged in 'start-up India Action Plan' to establish a Fund of Funds which intends to raise Rs 2,500 crores annually for four years to finance the start-ups. In order to raise funds for the same, the Central Government shall issue units of the Funds and investment therein would be eligible for capital gains exemption on similar lines with Section 54EC.

It is proposed to insert a new Section 54EE to provide exemption from capital gains tax if the long term capital gains proceeds are invested by an assessee in units of such specified fund, as may be notified by the Central Government in this behalf, subject to the condition that the amount remains invested for three years failing which the exemption shall be withdrawn. The investment in the units of the specified fund shall be allowed up to Rs. 50 lakh.

Exemption for investment in Start-ups

Existing provisions of section 54GB provide exemption from tax on long term capital gains in respect of the gains arising on account of transfer of a residential property, if such capital gains are invested in subscription of shares of a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006 subject to other conditions specified therein.

With an objective to provide relief to an individual or HUF willing to setup a start-up company by selling a residential property to invest in the shares of such company, it is proposed to amend section 54GB so as to provide that long term capital gains arising on account of transfer of a residential property shall not be charged to tax if such capital gains are invested in subscription of shares of a company which qualifies to be an eligible start-up subject to the condition that the individual or HUF holds more than fifty per cent shares of the company and such company utilizes the amount invested in shares to purchase new asset before due date of filing of return by the investor.

The existing provision of section 54GB requires that the company should invest the proceeds in the purchase of new asset being new plant and machinery but does not include, inter-alia, computers or computer software.

With a view to avoid the incidence of the aforesaid condition on start-ups where computers or computer software form the core asset base owing to nature of business activity, it is proposed to amend section

54GB so as to provide that the expression "new asset" includes computers or computer software in case of technology driven start-ups so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the official Gazette.

Further, 54GB (5) provided for the sunset provision for Section 54 GB and accordingly, is not applicable to transfer of residential property after 31st March, 2017. However, for the investment in eligible start ups this provision is extended to transfer of residential property till 31st March, 2019.

Conversion of a company into Limited Liability Partnership (LLP)

Existing provisions of clause (xiiib) of Section 47 provides that conversion of a private limited or unlisted public company into Limited Liability Partnership (LLP) shall not be regarded as transfer, if certain conditions are fulfilled, which, inter alia, include a condition that the company's gross receipts, turnover or total sales in any of the preceding three years did not exceed Rs. 60 lakh.

It is proposed to amend the said section so as to provide that, for availing tax-neutral conversion, in addition to the existing

conditions, the value of the total assets in the books of accounts of the company in any of the three previous years preceding the previous year in which the conversion takes place, should not exceed Rs. 5 crores.

While it can be debated whether conversion of a company into LLP itself would be subject to any tax under the head 'Capital Gains' in absence of any 'transfer', the lawmakers had explicitly provided for tax neutrality for conversion to encourage smaller companies to get converted into LLP. However, in absence of cap on the value of assets, companies with significant rental income from immovable properties were taking benefit thereof as the income was not taxable under the head 'Profits & Gains from Business or Profession'. In order to restrict the eligibility, it is proposed that tax neutrality on conversion would not be available in case the book value of assets in any of the three preceding years exceeds Rs. 5 crores.

Real Estate Transaction at less than Stamp Duty Value

As per the current provisions of Section 50C(1), in case of transfer of a capital asset being land or building or both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains.

It is proposed that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not same, the stamp duty value may be taken as on the date of agreement, instead of that on the date of registration. This exception shall apply only in case where the amount of consideration, or a part thereof, has been paid by any mode other than cash on or before the date of agreement fixing the amount of consideration for transfer of such immovable.

It may be mentioned that similar provision was already made under Section 43CA where the sale is taxable as Business Profits and the same principle is now extended to capital assets as well.

Receipt of shares not considered as Gift in case of demerger, amalgamation etc.

The existing provisions of clause(vii) of sub-section 2 of section 56 of the Act provide for chargeability of income from other sources in case any money, immovable property or other property with or without consideration in excess of Rs 50,000 is received by an assessee being an individual or an Hindu undivided family (HUF). The provisions also apply where shares of a company are received as a consequence of demerger or amalgamation of a company. Such a transaction is not regarded as transfer where the recipient is a firm or a company.

With a view to bring uniformity in tax treatment, it is proposed to amend the Act so as to provide that any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company shall not attract the provisions of Section 56(2)(vii).

It is important to note that such clarification / exemption has been provided in respect of shares received by individual or HUF, however, it has not been extended to Section 56(2)(viia) where the shares are received by

firm or closely held companies.

Investment in Gold Monetization Scheme

Under the existing provisions of section 2 sub-section (14) dealing with definition of capital asset, bonds issues under the Gold Deposit Scheme, 1999 were not considered as capital assets chargeable to tax under the head "capital gains". With a view to extend the same tax benefits to the scheme as were available to the Gold Deposit Scheme, 1999 it is proposed to amend Clause (14) of section 2, so as to exclude Deposit Certificates issued under the scheme notified by the Central Government, from the definition of capital asset and thereby to exempt it from capital gains tax.

It is also proposed to amend clause (15) of section 10 so as to provide that the interest on Deposit Certificates issued under the Scheme, shall be exempt from income-tax.

Capital Gain on Sovereign Gold Bonds

With a view to encourage the investment in gold bonds issued by the Reserve Bank of India on behalf of the Government under the Sovereign Gold Bonds Scheme, 2015 a new sub clause (viic) has been inserted in section 47 which provides that in case of individual, redemption of Sovereign Gold Bonds shall not be considered as transfer and hence not taxable under the head "Capital Gains".

In case of transfer of Sovereign Gold Bonds by all assessee [except on redemption by individual], the same will be taxable, however, the assessee shall be eligible for indexation benefits in case of long terms capital gains arising on transfer of Sovereign Gold Bond to all cases of assessee.

Rupee Denominated Bonds

The Reserve Bank of India has recently permitted Indian corporates to issue rupee denominated bonds outside India as a measure to enable the Indian corporates to raise funds from outside India.

Accordingly, with a view to provide relief to non-resident investor who bears the risk of currency fluctuation, it is proposed to amend section 48 of the Act so as to provide that the Capital Gains, arising in case of appreciation of rupee between the date of issue and the date of redemption against the foreign currency in which the investment is made shall be ignored for the purpose of tax on Capital Gains. This treatment is in accordance with the Press Release dated 29th October 2015 with regard to taxation of Rupee Denominated Bonds. It may also be mentioned that the said Press Release also clarified that interest on such bonds would also be eligible for concessional tax treatment of 5%. However, no formal amendment has been proposed in The Bill in this regard. While the assessee can rely on Circulars, the said clarification was provided in form of Press Release and therefore in order to reduce litigation on this front it would be preferable if a formal amendment is made in the Income Tax Act to this effect.

Tax Neutrality on Consolidation of similar Mutual Funds

With a view to trim product offerings and

reduce investor risks, the Securities and Exchange Board of India (SEBI) has been compelling Asset Management Companies to consolidate Mutual Fund Plans having similar features and benefits. However, since such consolidation was considered as a transfer under the provisions of Income Tax Act, 1961, the investors were not keen to transfer their investment to consolidated Mutual Fund Plans.

To encourage such consolidation of similar plans, a new sub-clause (xix) has been inserted in Section 47 which provides that in cases of consolidation of two or more plans, the transaction of transfer of units of existing plan for units of consolidated plan shall not be considered as transfer.

Compliance and Procedures

Advance Tax

Rationalization of advance tax payment and interest on its deferment

As per the existing provision, the advance tax payment schedule for companies and assessees other than companies are different. In order to streamline the payment system, it has been proposed that advance tax payment schedule for all the assessees will remain same except for the assessees falling under section 44AD who can pay whole amount of advance tax on or before 15th March of that financial year.

Therefore, for all the assessees who were earlier paying the first instalment of advance tax on or before 15th September will now have to make payments on or before 15th June.

Thus from now onwards all the assessees (except assesses falling under section 44AD) will have to pay advance tax in following four instalments:

Due Date of Instalment	Amount Payable
On or before the 15th June	Not less than 15% of advance tax
On or before the 15th September	Not less than 45% of advance tax
On or before the 15th December	Not less than 75% of advance tax
On or before the 15th March	Whole amount of advance tax

As a result, subsequent amendments are also made in section 234C which provides for chargeability of interest for deferment of advance tax payment. Now interest on deferment of advance tax payment by all the assessees will be charged at uniform rate. Further no interest on deferment of advance tax payment will be charged for the assessees

having income under the head "Profit and gains from business or profession" for the first time.

Tax Deduction / Collection at Source

Rationalization of Threshold and Rates for Tax Deduction at Source

The Bill proposes to amend the maximum amount of payment up to which tax is not required to be deducted and rates of tax deductible at source as per the provisions of Section 192A, 194BB, 194C, 194D, 194DA, 194EE, 194G, 194H, 194LA and 194LBB as reflected in Appendix. The amendment is proposed to be effective from June 1, 2016.

Declaration in Form 15G and Form 15H for non-deduction of TDS on Rent

As per the provisions of Section 197A, payer is not required to deduct TDS if the payee furnishes declaration in Form 15G / 15H confirming that the total income of the payee does not exceed maximum amount not chargeable to tax in India. Currently, such self-declaration cannot be furnished in respect of rent income on which tax is deductible under Section 194I of the Act. As per the proposed amendment to Section 197A, with effect from June 1, 2016, payee can furnish declaration in Form 15G / Form 15H for non-deduction of TDS under Section 194I on rent.

Relaxation in furnishing PAN by non-residents

As per the provisions of Section 206AA, person responsible for making payment to any person, which is subject to TDS as per provisions of Chapter XVIIB of the Act is required to obtain Permanent Account Number (PAN) of the payee. Further, in case PAN is not furnished by the payee, tax is required to be deducted at a minimum rate of 20%. There was ambiguity as to whether the provisions of Section 206AA can override the provisions of DTAA in case of non-residents or not. In light of the same, the Bill proposes that with effect from June 1, 2016, non-residents would not be required to furnish PAN subject to conditions that may be prescribed. The conditions are yet to be prescribed.

TCS on sale of motor vehicle, sale of goods in cash or provision of services in cash

As per the proposed provisions of Section 206C, tax collectible at source (TCS) will be required to be collected at the rate of 1% by seller of motor vehicle with value exceeding Rs. 10 Lacs.

It is also proposed to levy TCS at the rate of 1% on any sale of goods or provision of services exceeding Rs. 2 lakhs for consideration in cash.

Further, the provisions relating to TCS will not be applicable on such sale / provision of goods / services if the provisions of TDS are applicable to the transaction.

The amendments are proposed to be applicable with effect from June 1, 2016.

Return Filing

Compulsory filing of the Return in case of Long Term Capital Gain exempted u/s. 10(38)

Under the existing provisions, every person whose total income exceeds the

maximum amount not chargeable to tax is required to file return of income. As per the existing section 139(1), any individual, HUF, AOP or BOI whether incorporated or not, or artificial judicial person are required to file their return of income if the total income without giving effect to provision of Section 10A, 10B or 10BA or Chapter VI-A exceeds the maximum amount not chargeable to tax. As per the proposed amendment it is compulsory to file the return of income even in a case where total income arising on transfer of long term capital asset being equity shares wherein securities transaction tax is paid. As per section 10(38) long term capital gains were exempted which is now required to be considered by computing the maximum amount not chargeable to tax.

Loss from Specified Business and Return u/s 139(3)

It is a settled legal position that losses cannot be carried forward unless the return of loss is filed within the time specified u/s. 139(1). There was no provision for such restriction in case where the carry forward of losses incurred in specified business u/s. 35AD. Therefore in case of losses incurred in specified business it was not necessary to file the return of income within the time limit mentioned in section 139(1). The proposed amendment clarifies that in a case of loss sustained in a Specified Business, the Assessee is required to file return in time mentioned in section 139(1). The provision of section 139(3) has been proposed to be amended so as to include section 73A within the ambit of 139(3).

Belated Return

As per the existing provisions of section 139(4) a person who has not filed a return of income within the time allowed u/s 139(1) or time allowed in notice u/s. 142(1) shall furnish the return at any time before the expiry of one year from the end of the relevant assessment year or before completion of assessment whichever is earlier. Section 139(4) has been proposed to be substituted. In view of the proposed amendment, the extended time period contemplated in old section 139(4) is now been reduced and it has been stated that such return is required to be filed before the end of the relevant assessment year instead of one year from the end of the year. Further, in case where notice u/s 142(1) is issued to the Assessee for non-furnishing of return, such person is required to file return within the time stipulated therein.

Similarly, corresponding amendment has been made u/s 139(5) whereby it has been clarified that belated return filed u/s 139(4) can also be revised if the person discovers any error or omission in such belated return. This however signifies that return filed in pursuance of notice issued u/s. 142(1) cannot be revised.

Assessment & Appellate Proceedings

Interest on Refund

As per the existing provision of section 244A if the assessee is entitled for refund on the extra tax paid on TDS or TCS or advance tax, then he is eligible for interest at the rate of 0.5% for every month or part of the month from the first day of the relevant assessment year to the date of the refund.

Now as per the proposed amendment the time period for the calculation of interest rate will start from the first day of the relevant assessment year only if the assessee has filed its return of income on or before the due date.

Otherwise interest on refund will be paid from the date of furnishing of return to the date on which refund is granted.

Further it is proposed that interest on refund of self-assessment tax will be paid at the rate of 0.5% for every month or part of the month from the date of filing return or payment of tax, whichever is later, to the date of refund.

By a separate amendment it is proposed to amend the provisions of section 153 (5), wherein a time limit of 3 months is provided for giving appeal effect. It is further proposed that refund arising on giving appeal effect which gets delayed beyond the time of 3 months prescribed under sub section 153(5), additional interest at the rate of 3% per annum is to be paid beginning from the date of expiry of the time to the date on which refund is granted. The Finance Minister in his speech mentioned that the concerned officer responsible for delaying the refund will be held accountable to such additional interest.

No Appeal before ITAT to Challenge DRP's Order

In case of assessments involving Foreign Companies or transfer pricing adjustment an alternative dispute resolution mechanism was introduced in the form of Dispute Resolution Panel (DRP) consisting of 3 Commissioners / Directors. Order of the DRP were appealable by the Assessee before the Income Tax Appellate Tribunal. However, the Department was not entitled to file appeal against the said order of the DRP. Due to this the orders of the DRP were predominantly in favour of the Department and hardly provided any scope of genuine dispute resolution.

By the Finance Act, 2012 the orders of the DRP had been made appealable before the ITAT by the Department also. This amendment was made to provide more freedom to the DRP to take judicious view of the matter. By the proposed amendment which is made effective from July 1, 2016, it is proposed to do away with power of Commissioner or Principal Commissioner to challenge the order passed by Assessing Officer before Income Tax Appellate Tribunal consequent to direction issued by DRP under sub-section (5) of Section 144C of the Act. Proposed amendment seems to be made with a view to reducing litigation from

the side of revenue by way of challenging order passed by Dispute Resolution Panel u/s 144C(5) of the Act. Accordingly, necessary changes are also proposed in sub-section (4) & (6) of section 253 to give effect thereto.

Extension of time limit to Transfer Pricing Officer in certain cases

As per the existing provisions of Section 92 CA (3A), where assessment or reassessment cases have been referred to the Transfer Pricing Officer (TPO), he is required to pass an order at least 60 days before the date on

which the time limit for completion of assessment or reassessment, as case may be, under Section 153 or Section 153B comes to an end.

Explanation 1 to Section 153 provides a list of circumstances which have to be excluded for computing the period of limitation. These include time during which assessment proceedings have been stayed due to order of any court and the time taken in seeking and receiving information that has been requested under exchange of information, by competent authority.

The proposed amendment, in form of a proviso to Section 92CA(3A), provides extended time to the TPO for passing his

order by extending the time limit to 60 days in cases where, after excluding the above mentioned time period, the time available to TPO for making an order is less than 60 days.

The amendment will take effect from June 1, 2016.

Providing time limit for disposing assessee's application u/s 220(2A)

As per the provision of section 220, if the assessee is not able to pay the demand amount within 30 days of the notice, then the assessee is liable to pay interest at the rate of 1% for every month or part of the month till the default continues. However, Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner can reduce or waive the interest amount if they are satisfied that certain conditions are fulfilled.

In order to be more precise about the time limit for accepting or rejecting the application of assessee and for passing the order for reducing or waving the interest, new provisos have been inserted according to which order will now have to be passed within twelve months from the end of the month in which application is made for waiver or reduction and also assessee will be given an opportunity of being heard before rejecting the order. It is also provided that all the pending application for waiver should be disposed off by 1st June, 2017.

Jurisdiction of Assessing Officer

The existing sub-section (3) of the section 124, provides that no person shall be entitled to call in question the jurisdiction of an Assessing Officer in a case where return is filed under section 139, after the expiry of one month from the date on which he was served with a notice issued under sub-section (1) of section 142 or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier. However, this provision did not covers cases where notices were issued under section 153A or section 153C. In view of the proposed amendment in section 124, in case where Search is undertaken u/s 132 or Requisition u/s 132A, the person cannot question the jurisdiction after expiry of one month from the date of issue of notice u/s 153A or 153C

or before the completion of Assessment whichever is earlier. Thus, the person is required to challenge the jurisdiction within 30 days from issue of notice u/s 153A or 153C.

It may be pertinent to note that the jurisdiction of the AO stands on different footing as compared to the question of validity of notice. Provision of section 153C casts on the AO additional duty to records satisfaction before framing Assessment u/s 153C. Thus, the proposed amendment in no way obviate the responsibility casted u/s 153C. Similar, in absence of Search Authorization u/s 132, the validity of this notice can be challenged at any point of time.

Reduction of Time-limit for Rectification of Order passed by ITAT

With effect from 1st June, 2016, it is proposed to reduce time limit from 4 years from the date of the order to six months from the end of the month in which the order was passed for rectifying any mistake apparent from the record in relation to order passed by ITAT. It is proposed to reduce present time limit of four years from the date of order passed by ITAT to time limit of six months from the end of month in which such order is passed by ITAT. It is important to mention that the time limit has been fixed with reference to passing of order by ITAT and not with reference to receipt of order by the assessee. It has been observed that there is substantial delay in receiving of ITAT orders by the assessee and in some cases the period extends up to two months. In such cases, the period available for filing rectification would be reduced significantly.

Revision in monetary limit for disposal of case by single member bench of ITAT

With the object of expeditious disposal of pending appeal before the Income Tax Tribunal, it proposed to amend section 255(3) for revise in monetary limit for cases which can be taken up a single member to Rs. 50.00 lacs (earlier Rs. 15.00 lacs) of assessed income.

Section 133C- Power to call information by Prescribed Income Tax Authority

Section 133C of the Act was introduced by the Finance (No.2) Act, 2014, with effect from 01.10.2014. As per the existing provision, the prescribed Income Tax Authority being Principal Director General or Director General or Principal Director or Director, for the purpose of verification of information in its possession relating to any person, issue a notice to such person requiring him to furnish information or documents which may be useful or relevant to inquiry or proceeding under the Act. Though there was no bar under the existing provisions to communicate the outcome of the inquiry to the concerned Assessing Officer, the proposed amendment specifically provides to intimate the outcome of the inquiry to the Assessing Officer, with effect from 1st June, 2016. The proposed amendment is intended to provide the Assessing Officer the outcome of the inquiry who can take corrective action based on the information so received. Consequential amendments are proposed in section 143(2) and section 147, wherein:

> the Assessing Officer is empowered to issue notice u/s 143(2) and make assessment, or

re-open the assessment u/s 147 of the Act by considering such cases as deemed cases where income chargeable to tax has escaped assessment.

Processing of Intimation

Section 143(1) deals with processing of return of income by way of issuance of intimation. As per the existing section 143(1), the scope of adjustment was limited to any arithmetical error in the return or an incorrect claim, if such incorrect claim was apparent from any information in the return. No adjustments can be carried out while issuing an intimation other than arithmetical error or incorrect claim based on information apparent in the return of income.

The proposed amendment has enlarged the scope of electronic processing of the return. It has been clarified that while processing the return following additional adjustment can be carried out.

Disallowance of loss claimed, if the return of the previous year for which set off of loss is claimed was filed beyond the due date specified u/s. 139(1);

Disallowance of expenditure indicated in Audit Report but not taken into account in computing the total income in the return. Some examples of expenses reported in the tax audit report are capital expenditure, personal expenditure, expenditure by way of penalty or fine for violation of any law, expenditure prohibited by law, disallowance u/s. 14A, 36(1)(iii), 40(a)(i), 40(a)(ia), 40A(3), 40A(7), 40A(9), 43B etc. Henceforth, as per the proposed amendment, the expenses reported in the tax audit report would now be considered as additions to the income while processing the return.

Disallowance of deduction claimed u/s 10AA,80IA, 80IB, 80IC, 80ID or 80IE, if the return is filed beyond the due date specified u/s. 139(1).

Addition of income appearing in 26AS or Form 16A or Form 16 which has not been included in the total income in the return. Proper care needs to be taken by persons following cash system of accounting wherein the income is booked on receipt basis but the tax is deducted by the other person based on accrual system of accounting while filing the return of income.

Before making adjustments the proposed amendment provides that the intimation for such adjustment will have to be given to the Assessee and if no response is received within 30 days from the Assessee against the proposed adjustments, the adjustment would be automatically made. It may be noted that the intimation processed u/s. 143(1) is appealable and appeal against such adjustments can be filed before the Commissioner (Appeals).

The amendment also proposes to insert a new proviso in sub-section (1D) whereby it has been stated that processing of return is compulsory despite notice u/s 143(2) is issued. The existing provision provides that where a notice has been issued u/s. 143(2), the processing of return u/s. 143(1) shall not be necessary. It is further proposed that such processing of return should be completed before the order u/s. 143(3) is passed.

Bank Guarantee - Revoking attachment of property u/s 281B

Existing provisions of section 281B provides for provisional attachment of property belonging to an Assessee where Assessing Officer is of opinion that it is necessary to do so for protection of interest of revenue during the pendency of proceedings under the Act. It does not provide any option under such circumstances to Assessee to avoid such attachment. However, with the proposed amendment that assesse can alternatively provide for a bank guarantee for an amount equivalent to fair market value of property provisionally attached or for a value which is lower than such fair value but well enough to protect interest of the revenue. The Assessing Officer is required to revoke attachment of property provisionally attached within 15 days of receipt of bank guarantee. The Assessing Officer may make a reference to valuation officer for the purpose of determination of fair market value of property who in turn requires to submit his report of estimate within 30 days of such reference made by assessing officer for ascertaining the value of the bank guarantee to be submitted by the Assessee. The bank guarantee to be submitted should be of a schedule bank.

Time limit of passing Assessment / Re-assessment

Under the Act, sections 153 and 153B provide different time limits for completion of different types of assessments viz. regular assessment, reassessment, search assessment etc. [143(3), 147, 153A, 153C] and also in cases where reference to the Transfer Pricing Officer is made.

As per the existing provisions all the time barring assessments were getting completed on 31st March each year. Therefore, it was becoming difficult for the tax department to collect the money as per regular assessment in the same year in which the assessments were getting completed. To obviate this difficulty, it is provided by various amendments to curtail the time limit for completing assessments by 3 months such that time barring dates fell on 31st December of each year. New time limits have been proposed to be made effective from 1-6-2016. The existing time limits and the proposed time limits are as under.

Nature of Assessment	Existing Time Limit	Revised Time Limit
U/s 143(3), 144, 153A	24 months from the end of the AY	21 months
U/s. 143(3) / 153A where reference is made u/s. 92CA	36 months from the end of the AY	33 months
U/s 147	12 months from the end of the FY in which notice for reassessment is served.	9 months
Cases of re-assessment where reference is made u/s. 92CA	24 months from the end of the FY in which notice for re-assessment is served.	21 months
Fresh Assessment in pursuance of order u/s 254 (ITAT), section 263 (Revision) or section 264 (Revision by Assessee)	12 months from the end of the FY in which respective order is received / passed.	9 months
Order giving effect to order u/s 250, 254, 260, 262, 263 or 264	Not specified	3 Months from the end of the month in which order is received / passed. It can be extended up to further period of 6 months.

It may be noted that there was no time specified under the existing provisions for giving effect to the orders passed by the CIT(A), ITAT, etc. Under the proposed amendment the time limit of 3 months has been specified.

This amendment would be applicable from 1st June, 2016.

Automation of various process and paperless assessment

It is proposed to amend the relevant provisions of the Act so as to provide adequate legal framework for paperless assessment in order to enhance efficiency and reduce the burden of compliance. A series of changes are proposed to achieve this end.

It is proposed to amend the existing provision of section 2 by inserting new clause (23C) to define the term "hearing" to include communication of data and documents through electronic mode.

Sub-section (1) of section 282A provides that where a notice or other document is required to be issued by any income-tax authority under the Act, such notice or document should be signed by that authority in manuscript.

It is proposed to amend sub-section (1) of section 282A so as to provide that notices and documents required to be issued by income-tax authority under the Act shall be issued by such authority either in paper form or in electronic form in accordance with such procedure as may be prescribed.

These amendments will take effect from the 1st day of June, 2016.

Penalty

The present penalty provisions u/s. 271 cover cases of penalty for failure to furnish returns, failure to comply with notices, cases of concealment of particulars of income and furnishing of inaccurate particular of income. There was not only significant litigation happening on account of penalty but was also causing harassment in several cases. The existing provisions dealing with concealment and inaccurate particulars of income are now proposed to be substituted by entirely new law on penalty wherein more simpler concept of "under-reporting" and "misreporting" of income has been introduced. It is also worth noting that under the existing provisions the concerned officer was required to record satisfaction for initiating penalty during the course of assessment proceedings. This condition has been done away in the proposed amendment. The proposed amendment now lists out the cases of under-reporting of income and also specifies the circumstances under which the under-reporting of income shall be considered to be on account of misreporting. In other words the penalty under the new provisions would be automatic and there would be no requirement of recording satisfaction by the concerned officer.

Under the existing provisions of section 271(1)(c) the penalty ranges from 100 % to 300 % of tax sought to be evaded. In the proposed amendment:

In cases of under-reporting of income the penalty is to be computed only @ 50 % of the amount of tax payable;

In case of misreporting the penalty is to be computed @ 200 % of the amount of tax payable.

It may be noted that the discretion of the concerned officer to levy penalty @ 100 % to 300 % of the tax sought to be evaded under the existing provisions is now taken away and absolute rates of penalty are now prescribed in the proposed amendment.

Except a case falls under the specific provision dealing with misreporting of income all the additions or disallowances which are made in the course of assessment (i.e. assessment after issuance of initial assessment post processing of the return) will be treated as under-reporting. Therefore, it is for the AO to point out that this is a case of Mis-reporting. Further, all the adjustment to the total income made in the intimation issued while processing the return is outside the purview of Penalty of even 50 %.

The provisions are introduced for computing the under-reporting of income including covering computing and imposing penalty for cases where no returns were filed as there was a judicial view that no penalty for concealment can be imposed where no returns were furnished. The computation also covers cases of computing the penalty where the provisions of MAT are applicable so as to restrict the penalty only to the differential tax.

The proposed amendment lists out the situations wherein only following cases shall be shall be considered to be cases of misreporting attracting penalty @ 200 %:

Misrepresentation or suppression of facts - this is similar to furnishing of inaccurate particulars of income under the existing law.

Failure to record investments in books of account. Cases like additions made u/s. 69 being unexplained investment and 69B being investment not fully recorded in books of accounts would be covered.

Claim of expenditure not substantiated by any evidence.

Recording of any false entry in books of account.

Failure to record receipt in books of account having a bearing on total income.

Failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

Penalty in case of upward adjustments on account of Transfer Pricing:

Under the existing provisions, penalty on addition on account of transfer pricing was governed by Explanation 7 to section 271(1)(c). As per Explanation 7 to section 271(1)(c) a person has to prove that the price charged or paid in such transaction was computed in accordance with the provisions contained in section 92C and in the manner prescribed under that section, in good faith and with due diligence to come out of the provisions of section 271(1)(c). It may be noted that under the proposed section no penalty is leviable in cases of adjustments to arm's length price on account of difference in application of method or computation of arm's length price as per the Assesse and as per the Transfer Pricing Officer subject to the fact that the assesse had maintained information and documents as prescribed u/s. 92D, declared the international transaction and had disclosed all material facts relating to the transaction.

Note, cases of failure to report international transaction or any transaction deemed to be an international transaction or any specified domestic transaction u/s. 92C are covered in cases of misreporting of income liable to be penalty @ 200 %.

Penalty in Search cases:

Under the existing provisions of law penalty in search cases is covered u/s. 271(1)(c) and section 271AAA/ 271AAB. Section 271AAB deals with penalty for specified previous year being the year of search or the year which has ended before the date of search and the year for which due date of filing the return of income u/s. 139(1) has not expired. Under the proposed amendment the penalties covered by section 271AAB are not altered, except restricting the maximum penalty to 60 % of the tax.

Original Section 271 (1)(c) covered cases of penalty in search cases for the year prior to the specified years. These provisions were covered by Explanation (5A) of Section 271 (1)(c). However, it is interesting to note that the newly inserted Section 270 A, substituting the entire Section 271 (1)(c), there is no corresponding deeming fiction created for the search cases for non-specified years.

In the Bill proposes, processing of return of income u/s. 143(1)(a) to be mandatory. No penalty is imposable on the income which is determined at the stage of intimation U/s. 143 (1)(a). It is therefore possible to contend that if the undisclosed income is declared in the return of income filed in pursuance of notice U/s. 153 A / 153 C, there may not be any penalty for such income.

No Penalty in Specified Cases

Under the original provisions, the scope of penalty was enhanced by creating deeming fiction. Under the new law, the entire law if flipped to clearly provide a limitation on imposing penalty and therefore the scope of levying the penalty has been restricted in the following cases:

Explanation supplied by Assesse to concerned officer is bona fide to the satisfaction of the AO and the Assessee

has disclosed all the material facts to substantiate the explanation offered. Therefore, if the addition or disallowance is made by the AO by rejecting the explanation, without finding the same to be untrue, the penalties cannot be levied.

The amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the concerned officer but the method employed is such that the income cannot properly be deduced therefrom.

Where it represents enhanced disallowance by assessing officer which is already considered by assessee in its computation of income but with different amount.

Where it represents addition made by Transfer Pricing Officer, where the assessee has maintained information and documents as prescribed u/s. 92D and all material facts relating to the transaction are disclosed.

Immunity from Penalty u/s 270A

The proposed amendment in section 270AA allows an assessee to make an application u/s 270AA to assessing officer within one month to grant immunity from imposition of penalty u/s 270A and initiation of proceedings of prosecution u/s 276C of the Act, subject to condition that:

Tax and interest payable is paid within time allowed in the notice of demand;

No appeal is preferred against such order.

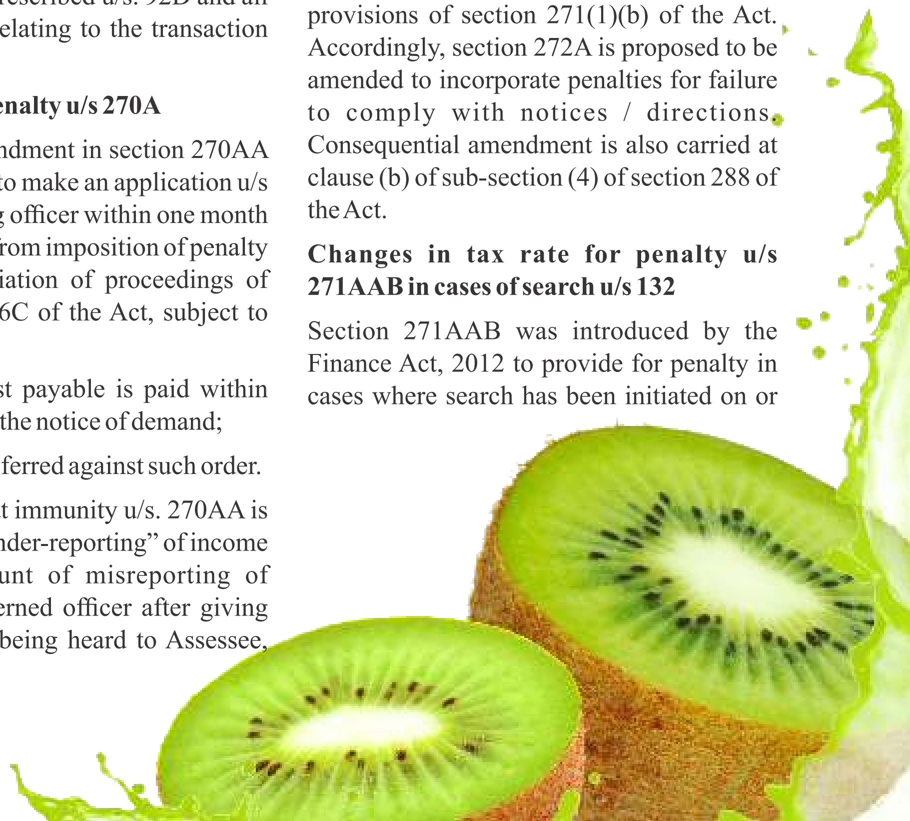
It may be noted that immunity u/s. 270AA is granted in cases "under-reporting" of income and not on account of misreporting of income. The concerned officer after giving an opportunity of being heard to Assessee, may grant immunity from penalty u/s 270A and proceedings u/s 276C of the Act by order in writing for acceptance of request or otherwise for rejection thereof. Where such application is accepted by assessing officer u/s 270AA, no appeal u/s 246A or application for revision of order u/s 264 can be preferred against such assessment order passed. There is no clarity under the new provisions whether an Assessee can prefer appeal where the application for immunity is rejected.

Penalty for failure to comply with Notice for Scrutiny assessment u/s 143(2) or 142(1) or 142(2A)

Penalty u/s. 271 would not be liveable from 1st April, 2017 since provisions of section 270A would be applicable from that date. The new section 270A does not provide for penalty in case of non-compliance of notices issued u/s. 143(2), 142(1) or failure to comply with the directions issued u/s. 142(2A) which was earlier governed by the provisions of section 271(1)(b) of the Act. Accordingly, section 272A is proposed to be amended to incorporate penalties for failure to comply with notices / directions. Consequential amendment is also carried at clause (b) of sub-section (4) of section 288 of the Act.

Changes in tax rate for penalty u/s 271AAB in cases of search u/s 132

Section 271AAB was introduced by the Finance Act, 2012 to provide for penalty in cases where search has been initiated on or



after 1-7-2012 covering specified previous year. An amendment is proposed in clause (c) of section 271AAB(1) to provide for a flat rate of 60% of penalty instead of variable rate of 30 % to 90% in order to reduce discretionary power of assessing officer and rationalise the provisions in line with clause (a) & (b) of said section.

Specified date under the existing provisions means the due date of furnishing of return of income u/s. 139(1) or the date on which the period specified in the notice issued u/s. 153A for furnishing the return of income expires, as the case may be.The revised rates as per the proposed amendment would be as under:

<table>
<tr><th>Conditions</th><th>Exiting Rate</th><th>Amended Rate</th></tr>
<tr><td>Complete disclosure of undisclosed income during the course of search in statement u/s. 132(4) and specifies the manner of earning such income; and</td><td rowspan="4">10 % Penalty of the undisclosed income</td><td rowspan="4">10 % Penalty of the undisclosed income</td></tr>
<tr><td>Substantiates the manner in which such income has been derived; and</td></tr>
<tr><td>Pays tax together with interest on the undisclosed income before the specified date; and</td></tr>
<tr><td>Furnishes return of income declaring such undisclosed income before the specified date.</td></tr>
<tr><td>Does not make disclosure of undisclosed income during search and does not specify the manner of earning such income; but, declares the undisclosed income in the return of income filed before the specified date and pays the tax thereon together with interest</td><td>20 % Penalty of the undisclosed income</td><td>20 % Penalty of the undisclosed income</td></tr>
<tr><td>Does not make disclosure of undisclosed income and does not disclose in the return of income or does not make payment of taxes</td><td>30% to 90% Penalty of the undisclosed income</td><td>60% Penalty of the undisclosed income</td></tr>
</table>

Other Amendments / Announcement

Tax on Dividend in special cases

A new sub-section has been inserted under section 115-O, providing that no dividend distribution tax shall be chargeable on the dividend distributed by Specified Domestic Company to the Business Trust out of its current income, from the date of acquisition of whole of the nominal value of equity share capital of such domestic company by the business trust.

Further it is also proposed that the dividend distributed by the company located in International Financial Service Centre, which is earning solely in convertible foreign currency, will not be chargeable to tax if the dividend is paid out of its current income on or after 1st day of April, 2017.

Tax on Buyback of shares

As per the existing provision of section 115QA, Companies are required to pay tax at the rate of twenty percent on the distributed income in the case of buy-back

of unlisted shares in accordance with section 77A of the Companies Act, 1956. Since there are other laws also governing buy-back of shares, there was unambiguity regarding taxation on distributed income of such buy-backs.

The Bill proposes amendment in the said section and clarifies that distribution income will be taxable for all the types of buy-backs recognised by different laws. Further there was also lack of clarity regarding the computation of distributed income for which the Bill proposes that the amount received by the company in respect of the shares being brought back shall be determined in the prescribed manner.

Levy of tax on cessation of charitable institution or on its conversion into a non-charitable organization

The existing provisions of section 2(24) of the Act define "Income" in an inclusive manner. Any voluntary contribution received by a charitable trust or institution or a fund is included in the definition of income. Sections 11 and 12 of the Act provide for exemption to trusts or institutions in respect of income derived from property held under trust and voluntary contributions, subject to various conditions contained in the said sections. The primary condition for grant of exemption is that the income derived from property held under trust should be applied for the charitable purposes, and where such income cannot be applied during the previous year, it has to be accumulated and invested in the modes prescribed and applied for such purposes in accordance with various conditions provided in the section. If the accumulated income is not applied in accordance with the conditions provided in the said section within a specified time, then such income is deemed to be taxable income of the trust or the institution. Section 12AA provides for registration of the trust or institution which entitles them to be able to get the benefit of sections 11 and 12. It also provides the circumstances under which the registration can be cancelled. Section 13 of the Act provides for the circumstances under which exemption under section 11 or 12 in respect of whole or part of income would not be available to a trust or institution.

A society or a company or a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In such a situation, the existing law does not provide any clarity as to how the assets of such a charitable institution shall be dealt with. Under provisions of section 11 certain amount of income of prior period can be brought to tax on failure of certain conditions. However, there is no provision in the Act which ensure that the corpus and asset base of the trust accreted over period of time, with promise of it being used for charitable purpose, continues to be utilized for charitable purposes and is not used for any other purpose. In the absence of a clear provision, it was always possible for charitable institutions to transfer assets to a non-charitable institution. There is a need to ensure that the benefit conferred over the years by way of exemption is not misused and to plug the gap in law that allows the charitable trusts having built up corpus/wealth through exemptions being converted into non-charitable organization with no tax consequences.

In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act was required for imposing a levy in the nature of an exit tax which is attracted when the organization is converted into a non-charitable organization or gets merged with a non-charitable organization or does not transfer the assets to another charitable organization.

Accordingly, it is proposed to amend the provisions of the Act and introduce a new Chapter to provide for levy of additional income-tax in case of conversion into, or merger with, any non-charitable form or on transfer of assets of a charitable organization on its dissolution to a non-charitable institution. The elements of the regime are: -

The accretion in income (accreted income) of the trust or institution shall be taxable on conversion of trust or institution into a form not eligible for registration u/s 12 AA or on merger into an entity not having similar objects and registered under section 12AA or on non-distribution of assets on dissolution to any charitable institution registered u/s 12AA or approved under section 10(23C) within a period twelve months from dissolution.

Accreted income shall be amount of aggregate of total assets as reduced by the liability as on the specified date. The method of valuation is proposed to be prescribed in rules. The asset and the liability of the charitable organization which have been transferred to another charitable organization within specified time will be excluded while calculating accreted income.

The taxation of accreted income shall be at the maximum marginal rate.

This levy shall be in addition to any income chargeable to tax in the hands of the entity.

This tax shall be final tax for which no credit can be taken by the trust or institution or any other person, and like any other additional tax, it shall be leviable even if the trust or institution does not have any other income chargeable to tax in the relevant previous year.

In case of failure of payment of tax within the prescribed time a simple interest @ 1% per month or part of it shall be applicable for the period of non-payment.

For the purpose of recovery of tax and interest, the principal officer or the trustee and the trust or the institution shall be deemed to be assessee in default and all provisions related to the recovery of taxes shall apply. Further, the recipient of assets of the trust, which is

not a charitable organization, 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.

These amendments will take effect from 1st June, 2016.

Subsidy by Central Government towards corpus of trust or institution

The Finance Act, 2015 w.e.f 1-4-2016 had amended the definition of income under clause (24) of section 2 of the Act so as to provide that the income shall include assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the Assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43 of the Income-tax Act.

As a result grant or cash assistance or subsidy etc. provided by the Central Government for budgetary support of a trust or any other entity formed specifically for operationalizing certain government schemes will be taxed in the hands of trust or any other entity. Therefore, it is proposed to amend section 2(24) to provide that subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or State government shall not form part of income.

Income Declaration Scheme

Background

The proposed scheme is a mirror scheme (albeit with lower tax costs) to the scheme which was introduced as compliance window under the Black Money (Undisclosed Income and Assets) and Imposition of Taxes, Act, 2015 (“the Black Money Act”) recently promulgated by the Government of India. Under the Scheme the persons who have not declared their income in the past which they ought to have declared and paid taxes thereon can come forward and make a declaration. The scheme prescribes a total tax cost of 45% on the income declared under the scheme and in return grants immunity from penalty and prosecution to the person making the declaration.

The salient features of the scheme are as under:

Applicability

The scheme shall come into force on 1st June 2016. The persons who had earned taxable income in the past and had failed to disclose the same by way of filing of return of income or after filing of the return of income had failed to disclose the income in the return of income would be covered under the scheme.

In cases where assessments are made but the AO has not taxed certain income on account of omission or failure of a person to fully and truly disclose all material facts necessary for

assessment are also covered under the scheme.

The scheme also makes a provision to disclose investments in assets.

In case undisclosed income is in the form of investment representing an asset, the disclosure can also be made under the scheme.

It may however, be noted that if the declaration is on account of undisclosed investment in that case the tax would be computed on the fair market value of the asset as on 1st June, 2016. Necessary rules for computing the fair market value of the asset would be prescribed.

Form of Declaration

The declaration is require to be made to the Principal Commissioner or a Commissioner. The form and the manner in which the disclosure is to be made shall be prescribed.

Tax on Disclosure

As per the scheme the tax on disclosed income shall be charged at a flat rate of 30%.

The tax so determined shall be further increased by a surcharge of 25% being Krishi Kalyan Cess and penalty at the same rate. The effective tax under the scheme is under:

Particular	Rate of Tax	Effective Rate
Tax on Income	30%	30%
Krishi Kalyan Cess	25% of the Tax	7.5%
Penalty	25% of the Tax	7.5%
	Total	**45%**

It may be noted that in computing the income for declaration, no deduction by way of expenditure and allowance shall be allowed.

It may also be noted that it is only the person who has made the disclosure can be the only beneficiary of the declaration.

Conditions

The scheme specifies that a person is required to be make payment of tax or penalty by the specified date in order to get the benefit of the scheme.

In case the tax determined or penalty determined is not paid in that case the declaration shall be considered to be void.

Further, if the declaration is found to be false or is made by misrepresenting the facts, the said application shall be rejected as void.

Once the application is rejected, the declarant shall not be entitle for any refund of amount paid. The said disclosure shall thereafter be deemed to be income of the previous year in which such declaration is made and all consequences under the Act like penalty, prosecution etc would apply.

Where a person has made declaration in respect of his income or as a representative Assessee in respect of any other person, he shall not be entitled to make any other declaration in respect of his income or income of other person as the case may be.

Immunity

Following immunity is provided under the scheme if the declaration made is accepted by the prescribed authority:

The declaration made would not be admissible as evidence against the

declarant for imposition of penalty or for the purpose of prosecution under the Income Tax Act, 1961 or Wealth Tax Act, 1957.

The amount disclosed under the scheme shall not be included in the total income of the declarant for any assessment year if the taxes and penalty has been paid in accordance with the provision of the scheme. The amount disclosed shall not affect the liability of completed Assessment.

The provision of Benami Transaction (Prohibition) Act 1988 shall not apply if the asset is transferred to the beneficial owner.

Similarly in case of undisclosed investment representing any asset, same would not be subjected to Wealth Tax. In case of disclosure of assets by the Partnership firm, the same shall not be considered in the hands of partner in determining the value of interest in the firm.

Exclusions

Following class of persons are excluded from making the declaration:

Any person in respect of whom an order of detention has been made under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 subject to certain condition.

In relation to prosecution for any offence punishable under chapter IX or XVII of the IPC, the Narcotic Drugs and Psychotropic Substance Act, 1985 and the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption act 1988

To any person notified u/s 2 of the Special Court (Trial of Offence Relating to Transaction in Securities) Act, 1992

In relation to Undisclosed Foreign Income and Asset which is chargeable to tax under the Black Money Act, 2015

In relation to undisclosed income relating to any prescribed years:

If notice u/s 142/ 143(2)/ 148/ 153A or 153C (year of search) has been issued for the said year and the proceeding is pending on the date of application

Search is conducted u/s 132 or requisition u/s 132A or survey is carried out u/s 133A in previous year and time limit for issue of notice u/s 143(2) or 153A or 153C has not expired

Information has been received by the competent authority under an agreement u/s 90 or 90A of the Act.

Background

Litigation has been a major area of concern in direct taxes. In order to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously, the Bill proposes to bring the Direct Tax Dispute Resolution Scheme, 2016 in relation to tax arrears and specified tax.

Introduction

The Direct Tax Resolution Scheme, 2016 ("the Scheme") shall come into effect from 1st June, 2016.

The Scheme is applicable to disputed amount of tax determined under the Income Tax Act as well as Wealth Tax Act.

The Scheme has been introduced in relation to:

- Tax Arrears; and
- Specified Tax

Tax Arrears means the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, 1957 for which appeal is pending before the Commissioner of Income tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29-02-2016

Specified Tax means a tax determined in consequence of or is validated by an amendment made with retrospective effect in the Income-tax Act or Wealth-tax Act, 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.

Amount Payable

A declarant has to file a declaration to the designated authority on or after 1st June, 2016 but before a date notified by the Central Government. Such declaration shall be in respect of either tax arrears or specified tax. Where the declarant files such declaration, the amount payable under the Scheme shall be as follows:

(a) In case of tax arrears, being amount of tax and interest, if:

- the disputed tax does not exceed Rs. 10,00,000, the whole of disputed tax and interest on disputed tax till the date of assessment or re-assessment; and
- the disputed tax exceeds Rs. 10,00,000, the whole of disputed tax, plus 25% of minimum penalty leviable and interest on disputed tax till the date of assessment or reassessment

(b) In case of tax arrears, being penalty, 25% of the minimum penalty leviable along with tax and interest payable on total income finally determined by the designated authority.

(c) In case of specified tax, the amount of tax so determined by the designated authority.

Declaration

Where the declaration is in respect of tax arrears, consequent to such declaration, the appeal shall be deemed to be withdrawn.

Where the declaration is made in respect of specified tax:

in case of appeal filed before any appellate authority or court against any order in respect of specified tax, the declarant shall withdraw the appeal filed and furnish the proof of such withdrawal along with the declaration.

in case any proceeding for arbitration, conciliation or mediation has been initiated or notice thereof under any law for the time being in force or under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, has been given by the declarant, the declarant shall withdraw such notice or claim in such proceeding before making the declaration. Further, the declarant shall furnish the proof of such withdrawal along with the declaration.

the declarant shall furnish an undertaking, waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the specified tax which may otherwise be available to him under any law for the time being in force, in equity, by statute or under an agreement referred in b) above.

Where—

any material particular furnished in the declaration is found to be false at any stage; or

the declarant violates any of the conditions in this Scheme; or

the declarant acts in a manner which is against the undertaking given by him under c) in the above para,

it shall be presumed as if the declaration was never made under the Scheme and all the consequences under the Income-tax Act or the Wealth Tax Act, as the case may be, under which the proceedings against the declarant are or were pending, shall be deemed to have been revived.

No appellate authority or arbitrator, conciliator or mediator shall decide any issue in relation to specified tax mentioned in the declaration and in respect of which an order had been made under Section 201(1) by the designated authority or the payment of the sum determined under that section.

Order of Designated Authority

The designated authority shall within 60 days of the receipt of the order determine the amount payable and issue a certificate which shall provide the particulars of the tax arrears or specified tax and sum payable by the declarant.

The declarant shall pay the sum, as per the certificate, within 30 days of the receipt of the certificate and intimate the fact of such payment to the designated authority along with proof. The designated authority shall pass the order that the declarant has paid the sum.

The order passed by the designated authority, determining the sum payable, shall be conclusive as to the matters stated therein and no matter covered by such order shall be re-opened in any other proceeding under the Income-tax Act or the Wealth-tax Act or under any other law for

the time being in force, or as the case may be, under any agreement, whether for protection of investment or otherwise, entered into by India with any other country or territory outside India.

The amount paid in pursuance of the declaration shall not be refundable under any circumstance.

Immunity

Following immunity is available upon making the declaration:

immunity from an offence under the Income Tax Act or the Wealth Tax Act;

immunity from or waiver of penalty under the Income Tax Act or the Wealth Tax Act in respect of:

- specified tax covered in the declaration; or
- tax arrears covered in the declaration, but to the extent it exceeds the amount of penalty referred in Clause (i) of Section 199.

waiver of interest under the Income Tax Act or the Wealth Tax Act in respect of:

- specified tax covered in the declaration; or
- tax arrears covered in the declaration, but to the extent it exceeds the amount of interest till the date of assessment or reassessment.

Non eligibility

In following cases, a person shall not be eligible to

Search or survey cases under Income Tax Act or Wealth Tax Act, where the declaration is in respect of tax arrears;

Cases where prosecution has been initiated before filing of declaration

Cases relating to undisclosed foreign income and assets.

Cases based on information received under Double Taxation Avoidance Agreement under section 90 or 90A of the Income-tax Act where the declaration is in respect of tax arrears.

Person notified under Special Courts Act, 1992.

Cases covered under Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code, Prevention of Corruption Act or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Indirect Tax
. . . the essence

Major Announcement

Krishi Kalyan Cess (KKC) at 0.5% on value of all taxable services is introduced w.e.f. June 1, 2016. The credit for this cess is admissible for only payment of it.

New services under service tax

Removal from Negative List

Following services are removed from the list of Negative list (section 66D). These services will now attract service tax.

- pre-school education and education up to higher secondary school or equivalent;
- education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- education as a part of an approved vocational education course
- Service of transportation of passengers, with or without accompanied belongings, by stage carriage (w.e.f. 1/06/2016);
- By an air craft or a vessel from a place outside India up to the custom station of clearance in India (w.e.f. 1/06/2016).

There has been lot of debate on the taxability or otherwise on the educational services. The traditional meaning of education is twisted just to avoid getting in the net. Over period of time the layers of services under education have been removed and slowly brought under the tax net. The first controversy was relating to the nature of the institution that was running the education. Whether Trust, charitable trust, society etc. The second was the nature of education (vocational, skill development etc) and finally level of education (primary, HS, recognised qualification etc). There are still some aspects which are in negative list but these are now very few.

The transportation services have been gradually coming into the net but with conscious decision.

Senior Advocate will charge to Advocate or partnership firm of Advocate

Addition to Declared Services

The service described as "assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfer thereof." will now be chargeable to service tax.

Reverse Charge Mechanism

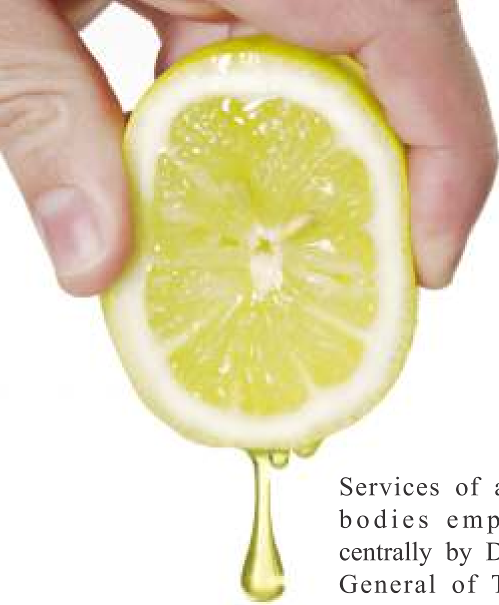
Selling or marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998)

Any service provided by Government or a local authority to a business entity, is taxable in the hand of service recipient (w.e.f. 1/04/2016). This service is not taxable to a business entity, whose turnover is less than ten lacks in a previous year. (This was originally introduced in Finance Bill 2015 but effective date was not notified. Same is notified as effective from 1st April,2016 vide Notification No.07/2016 ST Dated 18/02/2016]

Exemptions

Where IT software is recorded on media and applicable duty is paid on that software, the media is exempt from service tax.

Select Services provided by the Indian Institutes of Management (IIM)



Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under Skill Development Initiative (SDI) Scheme

Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council for Vocational Training.

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 under the Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana, only for existing slum dwellers.

A civil structure or any other original works pertaining to the Beneficiary-led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana"

Low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:

the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;

any housing scheme of a State Government

Stage carriage other than air-conditioned stage carriage

"Niramaya Health Insurance Scheme" implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 "

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 (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013"

Services provided by Employees" Provident Fund Organisation (EPFO) to persons governed under the Employees" Provident Funds and Miscellaneous Provisions Act, 1952

Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999

Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 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 National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmers Welfare by way of cold chain knowledge dissemination

Amendment in abatement

Particular	Existing		Proposed	
	Abatement	Conditions	Abatement	Conditions
Transport of goods by rail by any person other than Indian Railways in containers	-	-	40%	-
Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (like hotel) together with renting of such premises	70%	CENVAT credit not admissible under chapte 1 to 22 of Central Excise Tariff Act, 1985	70%	No CENVAT Credit on input and capital goods.
Services of goods transport agency in relation to transportation of: -				
Goods(Other than used household goods)	30%	N.A.	30%	N.A.
used household goods	-	-	40%	CENVAT credit not admissible
Services provided by a foreman of chit fund in relation to chit	-	-	70%	CENVAT credit not admissible
Transport of passengers, with or without accompanied belongings by “a stage carriage”	-	-	30%	-
Transport of goods in a vessel	30%	CENVAT credit not admissible	30%	Credit for input services is eligible
Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer:				
(i) For a residential unit– the carpet area of the unit is less than 2000 square feet; and the amount charged for the unit is less than rupees one crore;	25%	CENVAT credit not admissible	30%	CENVAT credit not admissible
(ii) For other than the above	30%		30%	
Services by a tour operator in relation to:				
(i) A package tour	25%	CENVAT Credit for input service of tour operator is admissible	-	CENVAT Credit for input service of tour operator is admissible
(ii) Any service other than specified at a package tour and the tour operator is providing services solely of arranging or booking accommodation.	40%		30%	

Interest

Where the service provider or service receiver have collected tax but have not paid in the account of central government, interest is proposed to be charged at new rate as per the table below, effective from the date finance bill receives the assent of the President (Amendment in Section 75)

The rate of interest is under:

Extension of Time for recovery

Central Excise officer had 18 months to recover tax which was short paid or not paid (paid includes levied) or was incorrectly refunded. To give the officer greater flexibility this time limit has been increased to 30 months. In many cases the department was unable to process or proceed in 18 months and had lost in litigation due to this limitation. The increase in time limit gives additional head room to the department.

Sr.	Particulars	Rate
1.	Collection of any amount as service tax but failing to pay the amount to the credit of the Central Government on or before the date on which such payment becomes due	24% p.a.
2.	Other than in situations covered under serial number 1 above	15% p.a.
3.	For assesse with the taxable value during the preceding year/years covered by notice is less than 60lakhs	12% p.a.

In continuation to the above changes, a consequential explanation is introduced to remove the possibility of potential litigation on the issue of Penalty under Section 78A. It is that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, and where a notice is already issued section 73(1) or its proviso but these proceedings are concluded in accordance with first proviso to section 76(i) or second proviso to section 78(i), as the case may be, then such proceedings will also been deemed to have been concluded for this section too. Section 73 deals with short payment/levy/erroneous refund and Section 76 deals with non-payment/levy of service tax.

Cognizable offence

The present powers in the Act provide the possibility of some offence being non-conginzable and therefore bailable. The new provision seeks to delete section 90(2) which provided for such possibility. The interpretation leads to all offences being cognizable and therefore non-bailable.

In addition to this the penalty under Section 89(1) has been

increased from 50 lakhs to 200 lakhs

Power to arrest has been made wider by amendment to Section 91

Section 101, 102 and 103, are proposed to be inserted to remove the litigations and difficulties arising from taxing the services provided to a government or local body, port or airport, where the contract

was entered before the date on which these services became taxable.

The service receiver that are envisaged are enumerated as under;

Set up be an act of parliament or state legislature

Established by government

Government or local authority

Port

Airport

The services that are covered by these sections are as under;

by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works

by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of—

a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

a structure meant predominantly for use as—

- an educational establishment;
- a clinical establishment; or
- an art or cultural establishment;
- a residential complex pre-dominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

Services provided by way of construction, erection, commissioning or installation of original works pertaining to an airport or port, under a contract which had been entered into before the 1st March, 2015 and on which appropriate stamp duty, is paid before that date, subject to the condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st March, 2015

For the tax collected by government on the service described above, refund shall be made. The application of refund has to be made within 6 months from the date this bill receives assent of the President.

Retrospective amendment for granting refund/rebate

Notification number G.S.R. 519(E), dated the 29th June, 2012 (service tax 41/2012) issued under section 93A of the Finance Act, 1994 grants rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of

goods. In that notification it was mentioned that services which are used in relation to manufacture of goods to be exported which are used beyond the place of manufacture are eligible. The amendment now seeks to make the field wider by adding that service used beyond factory or any other place of production or manufacture. The limitation of beyond factory where there are more than one production facility leading to doubt about allow ability has been sought to be removed. The amendment is from the date of the original notification to allow the exporters to claim the benefit they would have otherwise missed.

An application for the claim of rebate of service tax shall be made within the period of one month from the date of commencement of the Finance Act, 2016.

Amendment to Service Tax Rules

Annual return will have to be submitted for the financial year by 30th November of subsequent year. Forms and class of assessee who have to comply with this requirement will be prescribed later.

Annual return can be revised within one month from the date of filing of return.

One Person Company and HUF are to be required to make payment of Service tax on quarterly basis.

Excise

Major Announcement

Infrastructure cess, as a duty of excise is levied 1% on small petrol, LPG and CNG cars; 2.5 % on diesel cars of certain specifications; 4 % on higher-end models. CENVAT Credit of this cess is in-admissible. (w.e.f. 1/03/2016)

To levy 1 per cent excise duty on jewellery without input credit or 12.5 % excise with input credit.(SSI exemption is applicable)

Excise on readymade garment with retail price of Rs. 1000 or more is raised to 2% without input credit or 12.5% with input credit.

Excise duty on various products on tobacco except beedi raised by 10% to 15%.

Clean Energy Cess' levied on coal, lignite and peat, is renamed to 'Clean Environment Cess' and rate increased from Rs. 200 per tonne to Rs. 400.

Ready-mix concrete is now exempted

Any manufacturing factory or premises engaged in manufacture of articles of jewellery other than articles of silvers can opt for single registration for the unit having centralized accounting systems in place of separate registration for each unit.

Chief Commissioners of Central Excise are being instructed to file application for withdrawing prosecution in cases involving duty of less than Rs. 5 lakhs which are pending for more than 15 years.

Amendment in Central Excise Rule, 2002

Interest on the delayed payment of duty is rationalized and now payable at 15% p.a. as against existing rate of 18% p.a. on all dues. This will be effective from 1st April, 2016.

For quarterly payment of excise duty, the threshold limit for manufacture of articles of Jewellery is fixed at Rs. 12 Crore and in case of the other units Rs. 4 Crore. This will be

effective from 1st March, 2016. (Amendment in Rule 8). Corresponding amendment is also made in Rule 4 of CENVAT credit Rules.

Duplicate copy of Invoice issued with the digital signature is now not required to be self-attested by the manufacturer – (Rule 11(8)). This will be effective from 1st March, 2016.

Presently following returns are required to be filed under Central Excise Law

ER 1 – Monthly Excise return for production and clearance

ER 6 – Monthly return for quantitative details of Principle items of raw material

ER 4 – Annual Return for financial information statement

ER 7 – Return for Installed Capacity

ER 5 – Annual return for Input Output Ratio

The amendment seeks to do away with all returns other than ER 1 Return for monthly production and clearance and ER 4 Annual return.

Assesses can revise ER 1 monthly return by the end of the calendar month in which the original return is filed and in case of Annual Return within One month from the date of filing original return. This will be effective from 1st April, 2016.

The necessary amendments are made in rule 12. Corresponding amendments are also made in Rule 9A of CENVAT Credit Rules, 2004.

Amendment in Central Excise Act, 1944

Time limit for issue of the notice for recovery of the duty not levied or not paid or short paid or erroneously refunded other than the reason of fraud of collusion or any wilful statement or any suppression of fact is increase from One year to Two years. (Section 11A amended)

MRP based assessment expanded. The changes are as under :

Chapter Heading	Particulars	Existing Abatement	Proposed Abatement
3401	All Goods (Soap or Detergent and related Product)	30%	30%
3402	All Goods (Organic Surface Active Agents, washing preparations)	30%	30%
64	Foot wear	25%	30%
7607	All Goods (Aluminum Foil and related Product)	Nil	25%
8517 62	Wrist wearable devices (commonly known as smart watches)	Nil	35%

Amendment in CENVAT Credit Rules, 2004

Change in the definition of "Capital goods," now following list of entries are included:

any equipment or appliance used in an office

capital goods used outside the factory of the manufacturer for pumping of water

railway goods wagons

Definition of "Input", includes following list of entries:

all goods used for pumping of water for captive use

all capital goods which have a value up to ten thousand rupees per piece

Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India shall not include in the definition of Exempted Services.

Assessee can avail CENVAT credit for the tools falling under chapter 82 sent to another manufacturer or job worker without bringing these to his own premises. Time limit of returning to the factory is increased from one year to three years.

Rule 5 for Claim of refund under Export of goods and services, the time limit of filing the refund claim is prescribed for as under:

(1) in case of Manufacturer, within One year from date of payment of duty

(2) in case of service provider, before the expiry of one year from the date of –

  (i) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or

  (ii) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.

Rule 6 for Reversal of the CENVAT credit for use of Input and/or Input services for dutiable and exempted goods and /or for providing taxable & exempted output service are amended.

In addition to amendment made in various sub rules, following formula prescribed for reversal:

No credit is allowed on inputs/input services used exclusively in the manufacture of exempted goods / services.

Full credit is allowed on the inputs/input services used exclusively in the manufacture of dutiable goods / taxable services.

Credit on common inputs/input services is identified and the same is apportioned based on the turnover of the exempted/dutiable turnover. Credit on common inputs/input services is allowed only proportionately.

In Rule 7 for manner of distribution of services by input service distributor is rationalised

Outsourced manufacturing unit is now included in the definition of Input service distributor.

Rule 7B for distribution of Credit of inputs by warehouse of manufacturer are inserted.

Other Amendments

In case of the two manufacturing units located within close area of jurisdiction of Range officer of superintendent and the units are not operated in the area exemption notification, commissioner of central excise may allow single registration as against separate registration for each unit. (Notification No. 36/2001 amended by Notification 19/2016.)

Rule and procedure prescribe for removal of goods at concessional rate of duties for manufacture of excisable and other goods. – (Notification No. 20/2016)

Filing of rebate claim for Export, a certificate from Chartered Engineer is required for the correctness of Standard Input Output norms notified by the DGFT. (Notification No. 21/2004 amended by Notification No. 21/2016)

Customs

Retrospective Benefit

By notification issued with the budget, an earlier anomaly has been rectified. Before budget there was a reference in the notification relating to Advance license and Duty free authorisation schemes which created dilemma on allow ability of such benefit. The new notification amends this and now refers to section 8B to clearly provide that exemption from safe guard duty under that section is available in the original notification under imports by Advance license and Duty Free authorisation schemes.

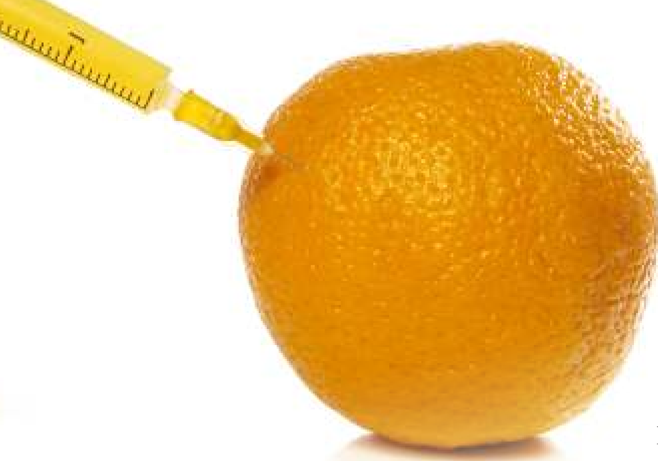
Baggage Rules

The duty free import allowance for bonafide gifts imported by post or by air or by courier service being increased to Rs. 20,000

Existing Baggage Rules, 1998 being substituted with Baggage Rules, 2016 so as to simplify and rationalize multiple slabs of duty free allowance available to various categories of passengers.

As per new Customs Baggage Declaration (Amendment) Regulations 2016, Duty Free Allowance for Indian Residents and Foreigners residing in India arriving from any country other than Nepal, Bhutan, Myanmar increased to Rs. 50,000 and for Tourist of foreign origin, the value shall be Rs. 15000.

Duty Free Allowance for Indian Residents



and Foreigners residing in India arriving from Nepal, Bhutan, Myanmar by air is Rs. 15,000 while coming by road the exemption withdrawal.

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

Recovery of Tax, interest, penalty

In case where the custom duty has not been levied or not paid or has been short levied or short paid, the time for issue of being notice for recovery of said duty is increase from 1 year to 2 Years-Section 28(1);

Payment and deferment of payment

Customs Duty will have to be paid within

two days from the date of bill of entry. Default will attract interest.

Rules for permitting certain class of importers to defer the payment of Custom duty will be prescribed.

Customs Duty will have to be paid within two days by exporter. Default will attract interest.

Rules for permitting certain class of exporters to defer the payment of Custom duty will be prescribed.

Proper Officer is authorised to allow the goods and the conveyance to transit without the payment of goods subject to condition.

New Warehousing Scheme

The definition of "Warehousing Station" and Power to declare places to be warehousing stations has been omitted. The definition of Warehouse in Section 2, Clause (43) is substituted so as to include special warehouse license under section 58A;

Principal Commissioner of custom or commissioner of custom may prescribe the procedure subject to condition as may be prescribe to license special warehouse where the dutiable goods may be deposited. The board may by notification in the official gazettes define special class of goods that may be deposited.

For the goods stored in Bonded warehouse the value of bond is increased from twice the amount of duty assessed to thrice the amount of duty.

Section 61 permits storing capital goods and other than capital goods till the clearance of capital goods and clearance of other than capital goods for consumption from warehouse. By an amendment the period of 3 years is now proposed to be increased to 5 years.

Commissioner of customs may extend the period for the storage of goods in warehouse, by not more than one year at a time.

Section 62 related to the Control over warehouse and Section 63 related to the

payment of rent and warehouse charges are omitted. In the Finance Minister's speech there is a proposal to maintain digital control over the movement. This amendment is in line with that thinking.

Section 73A is inserted to prescribe the procedure for warehoused goods that shall be remaining with the person who has been granted a license until they are cleared for home consumption or are transferred to another warehouse are exported or removed as otherwise under the act and contravention of the said provision, the licensee shall be liable to pay duty, interest, fine and penalty.

Amendment is made in Sub Section (4) of Section 25 that every notification issued u/s 25(1) or 25(2A), if effective date is not given then it comes into force on the date of its issue

Dispute Resolution Scheme

The Indirect Tax Dispute Resolution Scheme 2016 is designed to address the cases pending before Commissioner (Appeals), the assesse, after paying the duty, interest and penalty equivalent to 25% can file a declaration. In such cases proceedings against the assesse will be closed and an immunity will be given from prosecution.

Central Sales Tax

Gas supply through pipe line amendment in section 3 recognises transfer of gas by pipeline from one state to another as transfer under this section and shall attract CST.

Excise Tariff

Increase in Excise Duty

Sr No.	Item description	Rates	
		From	To
1	Charger/adapter, battery and wired headsets/speakers for supply to mobile phone manufacturers.	Nil	2% [without ITC] or 12.5% [with ITC]
2	Branded readymade garments (retail sale price of Rs. 1000 or more)	Nil (without ITC) or 6% / 12.5% (with ITC)	2% (without ITC) or 12.5% (with ITC)
3	Area based exemption on refined gold withdrawn	Exempt	Taxable

Decrease in Excise Duty

Sr No	Item description	Rates	
		From	To
1	Physical mixture of fertilizers, made out of chemical fertilizers on which duty of excise has been paid, by Co-operative Societies	1% (without ITC) or 6% (with ITC)	Nil
2	Ready Mix Concrete	12.5%	NIL
3	Inputs, parts and components, subparts for manufacture of Charger/adapter, battery and wired headsets/speakers	12.5%/NIL	NIL
4	Structure on Routers, broadband Modems, etc (other than mobile handsets)	12.5%	4% [without ITC] or 12.5% [with ITC]
5	inputs, parts and components, subparts for manufacture of items in 5 above	12.5%	NIL
6	Ship/ Repair Units	Applicable duty	NIL
7	Improved cook stoves	12.5%	NIL
8	Solar Lamps	12.5%	NIL
9	Tools and kits for Maintenance, Repair and Overhaul of Aircrafts	Applicable duty	NIL

Other Changes in Excise Duty

Sr No	Item description	Rates	
		From	To
1	Electric motor, shafts, sleeve, chamber, impeller, washer required for the manufacture of centrifugal pump being reduced. More than 50% of such pumps are used in agriculture.	12.5%	6%
2	Refrigerated containers	12.5%	6%
3	Micronutrients	12.5%	6%
4	Disposable containers made of aluminum foils	2% [without ITC] or 6% [with ITC]	2% [without ITC] or 12.5% [with ITC]
5	Parts of railway or tramway locomotives or rolling stock	12.5%	6%
6	Rubber sheets & resin rubber sheets for soles and heels (footwear)	12.5%	6%
7	The abatement rate from retail sale price for footwear	25%	30%
8	Flavored waters	18%	21%
9	Excise Duty on refined gold bars	9%	9.5%
10	Excise Duty on refined silver bars	8%	8.5%
11	Excise Duty on Aviation Turbine Fuel (ATF) other than supply to Scheduled Commuter Airlines (SCA)	8%	14%

Customs Tariff

Reduction in Custom Duty

Sr. No.	Item description	Rates	
		Existing	Proposed
BASIC CUSTOMS DUTY (BCD)			
1	Polypropylene granules	7.5%	Nil
2	Inputs, parts and components, subparts for manufacture of charger / adapter, battery and wired headsets /speakers, of mobile phone	Applicable Duty	Nil
3	Parts and components, subparts for manufacture of Routers, broadband Modems, etc. [other than those for mobile handsets]	Applicable Duty	Nil
4	Specified capital goods and inputs for use in manufacture of Micro fuses, Sub-miniature fuses, Resettable fuses and Thermal fuses	Applicable Duty	Nil
5	On electrolysers, membranes and their parts required by caustic soda/ potash unit using membrane cell technology	2.5%	Nil
6	Specified fibers and yarns	Applicable Duty	Nil
7	Polypropylene granules / resins for the manufacture of capacitor grade plastic films.	7.5%	Nil
8	Magnetron of capacity of 1 KW to 1.5 KW for use in manufacture of domestic microwave ovens	10%	Nil
9	Machinery, electrical equipment, instrument and parts thereof (except populated PCBs) for semiconductor wafer fabrication/LCD fabrication units being exempted & imported for Assembly, Test, Marking and Packaging of Semiconductor chips (ATMP)	Applicable Duty	Nil
10	Medical use fission molybdenum-99 by board of radiation and isotope Technology (BRIT) for manufacture of radio pharmaceuticals	7.5%	Nil
SPECIAL ADDITIONAL DUTY (SAD)			
1	Inputs, parts and components, subparts for manufacture of charger / adapter, battery and wired headsets /speakers, of mobile phone	Applicable Duty	Nil
2	Parts and components, subparts for manufacture of Routers, broadband Modems, etc [other than those for mobile handsets]	Applicable Duty	Nil
3	Machinery, electrical equipment, instrument and parts thereof (except populated PCBs) for semiconductor wafer fabrication/LCD fabrication units being exempted & imported for Assembly, Test, Marking and Packaging of Semiconductor chips (ATMP)	4%	Nil

Increase in Custom Duty

Sr. No	Item description	Rates	
		Existing	Proposed
BASIC CUSTOMS DUTY(BCD)			
1	Solar tempered glass/ solar tempered (anti-reflective coated)	Nil	5%
2	Charger/adapter, battery and wired headsets/speakers for manufacture of mobile phone	Nil	Applicable Duty
3	Magnetic - Heads (all types), Ceramic/Magnetic cartridges and stylus, Antennas, EHT cables, Level meters/level indicators/ tuning indicators/ peak level meters/ battery meter/VC meters/Tape counters, Tone arms, Electron guns	Nil	Applicable Duty
4	Specified telecommunication equipment	Nil	10%
5	Silica for manufacture of telecom grade optical fibre /cables	Nil	10%
6	Specified goods for defense purposes by Central or State Government of India	Nil	5% to 10%
7	Specified goods imported by contractors of Government of India PSUs or sub-contractors of such PSUs for defense purposes	Nil	7.5% to 10%
8	Plans, Drawing and design	Nil	10%
9	Electronics/Hardware		
	E-Readers	Nil	7.5%
	On parts of E-readers	Applicable Duty	5%
	Neodymium Magnet.	Applicable Duty	2.5%
10	Metals, glass and Ceramics on Silica sand & Brass scrap.	5%	2.5%
SPECIAL ADDITIONAL DUTY (SAD)			
1	Charger/adapter, battery and wired headsets/speakers for manufacture of mobile phone	Nil	4%
2	Populated PCBs for manufacture of personal computers (laptop or desktop)	Nil	4%
3	Populated PCBs for manufacture of mobile phone/tablet computer	Nil	2%
4	Direct imports of specified goods for defence purposes by Central or State Government of India	Nil	4%
COUNTERVAILING DUTY (CVD)			
1	Charger/adapter, battery and wired headsets/speakers for manufacture of mobile phone	Nil	12.5%
2	Specified machinery required for construction of roads	Nil	12.5%
3	Direct imports of specified goods for defence purposes by Central or State Government of India	Nil	12.5%

References

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Tax Rates*

***[To be increased by applicable surcharge and education cess (see Notes)]**
Individual, HUF, AOP & BOI

Taxable Income	All Individual, HUF, AOP & BOI	Resident Individual of 60 years or more age	Resident Individual of 80 years or more age
Upto Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 to Rs. 3,00,000	10%	Nil	Nil
Rs. 3,00,001 to Rs. 5,00,000	10%	10%	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	20%	20%
Rs. 10,00,000 and above	30%	30%	30%

Partnership Firm, LLP & Companies

Particulars	General Tax Rate
Partnership Firm & LLP	30%
New Domestic Company [Section 115BA]*	25%
Domestic Company with turnover up to Rs.5 Crores in FY 2014-15	29%
Other Domestic Company	30%
Foreign Company	40%

* Please refer the conditions to claim as mentioned in ‘Direct Tax’ on Page 16

Co-operative Society

Total Income	General Tax Rate
Upto Rs. 10,000	10%
Rs. 10,001 to 20,000	20%
Rs. 20,001 and above	30%

Special Rates of Tax (applicable to all assessees)

Nature of Income	Rate of Tax
Minimum Alternate Tax (Section 115JB) / Alternate Minimum Tax (Section 115JC)	18.5%
STCG on listed securities (Section 111A)	15%
LTCG on listed securities (Section 10(38))	Nil
LTCG on unlisted securities or shares of a company in which the public are substantially interested derived by **Non Resident** (Section 112)	10%
LTCG on assets other than listed securities and zero coupon bonds (Section 112)	20%
Royalty & Fees for Technical Services derived by **Non Resident** (Section 115A)	10%
Dividend Distribution Tax payable by Domestic Company (Section 115O)	15%
Tax payable by Domestic Company on Buy-back of Shares (Section 115QA)	20%
Tax payable by **Resident** Individual/HUF/Firm on receipt of Dividend from Domestic Company exceeding Rs. 10 Lacs (Section 115BBDA) (w.e.f 01.04.2016)	10%
Income by way of Royalty in respect of a patent developed and registered in India derived by **Resident** (Section 115BBF) (w.e.f. 01.04.2016)	10%

Note 1: Surcharge on Income Tax

Total Income	Up to Rs. 1 Crore	Rs. 1 Crore and up to Rs. 10 Crore	Above Rs. 10 Crore
Individual / HUF	Nil	15%	15%
AOP / BOI	Nil	15%	15%
Co-operative Society / Local Authority	Nil	12%	12%
Partnership Firm / LLP	Nil	12%	12%
Domestic Company	Nil	7%	12%
Foreign Company	Nil	2%	5%

Note 2: Education Cess: 3% of Income Tax & Surcharge [Applicable to all assessees]

TDS Rates

Rates of Tax Deducted at Source (w.e.f. June 1, 2016) (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
192	Salary	As per Slab	As per Slab
192A	Premature Withdrawal of Provident Fund	50,000[2]	10%
193	Interest on Securities (1) Interest on Debentures or Securities (Listed/Unlisted) (2) Interest on 8% Savings (Taxable) Bonds, 2003 (3) Any Other Interest on Securities (Unlisted)	 5,000** 10,000 0	 10% 10% 10%
194	Dividend other than dividend covered by Section 115-O	2,500*	10%
194A	(1) Interest paid by Banking Company, Co-operative Society/Banks engaged in banking business, Post Office under a deposit scheme framed by Central Government. (2) Interest other than Interest on Securities (Other than above)	10,000 5,000	10% 10%
194B	Winning from Lotteries	10,000	30%
194BB	Winnings from Horse Races	10,000[3]	30%
194C	Payments to Contractors		
	(1) Payment to Transporter covered by Section 44AE [4] (2) Payment to Individual / HUF (other than above) (3) Payment to Others (other than above)	NA 30,000[4a] 30,000[4a]	NIL[4] 1% 2%
194D	Insurance Commission	15,000[5]	5%[5]
194DA	LIC payment which are not covered u/s 10(10D)	1,00,000	1%[6]
194E	Non-Resident Sportsman /Sports Association / Entertainer	0	20%[1]
194EE	Deposits under NSS to Resident /Non-Resident	2,500	10%[1][7]
194F	Repurchase of units of Mutual Fund /UTI from Resident /Non-Resident	0	20%[1]
194G	Commission on Sale of lottery tickets to Resident /Non-Resident	15,000[8]	5%[1][8]

Rates of Tax Deducted at Source (w.e.f. June 1, 2016) (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194H	Commission or Brokerage to Resident	15,000[9]	5%[9]
194I	Rent to Resident		
	(a) Rent for machinery / plant / equipment	1,80,000	2%
	(b) Rent for other than in (a)	1,80,000	10%
194IA	Payment on transfer or certain immovable properties (Other than agricultural land)	50,00,000[10]	1%
194J	Fees payable to resident for professional / technical services	30,000	10%
194J	Remuneration, fees, commission paid to Director which is not in nature of Salary	0	10%
194LA	Compensation to Resident on acquisition of immovable property	2,50,000	10%
194LB	Interest paid to Non-Resident by Notified Infrastructure Debt	0	5%[1]
194LBA	Payment to resident Unit Holder specified in Section 115UA	0	10%
194LBA	Payment to non- resident Unit Holder specified in Section 115UA	0	5%
194LBB	Income in respect of units of investment fund in Section 115UB		
	(1) In case of Payee is Resident	0	10%
	(2) In case of Payee is Non-Resident	0	Rate in Force[1][11]
194LBC	Income distribution to an investor by Securitisation Trust in respect of Section 115TCA		
	(1) In case of Payee is Resident Ind/HUF	NA	25%
	(2) In case of Payee is Resident any other person	NA	30%
	(3) In case of Payee is Non-Resident	NA	Rate in Force[1]
194LC	Interest paid by Specified Company to Non-Resident	0	5%[1]

Rates of Tax Deducted at Source (w.e.f. June 1, 2016) (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
195	Payment of other sums to Non-Resident (Other than specified in Section 194LB)	Rates specified under Part II of First Schedule of Bill, including applicable surcharge and education cess subjected to rate specified under applicable DTAA	
196B	Income from units (including long term capital gain on transfer of such units) to an offshore fund	0	10%[1]
196C	Income from foreign currency bonds or GDR of Indian Company	0	10%[1]
196D	Income of FII from securities not being dividend, long term and short term capital gain	0	20%[1]
	Equalisation Levy in respect to online advertisement payment made to Non-Resident (not having PE in India (Clause 163 of Finance Bill 2016)	0	6%

(* in case of Resident Individual only)
(in case of Resident Individual / HUF only)**

[1] All rates of TDS for Non-Resident Assessee shall be increased by applicable Surcharge, Education Cess and Secondary and Higher Education Cess.
[2] Threshold limit of Rs.30,000 up to May 31, 2016.
[3] Threshold limit of Rs.5,000 up to May 31, 2016.
[4] Transporter means persons engaged in plying, hiring and leasing of Goods Carriages having Income u/s. 44AE and not owning more than 10 goods carriage. Nil rates will be applicable if the transporter quotes his PAN and furnishes prescribed declaration.
[4a] This limit is for individual transaction. However, if aggregate payment to contractors during the year exceeds Rs.1,00,000 (Rs.75000 up to May 31, 2016) then tax will required to be deducted even where individual transaction is less than the threshold limit of Rs. 30,000.
[5] Threshold limit of Rs. 20,000 up to May 31, 2016. TDS at 10% up to May 31, 2016.
[6] TDS at 2% up to May 31, 2016.
[7] TDS at 20% up to May 31, 2016.
[8] Threshold limit of Rs.1,000 up to May 31, 2016. TDS at 10% up to May 31, 2016.
[9] Threshold limit of Rs.5,000 up to May 31, 2016. TDS at 10% up to May 31, 2016.
[10] Threshold limit of Rs.2,00,000 up to May 31, 2016.
[11] TDS at 10% up to May 31, 2016.

Note:

In order to strengthen the PAN Mechanism, any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:

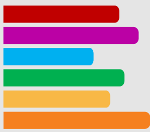
(i) prescribed in the Act;
(ii) at the rate in force i.e. the rate mentioned in the Finance Act; or
(iii) 20%

TCS Rates

Rates of Tax Collected at Source

Section	Nature of Payment	Threshold Limit	Rate
206C	Alcoholic Liquor for human consumption & Indian made foreing Liquor	0	1%
206C	Timber obtained by any mode and any other forest produce	0	2.5%
206C	Scrap	0	1%
206C	Parking Lot/Toll plaza/Mining and Quarrying	0	2%
206C	Tendu Leaves	0	5%
206C	Minerals, being coal or lignite or iron ore	0	1%
206C(1D)	Sale of Motor Car (w.e.f. 01.06.2016)	10,00,000	1%
206C(1D)	Cash sale of jewellery (other than for personal use)	5,00,000	1%
206C(1D)	Cash sale of bullion (other than for personal use)	2,00,000	1%
206C(1D)	Cash sale of goods* (other than bullion or jewellery) or providing any services (w.e.f. 01.06.2016)	2,00,000	1%

*With effect from June 1, 2016,no TCS will be applicable in case where TDS is already deducted by the buyer.



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