MCTC
18th
YEAR OF
PUBLICATION

# THE MALAD CHAMBER OF TAX CONSULTANTS

## DIRECT - INDIRECT TAX PROPOSALS

## AN ANALYTICAL STUDY

## THE FINANCE BILL 2016

# BUDGET 2016


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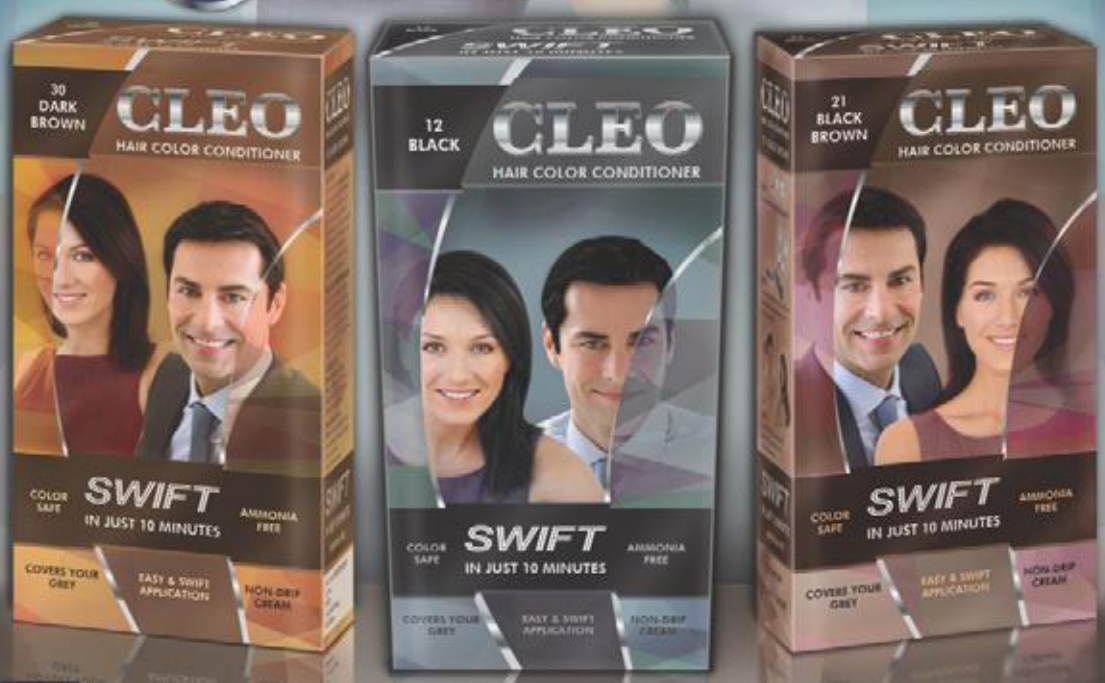


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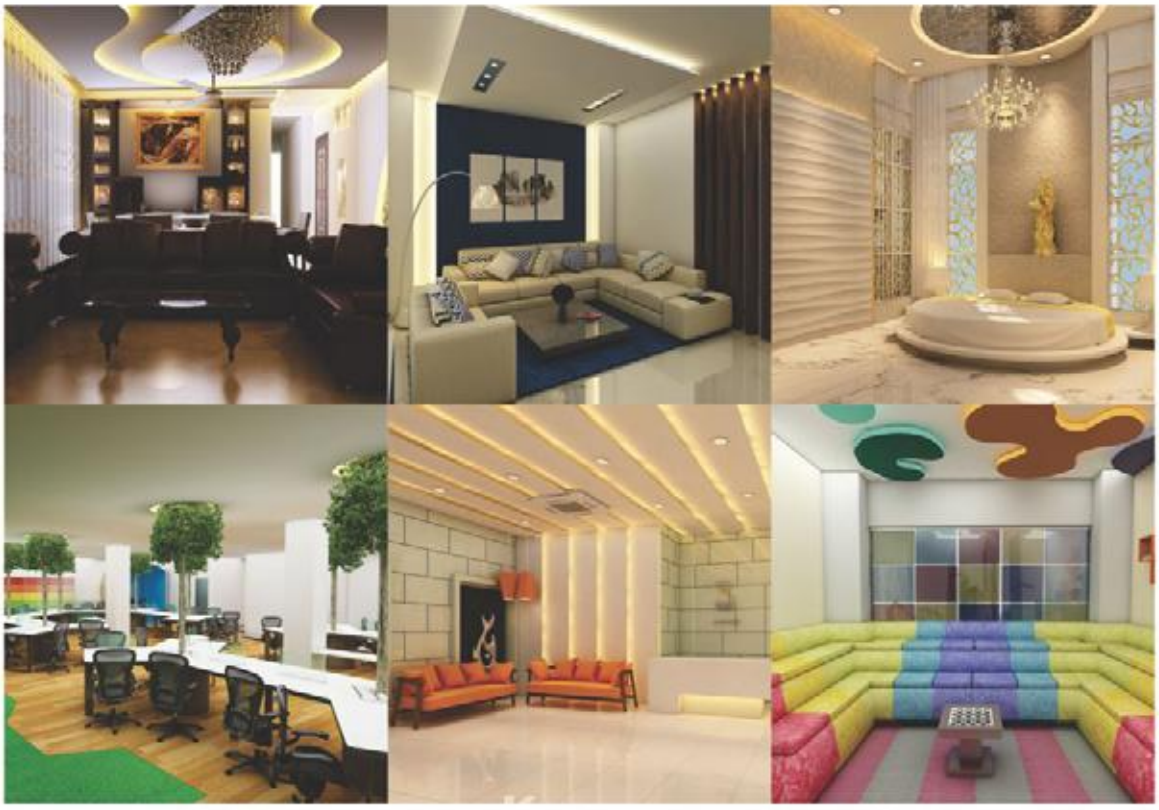

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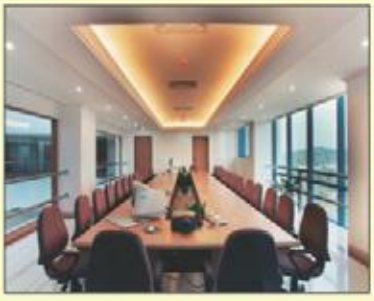


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# BUDGET
# TAX PROPOSALS 2016

## An Analytical Study

## 18th YEAR OF PUBLICATION

**2nd March 2016**

## The Malad Chamber of Tax Consultants

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**Special thanks to Adv. Atul Jasani**

# PRESIDENT'S MESSAGE

To present the product of hard and smart work is always a pleasurable moment. With no exception, I feel proud to present this 18th year of publication with the same Zeal and same enthusiasm.

We had discussed about the budget meeting & publication in various meetings. A lot of thought has gone behind. A thorough planning, taking over various responsibilities, execution by hard work. The team of Editors and more than 20 Compilers have put in their best efforts to produce this master piece. This is a tool available to reader throughout.

My compliment and sincere thanks to all Editors & Compilers for their guidance and support.

I sincerely thank CA Reepal Tralshawala, CA Atul Ruparelia, CA Haresh Kenia, Adv Ajay Singh, CA. Ketan Vajani - members of the Editorial Board in editing this book. I also congratulate & thank CA Yatin Rangwala, Chairman and CA Utpal Patel, Convener of Budget Publication & Public Meeting Committee for their untiring efforts.

I acknowledge & thank the worthy contributors of this publication CA Sunil Gabhawalla on Service Tax proposals, CA Kevin Shah on Excise & Custom proposals and Adv Ashvin Achaarya on Central Sales Tax proposals.

I sincerely thank our Past President CA Manishbhai Chokshi for providing his office premises and infrastructure for preparation of this prime publication. I also thank Shri Shailesh Patel of Krishna Packwell for timely printing of this publication.

My sincere thanks to advertisers for giving their advertisements in this publication.

I am thankful to all Past Presidents, Office Bearers, Managing Committee Members, Members of Budget Publication & Public Meeting Committee and all the well wishers for helping us to bring out this publication.

I sincerely thank and appreciate all our reades who are always the backbone of our publication. I am sure this publication will provide useful guidance to readers on proposed amendments made in the tax laws by the Finance Bill, 2016 in their day to day affairs.

With warm regards,
**CA. Jayprakash Tiwari**
**PRESIDENT**

**Disclaimer**

Though utmost care is taken about the accuracy of the matter contained herein, the Editorial team and Chamber or any of its functionaries are not liable for any inadvertent error. The views expressed herein are not necessarily of the Chamber. For full details the readers are advised to refer to the Finance Bill (No. 18) 2016 and relevant statutes.

**For Private Circulation Only.**

# INDEX

# EXCERPTS FROM FINANCE MINISTER'S SPEECH

- The International Monetary Fund has hailed India as a 'bright spot' amidst a slowing global economy. The World Economic Forum has said that India's growth is 'extraordinarily high'. We accomplished this despite very unfavourable conditions and despite the fact that we inherited an economy of low growth, high inflation and zero investor confidence in Government's capability to govern.
- Our initiatives in the last 21 months have not only placed the economy on a faster growth trajectory but have bridged the trust deficit, created by the previous Government.
- We believe in the principle that money with the Government belongs to the people and we have the sacred responsibility to spend it prudently and wisely for the welfare of our people, especially the poor and the downtrodden
- The risks of further global slowdown and turbulence are mounting. This complicates the task of economic management for India. It has three serious implications for us. First, we must strengthen our firewalls against these risks by ensuring macro- economic stability and prudent fiscal management. Second, since foreign markets are weak, we must rely on domestic demand and Indian markets to ensure that India's growth does not slow down. And third, we must continue with the pace of economic reforms and policy initiatives to change the lives of our people for the better.
- The Government is also launching a new initiative to ensure that the BPL families are provided with a cooking gas connection, supported by a Government subsidy. This will significantly improve the health of women and those BPL families who suffer adversely from the ill-effects of Chulha cooking
- A dedicated Long Term Irrigation Fund will be created in NABARD with an initial corpus of about `20,000 crore.
- To support farmers in the aftermath of natural calamities, Government has revised the norms of assistance under the National Disaster Response Fund in April 2015.
- Swachh Bharat Mission is India's biggest drive to improve sanitation and cleanliness, especially in rural India. This subject was very close to the heart of the Father of the Nation. For the first time since independence, the Parliament held a comprehensive debate on sanitation.
- We have already approved two Schemes to promote digital literacy: National

Digital Literacy Mission; and Digital Saksharta Abhiyan (DISHA). We now plan to launch a new Digital Literacy Mission Scheme for rural India to cover around 6 crore additional households within the next 3 years. Details of this scheme will be spelt out separately.

- Modernisation of land records is critical for dispute free titles. The National Land Record Modernisation Programme has been revamped under the Digital India Initiative and will be implemented as a Central sector scheme with effect from 1st April, 2016.
- When asked what he intends doing for regeneration of India, Swami Vivekananda had said "no amount of politics would be of any avail until the masses in India are well educated, well fed and well cared for".
- provide LPG connection in the name of women members of poor households.
- I want to take this opportunity to express our gratitude and appreciation for the 75 lakh middle class and lower middle class households who have voluntarily given up their cooking gas subsidy, in response to the call given by the Hon'ble Prime Minister. Their gesture is a matter of pride for the country.
- In order to help such families, the Government will launch a new health protection scheme which will provide health cover up to Rs.One lakh per family. For senior citizens of age 60 years and above belonging to this category, an additional top-up package up to `30,000 will be provided.
- Making quality medicines available at affordable prices has been a key challenge. We will reinvigorate the supply of generic drugs. 3,000 Stores under Prime Minister's Jan Aushadhi Yojana will be opened during 2016-17.
- I propose to start a 'National Dialysis Services Programme'. Funds will be made available through PPP mode under the National Health Mission, to provide dialysis services in all district hospitals.
- Scheduled Caste and Scheduled Tribe entrepreneurs are beginning to show great promise in starting and running successful business enterprises.
- It is our commitment to empower Higher Educational Institutions to help them become world class teaching and research institutions. An enabling regulatory architecture will be provided to ten public and ten private institutions to emerge as world-class Teaching and Research Institutions.
- We have decided to set up a Higher Education Financing Agency (HEFA) with an initial capital base of `1,000 crores. The HEFA will be a not-for-profit organisation that will leverage funds from the market and supplement them with

donations and CSR funds.

- it is proposed to establish a Digital Depository for School Leaving Certificates, College Degrees, Academic Awards and Mark sheets, on the pattern of a Securities Depository.
- Entrepreneurship Education and Training will be provided in 2200 colleges, 300 schools, 500 Government ITIs and 50 Vocational Training Centres through Massive Open Online Courses. Aspiring entrepreneurs, particularly those from remote parts of the country, will be connected to mentors and credit markets.
- In order to incentivize creation of new jobs in the formal sector, Government of India will pay the Employee Pension Scheme contribution of 8.33% for all new employees enrolling in EPFO for the first three years of their employment.
- If Shopping Malls are kept open all seven days of the week, why not the small and medium shops? These shops should be given the choice to remain open on all seven days of the week on voluntary basis. We propose to circulate a Model Shops and Establishments Bill which can be adopted by the State Governments on voluntary basis.
- The duty drawback scheme has been widened and deepened to include more products and countries.
- The Department of Disinvestment is being re-named as the "Department of Investment and Public Asset Management (DIPAM)".
- We already have a comprehensive 'Plan For Revamping of Public Sector Banks', INDRADHANUSH, which is under implementation. We are now confronted with the problem of stressed assets in Public Sector Banks, which is a legacy from the past.
- To remove the difficulties and impediments to ease of doing business, we will introduce a bill to amend the Companies Act, 2013 in the current Budget Session of the Parliament. The Bill would also improve the enabling environment for start-ups. The registration of companies will also be done in one day.

# EXECUTIVE SUMMARY – DIRECT TAXES

| Sr. No. | Section | Particulars | W.E.F. |
|---|---|---|---|
| 1. | 2 | Surcharge on Income Tax on Individuals including Non Resident Indians, HUF, AOP, BOI, Artificial Judicial Persons having Income exceeding Rs. One Crore is increased from 12 % to 15%. | A.Y. 2017-18 |
| 2. | 2 | Corporate Tax in case of domestic companies having Turnover or Gross receipts of less than Rs. Five Crore is reduced from 30% to 29%. | A.Y. 2017-18 |
| 3. | 10(15B) | Interest on deposit certificate issued under Gold Monetisation Scheme, 2015 is made exempt from Income Tax. | A.Y. 2017-18 |
| 4. | 17 | Employers Contribution to Provident Fund in excess of Rupees One Lakh Fifty Thousand ( Previous year Rupees One Lakh ) will be treated as perquisite. | A.Y. 2017-18 |
| 5. | 36 | Deduction of up to 5 % for Provision for Bad and doubtful debts is provided for NBFC Companies. | A.Y. 2017-18 |
| 6. | 43B- New | Payment made to Indian Railways for use of railway assets is covered u/s 43B. | A.Y. 2017-18 |
| 7. | 44AB | Limit for Tax Audit for Professional raised from Rupees Twenty Five Lakhs to Rupees Fifty Lakhs of Gross Receipts | A.Y. 2017-18 |
| 8. | 44AD | Limit for Turnover liable to Presumptive taxation increased from Rupees One Crore to Rupees Two Crore. Provision for allowance of deduction of salary and interest on capital from 8% presumptive income is now deleted | A.Y. 2017-18 |

| | | | |
|---|---|---|---|
| 9. | 54EE | Deduction allowed up to Rupees Fifty Lakhs on Long Term Capital Gain for Investment in specified assets ( Units of Fund to be notified ) | A.Y. 2017-18 |
| 10. | 80EE | Additional Interest deduction of Rupees Fifty thousand is provided for new house purchased between 01.04.2016 to 31.03.2017 where value of house is not exceeding Rupees Fifty Lakhs and also housing loan is not exceeding Rupees Thirty Five Lakhs. | A.Y. 2017-18 |
| 11. | 80GG | Limit for deduction of rent paid increased from Rupees Two Thousand to Rupees Five Thousand per Month. | A.Y. 2017-18 |
| 12. | 80IAC | 100% deduction of Profit for eligible start ups provided for Three consecutive years out of Five years provided. | A.Y. 2017-18 |
| 13. | 80IBA | 100% deduction of Profit from developing & building housing projects provided subject to conditions. | A.Y. 2017-18 |
| 14. | 80JJA | Deduction Provided for cost incurred for employees whose total remuneration is less than Rupees Twenty Five thousand | A.Y. 2017-18 |
| 15. | 87A | Rebate for Individual resident whose income does not exceed Rupees Five Lakh is increased from Rupees Two thousand to Rupees Five thousand per annum. | A.Y. 2017-18 |
| 16. | 112 | Long Term Capital Gain on shares of company in which public are substantially interested also be chargeable to tax @ 10 % | A.Y. 2017-18 |
| 17. | 115BA ( New ) | Income Tax @ 25% to be changed on certain newly registered Domestic Company on or after | A.Y. 2017-18 |

| | | | |
|---|---|---|---|
| | | 1st March,2016 subject to fulfillment of Conditions. | |
| 18. | 115BBDA ( New) and 10(34) | Dividend in excess of Rupees Ten Lakhs received by Individual, HUF and Firm will be liable to tax @ 10%. | A.Y. 2017-18 |
| 19. | 115BBE | Set off of any Loss shall not be allowed in Section 68, 69, 69CA, 69B, 69C and 69D. | A.Y. 2017-18 |
| 20. | 115BBF (New) | Royalty in respect Patent developed and registered in India liable to Tax @ 10 % . | A.Y. 2017-18 |
| 21. | 115O | Dividend Distribution Tax will not be applicable on amount distributed to a business trust out of its current income. | 01.06.2016 |
| 22. | 115TCA ( New ) | Scheme of Taxation in case of Securities on trust and investors notified. | A.Y. 2017-18 |
| 23. | 115TD ( New) | New Chapter XII-EB inserted, Tax will be Payable at Maximum Marginal Rate on accreted income of certain trusts and institutions. | 01.06.2016 |
| 24. | 115TE ( New) | Interest will be Payable @ 1 % of failure to pay tax within the time provided. | A.Y. 2017-18 |
| 25. | 115TF ( New ) | Provisions of recovery and collection of taxes shall apply in case of default | A.Y. 2017-18 |
| 26. | 143(1) | Expand the scope of adjustments at the time of processing after providing opportunity to the assessee. | 01.06.2016 |
| 27. | 147 | Reassessment shall now also be done where – Income exceeds the maximum amount not chargeable to tax or if the assessee has understated the income or has claimed excessive | 01.06.2016 |

| | | | |
|---|---|---|---|
| | | loss, deduction, allowance or relief in the return | |
| 28. | 192A | Threshold limit of accumulated balance due to an employer enhanced from Rs.30000/- to Rs.50000/- | 01.06.2016 |
| 29. | 211 | Advance Tax Payment schedule applicable for Company is now applicable for all the assessees. Assessee covered by section 44AD on presumptive basis also shall be required to pay whole amount of Advance Tax in One Installment on or before 15th March. | 01.06.2016 |
| 30. | 270A<br>( New) | Penalty for under reporting and misreporting of income is introduced, replacing the existing Provisions of Sec 271 (1)(cd ). | A Y 2017-18 |
| 31. | 160 to 177 of Finance Bill 2016 | Equalisation Levy @ 6 % on Consideration for Specified Services relating to Online Advertising received by Non Residents | Date to be notified |
| 32. | 178 to 196 of Finance Bill 2016 | Income Declaration Scheme, 2016 announced – Levying tax @ 30% + Surcharge @ 7.5% + Penalty @ 7.5% of the Undisclosed Domestic Income / Assets declared by any person | 01.06.2016 |
| 33. | 197 to 208 of Finance Bill 2016 | Direct Tax Dispute Resolution Scheme 2016 introduced – For Settlement of specified Tax ( Retrospective Tax ) and tax arrears for which appeal is pending before CIT (A). | 01.06.2016 |
| 34. | 209 to 215 of Finance Bill 2016 | Indirect Tax Dispute Resolution Scheme 2016 introduced for settlement of Indirect Tax Dispute in respect of Customs, Central Excise and Service Tax. | 01.06.2016 |
| 35. | Finance | STT on Options increased from 0.017% to 0.05% | 01.06.2016 |

| | | | |
|---|---|---|---|
| | ( No 2 ) Act 2004 | | |
| 36. | Finance Act 2015 and Sec 6(3) of IT Act 1961 | Provisions amending definition of Place of effective Management for Companies is omitted. | 01.04.2016 ( A Y 2016-17) |
| 37. | 10AA | Deduction to SEZ units is available only to entrepreneur whose unit begins to carry out the activity before 01.04.2021. | A.Y. 2017-18 |
| 38. | 32 | Additional depreciation @ 20 % provided for the assessee in the business of power transmission business. | A.Y. 2017-18 |
| 39. | 35 (1)(ii), 35(1)(iia), 35(i)(iii), 35(2AA), 35(2AB) | Weighted deduction for any sum paid for expenses on scientific research has been reduced. | A.Y. 2017-18 |
| 40. | 35AD | Weighted deduction in case of Specified business has been reduced from 150% to 100%. | A.Y. 2017-18 |
| 41. | 35CCC | Weighted deduction on notified agriculture extension project is reduced from 150% to 100%. | A.Y. 2017-18 |
| 42. | 80IA & 80IB | Benefit of deduction u/s 80IA and 80IB has been Withdrawn. | A.Y. 2017-18 |
| 43. | Rates of TDS | Amendments in rates of TDS and threshold limits are tabulated in this Publication elsewhere : Section 192A, 194BB, 194C, 194D, 194DA, 194EE, 194G, 194H, 194K, 194L, 194LA | 01. 06. 2016 |

# PART A : DIRECT TAXES

**1 RATES OF TAXES**

**Clause 2 of Finance bill proposes following tax rates:**

**a For Individuals Male And Females /HUF/AOP/BOI/Artitificial juridical person:**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates |
| Upto 2,50,000 | Nil | Upto 2,50,000 | Nil |
| 2,50,001 to 5,00,000 | 10% + EC | 2,50,001 to 5,00,000 | 10% + EC |
| 5,00,001 to 10,00,000 | 20% + EC | 5,00,001 to 10,00,000 | 20% + EC |
| Above 10,00,000/- | 30% + EC | Above 10,00,000/- | 30% + EC |
| Above 1 Crore | 30% + SC + EC | Above 1 Crore | 30% + SC + EC |
| Surcharge @ 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | | **Surcharge @ 15%**<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | |

**b Senior Citizens:** (Who is of the age of 60 years or more but less than 80 years)

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates |
| Upto 3,00,000 | Nil | Upto 3,00,000 | Nil |
| 3,00,001 to 5,00,000 | 10% + EC | 3,00,001 to 5,00,000 | 10% + EC |
| 5,00,001 to 10,00,000 | 20% + EC | 5,00,001 to 10,00,000 | 20% + EC |
| Above 10,00,000/- | 30% + EC | Above 10,00,000/- | 30% + EC |
| Above 1 Crore | 30% + SC + EC | Above 1 Crore | 30% + SC + EC |
| Surcharge @ 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | | **Surcharge @ 15%**<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | |

In case of Individuals and Senior Citizens having Total Income up to Rs. 5 lakh, Rebate shall be available u/s 87A w.e.f. A.Y. 2017-18 to the extent of tax payable or Rs. 5,000/- , whichever is lesser.

**c Very Senior Citizens:** (Who is of the age of 80 years or more at any time during the previous year)

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates |
| Upto 5,00,000 | Nil | Upto 5,00,000 | Nil |
| 5,00,001 to 10,00,000 | 20% + EC | 5,00,001 to 10,00,000 | 20% + EC |
| Above 10,00,000/- | 30% + EC | Above 10,00,000/- | 30% + EC |
| Above 1 Crore | 30% + SC + EC | Above 1 Crore | 30% + SC + EC |
| Surcharge @ 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | | **Surcharge @ 15%**<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | |

**d. For Firms & Limited Liability Partnership (LLP):**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates |
| Upto 1 Crore | 30% + EC | Upto 1 Crore | 30% + EC |
| Above 1 Crore | 30% + SC + EC | Above 1 Crore | 30% + SC + EC |
| Surcharge @ 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | | Surcharge @ 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | |

**e. Alternate Minimum Tax on Individuals Male And Females /HUF/AOP/BOI/Artifificial juridical person/Firms/LLP's**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates |
| Adj T.I Upto 1 Crore | 18.5 % + EC | Adj T.I Upto 1 Crore | 18.5 % + EC |
| Adj T.I Above 1 Crore | 18.5 % + SC@12% + EC | Adj T.I Above 1 Crore | 18.5 % + SC@12% + EC |

AMT not to apply to individual/HUF/AOP/BOI if Adjusted total income does not exceed Rs. 20,00,000.

**f. For Domestic Companies**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates ( Refer Note ) * |
| Upto 1 Crore | 30% + EC | Upto 1 Crore | 30% + EC |
| Above 1 Crore | 30% + SC@ 7% + EC | Above 1 Crore | 30% + SC@ 7% + EC |
| Above 10 Crore | 30% + SC@12% + EC | Above 10 Crore | 30% + SC@12% + EC |
| Surcharge - 7% / 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | | Surcharge - 7% / 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | |

* Note :- In the case of Domestic Company, the rate of Income Tax shall be 29% of the Total income if the total T/o or Gross receipts of the company in the previous year 2014-15 does not exceed Five Crore Rupees and in all other cases rate of income tax will be as mentioned above.

**g. For Domestic Companies incorporated on or after 01. 03. 2016 subject to conditions specified u/s 115BA**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| | | Total Income (In Rs.) | I.Tax Rates |
| N. A | | Upto 1 Crore | 25% + EC |
| | | Above 1 Crore | 25% + SC@ 7% + EC |
| | | Above 10 Crore | 25% + SC@12% + EC |
| | | Surcharge - 7% / 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | |

**h. Minimum Alternate Tax on Domestic Companies**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| (In Rs.) | I.Tax Rates | (In Rs.) | I.Tax Rates |
| Book Profit Up to 10 Crore | 18.5 % + SC@ 7% + EC | Book Profit Up to 10 Crore | 18.5 % + SC@ 7% + EC |
| Book Profit Above 10 Crore | 18.5 % + SC@12% + EC | Book Profit Above 10 Crore | 18.5 % + SC@12% + EC |

**i. For Companies Other Than Domestic Companies**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates |
| Upto 1 Crore | 40% + EC | Upto 1 Crore | 40% + EC |
| Above 1 Crore | 40% + SC@ 2% + EC | Above 1 Crore | 40% + SC@ 2% + EC |
| Above 10 Crore | 40% + SC@ 5% + EC | Above 10 Crore | 40% + SC@ 5% + EC |
| Surcharge - 2% / 5%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | | Surcharge - 2% / 5%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | |

**j. Minimum Alternate Tax on Companies Other than Domestic Companies**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates |
| Book Profit Up to 10 Crore | 18.5 % + SC@ 2% + EC | Book Profit Up to 10 Crore | 18.5 % + SC@ 2% + EC |
| Book Profit Above 10 Crore | 18.5 % + SC@5% + EC | Book Profit Above 10 Crore | 18.5 % + SC@5% + EC |

**k. For Co-Operative Societies:**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates |
| Upto 10,000 | 10% + EC | Upto 10,000 | 10% + EC |
| 10.000 to20,000 | 20% + EC | 10.000 to20,000 | 20% + EC |
| Above 20,000 | 30% + EC | Above 20,000 | 30% + EC |
| Above 1 Crore | 30% + SC + EC | Above 1 Crore | 30% + SC + EC |
| Surcharge - 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | | Surcharge - 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | |

**l. For Local Authorites:**

| Existing (AY:2016-17) | | Proposed (AY:2017-18) | |
|---|---|---|---|
| Total Income (In Rs.) | I.Tax Rates | Total Income (In Rs.) | I.Tax Rates |
| Up to 1 crore | 30% + EC | Up to 1 crore | 30% + EC |
| Above 1 Crore | 30% + SC + EC | Above 1 Crore | 30% + SC + EC |
| Surcharge - 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | | Surcharge - 12%<br>Education Cess @ 3% on IT + SC<br>[2% EC + 1% Secondary & Higher Ed.Cess] | |

**ILLUSTRATION SHOWING INCREASE / ( DECREASE ) IN TAX LIABILITY**

( IN CASE OF INDIVIDUAL RESIDENT IN INDIA OTHER THAN SENIOR CITIZEN & SUPER SENIOR CITIZEN )

| | A.Y. 2016-17 | A.Y. 2017-18 | A.Y. 2016-17 | A.Y. 2017-18 | A.Y. 2016-17 | A.Y. 2017-18 | A.Y. 2016-17 | A.Y. 2017-18 |
|---|---|---|---|---|---|---|---|---|
| **Taxable Income (Assumed)** | 865,000 | 865,000 | 1,000,000 | 1,000,000 | 1,500,000 | 1,500,000 | 11,000,000 | 11,000,000 |
| **Less :** | | | | | | | | |
| **Interest on Hsg Loan U/S 24 (b)** | (200,000) | (200,000) | (200,000) | (200,000) | (200,000) | (200,000) | (200,000) | (200,000) |
| **Gross Total Income** | 665,000 | 665,000 | 800,000 | 800,000 | 1,300,000 | 1,300,000 | 10,800,000 | 10,800,000 |
| **Less : Deduction** | | | | | | | | |
| **U/S 80C / 80CCC/ 80CCD(1)** | (150,000) | (150,000) | (150,000) | (150,000) | (150,000) | (150,000) | (150,000) | (150,000) |
| **Deduction U/S 80 CCD (1B) *** | (50,000) | (50,000) | (50,000) | (50,000) | (50,000) | (50,000) | (50,000) | (50,000) |
| **Deduction U/S 80 D** | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) | (25,000) |
| **Deduction U/S 80 EE **** | 0 | (50,000) | 0 | (50,000) | 0 | (50,000) | 0 | (50,000) |
| **Taxable Income** | 440,000 | 390,000 | 575,000 | 525,000 | 1,075,000 | 1,025,000 | 10,575,000 | 10,525,000 |
| **Tax Before Rebate** | 19,000 | 14,000 | 40,000 | 30,000 | 147,500 | 132,500 | 2,997,500 | 2,982,500 |
| **Rebate U/S 87A** | 2,000 | 5,000 | NIL | NIL | NIL | NIL | NIL | NIL |
| **Income Tax** | 17,000 | 9,000 | 40,000 | 30,000 | 147,500 | 132,500 | 2,997,500 | 2,982,500 |
| **Surcharge ***** | 0 | 0 | 0 | 0 | 0 | 0 | 359700 | 447375 |
| **Education Cess @ 3 %** | 510 | 270 | 1,200 | 900 | 4,425 | 3,975 | 100716 | 102896 |
| **Total Tax Liability** | 17,510 | 9,270 | 41,200 | 30,900 | 151,925 | 136,475 | 3,457,916 | 3,532,771 |
| **Increase / ( Decrease ) in Tax** | | **(8,240)** | | **(10,300)** | | **(15,450)** | | **74,855** |

*** - Investment in Notified Pension System**

**** - Subject to Conditions prescribed u/s 80EE**

***** - 15 % Surcharge applicable for Income above Rs.1 crore**

**ALL THE AMENDMENTS MENTIONED IN THE DIRECT TAX SECTION, HEREUNDER ARE PROPOSED TO BE EFFECTIVE FROM 1ST APRIL, 2017 AND WILL ACCORDINGLY APPLY FROM A.Y. 2017-18 , UNLESS OTHERWISE STATED.**

## 2. PRELIMINARY (DEFINITIONS)

### 2.1 Amendment to section 2(14) – Capital Assets – (Clause 3a)

**Existing Provision**

Section 2(14) of the Act defines the term "Capital Asset". It inter-alia excludes Gold Deposit Bonds issued under the Gold Deposit Scheme 1999 notified by the Central Government.

**Proposed Amendment**

Clause 3(a) of the Finance Bill, 2016 seeks to also exclude deposit certificates issued under the Gold Monetisation Scheme, 2015 from the definition of capital asset under the Act.

**Reason**

The amendment is a result of the recent notification of Gold Monetisation Scheme by RBI. It aims to exclude the Certificates issued under Gold Monetisation Scheme from the definition of capital asset.

**Effective Date**

The amendment will take effect retrospectively from 1 April 2016 and will accordingly apply from A.Y. 2016-17

### 2.2 New Section 2(23C) – Hearing – (Clause 3b)

**Existing Provision**

Sec 2 of the Income Tax Act defines various terms for the purpose of Income Tax Act.

**Proposed Amendment**

Clause 3(b) of the Finance Bill seeks to add a new clause 23C. The new clause 23C hearing to include communication of data and documents through electronic mode.

**Reason**

This clause is added in order to compliment the increasing emphasis being placed on "e-Sahyog" and online assessment proceedings.

**Effective Date**

The amendment will take effect from 1 June 2016 and will accordingly apply from A.Y. 2017-18.

## 2.3 Amendment to Section 2(24) – Income – (Clause 3c)

**Existing Provision**

Sub-section 24 to section 2 provides definition of the term "income" in a desired manner. Sub-clause (xviii) includes subsidies or grants or reimbursements received from Central Government or State Government will be construed as income but specifically excludes subsidy which is taken in the income in determining actual cost of asset under provisions of Explanation 10 to clause (1) of section 43 of the Act.

**Proposed Amendment**

Clause 3c of the Finance Bill seeks to amend sub-clause (xviii) so as to also exclude subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be from the definition of income.

**Reason**

The amendment aims at reducing the scope of subsidy incomes.

## 2.4 Amendment to Section 2(37A) – Rate or rates in force – (Clause 3d)

**Existing Provisions**

Sub-section 37A of Section 2 defines the term "Rate or rates in force". Sub-clause (iii) defines rate of tax to be charged under Section 194LBA or Section 195 of the Act.

**Proposed Amendment**

Clause 3(d) of The Finance Bill seeks to add two more sections Section 194LBB and Section 194LBC being provisions for deducting tax at source on income in respect of units of investment fund or income in respect of investment in securitisation trust, under the sub-clause.

**Reason**

The amendment aims at widening the scope of TDS provisions.

**Effective Date**

The amendment will take effect from 1 June 2016

## 3. BASIS OF CHARGE

### 3.1 Amendment to Section 6 (3) – Residence in India – (Clause 4)

**Existing Provision**

Sub-section 3 of section 6 was amended by Finance Act, 2015 w.e.f. 1-4-2016 i.e. from A.Y. 2016-17 and deals with conditions to be satisfied for a company to be treated as resident in India in any previous year.

Finance Act, 2015 provided that a company is said to be resident in India in any previous year, if:

(i) it is an Indian company or

(ii) Its place of effective management, in that year, is in India.

Explanation --- For the purpose of this clause "place of effective management" means 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.

**Proposed Amendment**

Clause 4 of the Finance Bill, 2016 proposes to extend the date to determine the residential status of the company from 1-4-2016 to 1-4-2017 i.e. it will be effective from A.Y. 2017-18.

It may also be noted here that since the date is extended the old provisions of section 6(3) will apply for A.Y. 2016-17 to determine the residential status of the company which is given hereunder:

(3) A company is said to be resident in India in any previous year, if

(i) It is an Indian company; or

(ii) During that year, the control and management of its affairs is situated wholly in India.

## 3.2 Income deemed to accrue or arise in India : Insertion of new clause (e) in Section 9(1)(i) – (Clause 5)

Finance Bill 2016 proposes to insert new clause (e) to section 9(1)(i) in the case of foreign company engaged in mining of diamonds.

**Proposed Amendment**

It is proposed to provide that in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India through or from the activities which are related to the display of uncut and unasserted diamond in any special zone notified by the Central Government.

**Reason**

A "Special Notified Zone" (SNZ) had been created to facilitate shifting of operations by foreign mining companies (FMC) to India and to permit the trading of rough diamonds in India by the leading diamond mining companies of the world. The activity of FMC of mere display of rough diamonds even with no actual sale taking place in India may lead to creation of business connection in India of the FMC. This potential tax exposure has been an area of concern for the mining companies willing to undertake these activities in India.

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

**Effective Date**

This amendment will take effect retrospectively from 1-4-2016 i.e. from A.Y. 2016-17.

## 3.3 Certain activities not to constitute business connection in India : Amendment to Section 9A – (Clause 6)

**Existing Provision**

In case of offshore funds, fund management activity carried out through eligible fund manager acting on behalf of such funds shall not constitute business connection in India. Further an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India subject to the conditions in sub- sections (3), (4) and (5).

One of the conditions of sub-section 3(b) is that a fund is a resident of a country or a specified territory with which Double Taxation Avoidance Agreement (DTAA) or Tax Information Exchange Agreement (TIEA) is entered into.

**Proposed Amendment**

It is proposed to modify the condition to provide that the eligible investment fund for purposes of section 9A shall also mean a fund established or incorporated or registered outside India in a country or a specified territory notified by the Central Government in this behalf. It is also proposed to provide that the condition of fund not controlling and managing any business in India or from India shall be restricted only in the context of activities in India.

**Reason**

There are many instances where a fund may not qualify as a tax resident of a country on account of domestic tax laws or legal framework of the country. The global structure of these funds had been based on applicable legal and regulatory framework of their country of incorporation and cannot be modified in respect of any investment made in a particular country. Examples of large pension funds or mutual funds from USA or SICAVs (open ended collective investment schemes) from Luxembourg had been cited. India would still be able to collect information regarding fund under the applicable DTAA or TIEA as under the agreements with many of the countries, information can be exchanged in respect of persons who may not be resident of the country. the conditions relating to restriction on fund carrying on business or controlling fund managing business in India or from India restricts the flexibility of operation for funds and focus should be on nature of activities undertaken in India.

## 4. INCOME WHICH DO NOT FORM PART OF TOTAL INCOME:

### 4.1 Amendment to Section 10(12) - (Clause 7(A)(i))

**Existing Provisions**

Section 10(12) provides for exemption on accumulated balance due and becoming payable to an employee participating in a recognised provident fund.

**Proposed Amendment**

Clause 7(A)(i) of Finance Bill seeks to insert a proviso so as to provide that contributions made to a Recognised Provident Fund on or after 1 April 2016, the exemption shall not exceed 40% of such accumulated balance in respect of employees other than excluded employees.

The term "excluded employee" means an employee whose monthly salary does not exceed such amount, as may be prescribed.

### 4.2 New Sub-Section 10(12A) - (Clause 7(A)(ii))

**Proposed Amendment**

Clause 7(A)(ii) of The Finance Bill, 2016 seeks to insert a new Clause (12A) in Section 10. The new Clause provides exemption to employees to the extent of 40% of Pension payable at the time of closure or opting out from National Pension System Trust.

### 4.3 Amendment to Section 10(13)- (Clause 7(A)(iii))

**Existing Provisions**

The sub-section (13) to Sec 10 provides for exemption on various types of payments from super annuation funds.

**Proposed Amendment**

Clause 7(A)(iii) of The Finance Bill seeks to insert a proviso to sub-clause (ii) so as to provide that any payment in lieu of or in commutation of an annuity made out of contributions made on or after the 1 April 2016, shall be exempt upto 40% of such annuity.

Clause 7(A)(iii) of The Finance Bill also seeks to insert an additional sub-clause (i) in sub-section (13) so as to provide exemption in respect of transfer to the account of the employee under a pension scheme referred to in section 80-CCD and notified by the Central Government.

### 4.4 Amendment to Section 10(15)- (Clause 7(B))

**Existing Provisions**

Sub-section (15) to Section 10 provides for exemption on income by way of interest, premium on redemption or other payment on various types of securities issued by various authorities including the Central Government. Sub-clause (vi)

provides exemption to the interest on Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999.

**Proposed Amendment**

Clause 7(B) of Finance Bill seeks to amend sub-clause (vi) so as to provide for exemption for interest on deposit certificates issued under the Gold Monetisation Scheme, 2015.

**Effective Date**

The amendment will take retrospective effect from 1 April 2016 and will accordingly apply from A.Y. 2016-17 onwards.

### 4.5 Amendment to Section 10(23DA)- (Clause 7(C)(I))

**Existing Provision**

Subsection (23DA) of Section 10 allows exemption to income of a securitisation trust from the activity of securitisation. The explanation to this clause defines various terms for the purpose of tax clause.

**Proposed Amendment**

Clause 7(C)(i) of the Finance Bill seeks to alter the definition of "securitisation" to include that Securitisation shall have the same meaning as assigned to it in clause (z) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). It further seeks to amend the definition of "Securitisation Trust" to provide that it shall have the same meaning as assigned to it in the Explanation below Section 115TCA.

### 4.6 Amendment to Section 10(23FC)- (Clause 7(C)(II))

**Existing Provision**

Clause 23FC of Section 10 provides that any income of a business trust by way of interest received or receivable from a special purpose vehicle shall not form part of total income.

**Proposed Amendment**

Clause 7(C)(ii) of the Finance Bill seeks to provide exemption for dividend referred to in sub-section 7 of Section 115-O in the above clause 23FC

### 4.7 Amendment to Section 10(23FD) )- (Clause 7(C)(III))

**Existing Provisions**

Sub section 23FD of Section 10 provides that any distributed income, referred to in section 115UA, received by a unit holder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in clause (23FC) or clause (23FCA).

**Proposed Amendment**

The Finance Bill, 2016 clarifies change in reference from Clause (23FC) to sub-clause (a) of clause (23FC), which is interest received or receivable from a special purpose vehicle.

## 4.8 Amendment to Section 10(34) )- (Clause 7(C)(IV))

**Existing Provision**

Clause 34 of Section 10 provides that dividends received u/s. 115-O will not form part of total income.

**Proposed Amendment**

Clause 7(C)(iv) of the Finance Bill seeks to provide that the said exemption shall not be available in respect of dividend as referred to in Section 115BBDA (Dividend received by Individual/ HUF/ Firm in excess of Rs. 10 lacs)

## 4.9 Amendment to Section 10(35A) )- (Clause 7(C)(V))

**Existing Provision**

Clause 35A of Section 10 provides for exception in respect of Income by way of distributed income referred to in section 115TA received from a securitisation trust by any person being an investor of the said trust.

**Proposed Amendment**

Clause 7(C)(v) of the Finance Bill seeks to insert a provision so as to deny the exemption in respect of distributed income received on or after the 1st day of June, 2016.

**Reason**

The amendment seeks to increase the tax revenue by withdrawing the prevailing exemption.

## 4.10 Amendment to Section 10(38) )- (Clause 7(C)(VI))

**Existing Provision**

Section 10(38) allows exemption for long term capital gain on equity shares or units of equity oriented mutual fund, where Securities Transaction Tax is paid.

**Proposed Amendment**

Clause 7(C)(vi) of The Finance Bill seeks to insert one more proviso in clause (38) so as to provide that the exemption shall not be available in respect of a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.

The Clause also seeks to define the terms "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 2

of the Special Economic Zones Act, 2005 and the term "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of the Explanation 1 to sub-section (5) of section 43.

### 4.11 New Section 10(48A) )- (Clause 7D)

**Proposed Amendment**

Clause 7D of the Finance Bill seeks to insert a new clause 48A in section 10 so as to provide for exemption on respect of 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 there from to any person resident in India subject to following conditions :-

(i) the storage and sale by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government; and

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

### 4.12 New Section 10(50) )- (Clause 7E)

**Proposed Amendment**

Clause 7E of Finance Bill seeks to insert an additional clause (50) in section 10 so as to provide for exception in respect of any income arising from specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force.

Explanation to the clause defines "specified service" shall have the meaning assigned to it in clause (i) of section 161 of Chapter VIII of the Finance Act, 2016.

**Effective Date**

The amendment will take effect from 1 June 2016.

## 5. SALARY

### 5.1 Amendment to Section 17)- (Clause 9))

**Existing Provision**

Section 17(2)(vii) of the Act provides that amount of contribution to an approved superannuation fund by the employer in respect of the assesse exceeding One Lakh Rupees shall be considered as Perquisites.

**Proposed Amendment**

The monetary limit of contribution Rs. One Lakh to Superannuation Fund is increased Rs. One Lakh Fifty Thousand.

**Reason**
Under Section 80-C, Employees can contribute to Superannuation Fund up to Rs. One Lakh Fifty Thousand. Above amendment is introduced with an objective to bring in parity among Employer's and Employees' contribution.

## 6. INCOME FROM HOUSE PROPERTY

### 6.1 Amendment to Section 24 - (Clause 10))

**Existing Provision**
Interest on borrowed capital u/s 24(1)(b) is allowed subject to completion of acquisition or construction of self-occupied house property within three years from the end of financial year in which capital was borrowed.

**Proposed Amendment**
Period of three years is extended to five years.

**Reason**
To align with the fact that housing projects often takes longer time for completion.

### 6.2 Substitution to Section 25A, 25AA, 25B - (Clause 11))

**Existing Provision**
Existing provisions of sections 25A, 25AA and 25B relate to special provisions on taxation of unrealised rent allowed as deduction when realised subsequently, unrealised rent received subsequently and arrears of rent received respectively.

**Proposed Amendment**
It is proposed to simplify these provisions and merge them under a single new section25A. It is proposed to provide that the amount of rent received in arrears or the amount of unrealised rent realised subsequently by an assessee shall be charged to income-tax in the financial year in which such rent is received or realised, whether the assessee is the owner of the property or not in that financial year. It is also proposed to introduce caluse 2 to section 25A to allow thirty percent of the arrears of rent or the unrealised rent realised subsequently by the assessee as deduction.

**Reason**
To simplify provision and merge various sections in to single new section and bring uniformity in tax treatment of arrears of rent and unrealised rent.

## 7. PROFIT AND GAINS OF BUSINESS AND PROFESSION

### 7.1 Section: 28(va) - Taxation of Non compete fees received/receivable in relation to carrying out profession :. (Clause 12)

**Existing Provision**

Presently Section 28(va) provides that any sum received or receivable under an agreement for not carrying out any activity in relation to business or not to share any know how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services (**i.e. Non Compete fees**) shall be covered within the scope of Profit and Gains of Business or Profession and is chargeable to tax as Business income.

However, non-compete fees received or receivable in relation to carrying out of profession are not covered under this provision.

**Proposed Amendment**

It is proposed to amend clause (va) of Sec 28, to bring within its ambit, the Non Compete fees received or receivable (which are recurring in nature) in relation to not carrying out any profession within the scope of Section 28. Further, it is also proposed to amend the proviso to clarify that receipts for transfer of right to carry on any profession, which are chargeable to tax under the head capital gains, would not be taxable as Profits & Gains of Business/profession.

### 7.2 Section: 32 - Allowability of Additional Depreciation to an assesses engaged in the business of Transmission of Power - (Clause 13)

**Existing provision**

Presently Section 32(1)(iia) provides initial additional depreciation @ 20% in case of new machinery or Plant acquired and installed by the assesses engaged in the business of manufacture or production of any article or thing [ or in the business of generation or generation and distribution of power].

Under the existing provisions, the benefit of additional depreciation is not available on the new machinery or plant installed by an assessee engaged in the business of transmission of power.

**Proposed amendment**

Clause 13 seeks to extend the benefit of initial additional depreciation to an assessee which is engaged in the business of transmission of power.

**Reason**

In order to rationalize incentive of power sector, it is proposed to provide that an assessee engaged in business of transmission of power shall also be allowed additional depreciation @ 20 % of actual cost of new machinery or plant acquired and installed in previous year.

## 7.3 Sec: 32AC (1A) - Tax Incentive u/s 32AC- (Clause 14)

**Existing provision**

Presently Section 32AC (1A) provides that in case of company assesse, engaged in the business of manufacture or production of any article or thing, acquires and installs new assets exceeding Rs. 25 Crore in a previous year, then deduction @ 15% of the actual cost shall be allowed of such new asset, subject to condition that the acquisition and installation has to be done in the same previous year.

However, the dual condition of acquisition and installed causes genuine hardship in cases in which assets having been acquired but could not be installed in same previous year.

**Proposed amendement:**

In order to obviate the difficulty in acquiring and installating the Plant & Machinery in the same year, it is proposed to amend the Section to provide that the acquisition of Plant & Machinery of the Specified value has to be made in the previous year; however, installation of such Plant & Machinery may be made on or before 31.03.2017

It is also clarified that where the installation of the new assets is in a year other than the year of acquisition, deduction shall be allowed in the year of installation of such new assets.

The above amendment will take effect from A.Y 2016-17 and accordingly, apply to A.Y 2016-17 & A.Y 2017-18.

## 7.4 Insertion of New Sec. 35 ABA relating to amortization of spectrum fees for purchase of Spectrum - (Clause 16)

**Proposed Amendment**

Clause 16 seeks to introduce new section 35 ABA which provide that any capital expenditure incurred and actually paid by the assessee on the acquisition of right to use spectrum for telecommunication services shall be allowed as deduction in equal installment on the tenure of spectrum, i.e. period starting from the year in

which such payment is made and ending in the year in which useful life of the spectrum comes to an end.

The other salient features are as under :

a) Where the spectrum is transferred and proceeds of the transfer is less than the unamortized expenditure, a deduction equal to the expenditure remaining to be allowed as reduced by the proceeds of transfer, shall be allowed in the year in which spectrum is transferred.
b) If the spectrum is transferred and the proceeds received on transfer exceeds the amounts remaining to be allowed , such excess shall be chargeable to tax as profits & gains of business in which in the year in which spectrum is transferred.
c) Where the part of the spectrum is transferred , unallowd expenses would be amortised.
d) Under the scheme of amalgamation, if the amalgamating company sells or transfer the spectrum to an amalgamated company, then the provision of the section will apply to amalgamated company as they would have applied to amalgamating company if such amalgamating company has not transferred the spectrum.

**Reason**

Government has newly introduced the spectrum fees for auction of airwaves. There is uncertainty in tax treatment of payment of spectrum i.e. whether spectrum is an intangible asset and eligible for depreciation u/s. 32 of the Act or whether it is in the nature of license to operate telecommunication business and eligible for deduction u/s. 35 ABB of the Act.

In order to provide clarity and avoid future litigation and controversy, it is proposed to insert sec. 35 ABA to provide for amortizations of spectrum fee over the tenure of the spectrum.

### 7.5 Sec: 36(1) (viia) – Deduction for Provision made for Bad and Doubtful Debts - (Clause 21)

**Existing provision**

Presently Section 36 (1) (viia) provides for a deduction in respect of provision made for Bad and Doubtful Debts of an amount not exceeding 5% of Total Income in case of Public Financial Institution or State Financial Corporation or State Industrial Investment Corporation ( Computed before making any deduction under this clause and chapter VIA ).

**Proposed amendment**

Clause 21 seeks to provide similar deduction in respect of provision for Bad and Doubtful Debt to the extent of 5% of total Income in case of NBFC.

**Reason**

Benefit of deduction in respect of provision made for Bad & Doubtful Debts to the extent of Income of 5% has been granted to NBFC by considering the fact that NBFC are also engaged in financial lending to different sector of Society.

## 7.6 Section 43B - Equalisation Levy - (Clause 23)

**Expansion of scope of section 43B**

Presently Section 43B provide for deduction in respect of any sum payable by the assessee by way of taxes, cess, duty or fee, employer contribution to P.F etc is available as a deduction in previous year in which the liability to pay such sum is incurred if the same has been actually paid on or before the due date of furnishing the Return of Income.

**Proposed amendment:**

It is proposed to provide that any amount payable to Indian railway for the use of railway assets shall be allowed as a deduction only if such sums are actually paid on or before the due date of furnishing the Return of Income, irrespective of method of accounting followed by the assessee.

**Reason**

With a view to ensure the prompt payment of dues to railway for the use of railway assets, it is proposed that any sum payable by the assessee to the Indian railway for use of railway assets shall not be allowed as a deduction if such sums are not actually paid on or before the due date of filing of Return of Income.

## 7.7 Section 44AA(2) - Maintenance of Accounts by Certain person carrying on Business or Profession - (Clause 24)

**Present Provision**

Presently sub clause (iv) of section 44AA(2) requires maintenance of Accounts in case of an Assessee covered u/s 44AD, if such assessee claims his income to be lower than 8% of the total turnover or Gross Receipts of such business.

**Proposed Amendment:**

Clause 24 seeks to substitute existing sub clause (iv) by a new sub clause (iv) to provide that where an eligible assessee referred to in substituted section

44AD(4) whose income exceed maximum amount not liable to income tax, will be required to maintain books of accounts U/S 44AA.

## 7.8 Section 44AB - Increase in Threshold limit for Audit for person having Income from Profession - (Clause: 25, 27)

**Present Provision**

Section 44AB (b) requires every person carrying on profession to get his accounts audited if the total gross receipts in the Previous Year exceeds Rs. 25 Lakhs.

**Proposed Amendment**

It is proposed to amend the said clause (b) so as to increase the threshold limit of total gross receipts, specified u/s 44AB for getting Accounts audited from Rs. 25 Lakhs to Rs. 50 Lakhs in case of person carrying on profession.

Further a **new section 44ADA** is sought to be introduced to provide for a special provision for computing profits and gains of profession on a presumptive basis. The salient features of section 44ADA are as under:-

- The assessee being a Resident in India who is engaged in the profession referred to in section 44AA(1) and whose total gross receipts do not exceed Rs. 50 Lakhs.
- A sum equal to 50% of the total gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the assessee shall be deemed to have been the profit and gains of such profession.
- Any Deduction allowable as u/s 30 to S. 38 shall be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.
- WDV of any assets of the profession shall be deemed to have been calculated as if the assessee has claimed and have been actually allowed the deduction in respect of depreciation.
- If the assessee claims that his profits are less than 50% of the total gross receipts and whose total income exceeds the maximum amount not chargeable to tax, he shall be required to keep and maintain Books of Accounts and other documents u/s 44AA(1) and get them audited u/s 44AB.

The above Amendment will take effect from AY 2017-18 and subsequent year.

## 7.9 Section 44AD - Increase in threshold limit for presumptive taxation scheme for persons having income from business - (Clause 26)

**Existing provision**

The existing provisions of section 44AD provide for a presumptive taxation scheme for an eligible business. As per the Existing Provisionin case of eligible assessee engaged in eligible business, a sum equal to 8% of Total Turnover or Gross Receipt or a sum higher than the aforesaid sums shall be deemed to be Profit and Gain of business chargeable to tax under head Profit and Gain of Business or Profession, provided, the total Turnover or Gross receipts do not exceed Rs. 1 Crore.

**Proposed amendement**

It is proposed to increase the threshold limit of Rs. 1 Crore specified in definition of eligible business to Rs. 2 Crore.

**Reason**

In order to reduce compliance burden of the small tax payers and facilitate the ease of doing business, the threshold limits has been increase from Rs. 1 Crore to Rs. 2 Crore.

Hitherto, in case of eligible assessee is a firm, the salary and interest paid to partner shall be deducted from the deemed income (i.e. 8% of total turnover or such higher sum claimed to have been ensured) compute.

It is proposed to provide that in case of eligible assessee is a firm, the expenditure in the nature of salary, remuneration and interest paid to partner, in terms of sec 40 (b) shall not be deducted from the deemed income computed in aforesaid manner.

As per the present provision eligible assessee the provision of chapter XVII-C regarding payment of tax by way of an advance tax were not applicable.

Now it is proposed provide that eligible assessee shall be required to pay advance tax. However, in order to keep the compliance minimum in his case it is proposed that such assessee may pay Advance tax by 15$^{th}$ March of the financial year.

It is further provided vide substituted sub section (4) of section 44AD that an eligible assessee declares profit for any Previous Year in accordance with provisions of Section 44AD and such assessee does not declare the profit for any of the 5 consecutive Assessment Years in accordance with the provisions of sub section (1), then such assessee shall not be eligible to claim the benefit of

provision of this section for 5 Assessment years subsequent to the Assessment Year in which profit has not been declared in accordance with provisions of sub section (1)

For example, an eligible assessee claims to be taxed on presumptive basis under section 44AD for Assessment Year 2017-18 and offers income of Rs. 8 lakh on the turnover of Rs. 1 crore. For Assessment Year 2018-19 and Assessment Year 2019-20 also he offers income in accordance with the provisions of section 44AD. However, for Assessment Year 2020-21, he offers income of Rs.4 lakh on turnover of Rs. 1 crore. In this case since he has not offered income in accordance with the provisions of section 44AD for five consecutive assessment years, after Assessment Year 2017-18, he will not be eligible to claim the benefit of section 44AD for next five assessment years i.e. from Assessment Year 2021-22 to 2025-26.

## 8. Capital Gains

### 8.1 Amendment to Section 47: Transaction not regarded as transfer - (Clause no. 28)

**Existing Provision:**

A. The existing provision contained in section 47 of the Act provides for list of transactions not regarded as transfer for capital gain purposes.

B. Sub-clause (xiiib) of section 47 provides for conditions for tax neutrality on conversion of a private company or unlisted public company to a limited liability partnership. Currently there are six conditions provided under this clause.

C. Under the existing provisions of section 47(xviii), any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund is not chargeable to tax.

**Proposed Amendment:**

A. It is proposed to include new clause (viic) so as to provide that any redemption of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015 by an assessee being an individual shall not be regarded as transfer.

B. It is proposed to insert new clause (ea) in clause (xiiib) of the said section

so as to provide a condition in addition to the existing conditions, that the value of the total assets in books of accounts of the company in any of the three previous years preceding the previous year in which its conversion into Limited Liability Partnership takes place does not exceed five crore rupees.

C. It is proposed to insert a new clause (xix) in section 47 of the Act so as to provide that any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund shall not be considered as transfer for capital gain tax purposes.

The terms "consolidating plan", "consolidated plan" and "mutual fund" for the purposes of the proposed clause (xix) are defined as under:

(a) "consolidating plan" means the plan within a scheme of a mutual fund which merges under the process of consolidation of the plans within a scheme of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992;

(b) "consolidated plan" means the plan with which the consolidating plan merges or which is formed as a result of such merger;

(c) "mutual fund" means a mutual fund specified under clause (23D) of section 10.

**Reason**

A. This amendment is proposed to promote Sovereign Gold Bond Scheme, 2015

B. This amendment is proposed to add more conditions for granting tax neutrality on conversion to limited liability partnership. This is an indication that the benefit of tax neutrality is meant only for small companies.

C. Security Exchange Board of India (SEBI) has issued guidelines for consolidation of mutual fund plans within a scheme. In view of this, it is proposed to extend the tax exemption, available on merger or consolidation of mutual fund schemes, to the merger or consolidation of

different plans in a mutual fund scheme. For this purpose, it is proposed to amend Section 47 so as to provide that any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund shall not be considered transfer for capital gain tax purposes and thereby shall not be chargeable to tax.

## 8.2 Amendment to Section 48: Mode of Computation – Clause 29

**Existing Provision:**

The existing provision contained in section 48 of the Act provides indexation benefit in respect of long-term capital gains as per third proviso is not available to bonds and debentures, except capital indexed bonds issued by the Government. Sovereign Gold Bond issued under the Sovereign Gold Bond Scheme, 2015, is therefore, presently, not eligible for indexation benefits.

Further, the current provisions provides for accounting of appreciation of rupee against a foreign currency while calculating full value of consideration in respect of Bonds.

**Proposed Amendment:**

It is proposed to amend section 48 of the Act so as to provide indexation benefits to long-term capital gains arising on transfer of the Sovereign Gold Bond issued under the Sovereign Gold Bond Scheme, 2015.

It is further proposed to provide that in case of an assessee being a non-resident, any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him, shall be ignored for the purpose of computation of full value of consideration under the said section.

**Reason**

The first amendment is proposed to promote Sovereign Gold Bond Scheme, 2015.

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 exempt from tax on capital gains (clause no. 29).

## 8.3 Amendment to Section 50C: Provision for full value of consideration in certain cases – Clause 30

**Existing Provision:**

Sub-section (1) of the aforesaid section provides that in case of transfer of a capital asset being land or building or both, the value adopted or assessed or assessable by the stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer is taken as the full value of consideration for the purpose of computation of capital gains.

**Proposed Amendment:**

It is proposed to amend the said sub-section so as to provide that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

It is further proposed to provide that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement of transfer.

**Reason:**

The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that this provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in-trade. This amendment in section 43CA of the Act was introduced by the Finance Act, 2013 but no similar amendment was made in section 50C of the Act (clause no. 30).

## 8.4 New Section 54EE: Exemption in respect of Investment Unit of Specified Funds – Clause 31

**Proposed Amendment:**

It is proposed to insert section 54EE so as to provide exemption from capital gains tax if the capital gains proceeds are invested by an assessee in units of specified fund, as may be notified by the Central Government in this behalf.
The scheme of section provides as under:

i) Where a long term capital gain is invested in long term specified asset within a period of six months after the date of transfer, the whole or part of the capital gains shall not be charged u/s 45 of the Act.

ii) "Long-term specified asset" means a unit or units, issued before the 1st day of April, 2019, of such fund as may be notified by the Central Government in this behalf.

iii) If the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;

iv) If the cost of the long-term specified asset is less than the capital gain arising from the transfer of the original asset, the proportionate exemption is allowed.

v) The maximum investment allowed in long term specified asset in a financial year is Rs. 50 lakhs.

vi) Where the long-term specified asset is transferred by the assessee at any time within a period of three years from the date of its acquisition, the amount of capital gains arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such long-term specified asset shall be deemed to be the income chargeable under the head "Capital gains" relating to long-term capital asset of the previous year in which the long-term specified asset is transferred.

vii) If the assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have transferred such specified asset on the date on which such loan or advance is taken.

**Reason:**
It is one of the measures to provide an impetus to start-ups and facilitate their growth. It seems that specified fund to be notified by the government will be in respect of start-up projects (clause no. 31).

## 8.5 Amendment to Section 54GB: Capital Gain on transfer of residential property not to be charged in certain cases (Clause no. 32).

**Existing Provision:**
The existing provisions of section 54GB provide that capital gains arising on account of transfer of a residential property shall not be charged to tax if such capital gains is 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.

The existing provisions for investment in eligible company are applicable for transfer of residential property made upto 31st day of March, 2017.

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.

**Proposed Amendment:**
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 with in one year from the date of subscription in the equity shares by the assessee.

It is proposed that in case of investment in eligible start-ups, the provisions are applicable for transfer of residential property made upto 31st March, 2019.

It is proposed to insert a proviso in section 54GB of the Act 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.

The term "eligible start-up" and "eligible business" shall have the meanings respectively assigned to them in explanation below sub-section (iv) of section 80-IAC.

**Reason:**
These provisions are proposed 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 a measure to provide an impetus to start-ups and facilitate their growth

## 8.6 Amendment to Section 55: Cost of acquisition, Cost of Improvement

**Existing Provision: (Clause 33)**

Sub-clause (1) of clause (b) of sub-section (1) of section 55 of Income Tax Act provides that the cost of improvement in relation to a capital asset, being goodwill of a business or a right to manufacture, produce or process any article or thing or right to carry on any business, shall be taken to be nil.

Further, clause (a) of sub-section (2) of the aforesaid section 55 of Income Tax Act provides that the cost of acquisition in relation to a capital asset, being goodwill of a business or a trademark or brand name associated with a business or a right to manufacture, produce or process any article or thing or right to carry on any business, tenancy rights, state carriage permits or loom hours, shall be taken to be the amount of the purchase price in case the asset is purchased by the assessee, and in any other case such cost shall be taken to be nil.

**Proposed Amendment:**
It is proposed to amend the said sub-clause (1) of clause (b) of sub-section (1) and clause (a) of sub-section (2) of the section 55 so as to include the right to carry on the profession also under its scope.

**Reason:**
This is consequential to proposed amendment to section 28(va) for charging non-compete fee in respect of profession.

## 9. INCOME FROM OTHER SOURCES

### 9.1 Section 56(2)(vii) : Income from Other Sources - [Clause 34]

**Existing Provision**

The existing provisions of clause(vii) of sub-section 2 of section 56 of the Act does not provide for exclusion from chargeability of income from other sources in case where shares of a company are received as a consequence of demerger or amalgamation of a company by individuals and HUF. Existing clause (viia) excludes such shares received by firm or company from chargeability as income.

**Proposed Amendment**

It is proposed to insert new sub-clause 'h' to the second proviso to sub-clause c to provide that any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company shall not be chargeable to tax U/s. 56(2).

**Reason**

Introduced to bring uniformity in the tax treatment in the hands of individual and HUF in line with the tax treatment in the case of firms or a company.

## 10 AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSSES

### 10.1 Section 80: Submission of Return for losses [Clause 35]

**Existing Provision**

The existing provisions of section 80 of the Act provides that a loss which has not been determined in pursance of return filed in accordance with the provisions of sub-section (3) of section 139, shall not be carried forward and set-off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) or sub-section (3) or section 74 or sub-section 74A

**Proposed Amendment**

It is proposed to amend section 80 so as to provide that the loss shall not be allowed to be carried forward and set off u/s. 73A(2)if such loss has not been

determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139

**Reason**

carry forward and set off of such loss under section 73A of the Income-tax Act to be allowed only if the return is filed within the specified time

**Effective Date:**

These amendments are proposed to be made effective from the 1st day of April, 2016 and shall accordingly apply in relation to assessment year 2016-17 and subsequent years.

## 11 DEDUCTION TO BE MADE IN COMPUTING TOTAL INCOME

### 11.1 Section 80CCD: Deduction in respect of contribution to pension scheme - [Clause 7 and 36]

**Existing Provision**

Tax treatment for the National Pension System (NPS) referred to in section 80CCD is Exempt, Exempt and Tax (EET) i.e. periodic contributions during the pension accumulation phase are allowed as deduction from income; the returns generated on these contributions are also exempt from tax; however, the terminal benefits on exit or superannuation, in the form of lump sum withdrawals, are taxable in the hands of the individual subscriber or his nominee in the year of receipt of such amounts.

**Proposed Amendment**

It is proposed to insert Section 10 (12A) to provide that any payment from National Pension System (NPS) to an employee on account of closure or his opting out of the pension scheme referred to in Section 80CCD, shall be exempt from tax to the extent it does not exceed 40% of the total amount payable to him,.

It is also proposed to amend Section 80CCD to provide that in case payment is received by the nominee, on death of the assessee, the whole amount shall be exempt from tax.

**Reason**

In order to bring greater parity in tax treatment of different types of pension plans and to bring all the pension plans under one umbrella.

## 11.2 Section 80EE (Substitution): Deduction in respect of loan taken for residential house property - [Clause 37]

**Existing Provision**

Section 80EE provided a total deduction of up to Rs. 1 Lakh over a period of 2 assessment years viz. AY14-15 and AY15-16, in respect of interest paid on loan taken by an individual for acquisition of a residential house property from a financial institution between 1st April 2013 to 31st March 2014.

**Proposed Amendment**

Substituted Section 80EE provides for a deduction to an individual of an amount up to Rs. 50,000 in respect of interest paid to Financial Institution (FI) towards borrowing made for acquisition of residential property and fulfilling following conditions:

i. Loan is sanctioned by the FI during 1st day of April 2016 to 31st March 2017.
ii. Amount of loan sanctioned for above purpose does not exceed Rs. 35 Lakhs.
iii. Value of residential house property does not exceed Rs. 50 Lakhs.
iv. Assessee does not own residential house on date of sanction of loan.

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. Further, the benefit of deduction will continue till the repayment of loan as such deduction will be available from AY 2017-18 and in subsequent years. However, deduction allowed for the amount u/s.80EE will not be available under any other section.

**Reason**

The proposed amendment provides further impetus to the goal of the government of providing "Housing for All " in the form of incentivizing first-home buyers availing home loans.

## 11.3 Section 80GG: Deduction in respect of rents paid - [Clause 38]

**Existing Provision**

A deductions is provided to an individual, under employment or carrying on his business or profession towards payment of rent in respect of any accommodation occupied by him for the purposes of his own residence, provided the assessee, his spouse or minor child or HUF of which he/she is a member does not own a house at a place where he ordinarily resides and performs his duties or carries business or profession. Further, the individual does not receive House Rent allowance from his employer.

The deduction is allowed if the rent paid is in respect of any furnished or unfurnished accommodation occupied by him and is in excess of 10% of his total income up to a maximum of Rs. 2,000 per month or 25% of his total income for the year, whichever is less. Thus an assessee could claim deduction from income up to Rs. 24,000 in an assessment year.

**Proposed Amendment**

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 i.e. upto Rs. 60000/- in an assessment year

**Reason**

In order to provide relief to individual tax payers.

## 11.4 Insertion of New Section 80-IAC: Special provision in respect of start-up business: - [Clause 41]

**Proposed Amendment:**

It is proposed to provide a deduction of 100% of the profits and gains derived by an eligible start-up from a business involving innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.

The benefit of 100% deductions can be availed by eligible start-ups for **3** consecutive assessment years out of **5** years, at the option of the assessee. This benefit of deduction shall be available to an eligible start-up which is setup before 01.04.2019.

The said start-up should fulfill following conditions, with certain specified exceptions:

i. It is not formed by splitting up, or the reconstruction, of a business already in existence.
ii. It is not formed by the transfer of machinery or plant previously used for any purpose.

A Start up to be eligible for this section should fulfill following conditions:

(a) It is incorporated on or after the 01.04.2016 but before 01.04.2019;
(b) The total turnover of its business does not exceed Rs. 25 Crores rupees, in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021; and
(c) It holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

**Reason:**

With a view to providing an impetus to start -ups and facilitate their growth in the initial phase of their business.

## 11.5 Insertion of new Section 80-IBA: Deduction in respect of profits and gains from housing projects - [Clause 43]

**New Provision**

It is proposed to to provide for 100% deduction of the profits and gains of an assessee developing and building affordable housing projects, if, the housing project is approved by the competent authority after 1st June 2016 but before the 31st March, 2019 in accordance with such guidelines as may be prescribed and subject to certain conditions which inter alia, include:-

(i) The project is completed within a period of **3** years from the date of approval,

(ii) The project is on a plot of land measuring not less than 1000 sq. meters where the project is within 25 km from the municipal limits of four metros namely Delhi, Mumbai, Chennai & Kolkata and where the size of the residential unit in the said areas is not more than thirty sq. meters. In any other area, it is measuring not less than 2000 sq. meters where the size of the residential unit in the said areas is not more than sixty sq. meters.

(iii) where residential unit is allotted to an individual, no other such unit shall be allotted to him or spouse or minor children's of such individuals.

(iv) The built-up area of the shops and other commercial establishments included in the housing project should not exceed **3%** of the aggregate built-up area.

(v) The assessee maintains separate books of account in respect of the housing project.

(vi) No deduction is allowed to any undertaking, which executes the housing project as a works contract awarded by any person including State or Central Government.

The assessee is required to complete the said project (with certificate of completion from the competent authority) within a period of three years from the date of approval by the competent authority, failing which the entire deduction claimed in previous years shall be deemed as his income deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the period for completion so expires.
The Competent Authority means Authority empowered by the Central Government.

**Reason**
To incentivise affordable housing sector as a part of larger objective of 'Housing for All'

## 11.6 Substitution of Section 80JJAA: Deduction in respect of employment of new employees [Clause 44]

**Existing Provision**
Section 80JJAA provides for a deduction of 30% of additional wages paid to new regular workmen in a factory. The provisions apply to the business of manufacture of goods in a factory. The deduction is available for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

New regular workmen are considered where 'workmen' are employed for not less than three hundred days in a previous year. Further, benefits are allowed only if

there is an increase of at least ten percent in total number of workmen employed on the last day of the preceding year.

Deduction under this section is not available if the factory is hived off or transferred from another existing entity or acquired by assessee as a result of amalgamation with another company.

**Proposed Amendment**

It is proposed to substitute new section. It is proposed that the deduction under this provision shall be available to any assessee deriving profits and gains from business and who is liable for tax audit u/s. 44AB.

Such an assessee will be allowed a deduction of an amount equal to 30% of "additional employee cost" incurred in the course of such business in the previous year. The deduction is available for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

**"Additional employee cost"** here means total emoluments paid or payable to additional employees employed during the previous year. Further in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;

However, in case of an existing business additional cost shall be considered NIL, if,

i. There is no increase in the number of employees from the last day of the preceding year
ii. Emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account

"**Additional employee**" here means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year.

Following employees are not considered part of "Additional employees':

(*a*) an employee whose total emoluments are more than Rs. 25,000 per

month; or

(*b*) an employee for whom the entire Employees' Pension Scheme is paid by the Government

(*c*) an employee employed for a period of less than 240 days or

(*d*) an employee who does not participate in the recognised provident fund;

Thus the norms for minimum number of days of employment in a financial year from 300 days are reduced to 240 days. Further, the condition of 10% increase in number of employees every year is proposed to be done away with, so that any increase in the number of employees will be eligible for deduction under the provision.

"Emoluments" here means any sum paid or payable to an employee *in lieu* of his employment by whatever name called, but does not include—

(*a*) any contribution by the employer to any pension or provident or any other fund for the benefit of the employee under any law for the time being in force; and

(*b*) any lump-sum payment to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension etc..

Deduction under this section will not be allowed, if:

*(a)* the business is formed by splitting up, or the reconstruction, of an existing business:

(*b*) the business is acquired by the assessee by way of transfer from any other person or as a result of any business re-organisation;

*(c)* the assessee does not furnishes prescribed audit report of Chartered Accountant in this regard along with the return of income,

The subsection (3) provides that the provision as it stood immedeatly prior to the amendment by this finance bill shall apply to an assessee eligible to claim any deduction for any assessment year commencing on or before 1st April 2016.

**Reason**

To provide employment generation incentive to all the sectors.

## 12 PHASING OUT OF DEDUCTIONS AND EXEMPTIONS

**Sec: 10AA, 35AC, 35CCD, 80IA, 80IAB, 80IB, 32, 35(1)(ii), 35(1)(iia), 35(1)(iii), 35(2AA), 35(2AB), 35AD, 35CCC - Phasing out of deductions and exemptions – ( Clause: 8, 15, 17, 18, 19, 20, 39, 40, 42)**

The Finance Minister in his Budget Speech, 2015 has indicated that the rate of corporate tax will be reduced from 30% to 25% over the next four years along with corresponding phasing out of exemptions and deductions. The Government proposed to implement this decision in a phased manner. In this regard, broad guiding principles had been put in the public domain for receiving comments from the stakeholders. These guiding principles are listed below for reference:-

- Profit linked, investment linked and area based deductions will be phased out for both corporate and non-corporate tax payers.
- The provisions having a sunset date will not be modified to advance the sunset date. Similarly the sunset dates provided in the Act will not be extended.
- In case of tax incentives with no terminal date, a sunset date of 31.3.2017 will be provided either for commencement of the activity or for claim of benefit depending upon the structure of the relevant provisions of the Act.
- There will be no weighted deduction with effect from 01. 04.2017.

**Proposed Phase out plan of incentives (Profit linked Deductions/weighted deduction) available under the Act**

| Section | Incentive available currently | Present quantum of deduction | Proposed Amendment |
|---|---|---|---|
| | | | |
| 10AA | Profit Linked deductions for units in SEZ for profit derived from export of articles or things or services | 100% of profits derived from exports for a period of 5 consecutive Asst. years and 50% of profits derived from exports for the next 5 consecutive Asst. years | No deduction available for units commencing manufacture or production of article or thing |

| | | | |
|---|---|---|---|
| | | | or start providing services on or after 1st April, 2020. i.e A.Y. 2021-22 . **[clause No. 8]** |
| 35AC | Any sum paid to a public sector company or a local authority or to an approved association or institution, etc. on certain eligible social development project or a scheme | 100% of the sum paid | No deduction shall be available with effect from 1st April, 2017. i.e A.Y. 2018-19. **[clause no. 17]** |
| 35CCD | Any expenditure incurred (not being expenditure in nature of cost of any land or building) on any notified skill development project by a company. | Weighted deduction of 150% of the expenditure incurred | Deduction shall be restricted to 100% from 1st April, 2020, i.e A.Y. 2021-22. **[clause no. 20]** |
| 80IA, 80IAB, 80IB | Profit Linked deductions for specified period on eligible business carried on by industrial undertakings or enterprises referred in section 80IA, 80IAB and 80IB | 100% of profit linked deductions | No deduction shall be available if the specified activity commences on or after 1st April, 2017, i.e A.Y. 2018-19. **[clause no. 39,40 and 42]** |

**Proposed Phase out plan of incentives (Accelerated Depreciation/Weighted Deduction) available under the Act.**

| Section | Incentive available currently | Present quantum of deduction | Proposed Amendment |
|---|---|---|---|
| | | | |

| | | | |
|---|---|---|---|
| 32 | Accelerated depreciation is provided to certain Industrial sectors in order to give impetus for investment | Upto 100% in respect of certain block of assets | The highest rate of depreciation shall be restricted to 40% w.e.f 1st April, 2017. i e Asst Year 2018-19 andn subsequent years. The new rate is proposed to be made applicable to all the assets (whether old or new) falling in the relevant block of assets. |
| 35(1)(ii) | Any sum paid to an approved scientific research association, approved university, college or other institution which has the object of undertaking scientific research and if such sum is used for scientific research. | Weighted Deduction of 175% of the sum paid | Weighted deduction shall be restricted to 150% from 01/04/2017 to 31/03/2020 and deduction shall be restricted to 100% from 1st April, 2020, i.e A.Y.2021-22.<br><br>**[clause no. 15]** |
| 35(1)(iia) | Any sum paid as contribution to an approved scientific research company and if such sum is used for scientific research | Weighted deduction of 125% of the sum paid | Deduction shall be restricted to 100% w.e.f 1st April, 2017, i.e A.Y. 2018-19.<br><br>**[clause no. 15]** |
| 35(1)(iii) | Any sum paid as contribution to an approved research association or university or college or other institution to be used for research in social science or statistical research | Weighted deduction of 125% of the sum paid | Deduction shall be restricted to 100% w.e.f 1st April, 2017, i.e A.Y. 2018-19.<br><br>**[clause no. 15]** |

| | | | |
|---|---|---|---|
| 35(2AA) | Any sum paid to a National Laboratory or a university or an Indian Institute of Technology or a specified person for the purpose of approved scientific research programme. | Weighted deduction of 200% of the sum paid | Weighted deduction shall be restricted to 150% from 01/04/2017 to 31/03/2020 and deduction shall be restricted to 100% from 1st April, 2020, A.Y. 2021-22. **[clause no. 15]** |
| 35(2AB) | Any expenditure (not being expenditure in the nature of cost of any land or building) incurred by a company, engaged in the business of bio-technology or in the business of manufacture or production of any article or thing except some items appearing in the negative list specified in Schedule-XI, on scientific research on approved in-house research and development facility. | Weighted deduction of 200% of the sum paid | Weighted deduction shall be restricted to 150% from 01/04/2017 to 31/03/2020 and deduction shall be restricted to 100% from 1st April, 2020, A.Y. 2021-22.<br><br>**[clause no. 15]** |
| 35AD | Capital expenditure (other than expenditure on land, goodwill and financial assets) in case of following specified business:<br>- a cold chain facility - Sec. 35AD(8)(c)(i)<br>- warehousing facility for storage of agricultural produce - | Weighted deduction of 150% of the sum paid | Deduction shall be restricted to 100% w.e.f 1st April, 2017, i.e A.Y. 2018-19.<br><br>**[clause no. 18]** |

| | | | |
|---|---|---|---|
| | Sec. 35AD(8)(c)(ii) - Hospital with at least 100 beds - Sec. 35AD(8)(c)(v)<br>- affordable housing project - Sec. 35AD(8)(c)(vii)<br>- production of fertiliser - Sec. 35AD(8)(c)(viii) | | |
| 35CCC | Expenditure incurred on notified agricultural extension project. | Weighted deduction of 150% of the sum paid | Deduction shall be restricted to 100% w.e.f 01st April, 2017, i.e A.Y. 2018-19.<br><br>**[clause no. 19]** |

## 13. REBATE OF INCOME TAX

### 13.1 Section 87A: Rebate in Income Tax -[Clause 45]

**Existing Provision**

The existing provisions of section 87A provides for a rebate of an amount equal to 100% of such income-tax or an amount of RS. 2,000 whichever is less, from the amount of income-tax to an individual resident in India whose total income does not exceed RS. 5 Lakhs.

**Proposed Amendment**

It is proposed to increase the maximum amount of such rebate from existing RS.2,000 to Rs. 5000.

**Reason**

To provide relief to resident individuals in the lower income slab

## 14. SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

### 14.1 Amendment to Section 92CA - Extension of time limit to transfer pricing officer in certain cases: - (Clause 46)

**Existing Provision**

Section – 92CA of the Act provides that where an assessee has entered into an international transaction, a reference can be made by an Assessing Officer to Transfer Pricing Officer (TPO) if he considers it necessary or expedient to do so for determination of arm's length price.

Section 92CA (3A) of the Act states that TPO has to pass his order at least sixty days prior to the date on which the limitation for making assessment expires.

**Proposed Amendment**

Clause 46 of the Finance Bill seeks to amend sub-section (3A) of section 92CA by inserting a proviso to provide that in the circumstances referred to in clause (ii) or clause (viii) of Explanation (1) to section 153 if period of limitation available to the TPO for making an order is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly.

**Reason**

It was noted that at times seeking information from foreign jurisdictions was necessary for determination of arm's length price by the TPO and at times proceedings before the TPO were also stayed by a court order.

It is therefore proposed to amend sub-section (3A) of section 92CA to provide time to TPO for making an order after excluding the time for which assessment proceedings were stayed or the time taken for receipt of information where a reference for exchange of information has been made by the competent authority, as the case may be, was less than sixty days, then such remaining period shall be extended to sixty days and the period of limitation u/s 153 shall be deemed to have been extended accordingly.

**Effective Date**

This amendment will take effect from 1st June, 2016 and will, accordingly, apply in relation to the assessment year 2016-2017 and subsequent assessment years.

## 14.2 Amendment to Section 92D - Transfer Pricing Documentation. - (Clause 47)

**Existing Provision**

Section 92D of the Income tax Act relates to maintenance and keeping of information and document by persons entering into an international transaction or specified domestic transaction.

The aforesaid section provides that every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof as may be prescribed. The said section further provides that the Assessing Officer or the Commissioner (Appeals) may in the course of any proceeding require such person to furnish the information and document within the period of thirty days of it being called for or within the extended period.

**Proposed Amendment**

It is proposed to insert proviso to sub-section (1) of sub-section 1 of section 92D of the Income Tax Act so as to provide that the person being a constituent entity of an international group, referred to in section 286, shall also keep and maintain such information and document in respect of the international group as may be prescribed.

It is further proposed to insert new sub-section 4 to section 92D of the Income Tax Act so as to provide that without prejudice to the power of the Assessing Officer or the Commissioner (Appeals) to call for the information and document, the person being a constituent entity of an international group, shall furnish the prescribed information and document to the prescribed authority referred to in sub-section 1 of section 286 in the prescribed manner on or before the date to be prescribed.

**Reason**

India has been one of the active members of BEPS (Base Erosion and Profit Shifting) initiative and part of international consensus. The OECD report on

Action 13 of BEPS Action plan provides for revised standards for transfer pricing documentation and a template for country-by-country (cbc) reporting of income, earnings, taxes paid and certain measure of economic activity. It is recommended in the BEPS report that the countries should adopt a standardized approach to transfer pricing documentation. Hence a three tired structure (country-by-country report, master file and local file) for reporting has been mandated. These documents require taxpayers to articulate consistent transfer pricing positions and will provide tax administrations with useful information to assess transfer pricing risks. It will facilitate tax administrations to make determinations about where their resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries.

The CbC reporting requirement for a reporting year does not apply unless the consolidated revenues of the preceding year of the group, based on consolidated financial statement, exceeds a threshold to be prescribed. The current international consensus is for a threshold of € 750 million equivalent in local currency. This threshold in Indian currency would be equivalent to Rs. 5395 crores (at current rates). Therefore, CbC reporting for an international group having Indian parent, for the previous year 2016-17, shall apply only if the consolidated revenue of the international group in previous year 2015-16 exceeds Rs. 5395 crore (the equivalent would be determinable based on exchange rate as on the last day of previous year 2015-16).

## 14.3 Consequential Amendment by insertion of New section 286 (Clause 110):

### Proposed Provision

Clause 110 of the Bill seeks to insert a new section 286 in the Income-tax Act relating to furnishing of report in respect of international group. The proposed section provides for furnishing of a report in respect of an international group, if the parent entity of the group is not resident in India.

Sub-section (1) of the proposed new section provides that constituent entity in India of an international group, the parent entity of which is not a resident in India shall notify the prescribed income tax authority before such date as may be prescribed regarding whether it is the alternate reporting entity of the international group or the details of parent entity or an alternate reporting

entity, if any, of the international group, and the country or territory of which the said entities are resident.

Sub-section (2) of the proposed new section provides that every parent entity or the alternate reporting entity, resident in India, shall for every reporting accounting year, in respect of the international group furnish a report, to the prescribed authority on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the relevant accounting year, in the form and manner as may be prescribed.

Sub-section (3) of the proposed new section provides for the details to be contained in the report to be furnished. It inter alia, provides that the report shall contain aggregate information in respect of amount of revenues, profit or loss before income-tax, taxes accrued and paid, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates, the details of each constituent entity of the group including the country or territory in which such constituent entity is incorporated or organized or established and the country or territory where it is resident, the nature and details of the main business activity or activities of each constituent entity and any other information as may be prescribed.

Sub-section (4) provides a constituent entity of an international group, resident in India, other than the entity referred to in sub-section (2) shall furnish the report referred to in the said sub-section, in respect of the international group for a reporting accounting year, if the parent entity is resident of a county or territory with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2) or there has been a systemic failure of the county or territory and the said failure has been intimated by the prescribed authority to such constituent entity. Provided that where there are more than one such constituent entities of the group, resident in India, the report shall be furnished by any one constituent entity if the international group has designated such entity to furnish the report on behalf of all the constituent entities resident in India and the information has been conveyed in writing on behalf of the group to the prescribed authority.

Sub-section (5) provides that if an alternate reporting entity of the international group has furnished a report of the nature referred to in sub-section (2), with the tax authority of the country or territory in which such entity is resident, on or

before the date specified in the said sub-section subject to the report is required to be furnished under the law for the time being in force in the said country or territory, the said country or territory has entered into an agreement with India providing for exchange of the said report, the prescribed authority has not conveyed any systemic failure in respect of the said country or territory to any constituent entity of the group that is resident in India, the said country or territory has been informed in writing by the constituent entity that it is the alternate reporting entity on behalf of the international group and the prescribed authority has been informed by the entities referred to in sub-section (4) in accordance with sub-section (1).

Sub-section (6) of the proposed new section provides that the prescribed authority may, by issuance of notice for the purpose of verifying the accuracy of the report furnished by any entity, require submission of information and document as specified in the notice within 30 days from the date of receipt of the notice. The period of 30 days can be extended for a further period of 30 days by the prescribed authority.

Sub-section (7) of the proposed new section provides that the reporting requirement under this section shall not apply to an accounting year, if the total consolidated group revenue for the accounting year preceding such accounting year does not exceed the threshold amount, as may be prescribed.

Sub-section (8) of the proposed new section provides for application of the section in accordance with such guidelines and subject to such conditions as may be prescribed.

Sub-section (9) of the proposed new section, inter alia, defines various terms for the purposes of the new section viz. accounting year, agreement, alternate reporting entity, constituent entity, group, consolidated financial statement, international group, parent entity, permanent establishment, reporting accounting year, reporting accounting year, reporting entity and systematic failure.

**Reason**

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

certain measure of economic activity. It is recommended in the BEPS report that the countries should adopt a standardized approach to transfer pricing documentation. Hence a three tired structure (country-by-country report, master file and local file) for reporting has been mandated. These documents require taxpayers to articulate consistent transfer pricing positions and will provide tax administrations with useful information to assess transfer pricing risks. It will facilitate tax administrations to make determinations about where their resources can most effectively be deployed, and, in the event audits are called for, provide information to commence and target audit enquiries.

The CbC reporting requirement for a reporting year does not apply unless the consolidated revenues of the preceding year of the group, based on consolidated financial statement, exceeds a threshold to be prescribed. The current international consensus is for a threshold of € 750 million equivalent in local currency. This threshold in Indian currency would be equivalent to Rs. 5395 crores (at current rates).

## 15. DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

### 15.1 Amendment in Section 112 : Clarification regarding the definition of the term 'unlisted securities' for the purpose of Section 112 (1) (c) - (Clause 48)

**Proposed Amendment**

Clause – 48 of the Finance Bill seeks to substitute words "unlisted securities" as appearing in Section 112(1)(c) with the words – "unlisted securities or shares of a company not being a company in which the public are substantially interested"

**Reason**

The existing provisions of Section 112(1)(c) provide tax rate of ten per cent for long-term capital gain arising from transfer of securities, whether listed or unlisted. The expression "securities" for the purpose of the said provision has the same meaning as in clause (h) of section 2 of the Securities Contracts (Regulations) Act, 1956 ('SCRA'). A view has been taken by the courts that shares of a private company are not "securities". With a view to clarify the position so far as taxability is concerned, it is proposed to amend the provisions of section 112(1)(c) of the Act, so as to provide that long-term capital gains

arising from the transfer of a capital asset being shares of a company not being a company in which the public are substantially interested, shall be chargeable to tax at the rate of 10 per cent.

## 15.2 Insertion of Section 115BA: RELIEF IN TAX FOR NEWLY SET-UP DOMESTIC COMPANIES ENGAGED SOLELY IN MANUFACTURE OR PRODUCTION OF ARTICLE OR THING- (Clause 49)

### Proposed Amendment

The rates of income-tax in the case of domestic company is proposed to be twenty nine per cent of the total income, if the total turnover or gross receipts of the company in the previous year 2014-15 does not exceed five crore rupees and in all other cases the rate of Income- tax shall be thirty per cent of the total income.

In order to provide relief to newly setup domestic companies engaged solely in the business of manufacture or production of article or thing, it is proposed to amend the Act by way of insertion of new section 115BA, to provide that the income-tax payable in respect of the total income of a domestic company for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017 shall be computed @ 25% at the option of the company, if, -

(i) the company has been setup and registered on or after 1st day of March, 2016;
(ii) the company is engaged in the business of manufacture or production of any article or thing and is not engaged in any other business;
(iii) the company while computing its total income has not claimed any benefit under section 10AA, benefit of accelerated depreciation, benefit of additional depreciation, investment allowance, expenditure on scientific research and any deduction in respect of certain income under Part-C of Chapter-VI-A other than the provisions of section 80JJAA; and
(iv) the option is furnished in the prescribed manner before the due date of furnishing of income.

## 15.3 Insertion of Section 115BBDA: TAXATION OF DIVIDEND IN EXCESS OF RUPEES TEN LAKHS- (Clause 50)

### Proposed Amendment

It is proposed to insert a new section 115BBDA in the Act so as to provide that any income by way of dividend declared, distributed or paid by a domestic

company, in excess of ten lakh rupees shall be chargeable to tax at the rate of ten per cent in the case of an individual, Hindu undivided family or a firm who is a resident in India. It is further proposed to provide that no deduction in respect of any expenditure or allowance or set off of loss shall be allowed in computing the income by way of dividend. The dividend for this provision shall not include the dividend u/s 2(22)(e).

**Reason**

Under the existing provisions of clause (34) of section 10 of the Act, dividend which suffer dividend distribution tax (DDT) under section 115-O is exempt in the hands of the shareholder. Under section 115-O dividends are taxed only at the rate of fifteen percent at the time of distribution in the hands of company declaring dividends. This creates vertical inequity amongst the tax payers as those who have high dividend income are subjected to tax only at the rate of 15% whereas such income in their hands would have been chargeable to tax at the rate of 30%. With a view to rationalize the tax treatment provided to income by way of dividend, it is proposed to amend the Income-tax Act so as to provide that any income by way of dividend in excess of Rs. 10 lakh shall be chargeable to tax in the case of an individual, Hindu undivided family (HUF) or a firm who is resident in India, at the rate of ten percent. The taxation of dividend income in excess of ten lakh rupees shall be on gross basis.

## 15.4 Amendment to Section 115BBE TAXATION OF UNEXPLAINED CREDITS, INVESTMENTS ETC- (Clause 51)

**Existing Provision**

Sub-section *(1)* of the section 115BBE, *inter alia*, provides that the income relating to the unexplained cash credits (section 68), Unexplained Investments (section 69), Unexplained Money (section 69A), amount of investments not fully disclosed (section 69B) Unexplained expenditure (Section 69C) or amount borrowed on hundi (Section 69D) are taxable at the rate of thirty per cent. Sub-section *(2)* of the said section 115BBE provides that no deduction in respect of any expenditure or allowances in relation to income referred to in the aforesaid sections shall be allowable.

**Proposed Amendments**

It is proposed to amend the said sub-section *(2)* of section 115BBE so as to provide that the set off of any loss shall also be not allowable in respect of income under the aforesaid sections.

**Reason**

Currently, there is uncertainty on the issue of set-off of losses against income referred in section 115BBE of the Act. The matter has been carried to judicial forums and courts in some cases has taken a view that losses shall not be allowed to be set-off against income referred to in section 115BBE. However, the current language of section 115BBE of the Act does not convey the desired intention and as a result the matter is litigated. In order to avoid unnecessary litigation, it is proposed to amend the provisions of the sub-section (2) of section 115BBE to expressly provide that no set off of any loss shall be allowable in respect of income under the sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

## 15.5 Insertion of Section 115BBF: CONCESSIONAL TAXATION OF INCOME ON PATENTS - (Clause 52)

**Proposed Amendment**

A new section 115BBF is proposed to be inserted in the Income-tax Act to provide that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of ten per cent (plus applicable surcharge and cess) on the gross amount of royalty. No expenditure or allowance in respect of such royalty income shall be allowed under the Act. For the purpose of this concessional tax regime an eligible assessee means a person resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent.

**Reason**

In order to encourage indigenous research & development activities and to make India a global R & D hub, the Government has decided to put in place a concessional taxation regime for income from patents. The aim of the concessional taxation regime is to provide an additional incentive for companies to retain and commercialize existing patents and to develop new innovative patented products. This will encourage companies to locate the high-value jobs associated with the development, manufacture and exploitation of patents in India. The Organization for Economic Cooperation and Development (OECD) has recommended, in Base Erosion and Profit Shifting (BEPS) project under Action Plan 5, the nexus approach which prescribes that income arising from exploitation of Intellectual property (IP) should be attributed and taxed in the jurisdiction where substantial research & development (R&D) activities are undertaken rather than the jurisdiction of legal ownership only.

## 16. SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES

**Amendment to Section 115JB : BOOK PROFITS FOR CONCESSIONAL TAXATION OF INCOME ON PATENTS- (Clause 53)**

**Proposed Amendment**

It is proposed to amend section 115JB of the Income-tax Act relating to special provision for payment of tax by certain companies by inserting a new clause (fd) in Explanation 1 to sub-section (1) of the aforesaid section so as to provide that the book profit shall be increased by an amount or amounts of expenditure relatable to income, by way of royalty in respect of patent chargeable to tax in accordance with the provisions of section 115BBF. It is further proposed to insert a new clause (iig) in the long line to the said Explanation 1 so as to provide that the amount of income, by way of royalty in respect of patent chargeable to tax in accordance with the provisions of section 115BBF, shall be reduced from the book profit, if any such amount is credited to the profit or loss account.

**Amendment to Section 115JB : APPLICABILITY OF MINIMUM ALTERNATE TAX (MAT) ON FOREIGN COMPANIES FOR THE PERIOD PRIOR TO 01.04.2015.**

**Existing Provision:**

Under the existing provisions contained in sub-section (1) of the 115JB in case of a company, if the tax payable on the total income as computed under the Income-tax Act, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee for the relevant previous year shall be eighteen and one-half per cent of its book profit. Issues were raised regarding the applicability of this provision to Foreign Institutional Investors (FIIs) who do not have a permanent establishment (PE) in India. Vide Finance Act, 2015, the provisions of section 115JB were amended to provide that in case of a foreign company any income chargeable at a rate lower than the rate specified in section 115JB shall be reduced from the book profits and the corresponding expenditure will be added back. However, since this amendment was prospective w.e.f. assessment year 2016-17, the issue for assessment year prior to 2016-17 remained to be addressed.

**Proposed Amendments**

An *Explanation* is proposed to be inserted so as to provide that the provisions of the said section 115JB, shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, if––

*(i)* the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub- section *(1)* of section 90 or the Central Government has adopted any agreement under sub-section *(1)* of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement; or

*(ii)* the assessee is a resident of a country with which India does not have an agreement referred to in clause *(i)* and the assessee is not required to seek registration under any law for the time being in force relating to companies.

**Effective Date**

This amendment will take effect from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent assessment years.

**Amendment to Section 115JB : APPLICABILITY OF MINIMUM ALTERNATE TAX (MAT) ON INTERNATIONAL FINANCE SERVICE CENTRE**

**Existing Provision:**

Under the existing provisions of the 115JB in case of a company, if the tax payable on the total income as computed under the Income-tax Act, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the Minimum Alternate Tax (MAT) payable by the assessee for the relevant previous year shall be eighteen and one-half per cent of such book profit.

**Proposed Amendments**

It is proposed to insert a new sub- section (7) in the said section so as to provide 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 nine per cent.

## 17. Special Provisions relating to foreign company said to be resident in India -(Clause 54)

New Chapter XII-BC have been introduced to provide a transition mechanism for a company which is incorporated outside India and has not earlier been assessed to tax in India. New Section 115JH has been inserted under new chapter XII-BC.

**Proposed Amendment**

It is proposed wherein the foreign company is treated as resident in India under section 6 and such foreign company is not a resident in India in any earlier previous year, then the conditions relating to computation of total income, treatment of unabsorbed depreciation, set off or carry forward and set off of losses, collection and recovery and special provisions relating to avoidance of tax shall apply with such exceptions, modifications and adaptations as may be specified in the notification. It is also provided that these transition provisions would also cover any subsequent previous year up to the date of determination of POEM in an assessment proceeding. Once the transition is complete, then normal provision of the Act would apply.

It is also provided that in case of any benefit, exemption or relief has been claimed and granted to foreign company according to this proposed provisions and subsequently there is failure to comply with any of the conditions specified in the notification then such benefit, exemption or relief shall be deemed to have been wrongly allowed and the Assessing Officer has been given the power to re-

compute the total income of the assessee as if exceptions, modifications and adaptations did not apply and the provisions of section 154 shall apply thereto and the period of four years shall be reckoned from the end of the previous year in which the assessee fails to comply with the conditions.

**Reason**

The provisions of section 6 of the Act provide for conditions in which residence in India is determined in case of different category of persons. Section 6(3) deals with conditions to be satisfied for a company to be treated as resident in India in any previous year. Prior to amendment of section 6(3) by the Finance Act 2015, a company was said to be resident in India in any previous year if it was an Indian company or during that year the control and management of its affairs was situated wholly in India. The Finance Act, 2015 amended the above provision so as to provide that a company would be resident in India in any previous year if it is an Indian company or its Place of Effective Management (POEM) in that year is in India. The POEM was defined to mean 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.

In the context of implementation of POEM based residence rule, certain issues, relating to the applicability of current provisions of the Act to a company which is incorporated outside India and has not earlier been assessed to tax in India, have arisen. In particular, the issues relate to applicability of specific provisions of the Act relating to Advance tax payment, applicability of TDS provisions, computation of total income, set off of losses and manner of application of transfer pricing regime. These provisions have compliance requirements which would not have been undertaken by the company at relevant time due to absence of any such requirement under tax laws of country of incorporation of such company. Similarly, issues of computation of depreciation also arise when in earlier years it has not been subject to computation under the Act.

Problems highlighted also arise due to the fact that a company may be claiming to be a foreign company not resident in India but in the course of assessment, it is held to be resident based on POEM being in fact in India. This determination would be well after closure of the previous year and it may not be possible for company to undertake many of procedural requirements. Representations have also been made by stakeholders that the implementation of POEM be deferred by a year, by which time clarity regarding guidelines and applicability of other provisions of the Act would be in place.

## 18 SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANY

### Amendment to Section 115-O : EXEMPTION FROM DIVIDEND DISTRIBUTION TAX (DDT) ON DISTRIBUTION MADE BY AN SPV TO BUSINESS TRUST -(Clause 55 & 61)

### Existing Provisions:-

In respect of taxation of business trusts comprising of Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (Invits) regulated by SEBI a specific taxation regime has been incorporated in the Act. Under this regime, the multiple taxation due to interposition of business trust is avoided. Under the SEBI regulation, these business trusts can hold the income generating asset either directly or through a Special Purpose Vehicle (SPV). The SPV can be a company or an LLP. Under SEBI Regulation, SPV is defined to mean any company or LLP in which REIT holds or proposes to hold controlling interest which is not less than fifty percent of the equity share capital or interest. The SPV should hold at least 80% of the assets in properties and not invest in other SPV. The existing tax regime provides that in case of REITs, the income by way of interest paid by SPV being a company to REIT is given pass through i.e. it is not taxed at the level of REIT but in the hands of respective investors of REIT. The rental income from directly held assets by REIT is also allowed a pass through. In respect of assets held through an SPV, if SPV is a company then the company pays normal corporate tax and thereafter when the income is distributed to the REIT being a shareholder, it suffers DDT which is paid by the SPV and thereafter the income is exempt both in the hands of REIT and also its investors. In case of Invits, there is a similar regime with only exception being that there is no pass through for Invits holding income generating assets directly as normally such large infrastructure projects are not held directly in the trust but are held through an SPV. As an incentive in the case of sponsor (the person setting up trust), capital gain arising at time of swap of its shareholding in SPV for units of business trust is deferred both under normal provisions and from applicability of MAT. Such gains get taxed only after actual sale of units.

### Proposed Amendment:

The salient features of proposed amendments are-

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

**Effective Date**

The amendment will take effect from 1st June, 2016

**Amendment to Section 115-O : EXEMPTION FROM DIVIDEND DISTRIBUTION TAX (DDT) ON INTERNATIONAL FINANCE SERVICE CENTRE- (Clause 55)**

**Proposed Amendment:**

it is proposed to amend section 115-O so as to provide that no tax on distributed profits shall be chargeable in respect of the total income of a company being a unit located in International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2017 out of its current income, either in the hands of the company or the person receiving such dividend.

**19. Special Provisions relating to Tax on Distributed Income of Domestic Company for Buy Back of Shares**

**Amendment to Section 115QA : TAX ON DISTRIBUTED INCOME TO SHAREHOLDERS -(Clause 56)**

**Existing Provisions:-**

The existing provisions of section 115QA of the Act provide for the levy of additional Income-tax @ 20% of the distributed income on account of buy back of unlisted shares by a company. The distributed income has been defined in the section to mean the consideration paid by the company on buy back of shares as reduced by the amount which was received by the company for issue of such shares. Buyback has been defined to mean the purchase of a company of its own shares in accordance with the provisions of section 77A of the Companies Act, 1956.

**Proposed Amendments**

It is proposed to amend section 115QA to provide that the provisions of this section shall apply to any buy back of unlisted share undertaken by the company in accordance with the provisions of the law relating to the Companies and not necessarily restricted to section 77A of the Companies Act, 1956. It is further proposed to provide that for the purpose of computing distributed income, the amount received by the Company in respect of the shares being bought back shall be determined in the prescribed manner. The rules would thereafter be framed to provide for manner of determination of the amount in various circumstances including shares being issued under tax neutral reorganisations and in different tranches.

**Reason**

Recently doubts have been raised regarding the effect of buybacks undertaken by the company under different provisions of the Companies Act, 1956 or the Companies Act, 2013 and applicability of provisions of section 115QA to such transactions. An issue has also been raised regarding lack of clarity in determination of consideration received by the company at the time of issue of shares being bought back by the company. There are situations where shares may have been issued by the company in tranches, for different considerations, at different point of time or may have been issued in lieu of existing shares of another company under amalgamation, merger or demerger.For the purposes of section 115QA, it is the effect of buyback being in the nature of distribution of income which is relevant rather than particular provision of the law relating to companies under which it has been undertaken. Further, lack of clarity in the manner of determination of consideration received by the company would lead to

avoidable disputes and also presents a tax arbitrage opportunity of scaling up of consideration particularly under a tax neutral business reorganisation followed by buyback of shares.In order to provide clarity and remove any ambiguity on the above issues, the above amendment has been proposed.

**Effective Date**

The amendment will take effect from 1st June, 2016

## 20. SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME BY SECURITISATION TRUST

### 20 Amendment to Section 115TA : NEW TAXATION REGIME FOR SECURITISATION TRUST AND ITS INVESTORS -(Clause 57, 58, 59)

**Existing Provision:**

Under the existing provisions of Chapter-XII-EA of the Act consisting of sections 115TA, 115TB and 115TC, special taxation regime in respect of income of the securitisation trusts and the investors of such trusts has been provided. The regime provides that income distributed by the securitisation trust to its investors shall be subject to a levy of additional tax to be paid by the securitisation trust within 14 days of distribution of income. The distribution tax shall be paid @ 25% if the distribution is made to an individual or a Hindu undivided family (HUF) and @ 30% if the distribution is to others. Further, no distribution tax is to be levied if the distribution is made to an exempt entity. Consequent to the levy of distribution tax, the income of the investor, received from the securitisation trust, is exempt under section 10(35A) of the Act and the income of securitisation trust itself is exempt under section 10(23DA) of the Act.

**Proposed Amendment:**

The salient features of the proposed amendment are:-

(i) The new regime shall apply to securitisation trust being an SPV defined under SEBI (Public Offer and Listing of Securitised Debt Instrument) Regulations, 2008 or SPV as defined in the guidelines on securitisation of standard assets issued by RBI or being setup by a securitisation company or a reconstruction company in accordance with the SARFAESI Act;

(ii) The income of securitisation trust shall continue to be exempt. However, exemption in respect of income of investor from securitisation trust would not be available and any income from securitisation trust would be taxable in the hands of investors;

(iii) The income accrued or received from the securitisation trust shall be taxable in the hands of investor in the same manner and to the same extent as it would have happened had investor made investment directly in the underlying assets and not through the trust;

(iv) Tax deduction at source shall be effected by the securitisation trust at the rate of 25% in case of payment to resident investors which are individual or HUF and @ 30% in case of others. In case of payments to non-resident investors, the deduction shall be at rates in force;

(v) The facility for the investors to obtain low or nil deduction of tax certificate would be available; and

(vi) The trust shall provide breakup regarding nature and proportion of its income to the investors and also to the prescribed income-tax authority.

Further, it is proposed to provide that the current regime of distribution tax shall cease to apply in case of distribution made by securitisation trusts with effect from 01.06.2016.

**Reason**

It has been represented that under the current regime, the trusts set up by reconstruction companies or the securitisation companies are not covered although such trusts are also engaged in securitisation activity. These companies are established for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and their activities are regulated by the Reserve Bank of India (RBI). It has been represented that the existing regime providing for final levy in the form of distribution tax is tax inefficient for the investors specially the banks and financial institutions. Disallowance of expenditure in respect of income received from securitisation trust increases the effective rate of taxation. Further, the non-resident and resident investors are unable to take benefits of their specific tax status. In order to rationalise the tax regime for securitisation trust and its investors, and to provide tax pass through treatment, it is proposed to amend

the provisions of the Act to substitute the existing special regime for securitisation trusts by a new regime.

**Effective Date**

The amendment will take effect from 1st June, 2016

## 21. SPECIAL PROVISION RELATING TO TAX ON ACCRETED INCOME OF CERTAIN TRUST AND INSTITUTION

**Insertion of New Chapter XII-EB consisting of new sections 115TD, 115TE and 115TF Section 115-O : LEVY OF TAX WHERE THE CHARITABLE INSTITUTION CEASES TO EXIST OR CONVERTS INTO A NON-CHARITABLE ORGANIZATION. -(Clause 60)**

**Existing Provision:**

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.

**Proposed Amendment:**

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 organisation on its dissolution to a non-charitable institution. The elements of the regime are: -

(i) 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.

(ii) 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 organisation which have been transferred to another charitable organisation within specified time will be excluded while calculating accreted income.

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

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

(v) 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.

(vi) 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.

(vii) 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 organisation, 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.

**Reason**

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 utilised for charitable purposes and is not used for any other purpose. In the absence of a clear provision, it is 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 organisation 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 is 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 organisation. Accordingly, the above new provisions have been proposed.

**Effective Date**

The amendment will take effect from 1st June, 2016

## 22 INCOME TAX AUTHORITIES

### 22.1 Amendment to Section 119 : Power of Board -(Clause 62)

**Existing Provision**

The existing provision contained in clause (a) of sub section (2) of section 119 empowers the Board to issue directions or instruction for the purpose of proper and efficient management of work of assessment and collection of revenue provided such directions are not prejudicial to the assessee.

**Proposed Amendment**

It is proposed to include Sec 270A i.e. imposition of penalty in the said section, so as to enable the Board to issue directions and instruction for the said section.

**Reason**

The proposed amendment is consequential to the insertion of new Section 270 A of the Income Tax.

## 22.2 Amendment to Section 124 : Jurisdiction of Assessing Officer - (Clause 63)

**Existing Provision**

The existing provision contained in 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 U/S 139, after the expiry of one month from the date on which he was served a notice under Section 142 (1) or Sub Section 143 (2) or after the completion of the assessment, whichever is earlier.

**Proposed Amendment**

It is proposed to amend section 124 of the Act so as to provide that in a case where a search is initiated U/S 132 or books of accounts, other documents or any assets are requisitioned U/s 132A, no person shall be entitled to call in question the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with a notice U/S 153A (1) of U/S 153C (2) or after the completion of the assessment, whichever is earlier.

**Effective Date**

These amendments will take effect from 1st June 2016.

## 22.3 Amendment to Section 133C - (Clause 64)

**Existing Provision**

The existing provisions of the said section empowers the prescribed income-tax authority to issue notices calling for information and documents for the purpose of verification of information in its possession.

**Proposed Amendment**

It is proposed to amend the said sub-section so as to further provide that the information and documents so obtained by the prescribed income-tax authority

may be possessed and the outcome of such processing may be made available to the Assessing Officer for further necessary action, if any.

**Effective Date**

These amendments will take effect from 1st June 2016.

## 23. PROCEDURE FOR ASSESSMENT

### 23.1 Amendment to Section 139 : Return of Income -(Clause 65)

**Existing Provision**

**Section 139(1)**

Sixth proviso to Section 139(1) provides that Total income of any person or of any other person in respect of which person is assessable during the previous year, without giving effect to provisions of section 10A or section 10B or section 10BA or Chapter VI-A, exceeds the maximum amount which is not chargeable to income tax shall be liable to furnish return on or before the due date.

**Section 139(3)**

Sub-section (3) of the said section provides that if any person who has sustained a loss in any previous year under the head profits and gains of business or profession or under the head capital gains and claims that the loss or any part thereof should be carried forward under sub-section (1) of section 72, or sub-section (2) of section 73, or sub-section (1) or sub-section (3) of section 74 or sub-section (3) of section 74A, he may furnish, within the time allowed under sub-section (1), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

**Section 139(4)**

Existing provisions of sections 139 (4) provides that a person who has not furnished a return within the time allowed to him under section 139(1), or in response to notice under section 142 (1), may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

**Section 139(5)**

A return filed u/s 139(1) or in response to notice u/s 142(1) can be revised at any time before one year from the end of the relevant assessment year or completion of assessment, whichever is earlier.

**Section 139(9) [Explanation (aa)**

Return of income shall be regarded as defective unless the self-assessment tax together with interest, if any, payable in accordance with the provisions of section140A, has been paid on or before the date of furnishing of return.

**Proposed Amendments**

**Section 139(1)**

It is proposed to amend the sixth proviso to section 139(1) to include that if a person during the previous year earns income which is exempt under section 10(38) and income of such person without giving effect to the said clause of section 10 exceeds the maximum amount which is not chargeable to tax, shall also be liable to file return of income for the previous year within the due date.

**Section 139(3)**

It is proposed to amend sub-section (3) of the said section so as to give the reference of sub-section (2) of section 73A in the said section.

**Reason**

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. Further, section 80 of the Act inter-alia provides that a loss which has not been determined in pursuance of return filed in accordance with the provisions of sub-section (3) of section 130, shall not be carried forward and set-off under sub-section (1) of section 72 or sub-section (2) of section 73 or sub-section (1) or sub-section (3) or section 74 or sub-section 74A.

In accordance with the scheme of the Act, this loss is to be allowed if the return is filed within the specified time i.e. by the due date of filing of the return of the income as provided in section 80 for other losses determined under the Act.

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 sub-section (3) of section 139.

It is also proposed to amend the said sub-section (3) of section 139 so as to give reference of sub-section (2) of section 73A in the said sub-section.

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

**Section 139(4)**

It is proposed to substitute section 139 (4) to provide that any person who has not furnished a return within the time allowed to him under section 139 (1), may furnish the return for any previous year at any time before the end of the relevant assessment year or beforethe completion of the assessment, whichever isearlier.

Now Assessee has to file return of Income within one year of end of financial year.

**Section 139(5)**

Return filed u/s 139(1) as well as u/s 139(4) can also be revised at any time before one year from the end of the relevant assessment year or completion of assessment, whichever is earlier. However, return filed in response to notice u/s 142(1) cannot be revised.

**Section 139(9)**

It is proposed to omit clause (aa) of the Explanation to section 139 (9) to provide that return which is otherwise valid would not be treated defective merely because self-assessment tax and interest payable in accordance with the provisions of section 140A has not been paid on or before the date of furnishing of the return.

**Reason**

To rationalise the time allowed for filing of returns, completion of proceedings and realisation of revenue without undue compliance burden on the taxpayer and to promote the culture of compliance.

## 23.2 Amendment to Section 143 : Assessment -(Clause 66)

**Existing provision – Section 143(1)(a)**

Section 143 of the Income tax provides for provision relating to assessment. Clause (a) of sub-section (1) of the aforesaid section provides that a return filed is to be processed and total income or loss is computed after making the adjustments on account of any arithmetical error in the return or on account of an incorrect claim, if such incorrect claim is apparent from any information in the return.

**Proposed Amendment**

Now, the scope of summary assessment is expanded to include within its scope, the following adjustment as well:

(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;

(v) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or

(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

It is further proposed to provide an opportunity to the assessee, before making any adjustment under clause (a) of sub-section (1) of section 143 to explain and rectify the same within thirty days of issuance of such intimation and the response so received be considered before making such adjustments. In case no response is received within such time, the adjustment of the amount indicated in the intimation be made.

**Reason**

In order to expeditiously remove the mismatch between the return and the information available with the Department, it is proposed to expand the scope of adjustments that can be made at the time of processing of returns under sub-section (1) of section, it is proposed that such adjustments can be made based on the data available with the Department in the form of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, and Form 16A. However, before making any such adjustments, in the interest of natural justice, intimation shall be given to the assessee either in writing or through electronic mode requiring him to respond to such adjustments. The response received, if any, will be duly considered before making any adjustment. However, if no response is received within thirty days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

**Effective Date**

The amendment will take effect from 1st June 2016

**Existing Provision – Section 143(1D)**

Under Section 143(1D), Processing of a return is not necessary where a notice has been issued to the assessee under section 143(2).

**Proposed Amendment**

It is proposed to amend section 143(1D) by inserting a proviso, to provide that before making an assessment under section 143(3), a return shall be processed under section 143(1).

**Effective Date**

The amendment will take effect from 1st day of April, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent years.

## 23.3 SECTION 147 - Income escaping assessment. – (Clause 67)

**Existing Provision**

The Existing provision contained in section 147 of the Act provides for Assessment or Reassessment where income chargeable to tax has escaped assessment. Explanation 2 enlists the cases where income chargeable to tax shall be deemed to be escaping assessment.

**Proposed Amendment**

In order to increase the scope, it is proposed to insert clause (ca) in Explanation 2. Now the list of cases deemed to be escaping assessment shall also include a case where the Assessing Officer notices that the Income of the Assessee exceeds the maximum amount not chargeable to tax or has understated Income or claimed excessive loss, deduction, allowance or relief based on the information or document received from the prescribed Income Tax Authority under section 133C(2).

**Effective Date**

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

## 23.4 SECTION 153– Time Limit for Completion of Assessments, Reassessments and Recomputation : (Clause 68)

**Existing Provision**

The existing section provides for various time limit for Completion of Assessments and Reassessments.

**Proposed Amendment**

It is proposed to substitute Section 153 and change the time limits to complete the Assessment. The proposed changes are given below:

**Time limit for completion of Assessment/Reassessment**

| **Section or event under which Assessment/ Reassessment is done** | **Proposed Time Limit*** ***(See Notes below)*** | **Remark** |
|---|---|---|
| Sec 143 and Sec 144 | 21 months from the end of the Assessment Year in which the Income was first Assessable | Where a reference to Transfer Pricing Officer is made under section 92CA(1) during the course of Assessment or Reassessment Proceedings, the time limit is to be complete for Assessment/ Reassessment is proposed to be extended by twelve months. |
| Sec 147 | Nine Months from the end of the Financial Year in which the notice under section 148 was served | |
| Fresh Assessment in pursuance of an order under section 254, 263 or 264 setting aside or cancelling an assessment | Nine months from the end of the financial in which the order under section 254 or 263 was received or passed by Appropriate Commissioner | |
| Assessment, Reassessment or recomputation to be made in consequence of any finding or direction contained in an order under section 250, 254, 260, 262, 263, 264 or in an order of any court in a proceedings otherwise than by way of appeal or reference.* | On or before the expiry of twelve months from the end of the month in which such order is received by the Principal Commissioner or Commissioner. | In respect of cases pending as on 1st June 2016, the time limit for taking requisite action is proposed to be upto 31st March, 2017 or twelve month from the end of the month in which such order is received, whichever is later. |
| Where an assessment is made on a partner as a consequence of an assessment made on the firm under section 147. | On or before the expiry of twelve months from the end of the month in which the assessment order | In respect of cases pending as on 1st June 2016, the time limit for taking requisite action is proposed to be upto 31st March, 2017 or twelve |

| | | |
|---|---|---|
| | in the case of the firm is passed. | month from the end of the month in which order in case of firm is passed, whichever is later. |
| Order which stands revived under section 153A(2) | Within a period of one year from the end of the month of such revival or within the period specified in section 153B(1), whichever is later. | Notwithstanding anything contained in section 153, 153A(2), 153B(1) |

*****Also includes a case where the Assessment, Reassessment or Recomputation of other Assessment Year or other person is to be made due to an order which has the effect of:

1. Excluding any Income from the total Income of the Assessee for a particular Assessment Year and including the same as Income for other Assessment Year, or
2. Excluding any Income from the total Income of one person and including the same as Income for other person.

**Time limit for giving effect to an order otherwise then by making fresh Assessment/ Reassessment by the Assessing Officer**

| **Section or events under which order to give effect is passed** | **Proposed Time Limit to give effect to an order* *(See Notes below)*** | **Remark** |
|---|---|---|
| Section 250, 254, 260, 262, 263 or 264 | Three months from the end of the month in which order under respective section is received or passed by Appropriate Commissioner. | 1. Where it is not possible for the Assessing Officer to give effect within the prescribed limit, for reasons beyond his control, the Principal Commissioner or |

| | | |
|---|---|---|
| | | Commissioner may allow an additional period of six months on receipt of request from the Assessing Officer.<br>In respect of cases pending as on 1st June 2016, the time limit for passing the order is proposed to be upto 31st March, 2017. |
| Assessment, Reassessment or recomputation to be made to give effect or any finding or direction contained in an order under section 250, 254, 260, 262, 263, 264 or in an order of any court in a proceedings otherwise than by way of appeal or reference | On or before the expiry of twelve months from the end of the month in which such order is received by the Principal Commissioner or Commissioner. | In respect of cases pending as on 1st June 2016, the time limit for taking requisite action is proposed to be upto 31st March, 2017 or twelve month from the end of the month in which such order is received, whichever is later. |

**Notes**

1. The revised timeline proposed above shall be applicable where the Assessment, Reassessment of Recomputation is made after 1st June, 2016.
2. The following time shall be excluded for computing the period of limitation mentioned above:

| | **Case** | **Period From** | **Period To** |
|---|---|---|---|
| i | In case of Change of Incumbent of an office – Section 129. | Time taken in reopening the whole or part of the proceedings or giving an opportunity to the assessee to be re-heard | |
| ii | In case where the assessment proceedings is stayed by the order or injuction of a court. | The period of such stay or injuction | |
| iii | In case of any | The date on which | The date on which the |

| | | | |
|---|---|---|---|
| | contravention of the provision of Section 10(21) or 10(22B) or 10(23A) or 10(23B) or 10(23C)(iv) or 10(23C)(v) or 10(23C)(vi) or 10(23C)(via). | Assessing Officer intimates the Central Government or the prescribed authority about the contravention | copy of the order withdrawing the approval or rescinding the notification is received by the Assessing Officer. |
| iv | Where the Assessing Officer directs the assessee to get his accounts audited under section 142(2A). | The date of such direction | The last date on which the assessee is required to furnish the Audit Report<br>or<br>Where such direction is challenged before a court, upto the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner. |
| v | Where the Assessing Officer makes a reference to the Valuation Officer | The date on which the Assessing Officer makes such reference | The date on which the report of the Valuation officer is received by the Assessing Officer. |
| vi | When the Assessing Officer receives declaration under section 158A(1)<br>(Not exceeding 60 days) | The date on which the Assessing Office receives such decleration | The date on which the order under section 158(3) is made by the Assessing Officer |
| vii | In case where an application made before the Income Tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it | The date on which an application is made before Settlement Commission under section 245C | The date on which the order under section 245D(1) or 245(2) is received by appropriate Commissioner. |
| viii | In case where an application is made before the Authority of | The date on which an application is made before the | The date on which the order rejecting the application is received |

| | | | |
|---|---|---|---|
| | Advance Rulings under section 245Q(1) | Authority of Advance Rulings | by the appropriate Commissioner under section 245R(3) |
| ix | In case where an application is made before the Authority of Advance Rulings under section 245Q(1) | The date on which an application is made before the Authority of Advance Rulings | The date on which the advance ruling pronounced by it is received by the appropriate Commissioner under section 245R(3) |
| x | In case where a reference or first of the references for exchange of Information is made by an authority competent under an agreement referred to in section 90 or section 90A | The date on which such reference or first references is made | The date on which the information requested is last received by the appropriate Commissioner<br>Or<br>A period of one year<br><br>Whichever is less |
| xi | In case where a reference for declaration of an arrangement to be an impermissible avoidance arrangement | The date on which the arrangement is received by the Appropriate Commissioner under section 144BA(1) | The date on which a direction under section 144BA(3) or 144BA(6) or order under section 144BA(5) is received by the Assessing Officer. |

It is further provided that:

1. If immediately after the exclusion of the above period, the time limit left for the Assessing Officer of completion of Assessment, Reassessment or Recomputation under subsection (1), (2), (3) or (8) is less than 60 days, then the period of limitation is proposed to be extended to 60 days.
2. If immediately after the exclusion of the above period, the time limit left for the Transfer Pricing Officer for completing Assessment, Reassessment or Recomputation is less than 60 days, then the period of limitation is proposed to be extended to 60 days.
3. Where a proceedings before the Settlement Commission abates under section 245HA and if immediately after the exclusion of the above period, the time limit left for the Assessing Officer Officer for making an order of Assessment, Reassessment or Recomputation is less than one year, then the period of limitation is proposed to be extended to 1 year. Also the period of limitation

under section 149, 153B, 154, 155, 158BE and 244A shall apply as per this provision.

**Reasons**

It is desirable that proceedings under the Act are finalized more expeditiously as digitisation of processes within the Department has enhanced in handling workload, The digitization of the processes within the Department has enhanced its efficiency in handling workload.

**Effective Date**

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

## 23.5 SECTION 153B – Time Limit for Completion of Assessment under section 153A. -(Clause 69)

**Existing Provision**

The existing section provides for time limit for Completion of Assessment in case of Search or Requisition.

**Proposed Amendment**

It is proposed to substitute Section 153B and change the time limits to complete the Assessment in case of Search or Requisition. The proposed changes are given below:

**Time limit for completion of Assessment/Reassessment**

| | **Proposed Time Limit*** ***(See Notes below)*** | **Remark** |
|---|---|---|
| In respect of each Assessment Year falling within six Assessment Years referred to in Section 153A(1)(b) | Twenty one months from the end of Financial Year in which the last of the authorizations for search under section 132 or for requisition under section 132A is executed | In case where a reference to Transfer Pricing Officer is made during the course of the proceedings for the Assessment or Reassessment of Total Income, the time limit of Twenty one months should be changed to Thirty Three months. |
| In respect of the Assessment Year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A | | |
| In respect of Assessment of a person referred to in section 153C | Twenty one months from the end of Financial Year in | |

| | | |
|---|---|---|
| | which the last of the authorizations for search under section 132 or for requisition under section 132A is executed<br><br>or<br><br>Nine month from the end of the Financial Year in which books of account or document or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such person<br><br>Whichever is less | |

**Notes**

1. The authorization referred to above shall deemed to have been executed
   - In case of Search, on the conclusion of search as recorded in *panchnama* drawn in relation to any person in whose case the warrant of authorization has been issued; or
   - In case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.
2. The following time shall be excluded for computing the period of limitation mentioned above:

| | **Case** | **Period From** | **Period To** |
|---|---|---|---|
| I | In case of annulment of a proceedings or order of assessment or reassessment referred to in section 153A(2) | The date of annulment proceedings or order of assessment or reassessment | The date of receipt of order setting aside the order of such annulment, by appropriate Commissioner. |

Also cases mentioned in points no i , ii, iv, v, vii, viii, ix, x and xi for excluding the time for computing the period of limitation in case of section 153 shall also be applicable to this section.

3. If immediately after the exclusion of the above period, the time limit left for the Assessing Officer of completion of Assessment, Reassessment or Recomputation under subsection (1), (2), (3) or (8) is less than 60 days, then the period of limitation is proposed to be extended to 60 days.
4. If immediately after the exclusion of the above period, the time limit left for the Transfer Pricing Officer for completing Assessment, Reassessment or Recomputation is less than 60 days, then the period of limitation is proposed to be extended to 60 days.

**Effective Date**

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

## 24 TAX DEDUCTION AND TAX COLLECTION AT SOURCE

### 24.1 Amendment to Section 194LBA: Certain income from Units of a business Trust - (Clause 80)

**Existing Provision**

Where any distributed income referred to in section 115UA, being of the nature referred to in clause (23FC) or clause 23FCA of section 10, is payable by a business trust to its unit holder being a resident and Non Resident or foreign company the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent & five percent respectively.

**Proposed Amendment**

It is proposed to amend sub-sections 1 & 2 of Section 194LBA in which words "in clause (23FC)" are substituted by the words "in sub-clause (a) of clause (23FC)" shall be substituted TDS U/s. 194LBA will be applicable only in respect of income in the nature of interest received or receivable from a special purpose vehicle,

distributed by business trust to its unit holders. TDS U/s. 194LBA will not be applicable on the income in nature of dividend reflected in sub-section 7 of section 115O.

**Reason**

Levy of dividend distribution tax at the level of SPV when it distributes its current income to the business trust makes the business trust structure tax inefficient and adversely impacts the rate of return for the investor. In order to rationalize the taxation regime for business trusts and their investor .

**Effective Date**

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

**24.2 Section 194 LBB : Income in respect of units of Investment fund -(Clause 81 & 83)**

**Existing Provision**

The existing provisions of section 194LBB provides that in respect of any income credited or paid by the investment fund to its investor, a tax deduction at source (TDS) shall be deducted by the investment fund @ 10% of the income. Also Under Section 197, facility for obtaining certificate for deduction of tax at lower rate or nil deduction is not available

**Proposed Amendment**

It is proposed to amend section 194LBB to provide that the person responsible for making the payment to the investor shall deduct income-tax u/s 194LBB at the rate of 10% where the payee is a resident and at the rates in force where the payee is a non-resident (not being a company) or a foreign company.

Further, it is proposed to amend section 197 to include section 194LBB in the list of sections for which a certificate for deduction of tax at lower rate or nil deduction of tax can be obtained from the Assessing officer.

**Reason**

To provide facility to the Non-resident investor to avail benefit of Lower or NIL Rate of tax under relevant DTAA.

**Effective Date:**

These amendments are proposed to be made effective from the 1st day of June, 2016

## 24.3 Section 194 LBC : Income in respect of Investment in securitization Trust - (Clause 82 and 83)

**New Provision**

Clause 82 of Finance bill proposed to introduce new section -194LBC(1) Where any income is payable to an investor, being a resident, in respect of an investment in a securitisation trust specified in clause (d) of the Explanation after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, at the rate of—

(i) twenty-five per cent., if the payee is an individual or a Hindu undivided family;

(ii) thirty per cent., if the payee is any other person.

(2) Where any income is payable to an investor, being a non-resident (not being a company) or a foreign company, deduct income-tax thereon, at the rates in force.

Explanation.—For the purposes of this section,—

(a) "investor" means a person who is holder of any securitized debt instrument or securities issued by the securitization Trust.;

(b) where any income as aforesaid is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be the credit of such income to the account of the payee, and the provisions of this section shall apply accordingly.'.

Further, it is proposed to amend section 197 to include section 194LBC in the list of sections for which a certificate for deduction of tax at lower rate or nil deduction of tax can be obtained from the Assessing officer.

**Reason**

To rationalise the tax regime for securitisation trust and its investors, and to provide tax pass through treatment and to provide facility to the Non-resident investor to avail benefit of Lower or NIL Rate of tax under relevant DTAA.

**Effective Date**

These amendments are proposed to be made effective from the 1st day of June, 2016

**24.4 Section 197A : No deduction to be made in certain cases- (Clause 84)**

**Existing Provision**

The existing provisions of section 197A provide that tax shall not be deducted, if the recipient of certain payments on which tax is deductible furnishes to the payer a self- declaration in prescribed Form.No. 15G/15H declaring that the tax on his estimated total income of the relevant previous year would be nil.

**Proposed Amendment**

It is proposed to amend the sub-section (1A) and (1C) of section 197A thereby allowing the recipients of payments in the nature of Rent U/S 194-I, eligible for filing self-declaration in form no 15G/15H for non-deduction of tax at source.

**Reason**

To reduce compliance burden in case of small tax payers having Rental Income .

**Effective Date:**

These amendments are proposed to be made effective from the 1st day of June, 2016

**24.5 Amendment to Section 206AA : Requirement to furnish PAN - (Clause 85)**

**Existing Provision**

Section – 206AA of the Act provides that any person who is entitled to receive any sum or income or amount on which tax is deductible at source under Chapter XVII shall furnish his Permanent Account Number to the deductor, failing which tax shall be deducted at the rate mentioned in the relevant provisions of the Act or at the rate in force or at the rate of twenty per cent., whichever is higher. Sub-section 7 of section 206AA of the Act provides that this section shall not apply to non-resident, not being a company or to a foreign company, in respect of payment on long term bonds referred in section 194LC.

**Proposed Amendment**

It is proposed to substitute sub-section (7) of the section 206AA so as to provide that the provisions of section 206AA of the Income Tax Act shall not apply to a non-resident, not being a company, or to a foreign company, in respect of payment of interest on long-term bonds as referred to in section 194LC **and any other payment subject to such conditions as may be prescribed.**

**Reason**

The amendment is introduced in order to reduce compliance burden.

**Effective Date**

This amendment will take effect from 1st June 2016.

## 24.6 Section 206C: Tax collection at Source - (Clause 86)

**Existing Provision**

The existing provision of section 206C(1) , provides that the seller shall collect tax at source at specified rate from the buyer at the time of sale of specified items such as alcoholic liquor for human consumption, tendu leaves, scrap, mineral being coal or lignite or iron ore, bullion etc..

The existing provision of section 206C(1D), provides that the seller shall collect tax at source at specified rate from the buyer at the time of sale of bullion or jewellery, shall, at the time of receipt of such amount in cash exceeding the specified amount in each case.

**Proposed Amendment**

It is proposed to insert Sr. no. (viii ) in 206C(1) to provide that the seller shall collect the tax at the rate of 1 % from the purchaser on sale of motor vehicle of the value exceeding RS.10 lakhs

It is also proposed to amend sub-section (1D) to include sale of any goods (other than bullion and jewellery), or providing of any services (other than payments on which tax is deducted at source under Chapter XVII-B) where consideration exceeding two lakh rupees is received in cash. Nothing contained in sub-section (1D) in relation to sale of any goods (other than bullion or jewellery) or providing any service shall apply to such class of buyers who fulfill such conditions as may be prescribed

**Reason**

To reduce the quantum of cash transaction in sale of any goods and services and for curbing the flow of unaccounted money in the trading system and to bring high value transactions within the tax net.

**Effective Date:**

These amendments are proposed to be made effective from the 1st day of June, 2016

## 25 ADVANCE PAYMENT OF TAX

**Section 211: Installments of advance tax and due dates -(Clause 87)**

**Existing Provision**

| **For Companies** | | **Other then companies** | |
|---|---|---|---|
| Due Date of installments | Amount Payable | Due Date of installments | Amount Payable |
| On or before 15th June | Not less then 15% of advance tax | NA | NA |
| On or before | Not less then 45% of | On or before | Not less then 30% of |

| | | | |
|---|---|---|---|
| 15th September | advance tax less paid in earlier installments | 15th September | advance tax less paid in earlier installments |
| On or before 15th December | Not less then 75% of advance tax less paid in earlier installments | On or before 15th December | Not less then 60% of advance tax less paid in earlier installments |
| On or before 15th March | The whole amount of advance tax reduced by the amount already paid. | On or before 15th March | The whole amount of advance tax reduced by the amount already paid. |

**Proposed Amendment**

| **For all assessee other than eligible U/s. 44AD** | | **Eligible assessee U/s. 44AD** | |
|---|---|---|---|
| Due Date of installments | Amount Payable | Due Date of installments | Amount Payable |
| On or before 15th June | Not less then 15% of advance tax | NA | NA |
| On or before 15th September | Not less then 45% of advance tax less paid in earlier installments | NA | NA |
| On or before 15th December | Not less then 75% of advance tax less paid in earlier installments | NA | NA |
| On or before 15th March | The whole amount of advance tax reduced by the amount already paid. | On or before 15th March | The whole amount of advance tax |

**Reason**

To rationalise schedule for advance tax payment for all assessee and will facilitate forecasting of revenue collections during a financial year with greater accuracy.

**Effective Date:**

These amendments are proposed to be made effective from the 1st day of June, 2016

## 26. COLLECTION AND RECOVERY OF TAX

**Section 220: When tax payable and when assessee deemed in default - (Clause 88)**

**Existing provision**

The provision relates to demand raised u/s 156 should be paid within 30 days and interest to be charged @ 1%. Such interest can be reduced or waived by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

**Proposed Amendment**

New Proviso is inserted that the order for reduction or waiver of interest should be passed within 12 months from the d`ate of application from the assessee. Orders for applications pending as on 1st June 2016 to be passed before 31st May 2017. Any rejection of application should be done after giving due opportunity to the assessee.

**Effective date**

The amendment will take effect from 1st June 2016.

## 27. INTEREST CHARGEABLE IN CERTAIN CASES

**Section 234C: Interest on Deferment of Advance Tax- (Clause 89)**

**Existing provision**

The Section provides for charging of interest of 1% on shortfall in payment of advance tax by companies in 4 installments viz 15%, 45%, 75% and 100% by 15th of June, September, December and March and by other assessees in 3 installments viz 30%, 60%, and 100% by 15th of September, December and March.

Besides, interest was not chargeable where income accrued from Capital gains, lotteries, crossword puzzles, races.

**Proposed Amendment**

The proposed amendment has removed the difference between companies and non companies and differentiated on the basis of assessee covered under presumptive taxation u/s 44AD.

As per amended provision, ASSESSEES NOT COVERED U/S 44AD are liable to pay advance tax in 4 installments viz 15%, 45%, 75% and 100% by 15th of June, September, December and March.

Whereas ASSESSEES COVERED U/S 44AD offering tax on presumptive basis are liable to pay advance tax in 1 installment of 100% by 15th March of every year.

On any shortfall, all assessees are liable to pay interest of 1%.

Interest will not be charged in the first year where income is chargeable under the head Business or profession in addition to existing provision of Capital gains, lotteries etc.

**Effective date**

The amendment will take effect from 1st June 2016.

## 28 REFUNDS

**Section 244A: Interest on Refunds-(Clause 90)**

**Existing provision**

Interest on refund to be granted from the 1st day of April of the AY to the date on which the refund is granted.

**Proposed amendment**

Proposed amendment differentiates between return filed before due date and returns filed after due date.

If return is filed before due date u/s 139, Interest on refund to be granted from the 1st April of the AY to date of refund.

If returns filed after due date u/s 139, Interest on refund to be granted from the date of filing of return to date of refund.

If Refund is out of self assessment tax paid, Interest shall be paid from date of filing of return till date of refund

New subsection 1A is inserted for giving additional interest @ 3% p.a. on refund resulting from order u/s 250, 254, 260, 262, 263, 264 from the date following date of expiry of time allowed under subsection (5) of section 153 to the date on which the refund is granted.

**Reason**

In order to ensure filing of return within the due date, it is proposed to amend Sec 244A to provide that in cases where the return is filed after the due date, the period for grant of interest on refund may begin from the date of filing return.

**Effective date**

The amendment will take effect from 1st June 2016.

## 29 APPEALS & REVISION

### 29.1 Amendment to Section 249 : FORM OF APPEAL AND LIMITATION:- (Clause 91)

**Existing Provision**

Clause (b) of sub section 2 to Section 249 provides that where an appeal relates to any assessment or penalty, it should be presented within thirty days from the date of service of the notice of demand relating to such assessment or penalty. The proviso to this clause provides that where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on which the order passed on the application is served on the assessee shall be excluded while computing the period of 30 days.

**Proposed Amendment**

Clause – 91 of the Finance Bill seeks to insert second proviso to clause b. The second proviso seeks to provide that where an application has been made under sub-section (1) of section 270AA the period beginning from the date on which the application is made, to the date on which the order rejecting the application is served on the assessee, shall also be excluded.

**Reason**

The amendment is a consequential amendment. It is sought to be made with a view to facilitate Assessee preferring appeal in case of rejection of their

application for granting immunity from imposition of penalty under newly inserted section 270AA for under reporting of income, misreporting of income and initiation of proceedings under Section 276C for willful attempt to evade tax.

## 29.2 Amendment to Section 252 : APPEALS TO THE APPELLATE TRIBUNAL:- (Clause 92)

### Existing Provision

Subsection (4A) of Section 252 empowers the Central Government to appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President. Sub-section 3 provides that Central Government could appoint Senior Vice-President to be the President and sub-section 5 provides that the senior vice-president or vice-president shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

### Proposed Amendment

Clause 92 of the Finance Bill seeks to amend sub-section 3 and 5 and omit sub-section 4A so as to avoid reference to senior vice-president in the entire section.

### Effective Date

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

## 29.3 Amendment to Section 253 : APPEALS TO THE APPELLATE TRIBUNAL- (Clause 93)

### Existing Provision

Sub-section 1 of Section 253 provides a list of orders against which aggrieved assessee may prefer appeal to Appellate Tribunal.

Sub-Section (2A) read with Sub-section (3A) empowers Commissioner or Principal Commissioner to direct Assessing Officer who has passed order in pursuance of directions of Dispute Resolution Panel to appeal to Appellate Tribunal within 60 days of the date on which the order sought to be appealed against is passed by him in case he objects to any direction issued by the Dispute Resolution Panel.

Sub-Section 4 provides an opportunity to Assessing Officer or assessee, as the case may be to file memorandum of cross objections, against any part of the order of the Assessing Officer (in pursuance of the directions of the Dispute Resolution Panel) or Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the prescribed time of sixty days.

Proviso to Sub-Section 6 provides that no fee shall be payable in case of appeal to Appellate Tribunal is preferred by Assessing Officer under directions of Principal Commissioner or Commissioner objecting any order passed by Deputy Commissioner (Appeals) or as the case may be Commissioner (Appeals) or memorandum of cross objection referred to in Sub-Section 4 above.

**Proposed Amendment**

Clause – 93A of the Finance Bill seeks to amend sub-section 1 so as to empower any aggrieved assessee to prefer an appeal to Appellate Tribunal in case of orders passed by Deputy Commissioner (Appeals) or Commissioner (Appeals) under section 270A for under reporting of income or misreporting of income.

Clause – 93B of the Finance Bill seeks to omit Sub-section (2A) and (3A) w.e.f 01.06.2016. Clause – 93B also seeks to substitute sub-section 4 so as to avoid reference to sub-section (2A) and (3A) and also to the order of the assessing officer in pursuance of direction of DRP.

Clause – 93C of the Finance Bill seeks to amend proviso to sub-section 6 so as to provide that no fees shall be payable in case of appeal referred to in sub-section 2 or the erstwhile sub-section (2A) or sub-section (4). The proviso is sought to be substituted and deemed to have substituted w.e.f. 01.04.2012.

**Reason**

The amendments are consequential in nature in lieu of newly inserted Section 270A and withdrawal of powers of sub-section (2A).

**Effective Date**

The amendment in clause 93A will take effect from 1st April, 2017; amendment in clause 93B will take effect from 1st June 2016; and amendment in clause 93C will take retrospective effect from 1st July 2012.

## 29.4 Amendment to Section 254 : ORDERS OF THE APPELLATE TRIBUNAL- (Clause 94)

### Existing Provision

Sec 254(2) provides that Appellate Tribunal may rectify any mistake apparent on record or shall make such amendment if mistake is brought to notice by assessing officer within a period of 4 years from the date of order.

Sub-section (2A) provides that the Tribunal may, where it is possible to hear and decide the appeals as per the sub-section (1), (2) or (2A) of Section 253 within a period of a year from the end of financial year in which such appeal is filed.

### Proposed Amendment

Clause 94 of Finance Bill seeks to amend sub-section (2) of Section 254 so as to reduce the time for rectification to six months from the end of the month in which the order was passed by Appellate Tribunal.

Clause 94 of finance bill seeks to omit reference to sub-section (2A) or section 253 since the said sub-section (2A) is sought to be omitted.

### Reason

The amendment is sought to reduce the rectification period presently enjoyed by the Appellate Tribunal.

### Effective Date

The amendment in clause 94 will take effect from 1st June 2016.

## 29.5 Amendment to Section 255 : PROCEDURES OF THE APPELLATE TRIBUNAL-(Clause 95)

### Existing Provision

Sec 255(3) provides that President or any other member of Appellate Tribunal may sitting singly dispose of any case in respect of an assessee whose total income as computed by the Assessing Officer does not exceed fifteen lakhs.

### Proposed Amendment

Clause 95 of the finance bill seeks to enhance limit of Rs. 15 lacs to Rs. 50 lacs.

**Reason**

The amendment is brought to ensure speedy disposal of cases in Appellate Tribunal.

**Effective Date**

The amendment in clause 95 will take effect from 1st June 2016.

## 30 PENALTIES IMPOSABLE

### 30.1 Insertion Of New Section 270A : PENALTIES IMPOSABLE FOR UNDERREPORTING AND MISREPORTING OF INCOME-(Clause 96)

**Proposed Amendment**

Clause – 96 of the Finance Bill seeks to insert Section 270A. The new section 270A provides for levy of penalty in cases of under reporting and misreporting of income. This new provision replaces Sec 272 of the Act w.e.f. 1/4/17.

The Assessing Officer, Commissioner (Appeals) or the Principal Commissioner or Commissioner may levy penalty if a person has under reported his income.

**Instances of Under-reporting.**

A person shall be considered to have under reported his income if,-

(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;
(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;
(c) the income reassessed is greater than the income assessed or reassessed immediately before such re-assessment;
(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;
(e) the amount of deemed total income assessed as per the provisions of section 115JB or 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;
(f) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

**Amount Of Under-reported Income.**

| | |
|---|---|
| In a case where return is furnished and assessment is made for the first time. | The amount of under reported income in case of all persons shall be the difference between the assessed income and the income determined under section 143(1)(a). |
| In a case where no return has been furnished and the return is furnished for the first time, | The amount of under-reported income is proposed to be:<br>(i) for a company, firm or local authority, the assessed income;<br>(ii) for a person other than company, firm or local authority, the difference between the assessed income and the maximum amount not chargeable to tax. |
| In case of any person, where income is not assessed for the first time | The amount of under reported income shall be the difference between the income assessed or determined in such order and the income assessed or determined in the order immediately preceding such order. |
| Where under reported income arises out of determination of deemed total income in accordance with the provisions of **section 115JB or section 115JC,** | The amount of total under reported income shall be determined in accordance with the following formula-<br>(A - B) + (C - D)<br>where,<br>A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);<br><br>B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of |

| | |
|---|---|
| | under reported income;<br><br>C = the total income assessed as per the provisions contained in section 115JB or section 115JC;<br><br>D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under reported income.<br><br>However, where the amount of under reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D. |
| Where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income. | The amount of under reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed. |
| Under-reported income in a case where the source of any receipt, deposit or investment is linked to earlier year. | As per Explanation 2 to Section 271(1)(c). |

**Exclusion from under-reported Income.**

(i) where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is bona fide and all the material facts have been disclosed;
(ii) where such under-reported income is determined on the basis of an

estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deducted therefrom;

(iii) where the assessee has, on his own, estimated a lower amount of addition or disallowance on the issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance;

(iv) where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X and disclosed all the material facts relating to the transaction;

(v) where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB

**Rate of Penalty**

The rate of penalty shall be fifty per cent of the tax payable on under-reported income.

However in a case where under reporting of income results from misreporting of income by the assessee, the person shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income.

The cases of **misreporting of income** have been specified as under:

(i) misrepresentation or suppression of facts;
(ii) non-recording of investments in books of account;
(iii) claiming of expenditure not substantiated by evidence;
(iv) recording of false entry in books of account;
(v) failure to record any receipt in books of account having a bearing on total income;
(vi) failure to report any international transaction or deemed international transaction under Chapter X.

In case of company, firm or local authority, the tax payable on under reported income shall be calculated as if the under-reported income is the total income. In any other case the tax payable shall be thirty per cent of the under-reported income.

No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

**Reason**

Under the existing provisions, penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income is leviable under section 271(1)(c) of the Income-tax Act. In order to rationalize and bring objectivity, certainty and clarity in the penalty provisions, it is proposed that section 271 shall not apply to and in relation to any assessment for the assessment year commencing on or after the 1st day of April, 2017 and subsequent assessment years and penalty will be levied under the newly inserted section 270A with effect from 1st April, 2017.

## 30.2 INSERTION OF NEW SECTION 270AA : IMMUNITY FROM PENALTY & PROSECUTION IN CERTAIN CASES-(Clause 97)

**Proposed Amendment**

Clause – 97 of the Finance Bill seeks to insert Section 270AA. The new section 270AA provides for immunity from penalty u/s 270A and prosecution u/s 276C in certain cases.

**Pre-condition for Immunity**

An assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C, provided he pays the tax and interest payable as per the order of assessment or reassessment within the period specified in such notice of demand and does not prefer an appeal against such assessment order.

**Time Limit for making application**

The assessee can make such application within one month from the end of the month in which the order of assessment or reassessment is received in the form and manner, as may be prescribed.

**Conditions for grant of Immunity**

Immunity from initiation of penalty and prosecution proceeding under section 276C will be granted if the penalty proceedings under section 270A has not been initiated on account of the following, namely:—

(a) misrepresentation or suppression of facts;
(b) failure to record investments in the books of account;
(c) claim of expenditure not substantiated by any evidence;
(d) recording of any false entry in the books of account;
(e) failure to record any receipt in books of account having a bearing on

total income; or

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

**Time limit for passing order.**
The Assessing Officer shall pass an order accepting or rejecting such application within a period of one month from the end of the month in which such application is received. However, in the interest of natural justice, no order rejecting the application shall be passed by the Assessing Officer unless the assessee has been given an opportunity of being heard.

**Binding Effect**
The order of Assessing Officer under the said section shall be final.

**Effect of making application**.
No appeal under section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment referred to in clause (a) of sub-section (1), in a case where an order under section 270AA has been made accepting the application.

**Remedy**
An appeal against order of rejection is to be made before the Commissioner (Appeals) within thirty days of the receipt of the notice of demand relating to an assessment order. The period beginning from the date on which such application is made to the date on which the order rejecting the application is served on the assessee shall be excluded for calculation of the thirty days period.

**Reason**

In order to rationalize and bring objectivity, certainty and clarity in the penalty provisions, the proposed amendment is made in consequence to the insertion of section 270A.

## 30.3 Amendment to Section 271 – Failure to furnish, comply with notices, concealment of income, etc.- (Clause 98)

**Proposed Amendment**

Clause – 98 of the Finance Bill seeks to amend Section 271 by inserting sub-section (7). Sub-section(7) provides that the provisions of section 271 shall not apply to and in relation to any assessment for the assessment year commencing on or after the 1st day of April, 2017.

**Reason**

In order to rationalize and bring objectivity, certainty and clarity in the penalty provisions, the proposed amendment is made in consequence to the insertion of new section 270A.

## 30.4 Amendment to Section 271A – Failure to keep, maintain or retain books of account, document etc.- (Clause 99)

**Proposed Amendment**

Clause – 99 of the Finance Bill seeks to amend Section 271A by adding the words "section 270A" after the words "Without prejudice to the provisions of".

**Reason**

In order to rationalize and bring objectivity, certainty and clarity in the penalty provisions, the proposed amendment is made in consequence to the insertion of section 270A.

## 30.5 Amendment to Section 271AA - Penalty for failure to keep and maintain information and document , etc in respect of certain transactions -(Clause 100)

**Existing Provision**

Section – 271AA of the Act provides a penalty for failure to keep and maintain information and document, etc., in respect of certain transactions. It also provides that the Assessing Officer or Commissioner (Appeals) may direct that a person who has failed to keep and maintain any information and document referred to in section 92D, shall pay by way of penalty a sum equal to two per cent of the value of each international transaction or specified domestic transaction entered into by such person.

**Proposed Amendments**

a) sub-section (1) in section 271AA is amended to give the reference to Section 270A, which is consequential in nature.
b) It is proposed to insert new sub-section 2 to section 271AA of the Income Tax Act so as to provide that if any person being constituent entity of an international group referred **to in the proposed new section 286** fails to furnish the information and document in accordance with provisions of proposed sub-section (4) of section 92D, then, the prescribed authority referred to in the said section may direct that such person shall be liable to pay a penalty of five hundred thousand rupees.

**Reasons**

The amendments made are consequential to proposed amendments by insertion of new section 270A; sub-section (4) of section 92D and section 286 of the Income Tax Act.

**30.6 Amendment to Section 271AAB : Penalty where search has been initiated. - (Clause 101)**

**Existing Provision**

Existing provision of clause (c) of sub-section (1) of section 271AAB provides that in a case not covered under the provisions of clauses (a) and (b) of the said sub-section of section 271 AAB, a penalty of a sum which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year shall be levied in case where search has been initiated under section 132 on or after the 1st day of July, 2012.

**Proposed Amendment**

Clause – 101 of the Finance Bill seeks to amend Section 271AAB. Accordingly clause (c) of sub-section (1) of section 271AAB will provide for levy of penalty on such undisclosed income at a flat rate of sixty per cent of such income.

**Reason**

In order to rationalise the rate of penalty and to reduce discretion.

## 30.7 Insertion Of New Section 271GB : Penalty for failure to furnish report or furnishing inaccurate reports U/S 286-(Clause 102)

### Proposed Amendment

Clause – 102 of the Finance Bill seeks to insert Section 271GB. The new section 271GB provides as under :

If any reporting entity referred to in section 286, which is required to furnish the report referred to in sub-section (*2*) of the said section, in respect of a reporting accounting year, fails to do so, the authority prescribed under that section may direct that such entity shall pay, by way of penalty, a sum of,—

(a) five thousand rupees for every day for which the failure continues, if the period of failure does not exceed one month; or
(b) fifteen thousand rupees for every day for which the failure continues beyond the period of one month.

Where any reporting entity referred to in section 286 fails to produce the information and documents within the period allowed under sub-section (*6*) of the said section, the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of five thousand rupees for every day during which the failure continues, beginning from the day immediately following the day on which the period for furnishing the information and document expires.

If the failure continues after an order has been served on the entity, directing it to pay the penalty , then, the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of fifty thousand rupees for every day for which such failure continues beginning from the date of service of such order.

Where a reporting entity referred to in section 286 provides inaccurate information in the report furnished in accordance with sub-section (*2*) of the said section and where—

(a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority; or

(b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or

(c) the entity furnishes inaccurate information or document in response to the notice issued under sub-section (6) of section 286,

then, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of five lakh rupees.

## 30.8 Amendment to Section 272A : Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspection etc.- (Clause 103)

### Existing Provision

Existing provision of Sub-section (1) provides for levy of penalty of ten thousand rupees for each failure or default to answer the questions raised by an income-tax authority under the Income-tax Act, refusal to sign any statement legally required during the proceedings under the Income-tax Act or failure to attend to give evidence or produce books or documents as required under sub-section (1) of section 131 of the Income-tax Act.

### Proposed Amendment

Clause – 103 of the Finance Bill seeks to amend Section 271AAB. Accordingly section 272A to further include levy of penalty of ten thousand rupees for each default or failure to comply with a notice issued under sub-section (1) of section 142 or sub-section (2) of section 143 or failure to comply with a direction issued under sub-section (2A) of section 142. The penalty shall be levied by the income tax authority issuing such notice or direction. It is also proposed to make consequential amendment to section 288 by insertion of a new clause (d) in sub- section (1) of section 272A in the Income-tax Act relating to penalty for failure to comply with the notices and directions specified therein.

## 30.9 Amendment to Section 273A and 273AA : Time limit for Disposing Application-(Clause 104, 105)

### Existing Provision

Sub-section (4) of section 273A, inter alia, provides that the Principal Commissioner or the Commissioner may, on an application made by an assessee, reduce or waive the amount of any penalty payable by the assessee or stay or compound any proceeding for recovery of the penalty amount in certain circumstances.

Section 273AA inter alia, provides that the Principal Commissioner or the

Commissioner may grant immunity from penalty, if penalty proceedings have been initiated in case of a person who has made application for settlement before the settlement commission and the proceedings for settlement had abated under the circumstances contained in section 245HA of the Act

**Proposed Amendment**

Clause – 104 and 105 of the Finance Bill seeks to amend Section 273A and 273AA respectively. Accordingly section 273A and section 273AA provide that an order accepting or rejecting the application of an assessee shall be passed by the Principal Commissioner or Commissioner within a period of twelve months from the end of the month in which such application is received. Further no order rejecting the application of the assessee under section 273A and 273AA shall be passed without giving the assessee an opportunity of being heard.

**Reason**

Under the existing provisions no time limit has been provided regarding the passing of orders either under sections 273A or 273AA. Further, these provisions do not specifically mandate that assessee be given an opportunity of being heard in case such application is rejected by an authority. Therefore, in order to rationalise the provisions and provide for specific time-line, amendment to the existing provisions have been proposed.

**Effective Date**

This amendment will take effect from 1st June 2016. However, in respect of applications pending as on 1 st day of June, 2016, the order under said sections shall be passed on or before 31st May, 2017.

**30.10 Amendment to Section 273B : Penalty not to be imposed in certain cases-(Clause 106)**

**Existing Provision**

Section 273B provides immunity from penalty leviable under various provisions if assessee is able to show reasonable cause.

**Proposed Amendment**

Clause – 106 of the Finance Bill seeks to amend Section 273B so as to include penalty under section 271GB for immunity.

**Reason**

Amendment is made consequent to insertion of Section 271GB.

## 31. OFFENCES AND PROSECUTIONS

**Amendment to Section 279 : Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Commissioner- (Clause 107)**

**Existing Provision**

Section 279 relating to prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. Sub-section (1A) of the aforesaid section provides that prosecution proceeding shall not be proceeded against a person for offences under section 276C or section 277 in respect of whom penalty under clause (iii) of sub-section (1) of section 271 has been reduced or waived under section 273A

**Proposed Amendment**

Clause - 107 Finance Bill seeks to amend Section 279 of the Income- tax Act relating to prosecution It is proposed to amend the said sub-section so as to provide that the prosecution proceeding shall not be proceeded against a person for offences under section 276C or section 277 in respect of whom penalty under section 270A (i.e. Penalty for under reporting and misreporting of income) has also been reduced or waived under section 273A.

## 32 MISCELLANEOUS

**32.1 Amendment to Section 281B : Provisional attachment to protect revenue in certain cases-(Clause 108)**

**Existing Provision**

Section 281B of the Income tax Act provides provisional attachment to protect revenue in certain cases where, The aforesaid section provides that the Assessing Officer has the power to provisionally attach any property of the assessee during the pendency of assessment or reassessment proceedings, for a period of six months, with the prior approval of the income- tax authorities specified therein, if he is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue. Such attachment of property is extendable by the said income-tax authorities to a maximum period of two years or sixty days after the date of assessment order, whichever is later.

Explanation to section 281B(1) provides that proceedings under sub-section (5) of section 132 shall be deemed to be proceedings for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment. Sub-section (5) of section 132 stands omitted from 1st June, 2002.

**Proposed Amendment**

Clause 108 of the Bill seeks to amend section 281B of the Income-tax Act relating to provisional attachment to protect revenue in certain cases.

On basis of recommendation of Easwar Committee it is proposed to insert new sub-sections (3) to (9) in the said section to provide that the Assessing Officer shall revoke attachment of property made under sub-section (1) in a case where the assessee furnishes a bank guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount lower than the fair market value of the property which is sufficient to protect the interests of the revenue.

It is also proposed that the Assessing Officer may determine the FMV of the property, make a reference to the Valuation Officer, who may be required to submit the report of the estimate of the property to the Assessing Officer within a period of thirty days from the date of receipt of such reference.

It is also proposed to provide that an order revoking the attachment be made by the Assessing Officer within fifteen days of receipt of such guarantee, and in a case where a reference is made to the Valuation Officer, within forty-five days from the date of receipt of such guarantee.

It is also proposed that where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay such sum within the time specified in the notice, the Assessing Officer may invoke the bank guarantee, wholly or partly, to recover the said amount.

If the assessee fails to renew the bank guarantee furnished under sub-section (3) or fails to furnish a fresh guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of such guarantee, the Assessing Officer shall, if it is necessary to do so to protect the interest of the revenue, invoke the bank guarantee. The amount realised by invoking the bank guarantee. shall be adjusted against the existing demand which is payable and the balance amount, if any, be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sub- section (1) of

section 45 of the Reserve Bank of India Act, 1934 at the place where the office of the Principal Commissioner or Commissioner is situated.

In a case where the Assessing Officer is satisfied that the bank guarantee is not required any more to protect the interests of the revenue, he shall release that guarantee forthwith.

**Effective Date**
These amendments will take effect from 1st day of June, 2016.

## 32.2 Section 282A : PAPERLESS ASSESSMENT -(Clause 109)

**Existing Provision**
Section 282A deals with the Authentication of notices and other documents. Sub-section (1) of the aforesaid section 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.

**Proposed Amendment**
Clause 109 of the Bill seeks to amend section 282A of the Income-tax Act relating to authentication of notices and other documents. These are in order to provide adequate legal framework for paperless assessment.

It is proposed to amend the said sub-section (1) 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, namely such notice or document should be signed by that authority in manuscript.

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

## 32.3 Section 288 : AUTHORISED REPRESENTATIVE - (Clause 111)

**Existing Provision**
Section 288 Clause (b) of sub-section (4) of the aforesaid section bars an authorised representative to represent an assessee before any income-tax authority or the Appellate Tribunal if he has been convicted of an offence connected with any income-tax proceedings or if a penalty has been imposed on him under the Income-tax Act other than a penalty imposed under clause (ii) of sub-section (1) of section 271.

**Proposed Amendment**

Clause 111 of the Bill seeks to amend section 288 of the Income- tax Act relating to appearance by authorised representative.

It is proposed to amend clause (b) of sub-section (4) of section 288 so as to provide that a person on whom a penalty has been imposed under clause (d) of sub-section (1) of section 272A of the Income-tax Act shall not be barred to represent an assessee before any income-tax authority or the Appellate Tribunal.

The proposed amendment is consequential to the insertion of a new clause (d) in sub-section (1) of section 272A in the Income- tax Act relating to penalty for failure to comply with the notices and directions specified therein.

## 33. THE INCOME DECLARATION SCHEME, 2016 - (Clause 178 to 196)

**Existing Provision:**

A New Scheme is proposed to be inserted under Chapter IX of Finance Bill 2016 consisting of clauses 178 to 196 of the Bill.

**Proposed Amendment:**

A new scheme is proposed to be inserted, which may be called "the Income Declaration Scheme, 2016". The scheme provides for declaration of undisclosed income by any person

The salient features of the proposed scheme are as under:

1. The scheme shall come into force on 1st June, 2016 (clause no. 178)

2. In this scheme -

   (a) "declarant" means a person making the declaration under sub-section (1) of section 180 (all tax payers are eligible to make such declaration);

   (b) "Income-tax Act" means the Income-tax Act, 1961;

   (c) all other words and expressions used herein but not defined and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

   (clause no. 179)

3. i) Any person may make on or after 1st June, 2016, but before a date to be notified by the Central Government, a declaration in respect of any income chargeable to tax under the Income Tax Act for any assessment year upto and including A.Y. 2016-17.

ii) The declaration can be made by a tax payer in respect of income -

(a) for which he has failed to furnish a return under section 139 of the Income-tax Act;

(b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme;

(c) which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

iii) Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of this Scheme shall be deemed to be the undisclosed income.

iv) The fair market value of any asset shall be determined in such manner, as may be prescribed.

v) No deduction in respect of any expenditure or allowance shall be allowed against the income in respect of which declaration under this section is made.

(Clause no. 180)

4. The disclosed income declared under clause 180 shall be chargeable to tax at the rate of 30% of the such undisclosed income. Further, a surcharge to be called "Krishi Kalyan Cess" will be levied at the rate of 25% of such tax i.e. 7.5% of undisclosed income declared (clause no. 181).

5. In addition to the tax and surcharge, a penalty is leviable at the rate of 25% of such tax i.e. 7.5% undisclosed income declared (clause no. 182).

6. Thus the effective rate is 45% of undisclosed income declared.

7. Clause 183 provides for procedure and manner of filing declaration under the scheme.

i) It provides that declaration shall be made to the Principle Commissioner or the Commissioner in such a manner as may be prescribed.

ii) It also provides for the person who has to sign the declaration. Declaration can be filed on behalf of mentally incapacitated person by guardian.

iii) Any person, who has made a declaration under sub-section (1) of section 180 in respect of his income or as a representative assessee in respect of the income of any other person, shall not be entitled to make any other declaration, under that sub-section in respect of his income or the income of such other person, and any such other declaration, if made, shall be void (clause no. 183).

8. Clause 184 provides for time for payment of tax.

i) The amount of tax, surcharge and penalty shall be paid on or before a date to be notified by the Central Government.

ii) A declarant shall file the proof of payment of tax, surcharge and penalty before the date to be notified with the Principle Commissioner or the Commissioner.

iii) If the declarant fails to pay tax, surcharge and penalty before the specified date, the declaration filed by him shall be deemed never to have been made under the scheme (Clause no. 184).

9. If the declarant makes payment of tax and surcharge referred to in section 181 above, and the penalty referred to in section 182 by the date specified under section 184(1) in respect of undisclosed income declared pursuant to this scheme for any assessment year than so much of income shall not be included in the total income.

10. A declarant under this Scheme shall not be entitled, in respect of undisclosed income declared or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957, or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment. Further tax, surcharge or penalty paid in pursuance of declaration shall not be refundable.

11. The provisions of the Benami Transactions (Prohibition) Act, 1988 shall not apply in respect of the declaration of undisclosed income made in the form of investment in any asset, if the asset existing in the name of a benamidar is transferred to the declarant, being the person who provides the consideration for such asset, or his legal representative, within the period notified by the Central Government.

12. Further, declaration made under Section 180 by a declarant shall not be admissible as evidence against him in relation to any penalty proceedings other than leviable under Sec 182, or for purposes of prosecution under Income Tax Act, 1957 or Wealth Tax Act, 1957.

13. If the declarant makes any misrepresentation or suppression of facts such declaration shall be void and deemed that he has never applied under this scheme.

14. Where the undisclosed income is represented by cash (including bank deposits), bullion, investment in shares or any other assets specified in the declaration and the assessee has defaulted either by not furnishing or understating or not showing the same in wealth tax return; than such assets shall not be included in the net wealth for wealth tax purpose and no wealth tax shall be payable.

15. The provisions relating to liability in special cases as enumerated under Chapter XV and Section 189 of Income Tax Act, Chapter V of Wealth Tax Act, shall apply so far as may be in relation to proceedings under this scheme.

16. Sec 193 specifies following circumstances in which provisions of this scheme shall not apply:-

a. a person on whom detention is ordered under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

b. a person who is punishable for any offence under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act, 1988

c. person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

d. in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

e. in relation to any undisclosed income chargeable to tax under the Income-tax Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2017 where notice u/s 142, 143(2) or sec 148, or sec 153A or Sec 153C has been issued and the proceedings is pending before the assessing officer.

f. Search u/s 132 or requisition has been made u/s 132A or survey u/s 133A of the Income Tax Act, and notice u/s 143(2) or 153A or 153C has not been issued and time for issuance of such notice has not expired.

g. where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act.

17. Sec 194 provides that where declaration is made by declarant and due taxes, surcharge and penalty is not paid by due date, than such undisclosed income shall be chargeable to tax under the income tax act in the previous year in which such declaration is made.

18. If any difficulty arises in giving effect to provisions of scheme, Central Government may by order remove difficulty. However, no order shall be passed after expiry of two years from date on which provisions of this scheme comes into force.

19. The Board shall issue notification in official gazette making rules carrying out provisions of this scheme.

**Effective Date:**
This scheme shall be in operation from 1st day of June, 2016 to the date to be notified by Government.

**Reason**
It is stated that the scheme is proposed to provide an opportunity to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty.

Although, the closing date of the scheme and the date of payment are yet to be notified by the Central Government as per the provisions of Finance Bill, 2016, the Finance Minister in his budget speech has stated that –

"We plan to open the window under this Income Disclosure Scheme from 1st June to 30th September, 2016 with an option to pay amount due within two months of declaration."

## 34 AMENDMENT TO THE FINANCE (NO.2) ACT, 2004:

### 34.1 Amendment to Section 98 of the Finance (No.2) Act,2004 – (Clause 230)

**Existing Provision**

Section – 98 of the Finance (No.2) Act, 2004 provides that the securities transaction tax on sale of an option in securities where option is not exercised is 0.017 per cent of the option premium.

**Proposed Amendment**

It is proposed to increase Securities transaction tax from 0.017 percent to 0.05 percent on sale of an option in securities where option is not exercised.

**Effective Date**

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

### 34.2 Amendment to Section 113A of the Finance (No.2) Act,2004

**Existing Provision**

Section – 113A of the Finance (No.2) Act, 2004 provides levy of the securities transaction tax on transactions in taxable securities respectively.

**Proposed Amendment**

It is proposed exempt securities transaction tax on transactions entered into by any person on a recognized stock exchange located in international Financial Services Centre where consideration for such transaction is paid or payable in foreign currency.

**Effective Date**

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

**35. AMENDMENT TO THE FINANCE ACT, 2013:**

**New Section 132A inserted in the Finance Act, 2013 - (Clause 234)**

**Proposed Amendment**

It is proposed to insert new section 132A thereby provisions of chapter VII of the Finance Act, 2013 not apply to taxable commodities transactions entered into by any person on a recognized association located in an international Financial Service Centre, where the consideration for such transaction is paid or payable in foreign currency.

"International Financial Services centre" shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones, Act, 2005.

**Effective Date**

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

**36. EQUALISATION LEVY :**

**Insertion of new Chapter VIII through Finance Bill 2016 - (Clause 22 & 160 to 177)**

**Proposed Provision**

The Finance Bill, 2016 seeks to insert new Chapter VIII dealing with levy, collection and recovery of equalisation levy. The proposed new chapter VIII extends to whole of India except the state of Jammu and Kashmir.

Clause 160 of the Bill provides that the said chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette,

appoint, and shall apply to consideration received or receivable for specified service provided on or after commencement of this chapter. Specified Service is defined to mean online advertisement, any provision for digital advertising space, or any other facility or service for the purpose of online advertisement and includes any other service as may be notified.

Clause 161 of the Bill seeks to define certain terms and expressions used in this Chapter.

Sub-clause (1) of clause 162 of the Bill seeks to make a provision for the charging of equalisation levy at the rate of six per cent of the amount of consideration for specified services received or receivable by a non-resident from a person resident in India and carrying on business or profession or from a non-resident having a permanent establishment in India. Sub-clause (2) provides that no such levy shall be made, if the non-resident service provider has a permanent establishment in India and income from such specified services are effectively connected to this permanent establishment or if such consideration is not for the purpose of carrying out business or profession or aggregate amount of consideration for specified services received or receivable does not exceed one lakh rupees in any previous year.

Clause 163 of the Bill provides for collection and recovery of equalisation levy by way of deduction from the amount paid or payable to the non-resident in respect of specified services. Sub-clause (2) provides that the amount of equalisation levy so deducted by the payer has to be paid to the credit of the Central Government by 7$^{th}$ day of the month following the month in which the equalisation levy is collected. Sub-section (3) of clause 163 also provides that if any assessee fails to deduct the levy would still be liable to pay the levy to Central Government in accordance with sub-clause(2).

Clauses 164 to 172 of the Bill are procedural in nature relating to the procedures for furnishing of statement, processing, refund, rectification of mistakes, payment of interest, imposition of penalty & filing of appeals before CIT (Appeals) & the Appellate Tribunal. The provisions of section 249 to 251 of the Income-tax Act, shall as far as maybe, shall apply to appeals before CIT (Appeals). Similarly, the provisions of sections 252 to 255 of the Income tax Act shall, as far as may be, apply to appeals before Appellate Tribunal.

In order to avoid double taxation, it is proposed to make a consequential amendment under section 10 of the Act to provide exemption for any income arising from providing specified services on which equalisation levy is chargeable.

Further, it is also proposed to confer the power on the Central Government to make rules for the purposes of carrying out the provisions of this Chapter and laying every rule made under this Chapter before each House of Parliament.

Clause 22 seeks to insert sub- section (ib) to Section 40 w.e.f 1st June, 2016 to provide as under:-

Any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible under the provisions of Chapter VIII of the Finance Act, 2016, and such levy has not been deducted or after deduction, has not been paid on or before the due date specified in sub-section (*1*) of section 139:

Provided that where in respect of any such consideration, the equalisation levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in sub-section (*1*) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid;".

**Reason**

With the expansion of information and communication technology, the supply and procurement of digital goods and services have undergone exponential expansion everywhere, including India. The digital economy is growing at ten per cent per year, significantly faster than the global economy as a whole.

Currently in the digital domain, business may be conducted without regard to national boundaries and may dissolve the link between an income-producing activity and a specific location. From a certain perspective, business in digital domain doesn't seem to occur in any physical location but instead takes place in the nebulous world of "cyberspace." Persons carrying business in digital domain could be located anywhere in the world. Entrepreneurs across the world have been quick to evolve their business to take advantage of these changes. It has also made it possible for the businesses to conduct themselves in ways that did not exist earlier, and given rise to new business models that rely more on digital and telecommunication network, do not require physical presence, and derives substantial value from data collected and transmitted from such networks.

These new business models have created new tax challenges. The typical direct tax issues relating to e-commerce are the difficulties of characterizing the nature of payment and establishing a nexus or link between a taxable transaction, activity and a taxing jurisdiction, the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes. 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) has recommended, in Base Erosion and Profit Shifting (BEPS) project under Action Plan 1, several options to tackle the direct tax challenges which include modifying the existing Permanent Establishment (PE) rule to include that where an enterprise engaged in fully de-materialized digital activities would constitute a PE if it maintained a significant digital presence in another country's economy. It further recommended a virtual fixed place of business PE in the concept of PE i,e creation of a PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction and carries on business through that website. It also recommended to impose of a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider or imposition of a 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.

Considering the potential of new digital economy and the rapidly evolving nature of business operations it is found essential to address the challenges in terms of taxation of such digital transactions as mentioned above.

Hence, it is proposed to insert a new Chapter titled "Equalisation Levy" in the Finance Bill, to provide for an equalisation levy of 6 % of the amount of consideration for specified services.

**Effective Date**

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

# 37. TDS AND TCS CHART

## 37.1 TDS CHART

**DEDUCTION OF TAX AT SOURCE**
**REVISED THRESHOLD LIMIT & TDS RATES APPLICABLE w.e.f 01.06.2016**

**Payments made to residents (Exhaustive) :**

| Nature Of payment | Threshold Limit | Rates -In Case of Payee | | |
|---|---|---|---|---|
| | | Individual/ HUF/AOP/ BOI | Firms | Companies |
| Interest on Securities (Sec 193) | Any Income (Except Certain Specified Payments)*** to any resident | 10% | 10% | 10% |
| Interest other than interest on securities (Sec 194A) | At the time of credit or payment, whichever is earlier, when the aggregate sums payable during the financial year exceeds Rs.5,000/-. However in certain specified cases limit is Rs.10,000/- *. | 10% | 10% | 10% |
| | At the time of credit or payment, whichever is earlier, when the aggregate sums payable during the financial year exceeds Rs.10,000/- by Co-operative Bank. | 10% | 10% | 10% |
| | At the time of payment, when the aggregate of such interest payments on the compensation amount awarded by the Motor Accident Claim Tribunal during the financial year exceeds Rs. 50,000/- | 10% | 10% | 10% |
| Winnings from lottery or crossword puzzles (Sec 194B) | Where winnings to be paid excceeds Rs. 10,000 | 30% | 30% | 30% |
| **Winnings from horse race (Sec 194BB)** | **Where winnings to be paid exceeds Rs. 10,000** | **30%** | **30%** | **30%** |
| Payments made to Contractors for Specified Work (Sec 194C) | **At the time of credit or payment whichever is earlier when the per contract value exceeds Rs.30,000/- or aggregate of amount credited or paid exceeds Rs.1,00,000/- during the financial year.** | 1% | 2% | 2% |
| | If Contractor & Subcontractor in business of plying, hiring or leasing goods carriages, who is eligible to compute income as per Sec. 44AE (i.e a person who is not owning more than 10 goods carriage during previous year), furnishing declaration alongwith PAN | Nil | Nil | Nil |
| | If Contractor & Subcontractor in business of plying, hiring or leasing goods carriages, quotes his PAN other than above | 1% | 2% | 2% |

| | | | | |
|---|---|---|---|---|
| Insurance Commission (Sec 194D) | **Where amount of Insurance commission exceeds Rs. 15,000 to Resident** | **5%** | **5%** | **5%** |
| Payment in respect of life insurance policies (Sec 194DA) (refer other point iv) | Where the aggregate amount paid to an assessee in a financial year equals to or exceeds Rs 1,00,000 and where such sum paid is not exempt u/s 10(10D) | **1%** | **1%** | **1%** |
| Payment of Deposit Under NSS to Any Person (Sec 194EE) | Where amount is equal to or exceeds Rs. 2,500 | **10%** | **10%** | **10%** |
| | If the payment of the said amount to the heirs of the assessee | Nil | Nil | Nil |
| Payments on account of repurchase of units by Mutual Fund or Unit Trust of India (Sec 194F) | Any Amount to any Person | 20% | 20% | 20% |
| Payment of Commission / Remunration on sale of lottery tickets to any person (Sec 194G) | **Where Amount exceeds Rs.15,000** | **5%** | **5%** | **5%** |
| Commission & Brokerage (Sec 194H) to any resident | **At the time of credit or payment whichever is earlier, when the aggregate sums payable during the financial year exceeds Rs.15,000/-** | **5%** | **5%** | **5%** |
| Rent Payment (Sec. 194I) to any resident | At the time of credit or payment whichever is earlier, when the aggregate sums payable during the financial year exceeds Rs 1,80,000/- | **Land, Building, Furniture & Fittings** | | |
| | | 10% | 10% | 10% |
| | | **Machinery, Plant & Equipments** | | |
| | | 2% | 2% | 2% |
| Consideration to resident on purchase of certain immovable property other than specified agricultural land (Sec.194IA) | Where Consideration exceeds Rs. 50,00,000/- | 1% | 1% | 1% |
| Fees for Professional & Technical Service,Royalty & other sums u/s 28 (va) (Sec.194J)** paid to resident | At the time of credit or payment whichever is earlier, when the aggregate sums payable during the financial year exceeds Rs 30,000/- | 10% | 10% | 10% |
| Compensation to resident on acquisition of certain immovable property other than specified agricultural land (Sec.194LA) | **Where amount exceeds Rs. 2,50,000/-** | 10% | 10% | 10% |
| Certain income from units of a business trust (Sec 194LBA) | Any amount | 10% | 10% | 10% |
| Income in respect of Units ( Sec 194K ) | This Section shall be ommitted w.e.f 01.06.2016 | NIL | NIL | NIL |
| Payment of Compensation on acquisition of Capital Assets ( Sec 194L) | This Section shall be ommitted w.e.f 01.06.2016 | NIL | NIL | NIL |

Note :- Payment of accumulated balance due to an employee u/s 192A has been increased to Rs.50,000/- from existing threshold limit of Rs.35,000/-

**Payments made to Non residents (Not Exhaustive) :**

| Nature Of payment | Threshold Limit | Rates -In Case of Payee **** | | |
|---|---|---|---|---|
| | | Individual / HUF/AOP/BOI | Firms | Companies |
| Payments to Non-resident sportsmen (including an athlete/ an entertainer/ sports association (Sec 194E) | Any Payment | 20% | 20% | 20% |
| Intrest Payments to non residents (Sec.194LB) by an Infrastructure Debt Fund refered to u/sec. 10(47) w.e.f. 01-06-2011. | Any amount | 5% | 5% | 5% |
| Intrest Payments on ECB to non residents (Sec.194LC) by a specified Company w.e.f. 01-07-2012. | Any amount | 5% | 5% | 5% |
| Intrest Payments to FII and QFIs in respect of Investement on Govt Securities and rupee denominated corporate bonds (Sec.194LD) by any person w.e.f. 01-06-2013 up to 30-06-2017 | Any amount | 5% | 5% | 5% |
| Payments to Non Resident by way of Royalty or Fees for Technical Services u/s 115 A | Any amount | 10% | 10% | 10% |
| Income from foreign currency bonds or shares of Indian company (Sec 196C) | Any amount | 10% | 10% | 10% |
| Certain income from units of a business trust (Sec 194LBA) | Any amount | 5% | 5% | 5% |

****** Surcharge, EC & SHEC on amount of tax deducted at source :**

| Deductee | Surcharge | | | EC | SHEC |
|---|---|---|---|---|---|
| | Aggregate of Income upto one crore | Agrregate of Income exceeds one crore but does not exceeds ten crore | Agrregate of Income exceeds exceeds ten crore | | |
| Non Resident Person other than a company | 0% | 12% | 12% | 2% | 1% |
| Foreign Company | 0% | 2% | 5% | 2% | 1% |

*** Where the Interest on debentures paid by a widely held Company (to a resident individual or HUF ) does not exceed Rs. 5,000/- and such interest is paid by an account payee cheque.

**Section 194J includes any remuneration or fees or commission by whatever name called, to a director of a company other than those on which tax is deductible u/s 192.

*On Time deposits including recurring deposits,with a bank inculding a co-operative bank (other than a co-operative land mortgage bank or a co-operative land development bank) or in case of Deposits with PO under scheme notifed by Central Government

Other Important Points:
If PAN is not quoted by the deductee, tax shall be deducted as under:

(i) a) at the rate specified in the relevant provision of this Act; or

b) at the rate of 20 %; whichever is higher.

(ii) TDS would be deductible at the above mentioned rates in cases where the tax payer files a declaration in form 15G or 15H (under section 197A) but does not provide his PAN.Further,no certificate under section 197 will be granted by the Assessing officer unless the application contains the PAN of the applicant.

(iii) TDS would be deductible at the above mentioned rates where the PAN pro vided to the deductor is invalid or does not belong to the deductee.It shall be deemed that the deductee has not funished his PAN to the deductor.

(iii) Computation of Interest income for the purpose of deduction of Tax under section 194A of the Act should be made with reference to the income credited or paid by the banking company or co-operative bank or public com pany which has adopted core banking solutions and not branchwise.

(iv) Receipent of Income from Life Insurance poicy chargeable to Tax can also file declatation in form 15G or 15H as the case may be if the receipent estimated total income of the relevent preivous year would be nil.

**Increase in threshold limit of deduction of tax at source on various payments mentioned in the relevant sections of the Act**

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

**(Clause 70, 71, 72, 73, 76, 77, 79)**

**37.2. TCS (Tax collection at source rates) U/S 206 C for the F.Y. 2016-17**

| Sl.No. | Nature of Receipts | Threshold Limit | Rates in % |
|---|---|---|---|
| 1 | Alcoholic liquor for human Consumption | Any Amount | 1 |
| 2 | Tendu leaves | Any Amount | 5 |
| 3 | Timber obtained under forest lease | Any Amount | 2.5 |
| 4 | Timber obtained by any mode other than a forest lease | Any Amount | 2.5 |
| 5 | Any other forest produce not being timber or tendu leaves | Any Amount | 2.5 |
| 6 | Scrap | Any Amount | 1 |
| 7 | Parking lot | Any Amount | 2 |
| 8 | Toll plaza | Any Amount | 2 |
| 9 | Mining & Quarrying | Any Amount | 2 |
| 10 | Minerals, being coal or lignite or iron ore w.e.f 01.07.2012 | Any Amount | 1 |
| 11 | Bullion or jewellery in case of sale consideration received in cash w.e.f. 01.07.2012 | 2 lakh for Bullion<br>5 lakh for Jewellery | 1 |
| 12 | Sale of Motor Vehicle w.e.f 01.06.2016 | Sale Value exceeding Rs.10 Lakh | 1 |
| 13 | Sale in Cash of any Goods ( Other than Bullion & Jewellery ) | Sale exceeding Rs.2 Lakh | 1 |
| 14 | Providing Services in Cash ( Other than payments on which tax is deducted at source u/c XVII -B ) | Amount exceeding Rs.2 Lakh | 1 |

Note :
In case of Non-Resident, Surcharge, Education Cess and Secondary Higher Education Cess will be applicable similar to TDS Provisions.

## 38. THE FOURTH SCHEDULE, PART A - RECOGNISED PROVIDENT FUNDS: (Clause 112)

**Existing Provision**

As per Rule 6 (a) of Fourth Schedule, Part A, Contributions made by the employer in excess of twelve per cent of the salary of the employee shall be deemed to be income received by employee.

Rule 8(i) to (iii) states about Exclusion from total income of accumulated balance due and becoming payable to an employee participating in a recognised provident fund from the computation of his total income.

**Proposed Amendment**

Rule 6(a) - Contributions made by the employer in excess of twelve per cent of the salary of the employee or Rs. 1,50,000/- whichever is less shall be deemed to be income received by employee.

Insertion of New Clause (iv) to Rule 8 of Fourth Schedule, Part A :

If the entire balance standing to the credit of the employee is transferred to his account under a pension scheme referred to in section 80CCD and notified by the Central Government, same shall be excluded from Total Income of the accumulated balance.

**Reason**

To bring parity in monetary limit for contribution by the employer and employee and to provide limit of employer's contribution to Rs. 1,50,000/- without attracting tax.

## 39. THE DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016 – (Clauses 197 – 208)

These are completely new provisions introduced for the first time.

**Proposed Amendment**

The Finance Bill, 2016 has sought to introduce a new and alternate mechanism to resolve disputes under the Direct Taxes laws. This scheme is to be called as the Direct Tax Dispute Resolution Scheme, 2016.

The scheme defines, inter alia, two terms, viz. "specified tax" and "tax arrear". "Specified tax" pertains to a tax dispute which is pending as on 29th February, 2016, as a result of retrospective amendment. Whereas, "tax arrear" means tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, 1957 in respect of which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29th day of February, 2016.

Under this scheme, the assessee may file a declaration with the designated authority (i.e. an officer not below the rank of a Commissioner of Income-tax and notified by the Principal Chief Commissioner) in the prescribed form and verified in such manner as may be prescribed. In case the declaration is with respect to "tax arrear" being interest and penalty, the pending appeal would be deemed to have been withdrawn by the assessee and the assessee would be liable to pay the whole of the disputed tax and interest thereon till the date of assessment or reassessment, as the case may be, if disputed tax is up to Rs. 10 lakhs. If the disputed tax exceeds Rs. 10 lakhs, the pending appeal would be deemed to have been withdrawn and the assessee would be liable to pay the whole of the disputed tax and interest thereon till the date of assessment or reassessment along with 25% of the minimum penalty leviable. If the impugned tax arrear is penalty, the pending appeal shall be deemed to have been withdrawn and the assessee would be liable to pay 25% of the minimum penalty leviable and the tax and interest payable on the total income finally determined. On the other hand, if the declaration is with respect to specified tax, the appeal shall be deemed to have been withdrawn and the assessee would be liable to pay the amount of tax so determined.

Where the declaration is in respect of specified tax and the declarant's appeal/ writ petition is pending before any authority, Tribunal or Court, he shall withdraw such appeal or writ petition and furnish proof of such withdrawal along with the declaration. Also, where the declaration is in respect of specified tax and the declarant has initiated any proceeding for arbitration, conciliation or mediation or has given any notice thereof, he shall withdraw such notice or the claim, if any, in such proceedings prior to making the declaration and furnish proof thereof along with the declaration. The declarant shall also furnish an undertaking waiving his right to seek or pursue any remedy or any claim in relation to the specified tax which may otherwise be available to him. It has also been provided that no appellate authorithy or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the specified tax mentioned in the declaration and in respect of which an order had been made by the designated authority or the payment of the sum determined under that section.

Upon receiving a declaration as mentioned, the designated authority shall determine the amount payable by the declarant in accordance with the

provisions of this Scheme within a period of sixty days from the date of receipt of the declaration. Every such determination by the designated authority will be conclusive as to the matters stated therein and no matter covered by such order shall be re-opened in any other proceeding. The declarant is liable to pay such amount within 30 days and the amount shall not be refundable under any circumstances. Thereafter, the designated authority will grant immunity from instituting any proceedings in respect of an offence under the Income-tax Act or the Wealth-tax Act, immunity from imposition or waiver, of penalty under the two Acts or waiver of interest thereunder.

However, ifs any material particular furnished in the declaration is found to be false at any stage or the declarant violates any of the conditions referred to in this Scheme or the declarant acts in a manner which is not in accordance with the undertaking given by him waiving his right to seek or pursue any remedy or any claim, 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.

The provisions of the Scheme would not apply:

(a) in respect of tax arrear or specified tax,—

(i) relating to an assessment year in respect of which an assessment has been made under section 153A or 153C of the Income-tax Act or assessment or reassessment for any of the assessment years, in consequence of a search initiated under section 37A or requisition made under section 37B of the Wealth-tax Act if it relates to any tax arrear (i.e. search assessments);

(ii) relating to an assessment or reassessment in respect of which a survey conducted under section 133A of the Income-tax Act or section 38A of the Wealth-tax Act, has a bearing if it relates to any tax arrear;

(iii) relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration;

(iv) relating to any undisclosed income from a source located outside India or undisclosed asset located outside India;

(v) relating to an assessment or reassessment made on the basis of information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, if it relates to any tax arrear;

(b) to any person in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; if

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(ii) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(iv) such order of detention has not been set aside by a court of competent jurisdiction;

(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988 or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts;

(d) to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

It is proposed that the Central Government be given the power to issue such orders, instructions and directions for the proper administration of this Scheme to persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions of the Central Government. In case any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may by order not inconsistent with the provisions of this Scheme remove the difficulty. However, no such order would be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

It is also proposed that the Central Government may make rules for carrying out the provisions of this Scheme.

**Reason**

This rationale of bringing in these provisions as stated in the Memorandum is to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously.

**Effective Date**

These amendments are proposed to take effect from 1st June, 2016.

# PART B : INDIRECT TAX

## SERVICE TAX

1. **Rate of Tax**

1.1. There has been no change in the basic rate of service tax which was increased to 14% w.e.f. 01.06.2015.

1.2. Effective from 15.11.2015, Swachh Bharat Cess was introduced @ 0.5% of the value of all taxable services. AT that point of time it was clarified that the cess will not be available as CENVAT Credit.

1.3. KrishiKalyan Cess is imposed on all taxable services at the rate of 0.5% on the value of taxable services with the objective of financing and promoting initiatives to improve agriculture. This Cess shall come into force on 01.06.2016. It is clarified that this KKC shall be available as CENVAT Credit.

1.4. On a comparison of the provisions of SBC and KKC, it can be noticed that they are identical, therefore on the point of availability of credit, there appears to be a conflict between the clarifications issued at the time of introduction of SBC and the current clarification. In view of the Karnataka High Court decision in the case of CCE VS Shree Renuka Sugars Limited 2014 (302) E.L.T. 33 (Kar) we believe that the current clarification represents a correct interpretation of law.

1.5. The following table summarizes the recent changes in the tax rates:

| Period | Calculation | Effective Rate |
|---|---|---|
| Upto 31.05.2015 | 12% ST + 0.24% EC + 0.12% SHEC | 12.36% |
| 01.06.2015 to 14.11.2015 | 14% ST | 14.00% |
| 15.11.2015 to 31.05.2016 | 14% ST + 0.5% SBC | 14.50% |
| 01.06.2016 onwards | 14% ST + 0.5% SBC + 0.5% KKC | 15.00% |

1.6. The above effective rates are applicable for normal services. There have been changes in the abatement rates as well which have been explained in the analysis of the respective sectors.

2. **Impact of change in rate**

2.1. The Point of Taxation Rules, 2011 were introduced w.e.f. 01.04.2011. to prescribe the point of time when the tax should be paid and also deal with certain situation of rate changes

2.2. It was realized that the said rules did not have statutory backing and therefore, amendments have been made in section 67A to empower the Central Government to notify rules in this regard. Notification 10/2016 – ST dated 01.03.2016 provides that the said amendments are effective from 01.03.2016. However, this would result in a possible interpretation to say that since prior to 01.03.2016, there was no specific provision enacting the

Point of Taxation Rules, 2011, the constitutional validity of such rules is challengeable.

2.3. During the last year there was a subsumation of EC and SHEC into the basic service tax rate and also an introduction of SBC in addition to the basic service tax rate. It was felt that the point of taxation rules were inadequate to cover the above made changes. Though the FAQ issued at the time of introduction of SBC clarified that Rule 5 of POTR, 2011 would be applicable, the legal validity of the said view was not free from doubt.

2.4. To overcome the above concerns, two Explanations have been added to Rule 5 of Point of Taxation Rules, 2011, wherein it is clarified that the said rule applies also in cases of new levy. The second explanation provides that unless the transaction satisfies the conditions provided in Rule 5, the same shall be taxable. The conditions provided in Rule 5 as reproduced below:

*Where a service is taxed for the first time, then, -*
*(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;*
*(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.*

2.5. The above explanation raises a fundamental question as to whether a service which has already been provided prior to introduction of levy could be taxed on raising of invoice or receiving payment subsequently. One needs to distinguish between the taxable event (event deciding taxability) vis-à-vis a payment event (event deciding timing of payment). Further, in the case of Collector of C.Ex Hyderabad VsVazir Sultan Tobacco Co Ltd 1996 (83) E.L.T. 3 (SC), it has been held that manufacturing is a taxable event whereas payment of excise duty is at the time of the removal of goods, therefore in a case where goods have been manufactured at the time when they were not excisable, there cannot be a duty liability at the time of removal of such goods.

2.6. Applying similar ratio in case of service tax, the Finance Act, 1994 levies a tax on provision of service i.e. essentially the levy is on provision of service. However, the payment of tax has been shifted at the time of raising of invoice or receipt of consideration by virtue of Point of Taxation Rules, 2011. Based, on the above discussion, it may be important to see whether a rule can impose a tax/new levy in cases where the service is already provided.

2.7. Specific challenges would arise since there have been multiple amendments as highlighted above. A service provider may have raised an invoice on 01.05.2015, when the applicable service tax rate was 12% with EC & SHEC. He would have paid this service tax of 12.36% to the Government treasury irrespective of him receiving the money. If the said consideration is realised after 01.06.2016, the issue of interpreting the above provisions can be challenging.

3. **Amendments in Rate of Interest**

3.1. Effective from 01.10.2014, the rate of interest under service tax law were increased drastically and went all the way upto 30% p.a. Based on various protests and representations against such exorbitant interest rates, the current budget proposes a reduction in rate as under:

| | Current Interest Rate | | Rate effective from date of assent of Finance Bill | | |
|---|---|---|---|---|---|
| | Simple interest rate per annum (Normal Cases) | Simple interest rate per annum (Small Service Providers) | Case where tax is collected and not paid | Normal Cases | Excess collection u/s 73A |
| Rate of Interest | 18%<br>24%<br>30% | 15%<br>21%<br>27% | 24% | 15% | 15% |

3.2. It may be noted that the interest rate on refunds has not been changed. While the reduction in interest rate is welcome, having a differential rate based on collection of tax can result in interpretation and administrative difficulties. The interpretation issue is whether tax collected refers to merely charging of tax in the invoice or actual reaslisation of tax from the customer. In our view, it has to be the actual realization of the tax from the customer

3.3. Based on the said interpretation there could an administrative challenge in the actual computation of interest. For e.g. If an invoice is raised on 01.05.2016 and the money is realized on 07.09.2016 and the payment of service tax is made on 30.10.2016, interest would be payable at the rate of 15% p.a. from 06.06.2016 to 07.09.2016 and at the rate of 24% from 08.09.2016 to 30.10.2016

3.4. When the above exercise is understood from the perspective of volume of operations, possibility of open payments not appropriated against specific services and four revisions in the rate of service tax, it is evident that doing business in India is not easy.

3.5. The interesting aspect to note is that a service provider liable to pay tax collecting and not paying service tax is required to pay interest of 24% p.a. whereas a service provider who is not liable to pay tax but collects tax and delays its payment is liable to pay interest at only 15% p.a.

4. **Government Support Service**

4.1. Currently only support services provided by the Government are liable for payment of service tax. The Finance Act, 2015 had proposed to tax all services provided by Government, however did not notify the date from which the said amendments are effective. Notification 06/2016-ST dated 18.02.2016 was issued to notify 01.04.2016 as the relevant date from when any service by Government shall be liable for payment of service tax.

4.2. Further Notifications have been issued to make corresponding impact on providing the above taxability on Reverse Charge basis. Also the definition of support service as provided earlier has been proposed to be deleted from 01.04.2016.

4.3. Through Notification 07/2016-ST an exemption has been provided for services rendered by the Government to business entities with turnover below Rs. 10 lakhs.

4.4. These amendment brings to prominence the importance of the concept of "service" in contradistinction to the performance of a statutory function. Any function which is a statutory function required to be performed by the Government cannot be considered as a rendition of service. In fact, it is the necessary requirement of the Government to perform that function and the requirement of the citizen to obtain that function

4.5. Therefore the liability of service tax on transactions with Government can be tabulated as under:

| **Transaction** | **Implication of Service Tax** |
|---|---|
| Statutory function carried out the Government | Not liable for service tax as it does not constitute a service |
| Specified Services mentioned in sub-clauses (i), (ii) & (iii) of clause (a) of Section 66D of the Finance Act, 1994 | Liable for service tax under Forward Charge i.e. the Government Department will register, collect and pay the service tax. |
| Other Services to business entities as listed in clause (a) of Section 66D of the Finance Act, 1994 | Liable for service tax under Reverse Charge Mechanism except for Renting of Immovable property where the tax has to be discharged by the Government |

| | |
|---|---|
| Other Services to non-business entities | Excluded from payment of service tax in terms of Negative List entry |
| Other Services to business entities below turnover of Rs. 10 lakhs | Exempted vide Notification No 07/2016 – ST |

4.6. From the above table, it is also evident that the applicability of service tax for other services provided by Government depends on whether the person receiving such services is a business entity or otherwise. As per section 65B(17) "business entity" is defined to mean any person ordinarily carrying out any activity relating to industry, commerce or any other business'. If person receiving services is not a business entity, there shall be no liability to pay service tax. Further, it must be noted that the business entities would even include individual, proprietary concern; partnership firms etc., if they carry out any kind of activity in the nature of business.

4.7. While the interpretation of a transaction as a statutory function vs a rendition of service by the Government is still to attain finality, the current budget speech also highlights the possibility of interpreting auction of certain rights and licenses granted by the Government as sale. To apprehend such fears the Finance Bill, 2016 also proposes to declare the assignment of radio-frequency spectrum as a service. The said amendment will be effective from a date of enactment of the Finance Bill, 2016.

4.8. The CENVAT Credit Rule, 2004 are also amended to permit CENVAT Credit of the above service tax. CENVAT Credit on service tax paid on the charges paid or payable for right to use any natural resource shall be taken over the period for which the right to use is assigned. Full cenvat credit on service tax paid on annual or monthly charges shall be allowed in the same financial year. A proviso giving effect to such provision is inserted in Rule 4(7).

4.9. In the above case, in case the person holding the right to use sells such right to another person for a consideration, then balance CENVATCredit will be allowed in the same financial year, subject to the condition that such balance credit should not exceed the service tax payable on the consideration charged

## 5. Procedural Amendments

5.1. One Person Companies will be treated at par with Individual and Proprietary concerns for the purposes of payment of service tax under Rule 6 including receipt basis taxation for small assessees. This is a welcome step.

5.2. However, the provisions of Notification 30/2012 prescribing Reverse Charge Mechanism have not been amended and therefore, for the said purpose One Person Companies will be treated as Body Corporate.

5.3. The Service Tax Rules, 1994 have been amended to prescribe for an annual return to be filed by 30th November each year. The said return can be revised within a period of one month from the date of submission of the original return. It may be noted that unlike regular returns the annual return can be revised only if the original return was filed in time

5.4. The Rules also prescribe for late filing fees extended uptoRs. 20,000/- for delayed filing of annual return. It may also be noted that the relevant date for the purposes of section 73 of the Finance Act, 1994 continues to be the date of periodic returns and not the annual return.

5.5. The normal period of limitation for issuance of SCN is increased from 18 months to 30 months. It is not clear whether the said amendment will grant a fresh lease of life to the department for a period which is already beyond 18 months but within 30 months. Of course, in general the department invokes the extended period of 5 years alleging suppression of facts.The said provision has not been amended.

5.6. In the last Budget, the Customs, Central Excise and Service Tax laws were amended to provide for closure of proceedings where the assessee pays duty/tax due, interest and specified penalty. Further amendments are being made to Service Tax law so as to provide for closure of proceedings against conoticees, once the proceedings against the main noticee have been closed.

5.7. The power to arrest in Service Tax is being restricted only to situations where the tax payer has collected the tax but not deposited it to the exchequer, and that too above a threshold of Rs 2 crore. The monetary limit for launching prosecution is being increased from Rs. 1 crore to Rs. 2 crore of Service Tax evasion

5.8. Notification No. 41/2012- ST, dated the 29th June, 2012 was amended by notification No.1/2016-ST dated 3rd February, 2016 so as to, inter alia, allow refund of Service Tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods. This amendment is being made effective from the date of application of the parent notification (i.e. 1st July 2012)

## 6. CENVAT Credit Amendments

### 6.1. Eligibility

6.1.1. The provisions of Rule 2(a) have been amended to include capital goods used outside the factory of the manufacturer of the final products for pumping of water for captive use within the factory. Consequently, Rule 2(k) is amended to include goods used for pumping of water within the definition of inputs as well.

6.1.2. The provisions of Rule 2(a) have been further amended to include wagons falling under sub-heading 860692 of the Central Excise Tariff Act, 1985 in the definition of capital goods. Thus, enabling cenvat credit on wagons.

6.1.3. The provisions of Rule 2(k) have been amended to consider capital goods having a value uptoRs. 10,000 per piece, as inputs. Hence, full cenvat credit can be availed in year of purchase on such capital goods.

6.1.4. The provisions of Rule 6(4) have been amended to restrict the availability of cenvat credit on capital goods used for manufacture of exempt and non-exempt goods or provision of exempt and non-exempt service. Hereafter, cenvat credit shall not be allowed on capital goods used exclusively in the manufacturing of exempt goods or in providing exempt service for a period of two years from the date of commencement of the commercial production or provision of service. Two years will be calculated from the date of installation of such capital goods.

6.2. **Interpretation of Output Service**

6.2.1. Rule 2(e) is amended w.e.f. 01.03.2016 to exclude services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India from the definition of exempted services. With this amendment, therefore, though this service is now included in exemption list for levy of tax, reversal of cenvat credit under Rule 6(3) will not be required.

6.3. **Utilization of CENVAT Credit**

6.3.1. Rule 3(4) of Cenvat Credit Rules is amended w.e.f 01.03.2016 to prohibit utilization of cenvat credit of any duty for payment of National Calamity Contingent duty, except for the National Calamity Contingent duty itself.

6.3.2. Rule 4(5) is amended to restrict cenvat credit to a manufacturer in respect of jigs, fixtures, moulds and dies or tools sent by manufacturer to another manufacturer or a job worker for production of goods on his behalf. However, cenvat credit will be allowed even if the jigs, moulds and dies or tools are directly sent to the premises of the other manufacturer or the job-worker without bringing these to his own premises.

6.3.3. The order of Deputy Commissioner or Assistant Commissioner of Central Excise allowing clearance of goods from the premises of job-worker will be valid for a period of three financial years. Earlier the order used to be valid for a period one financial year.

6.4. **Composite Output**

6.4.1. A new explanation to Rule 6(1) is added to consider any activity which is not a service defined in Section 65B(44) of the Finance Act, 1994 as exempt service.

6.4.2. Rule 6(2) is replaced completely. Now, as per Rule 6(2) a manufacturer who exclusively manufactures exempted goods or a service provider who exclusively provides exempted service shall not be eligible for credit of any inputs and input services. Hence, reversal of credit on the basis of separate books of accounts is done away with.

6.4.3. The provisions of Rule 6(3) and 6(3A) have been amended for calculation of CENVAT credit reversal in relation to exempt goods removed or provision of exempt services.

6.4.4. As per the amendment, amount of reversal will be determined as under:

| **Particulars** | **Amount** |
|---|---|
| Total Cenvat Credit | T |
| Cenvat exclusively attributable to exempt goods removed or provision of exempt service | A |
| Cenvat exclusively attributable to non-exempt goods removed or provision of non-exempt service | B |
| Common Cenvat Credit (C) | T- (A+B) |
| Value of exempt goods removed and exempt service provided in preceding financial year | E |
| Value of total goods removed and total services provided in preceding financial year | F |
| Reversal of Cenvat Credit | C * E/ F |

6.4.5. Where preceding year figures are not available for calculation of E and F, cenvat credit attributable to ineligible common credit shall be deemed to be fifty percent of the common credit.

6.4.6. Thereafter after the year end, the calculation for reversal amount is to be done based on the actual figures of turnover and any shortage if identified is to be paid on or before 30th June of the succeeding financial year. Delay in making the payment will attract interest at the rate of 15% interest. Earlier 24% interest was payable.

6.4.7. Calculation of reversal amount based on Rule 6(2), 6(3) and 6(3A) is extended to banking companies and financial institutions as well. Henceforth, banks can either reverse 50% of the total cenvat credit or can follow the procedure as mentioned above for reversal of cenvat credit attributable to exempt service.

6.5. **Important Impact areas of the amended provisions of Rule 6**

6.5.1. Under the amended provisions of Rule 6, the term exempted service is defined to include an activity which is not a service under section 65B (44). This can have widespread ramifications in terms of reversal of credit

6.5.2. The amended Rule 6 permits the slicing of credits into three baskets i.e. taxable, exempted and common credit. The ratio of reversal would apply only to common credit. This effectively reverses the decision of Mumbai Tribunal in the case of Thyssenkrupp Industries (I) Private Limited Vs CCE Pune 2014 (310) E.L.T. 317 (Tri – Mum). The amended provisions would provide substantial relief and clarity on the claim of CENVAT Credit

6.5.3. The amended provisions also state that if the option of 6%/7% is chosen, the amount payable shall not exceed the credit available. This again is a welcome step and would reduce substantial litigation.

6.5.4. Under the amended rules, reference to taxable services has been done away and substituted by the phrase "non-exempted" service.

6.6. **Input Service Distributor**

6.6.1. Rule 7 pertaining to input service distributor is amended to accommodate an outsourced manufacturing unit for distribution of cenvat credit. The amendments are as under:

6.6.2. The definition of input service distributor is amended to enable the distribution of credit to an outsourced manufacturing unit besides manufacturer, producer or provider.

6.6.3. Outsourced manufacturing unit means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act.

6.6.4. Credit is to be distributed pro rata only amongst such units to which the input service is attributable. Credit need not be allocated to units where input service is not attributable.

6.6.5. Credit can be distributed to outsourced manufacturing unit. The outsourced manufacturing unit is required to maintain separate books of accounts for such credits received and can utilize the credit for payment of duty on goods manufactured for the concerned input service distributor.

6.6.6. Provisions of Rule 6 pertaining to cenvat credit reversals do not apply to input service distributors but applies to the receiving unit.

6.7. **Other Provisions**

6.7.1. Rule 7B is inserted to allow manufacturers to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer and the provisions of Excise Act apply to such warehouse also.

6.7.2. Rule 9A is amended to replace the current process of monthly returns of receipt and consumption of each principal units by an annual return and the provisions of Rule 12 of the Central Excise Rules, 2002 apply to such annual return.

6.7.3. Rule 14(2) has been deleted and therefore the priority of utilization of CENVAT Credit is left to the discretion of the assessees.

6.8. **Refund**

6.8.1. Notification 27/2012-CE(NT) has been amended vide Notification 14/2016-CE(NT) so as to prescribe the time limit for filing the refund claim under Rule 5 of the CENVAT Credit Rules, 2004 in case of export of services. Below is the time limit:

6.8.2. In case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944.

6.8.3. In case of service provider, before the expiry of one year from the date of :
(a) Receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or
(b) Issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.

## 7. Indirect Tax Dispute Resolution Scheme, 2016

7.1. The dispute resolution scheme aims to reduce the pending litigations before the first appellate authority (Commissioner Appeals). The said scheme is applicable in respect of dispute with respect to Customs Act, 1962, Central Excise Act, 1944 & Finance Act, 1994.

7.2. The said scheme aims at disposing of the pending appeals and the declarant shall get immunity from all the proceedings under the Act, in respect of indirect tax dispute.

7.3. The said scheme shall come into force w.e.f. 01.06.2016 and the person desirous of applying under the said scheme shall apply by 31.12.2016. The said scheme can be applied only in cases where the impugned order is in challenge and is pending before the Commissioner (Appeal) as an appeal as on 31.03.2016.

7.4. Upon receipt of the declaration, the designated authority shall acknowledge the declaration in such manner as may be prescribed.

7.5. The declarant thereafter shall pay tax due alongwith the interest and penalty equivalent to 25% of the penalty imposed in the impugned order within 15 days of the receipt of acknowledgment. The declarant shall intimate the payment details within 7 seven days of making the payment alongwith the proof of payment.

7.6. The designated authority upon receipt of intimation payment shall pass an order of discharge of dues in such form as may be prescribed. Once the order is passed by the designated authority, the appeal pending before the Commissioner (Appeal) shall stand disposed and the declarant shall get immunity from all proceedings under respective Act.

7.7. The order so passed by the designated authority shall result in conclusion of proceedings and no matter relating to such order can be reopened thereafter before any authority or court. Further, the issue shall not be deemed to be decided on merits and does not have any binding effect.

7.8. Moreover, the amount paid under such declaration shall not be allowed to be refunded. However, the said scheme cannot be availed by the following assessee's:

7.8.1. If the impugned order is in respect of search and seizure proceedings

7.8.2. If the impugned order is in respect of prosecution instituted before 01.06.2016 for any offence punishable under the Act

7.8.3. If the impugned order is in respect of narcotic drugs or other prohibited goods

7.8.4. If the impugned order is in respect of any offence punishable under the Indian Penal Code, the Narcotics Drugs and Psychotropic Substances Act, 1985 of the Prevention of Corruption Act, 1988

7.8.5. any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

## 8. Sectoral Changes in Budget 2016

### 8.1. Construction

8.1.1. Over the last few years various exemptions provided to contractors for construction services rendered to Government agencies and infrastructure projects were withdrawn

8.1.2. Consequent to the withdrawal of such exemptions, the contractors faced challenges in paying the service tax especially in case of ongoing contracts, since the tax was not factored in at the time of bidding. The contractors therefore invoked subsequent legislation clauses against such government agencies.

8.1.3. The above resulted in blockage of funds and unnecessary litigation.Therefore, the current budget proposes a series of measures to grant an exemption for such ongoing contracts. The Budget also proposes to grant retrospective exemption in such case with consequential refund which needs to be claimed within a period of six months. The following services are granted this benefit

| Entry No of Not 25/2012 | Nature of Service | Contract Date before | Exemption upto |
|---|---|---|---|
| 12A | Construction provided to the Government, a local authority or a governmental authority, in respect of construction of govt. | 01.03.2015 | 01.04.2020 |

| | | | |
|---|---|---|---|
| | schools, hospitals etc. | | |
| 14A | Construction of ports, airports, | 01.03.2015 | 01.04.2020 |

8.1.4. Similarly, exemption on construction, erection, commissioning or installation of original works pertaining to monorail or metro, in respect of contracts entered into on or after 1st March 2016, is being withdrawn with effect from 1st March, 2016.

8.1.5. It may be noted that in all the above cases, fresh contracts entered after the dates mentioned above will become taxable. Also in the case of ongoing contracts, if sub contracts are issued after the dates mentioned above, they would also be liable for service tax.

8.1.6. Services provided by way of construction, maintenance etc. of canal, dam or other irrigation works provided to bodies set up by Government but not necessarily by an Act of Parliament or a State Legislature, during the period from the 1st July, 2012 to 29th January, 2014, are being exempted from Service Tax with consequential refunds, subject to the principle of unjust enrichment

8.1.7. Services by way of construction of low cost houses up to a carpet area of 60 square metres in a housing project under approved housing schemes are being exempted from Service Tax with effect from 1st March, 2016.

8.1.8. The abatement rate in respect of services by way of construction of residential complex, building, civil structure, or a part thereof, is being rationalized at 70%by merging the two existing rates (70% for high end flats and 75% for low end flats).

8.2. **Legal Services**

8.2.1. The levy of service tax on legal services has always been a subject matter of resistance from the legal fraternity. Currently, legal services rendered to business entities are liable for service tax under RCM and those rendered to non-business entities are exempted from payment of service tax. Also services rendered by advocates to other advocates and law firms are exempted from service tax

8.2.2. It is proposed that the exemption provided to services rendered by a senior advocate to an advocate or partnership firm of advocatesproviding legal service anda person represented on an arbitral tribunal to an arbitral tribunal, be withdrawn with effect from 1st April, 2016 and Service Tax is being levied under forward charge.

8.2.3. The above amendment presents issues relating to blockage of credit since the services rendered by law firm would be governed by RCM.

8.3. **Transport & Logistics**

8.3.1. The shipping industry has seen an a disproportionate share of litigation vis-à-vis service tax. While international transportation of goods was always sought to be exempted, the identification of various charges levied by a shipping line as being towards transportation or towards handling was challenged by the department. Further complications arose in claim of credits of taxes charged by ports and other agencies.

8.3.2. The freight forwarders faced a different set of challenges, though they acted on a principal basis, the department treated them as agents and effectively demanded service tax on the freight margins.

8.3.3. In the above background, the current budget proposes to impose service tax on international transportation of goods destined to India (Import Goods). It is felt that the shipping line can recover the service tax from the importer and claim the credits of taxes charged by the port and other agencies. Similarly if the importer is a manufacturer he can claim the credit of service tax charged by the shipping line.

8.3.4. In case of importers directly dealing with foreign shipping lines, it is expected that they would discharge service tax under RCM with corresponding CENVAT Credit.

8.3.5. It is accordingly felt that the amendment would ease the flow of credits. However, it may be noted that the industry operates on the principles of freight consolidation and the issue of whether a freight forwarder is an agent or a principal is not addressed by the budget. The proposed amendment while attempting to provide a level playing field to the domestic shipping lines, in fact results in discrimination between shipping lines and airlines since international air freight continues to remain outside the purview of service tax.

8.3.6. It may also be noted that in many cases the freight is paid by the foreign exporter to a foreign shipping line. In such cases naturally there would not be any service tax. However, since the value of the freight would be added in the cost of goods imported the same would be subject to Customs duty.

8.3.7. If an Indian Shipping line collects freight from a foreign exporter, service tax would be payable on the same in view of Rule 10 of Place of Provision of Service Rules, 2012 resulting in a disadvantage to an Indian shipping line as compared to a foreign shipping line.

8.3.8. Interestingly, under the Customs Valuation Rules, freight is treated as the part of the value of imported goods. With the imposition of service tax on such freight, there would be an overlap between customs duty and service tax. The TRU clarification suggests that service tax component shall not be a part of Customs Valuation. However, there is no amendment in the Customs Valuation Rules. Also recently the Mumbai Tribunal had held that once the freight is a part of customs valuation, service tax cannot be demanded on the same. As such the dual impact of customs duty and service tax will result in substantial litigation.

8.3.9. As far as Export of Goods is concerned, in view of Rule 10 of Place of Provision of Service Rule, 2012, the same is exempted from service tax.

Further due to an amendment in CENVAT Credit Rules, 2004 a corresponding credit will be available.

8.3.10. The abatement on shifting of used household goods by a Goods Transport Agency (GTA) is being rationalized at the rate of 60%, without CENVAT credit on inputs, input services and capital goods. (The existing rate of abatement of 70% allowed on transport of other goods by GTA continues unchanged).

8.3.11. Credit of input services is being allowed on transport of goods, other than in containers, by rail at the existing rate of abatement of 70%. Credit of input services is being allowed on transport of goods in containers by rail at a reduced abatement rate of 60%.

8.3.12. Credit of input services is being allowed on transport of goods by vessel at the existing rate of abatement of 70%.

8.3.13. The following table summarizes various situations and applicability of service tax in the field of transportation:

| **Nature of transportation** | **Types of goods** | **Nature of payer** | **Nature of service provider** | **Tax Implication** | **Availability of credits** |
|---|---|---|---|---|---|
| International sea | Import | Indian | Indian | Taxable at full rate | Yes |
| International sea | Import | Foreign | Indian | Taxable at full rate | Yes |
| International sea | Import | Indian | Foreign | Taxable under full rate under RCM | Not Applicable |
| International sea | Import | Foreign | Foreign | Exempt under Notification 25/2012 | No |
| International sea | Exports | Any | Any | Exempt under rule 10 of PPSR. | Yes |
| International air | Import | Any | Any | Exempt under Notification 25/2012. | No |
| International air | Exports | Any | Any | Exempt under rule 10 of PPSR. | No |

| Nature of transportation | Types of goods | Nature of payer | Nature of service provider | Tax Implication | Availability of credits |
|---|---|---|---|---|---|
| Coastal transportation | Non-essential commodities | Any | Any | Taxable on abated value of 30% | Yes |
| Coastal transportation | Essential commodities | Any | Any | Exempted under Notification 25/2012 | No |
| Rail transportation | Essential commodities | Any | Any | Exempted under Notification 25/2012 | No |
| Rail transportation | Containerized | Any | Other than indian railways | Taxable on abated value of 40% | Yes |
| Rail transportation | Non-essential | Any | Indian railways | Taxable on abated value of 30% | Yes |
| Goods transportation agency | Essential commodities | Any | Any | Exempted under Notification 25/2012 | No |
| Goods transportation agency | Household commodities | Any | Any | Taxable on abated value of 40% | No |
| Goods transportation agency | Other than Household commodities | Any | Any | Taxable on abated of 30% | No |
| Inland waterways | Any | Any | Any | Covered under negative list | No |
| Courier | Any | Any | Any | Taxable at full rate | Yes |

8.4. **Software**

8.4.1. The classification of software as product or service has seen its fair share of litigation. This results in overlaps not only between VAT and service tax but also between Excise Duty and Service Tax. The Budget tries to address this issue of overlaps between Excise Duty and Service tax and has made both the levies mutually exclusive of each other.

8.5. **Travel & Tourism**

8.5.1. The Negative List entry that covers 'service of transportation of passengers, with or without accompanied belongings, by a stage carriage is being omitted with effect from 1st June, 2016.

8.5.2. Service Tax is being levied on transportation of passengers by air conditioned stage carriage with effect from 1st June, 2016, at the same level of abatement as applicable to the transportation of passengers by a contract carriage, that is, 60% without credit of inputs, input services and capital goods

8.5.3. Exemption on the services of transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway is being withdrawn with effect from 1st April, 2016.

8.5.4. The abatement rate in respect of services by a tour operator in relation to packaged tour (defined where tour operator provides to the service recipient transportation, accommodation, food etc) and other than packaged tour is being rationalized at 70%.

8.6. **Banking & Financial Service**

8.6.1. The service of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India is being exempted from Service Tax with effect from 1st April, 2016

8.6.2. Services provided by Insurance Regulatory and Development Authority (IRDA) of India are being exempted from Service Tax with effect from 1st April, 2016

8.6.3. The regulatory services provided by Securities and Exchange Board of India (SEBI) are being exempted from Service Tax with effect from 1st April, 2016

8.6.4. The rate of Service Tax on single premium annuity (insurance) policies is being reduced from 3.5% to 1.4% of the premium, in cases where the amount allocated for investment, or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service, with effect from 1st April, 2016.

8.6.5. The abatement rate on services of a foreman to a chit fund is being rationalised at the rate of 30%, without CENVAT credit on inputs, input services and capital goods

8.6.6. The services of general insurance business provided under 'Niramaya' Health Insurance scheme launched by National Trust for the Welfare of

Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies are being exempted from Service Tax with effect from 1st April, 2016

8.6.7. The services provided by mutual fund agent/distributor to a mutual fund or asset management company, are being made taxable under forward charge with effect from 1st April, 2016, so as to enable the small sub-agents down the distribution chain to avail small scale exemption having threshold turnover of Rs 10 lakh per year, subject to fulfillment of other conditions prescribed

8.6.8. Calculation of reversal amount based on Rule 6(2), 6(3) and 6(3A) is extended to banking companies and financial institutions as well. Henceforth, banks can either reverse 50% of the total cenvat credit or can follow the procedure as mentioned above for reversal of cenvat credit attributable to exempt service

8.7. **Other Sectors**

8.7.1. Services provided by Employees' Provident Fund Organisation (EPFO) to employees are being exempted from Service Tax with effect from 1st April, 2016

8.7.2. Services provided by National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer's Welfare, Government of India, by way of knowledge dissemination are being exempted from Service Tax with effect from 1st April, 2016.

8.7.3. Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to incubatees are being exempted from Service Tax with effect from 1st April, 2016

8.7.4. Services provided by way of skill/vocational training by training partners under DeenDayalUpadhyayGrameenKaushalyaYojana are being exempted from Service Tax with effect from 1st April, 2016.

8.7.5. Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship are being exempted from Service Tax with effect from 1st April, 2016

8.7.6. The threshold exemption to services provided by a performing artist in folk or classical art forms of music, dance or theatre is being enhanced from Rs 1 lakh to Rs 1.5 lakh charged per event with effect from 1st April, 2016

8.7.7. Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management (PGPM) (other than executive development programme), Integrated Programme in Management and Fellowship Programme in Management (FPM) are being exempted from Service Tax with effect from 1st March, 2016

# CENTRAL EXCISE

1. Not once in the speech was GST spoken, neither its developments were addressed, but we know that the same is soon a reality, so is this budget reflecting glimpse of GST? Amendments in Central Excise are quite significant and necessary loopholes are filled. According to me cleanup was required and this budget is an answer to it. With this short introduction, let us sail over through the amendments affected this year.

2. **Rate Change**:

a. The basic rate of excise duty is unchanged at 12.5%.

Infrastructure Cess:

b. A new levy in the name of central excise duty called infrastructure cess would be levied on all on motor vehicles falling under chapter 8703 of the First Schedule to the Central Excise Tariff Act, 1985. The said entry includes:

- Petrol/LPG/CNG driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1200cc – 1%

- Diesel driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1500cc – 2.5%

- Other higher engine capacity motor vehicles and SUVs and bigger sedans – 4%.

But does not include

- Three wheeled vehicles, Electrically operated vehicles, Hybrid vehicles, Hydrogen vehicles based on fuel cell technology, Motor vehicles which after clearance have been registered for use solely as taxi, Cars for physically handicapped persons and Motor vehicles cleared as ambulances or registered for use solely as ambulance

c. The rate of the cess would be 4% on the value of such goods as specified above.

d. Further, the provisions of the Central Excise Act, 1944 and the rules made thereunder, including those relating to assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under sub-section (1) in respect of the goods specified in the Eleventh Schedule as they apply in relation to the levy and collection of the duties of excise on such goods under the said Act or the rules, as the case may be.

e. The same is **effective immediately (i.e. from 01.03.2016)** owing to a declaration made under the Provisional Collection of Taxes Act, 1931.

3. **Legislative Amendments:**

a. The normal period of invocation for raising demands in cases not involving fraud, suppression of facts, willfulmis-statement, etc under Section 11A of the Central Excise Act, 1944 is increased to two years from the present period of one year.

b. Central Board of Excise and Customs can issue Instructions/orders/directions issued for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods or for the implementation of any other provision of this act.

4. **Change in Rate of Duties and Exemption:**
A summarized change in excise duty rate structure is summarized under annexure-1 to the said note.

5. **Levy of Excise Duty on Readymade Garments:**
Scope of levy:

a. Excise duty is being levied on readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the First Schedule under Central Excise Tariff Act, 1985. Excise duty is payable only on such products where its retail sale price (RSP) is Rs.1000 and above when they bear or are sold under a brand name.

b. The levy shall not apply to retail tailoring establishments that stitch garments in a customized manner to the size and style specifications of individual customers, whether out of fabric purchased by the customer from the same establishment or fabric supplied by the customer.

c. The levy shall not apply to those garments falling under 6309 and 6310.

d. In respect of readymade garments and made up articles of textiles other than those mentioned above, the optional levy of "Nil" (without CENVAT credit) or 6% (with CENVAT credit) in case of garments / articles of cotton, not containing any other textile material and "Nil" (without CENVAT credit) or 12.5% (with CENVAT credit) in case of garments / articles of other composition, as the case may be, shall continue.

Rate of levy:

e. Excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit) is being levied on above mentioned readymade garments. This optional levy would apply to such readymade garments and made up articles of textiles regardless of the composition of the garment / article.

Value on which excise duty is payable:

f. The tariff value for readymade garments and made up articles of textile is also being increased from 30% to 60% which shall apply to all goods mentioned in

the notification. Accordingly, the optional rate of 2% or 12.5% is being made applicable on the above mentioned revised tariff value.

Whether small scale exemption available?

g. Small scale exemption is being extended to readymade garments and the value for computing the eligibility as well as the exemption limit for purposes of SSI exemption would be the tariff value of the goods.

h. The SSI exemption for the month of March, 2016 will be Rs.12.5 lakh, subject to fulfillment of other conditions of the notification No.8/2003-C.E., dated 01.03.2003. For this purpose, notification No.8/2003-C.E., dated 1st March, 2003 is being amended suitably.

i. The eligibility for availing of the SSI exemption in 2015-16 for the month of March 2016 is that the value of clearances for home consumption from one or more manufacturer from one or more unit should not have exceeded Rs. 4 crore in the financial year 2014-15. The computation for this purpose shall be done in accordance with the provisions of Para 3A of notification No. 8/2003-C.E. For this purpose, a certificate from a Chartered Accountant based on the books of accounts for 2014-15 shall suffice.

j. Excisable goods which were produced on or before 29.02.2016 but lying in stock as on 29.02.2016 shall attract excise duty upon clearance. Manufacturers shall keep a stock declaration of finished goods, goods-in-process and inputs as on 29.02.2016 in their records duly certified by a Chartered Accountant so as to enable the manufacturers to claim CENVAT credit on inputs or inputs contained in goods lying in stock as already provided for in Rule 3(2) of the CENVAT Credit, Rules, 2004, if he so desires. **No stock declaration, will, however, be required to be made to the jurisdictional central excise authorities.**

Certain clarifications:

k. Full exemption from Central Excise duty will be available to duty-paid goods returned to the manufacturer during a financial year up to an aggregate ceiling not exceeding 10% of the value of clearances for home consumption made in the preceding financial year. The manufacturer would be required to observe the following procedure as prescribed for the purpose of claiming exemption.

l. The brand name owner, who gets the goods manufactured on his own account on job work, shall pay the duty leviable on such goods as if the goods were manufactured by him. The brand name owner (and not the job-worker) shall be required to register and comply with all the provisions of Central Excise law. However, the brand-owner can authorise the job-worker to pay the duty leviable on such goods subject to certain conditions.

m. A unit which manufactures goods bearing the brand name of another person out of inputs or raw materials which have been purchased independently and not supplied by the brand owner, does not satisfy the definition of "job-worker" and would, therefore, have to obtain registration and discharge the duty liability.

n. In cases where the brand name owner gets goods bearing its brand manufactured from other manufacturers (normally small units) without providing the raw materials or inputs, and if the RSP is not affixed or marked on such goods when they are cleared in the course of sale from the factory of a manufacturer to the brand owner, then no excise duty would be payable by such a manufacturers since the RSP of such goods is not disclosed to them by the brand owner. However, since the process of labeling or re-labelling constitutes a process of "manufacture", duty on the tariff value (based on the RSP) would be payable as and when the brand owner labels the goods with the RSP of Rs.1000 or above and clears them for further sale.

6. **Levy of Excise Duty on Articles of Jewellery:**

Scope of levy:

a. Excise duty is being levied on the manufacturing of articles of jewellery. However, the levy excludes manufacturing of silver jewellery, other than studded with diamonds/other precious stones.

Rate of levy:

b. Excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit) is being levied on above mentioned articles of jewellery.

Whether small scale exemption available?

c. SSI exemption under notification 8/2003 – C.E. dated 01.03.2003 is available with a higher threshold exemption uptoRs. 6 crore in a year and eligibility limit of 12 crore.Thus, a jewellery manufacturer will be eligible for exemption from excise duty on first clearances uptoRs. 6 Crore during a financial year, if his aggregate domestic clearances during preceding financial year were less than Rs. 12 crore. In other words, jewellery manufacturer having aggregate value of clearances in a financial year exceeding Rs. 12 crore will not be eligible for this threshold exemption in the subsequent financial year.

d. The SSI exemption for the month of March, 2016 for jewellery manufacturers will be Rs.50 lakh, subject to the condition that value of clearances for home consumption from one or more manufacturer from one or more factory or premises of production or manufacture during the financial year 2014-15 should not be more than Rs. 12 crore. Computation for this purpose shall be done in accordance with the provisions of Para 3A of notification No. 8/2003- CE. For this purpose, a certificate from a Chartered Accountant, based on the books of accounts for 2014-15, shall suffice

e. Similarly, for determining the eligibility for availing of the SSI exemption from 2016-17 onwards, a certificate from a Chartered Accountant, based on the books of accounts for 2015-16, shall suffice.

Certain clarifications:

f. Excisable goods which were produced on or before 29.02.2016 but lying in stock as on 29.02.2016 shall attract excise duty upon clearance. Jewellery manufacturer shall keep a stock declaration of finished goods, goods-in-process and inputs as on 29.02.2016 in their records duly certified by a Chartered Accountant so as to enable the manufacturers to claim CENVAT credit on inputs or inputs contained in goods lying in stock as already provided for in Rule 3(2) of the CENVAT Credit, Rules, 2004, if he so desires. **No stock declaration, will, however, be required to be made to the jurisdictional central excise authorities.**

g. Moreover, documents being maintained by the jewellery manufacturers **for State VAT or Bureau of Indian Standards (in the case of hallmarked jewellery) shall suffice for Excise purposes also.**

h. The private records of the jewellery manufacturers, giving details of daily stock for his own purposes, shall be accepted for the purposes of Rule 10 of the Central Excise Rules 2002.

i. Registration process has been simplified and even centralized registration has been made available to jewellery manufacturers seeking registration. Further, it has been clarified that no field staff will visit the premise for the purpose of registration and the same would be granted within 2 days.

j. Jewellery manufacturers will be eligible for a simplified return applicable for optional excise duty of 1%/2% without CENVAT credit under notification No.1/2011-CE, under Rule 12 of the Central Excise Rules, 2002.

k. Rule 12AA of the Central Excise Rules, 2002 provides that in case of goods falling under chapter heading 7113, every person (not being an EOU or SEZ unit) who gets jewellery made from any other person, and supplies the raw materials such as gold/silver/gemstones to the job-worker for such manufacture, the duty liability would be on such person who gets articles of jewellery made from the job worker. In such cases, the principal manufacturer (and not job worker) will be required to get Central Excise registered, pay duty and follow other compliance requirements. This will ensure that small artisans/goldsmiths are not required to take any excise registration.

7. **Changes under Central Excise Rules, 2002:**

a. Manner of calculating interest on provisional assessment has been clarified and accordingly interest is payable at the specified rate for the period starting with the first day after the due date till the date of actual payment, whether such amount is paid before or after the issue of order for final assessment.

Illustrations:

- ✓ Goods under provisional assessment, cleared in the month of January, 2015 Provisional duty of Rs 5000 is paid on the 6th February, 2015 [due date under sub-rule (1) of rule 8]. Further duty of Rs 9000 is paid on the 15th April, 2015, and on the same day the documents for final assessment are submitted by the assessee. Final assessment order is issued on the 18th June, 2015, assessing the duty payable on goods as Rs 15000, and consequently the assessee pays a duty of Rs 1000 on the 30th June, 2015, then no interest shall be payable on Rs 5000, interest shall be payable on Rs 9000 from the 7th February, 2015, till the 15th April, 2015, and interest shall be payable on Rs 1000 from the 7th February, 2015, till the 30th June, 2015 as due date for payment of duty of Rs 15000 is the 6th February, 2015."
- ✓ Goods were cleared under provisional assessment on 1st April 2016 without payment of duty. Documents for final assessment was submitted on 1st September, 2016 and a consultant informed that duty of Rs. 10,000/- is payable and accordingly the same was paid on 30th September 2016. Final assessment order passed on 30th October, 2016 levied a duty of Rs. 10,000/- on the said goods and accordingly interest is payable on Rs. 10,000/- for the period from 1st April 2016 to 30th September 2016.

b. The condition for self attested invoices by the manufacturer for transport of goods has been relaxed and accordingly if the said invoice is digitally signed by the transporter then the same is a sufficient compliance under the said rules.

| S.No | Rtn | Purpose | Due Date | Amendments |
|---|---|---|---|---|
| **1** | ER-1 | Monthly return for production and removal of goods and Cenvat credit to be filed by every assessee | Within 10 days of the close of the month to which it relates | --Same-- |
| **2** | ER-2 | Monthly return to be filed by 100% EOU in respect of excisablegoods manufactured and inputs/capital goods received in unit | Within 10 days of the close of the month to which it relates | --Same-- |
| **3** | ER-3 | Quarterly return for clearance of goods and Cenvat credit to be filed by SSI units claiming | Within 10 days of the close of the quarter to which | --Same-- |

| | | | | |
|---|---|---|---|---|
| | | clearance based exemption | it relates | |
| 4 | ER-4 | Annual Financial Information Statement to be filed by assessees paying duty of Rs. 1 crore or more | 30th day of November of the succeeding year | Annual returns have to be filed |
| **5** | ER-5 | Annual return of information relating to principal inputs to be filed by assessees paying duty of Rs. 1 crore or more | 30th April of each Financial year | --Same-- |
| **6** | ER-6 | Monthly return of information relating to principal inputs to be filed by assessees paying duty of Rs. 1 crore or more | Within 10 days of the close of the month to which it relates | --Same-- |
| **7** | ER-7 | Annual Installed Capacity Statement declaring of the factory for every F. Y | 30th April of the succeeding F.Y. | --Deleted-- |

c. Late fee which was being levied from 01.03.2015 vide notification 08/2015 dated 01.03.2015 on late filing of Annual Financial Information Statement or Annual Installed Capacity Statement stands deleted.

d. The provision of filing annual returns is also being made applicable to 100% EOU.

e. ER-1/ER-2/ER-3 returns can be revised by the end of the calendar month in which the original return is filed. For the first time, the provision for revising these returns has been introduced and the same would solve many technical issues. Further, even annual returns filed in ER-4 can be revised within a period of one month from the date of submission of the said Annual return.

f. Finally, a proviso has been inserted in the said rules to the much accepted law established by various courts which states that in case where the duty liability, interest and penalty against the person liable has deemed to have been concluded then all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to have been concluded. This will reduce unnecessary litigation to an extent.

8. **Changes under Third Schedule and MRP Based Assessment for certain products:**

a. The Third Schedule is being amended so as to include therein:
   1) All goods falling under heading 3401 and 3402;
   2) Aluminium foils of a thickness not exceeding 0.2 mm;
   3) Wrist wearable devices (commonly known as 'smart watches'); and

4) Accessories of motor vehicle and certain other specified goods.
5) Relevant entry has been amended so as to include glazed tiles.

{Changes at above will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.}

b. Notification 49/2008 dated 24.12.2008 relating to MRP based assessment is being amended to align with the above mentioned amendments in third schedule. Accordingly, an abatement of 35% & 25% on the MRP value is being specified on smart watches and aluminium foils of a thickness not exceeding 0.2 mm.

c. Further, the abatement rate on MRP value for all footwear has been increased from 25% to 30%.

9. **Refunds/rebates and other changes**:

a. Earlier quarterly refunds were required to be filed for refund of cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004. It is now being amended to state that refund should be filed in Form A alongwith relevant documents relating to a quarter

- ✓ For manufacturers : 1 year from the relevant date adhering to various modes of export which is explained as under:

| Sr.No | Modes of export | Relevant date |
|---|---|---|
| 1 | Goods are exported by sea or air | Date on which the ship or the aircraft in which such goods are loaded |
| 2 | Goods are exported by land | Date on which such goods pass the frontier |
| 3 | Goods are exported by post | Date of dispatch of goods by the Post Office |

- ✓ For service providers : 1 year from the date of receipt of payment in convertible foreign exchange or issue of invoice (whichever is later)

b. The rate of interest for delay in refund pursuant to a order of the Appellate Tribunal or any other court is increased from 6% to 15%.

c. A dynamic concept of clubbing of registrations has been undertaken with a view to reduce compliance for persons who manufacturers Nil rated products or their products are exempted from payment of duty. The said clubbing can be allowed subject to the satisfaction of the Commissioner of Central Excise.

d. Rules' regarding Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016 have been introduced in place of old rules. The said rules are applicable only when a manufacturer intends to avail of the benefit of a notification issued under sub-

section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) granting exemption of duty to excisable goods. The said rules shall come into force from 01.04.2016. Relevant forms and certificates are required to be produced for claiming exemption and the relevant format of which is being specified in notification 20/2016 – C.E (NT) dated 01.03.2016.

| Sr. No | Description of goods | Old rate | New rate |
|---|---|---|---|
| | Aerated Beverages | | |
| 1 | Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured | 18% | 21% |
| | Tobacco and Tobacco Products | | |
| 2 | Cigar and cheroots | 12.5% or Rs.3375 per thousand, whichever is higher | 12.5% or Rs.3755 per thousand, whichever is higher |
| 3 | Cigarillos | 12.5% or Rs.3375 per thousand, whichever is higher | 12.5% or Rs.3755 per thousand, whichever is higher |
| 4 | Cigarettes of tobacco substitutes | Rs.3375 per thousand | Rs.3755 per thousand |
| 5 | Cigarillos of tobacco substitutes | 12.5% or Rs.3375 per thousand, whichever is higher | 12.5% or Rs.3755 per thousand, whichever is higher |
| 6 | Others of tobacco substitutes | 12.5% or Rs.3375 per thousand, whichever is higher | 12.5% or Rs.3755 per thousand, whichever is higher |
| 7 | Gutkha, chewing tobacco (including filter khaini) and jarda scented tobacco | 70% | 81% |
| 8 | Unmanufactured tobacco | 55% | 64% |
| 9 | Paper rolled biris [whether handmade or machine made] and other biris [other than handmade biris]. However, the effective rate of basic excise duty of Rs.21 per thousand shall remain unchanged. | Rs.30 per thousand | Rs.80 per thousand |
| | Food processing | | |

| | | | |
|---|---|---|---|
| 10 | Refrigerated containers | 12.5% | 6% |
| | Fertilizers | | |
| 11 | Micronutrients which are covered under Sr. No. 1(f) of Schedule 1 Part (A) of the Fertilizer Control Order, 1985 and are manufactured by the manufacturers which are registered under FCO, 1985 | 12.5% | 6% |
| 12 | Physical mixture of fertilizers manufactured by Co-operative Societies, holding certificate of manufacture for mixture of fertilizers under the Fertiliser Control Order 1985, made out of chemical fertilizers on which duty of excise has been paid and no credit of duty paid on such chemical fertilizers has been taken under rule 3 of the CENVAT Credit Rules, 2004 and which are intended for supply to the members of such Co-operative Societies | 1% [without CENVAT credit] **or** 6% [with CENVAT credit] | Nil |
| | Textiles | | |
| 13 | To increase Tariff Value of readymade garments and made up articles of textiles | 30% of retail sale price | 60% of retail sale price |
| 14 | Branded readymade garments and made up articles of textiles of retail sale price of Rs.1000 or more | Nil [without CENVAT credit] **or** 6%/12.5% [with CENVAT credit] | 2% [without CENVAT credit] **or** 12.5% [with CENVAT credit] |
| 15 | PSF / PFY, manufactured from plastic scrap or plastic waste including waste PET bottles | 2% [without CENVAT credit] **or** 6% [with CENVAT credit] | 2% [without CENVAT credit] **or** 12.5% [with CENVAT credit] |
| | Footwear | | |
| 16 | Rubber sheets & resin rubber sheets for soles and heels | 12.5% | 6% |
| 17 | Increase the abatement from retail sale price (RSP) for the purposes of excise duty assessment for all categories of footwear | 25% | 30% |
| | Metals | | |
| 18 | To change excise duty structure on disposable containers made of aluminium foils. | 2% [without CENVAT credit] or | 2% [without CENVAT credit] or |

| | | | |
|---|---|---|---|
| | | 6% [with CENVAT credit] | 12.5% [with CENVAT credit] |
| | Precious metals & Jewellery | | |
| 19 | Refined gold bars manufactured from gold dore bar, silver dore bar, gold ore or concentrate, silver ore or concentrate, copper ore or concentrate. Prospectively, the excise duty exemption under the existing area based exemptions on refined gold is being withdrawn. | 9% | 9.5% |
| 20 | Refined silver manufactured from silver ore or concentrate, silver dore bar, or gold dore bar. Prospectively, the excise duty exemption under the existing area based exemptions on refined silver is being withdrawn. | 8% | 8.5% |
| 21 | Articles of Jewellery [excluding silver jewellery, other than studded with diamonds or other precious stones namely, ruby, emerald and sapphire] with a higher threshold exemption uptoRs. 6 crore in a year and eligibility limit of Rs.12 crore, along with simplified compliance procedure. | Nil | 1% [without CENVAT credit] or 12.5% [with CENVAT credit] |
| | Renewable Energy | | |
| 22 | Unsaturated Polyester Resin (polyester based infusion resin and hand layup resin), Hardeners/Hardener for adhesive resin, Vinyl Easter Adhesive (VEA) and Epoxy Resin used for manufacture of rotor blades and intermediates, parts and sub parts of rotor blades for wind operated electricity generators | Nil | 6% |
| 23 | Carbon pultrusion used for manufacture of rotor blades and intermediates, parts and sub-parts of rotor blades for wind operated electricity generators | 12.5% | 6% |
| 24 | Solar lamp | 12.5% | Nil |

| | | | |
|---|---|---|---|
| 25 | To prescribe "valid agreement between importer / producer of power with urban local body for processing of municipal solid waste for not less than ten years from the date of commissioning of project" as an alternative to the condition of "production of valid power purchase agreement between the importer/producer of power and the purchaser, for the sale and purchase of electricity generated using non-conventional materials" for availing concessional customs/excise duty benefits in case of power generation project based on municipal and urban waste | - | - |
| | Civil Aviation | | |
| 26 | Aviation Turbine Fuel [ATF] other than for supply to Scheduled Commuter Airlines (SCA) from the Regional Connectivity Scheme airports | 8% | 14% |
| | Maintenance, repair and overhaul [MRO] of aircrafts | | |
| 27 | Tools and tool kits when procured by MROs for maintenance, repair, and overhauling [MRO] of aircraft subject to a certification by the Directorate General of Civil Aviation | Applicable excise duty | Nil |
| 28 | To simplify the procedure for availment of exemption from excise duty on parts, testing equipment, tools and tool-kits for maintenance, repair and overhaul of aircraft based on records | - | - |
| 29 | To remove the restriction of one year for utilization of duty free parts for maintenance, repair and overhaul of aircraft | - | - |
| _ | Electronics & IT hardware | _ | _ |
| 30 | Charger / adapter, battery and wired headsets / speakers for supply to mobile phone manufacturers as original equipment manufacturer | Nil | 2% [without CENVAT credit] **or** 12.5% [with CENVAT credit] |

| | | | |
|---|---|---|---|
| 31 | Inputs, parts and components, subparts for manufacture of charger / adapter, battery and wired headsets / speakers of mobile phone, subject to actual user condition. | 12.5% / Nil | Nil |
| 32 | Routers, broadband Modems, Set-top boxes for gaining access to internet, set top boxes for TV, digital video recorder (DVR) / network video recorder (NVR), CCTV camera / IP camera, lithium ion battery [other than those for mobile handsets] | 12.5% | 4% [without CENVAT credit] or 12.5% [with CENVAT credit] |
| 33 | Parts and components, subparts for manufacture of Routers, broadband Modems, Set-top boxes for gaining access to internet, set top boxes for TV, digital video recorder (DVR) / network video recorder (NVR), CCTV camera / IP camera, lithium ion battery [other than those for mobile handsets] | 12.5% | Nil |
| | Machinery | | |
| 34 | Electric motor, shafts, sleeve, chamber, impeller, washer required for the manufacture of centrifugal pump | 12.5% | 6% |
| | Automobiles | | |
| 35 | Specified parts of Electric Vehicles and Hybrid Vehicles | 6% Upto 31.03.2016 | 6% Without time limit |
| 36 | Engine for xEV (hybrid electric vehicle) | 12.5% | 6% |
| | Miscellaneous | | |
| 37 | Excise duty on sacks and bags of all plastics is being rationalized at 15%. | 12.5%/15% | 15% |
| 38 | Unconditionally exempt improved cook stoves including smokeless chulhas for burning wood, agrowaste, cowdung, briquettes, and coal | Nil | Nil |
| 39 | Disposable sterilized dialyzer and micro barrier of artificial kidney | 12.5% | Nil |
| 40 | Ready Mix Concrete manufactured at the site of construction for use in construction work at such site | 2% [without cenvat credit] **or** 6% [with cenvat credit] | Nil |
| 41 | Parts of railway or tramway locomotives or rolling stock and railway or tramway track fixtures and fittings, railway safety or traffic control equipment, etc. | 12.5% | 6% |

| | | | |
|---|---|---|---|
| 42 | Remnant kerosene, presently available for manufacture of Linear alkyl Benzene [LAB] and heavy alkylate [HA] to N-paraffin. At present, exemption is restricted to manufacturers of LAB and HA. | 14% | Nil |
| 43 | Clean Energy Cess / Clean Environment Cess on coal, lignite or peat produced or extracted as per traditional and customary rights enjoyed by local tribals without any license or lease in the State of Nagaland | Rs.200 per tonne | Nil |
| 44 | Cigarettes | From Rs. Per thousand | To Rs. Per thousand |
| | Non filter not exceeding 65 mm | 70 | 215 |
| | Non-filter exceeding 65 mm but not exceeding 70 mm | 110 | 370 |
| | Filter not exceeding 65 mm | 70 | 215 |
| | Filter exceeding 65 mm but not exceeding 70 mm | 70 | 260 |
| | Filter exceeding 70 mm but not exceeding 75 mm | 110 | 370 |
| | Other | 180 | 560 |

# CUSTOMS

1. **RATE CHANGE**:

a. There is no change in the rate of basic customs duty. However, for certain products the rate has been changed and the same is enumerated in subsequent paras. Further, education cess and secondary higher education Cess levied on imported goods as a duty of customs will continue.

2. **LEGISLATIVE AMENDMENTS:**

a. The term "warehouse" has been amended to include certain new class of warehouses for enabling storage of specific goods under physical control of the department. Thus, the area for storing goods under the purview of customs will increase and will hence solve the crisis of storage of goods.

b. The provision for transit of goods in the same conveyance without payment of duty has been amended to state that henceforth only a proper officer may allow the goods and the conveyance to transit without payment of duty subject and no suomoto transit can take place. Further it may be prescribed to certain conditions which are yet to be prescribed.

c. The relevant provisions has been amended to permit certain class of importers to make deferred payment of duty or any charges in such manner as may be prescribed. Accordingly, on non-compliance with prescribed rules for deferment of payment of customs duty, appropriate interest and penalty provisions are applicable and the relevant provisions have been amended accordingly.

d. The existing provision is being substituted to define the date of removal of goods as the date when the proper officer makes an order permitting the removal of goods from customs stations for the purpose of deposit in a warehouse.

e. The warehousing provision for goods is being extended to units under EHTP, STEP, Ship building yards and other units manufacturing under bond, thereby empowering the Principal Commissioners and Commissioners to extend the warehousing period upto one year at a time.

f. The extended period of limitation has been increased from one year to two years in cases not involving fraud, suppression of facts, wilful mis-statements etc.

g. Interest rates on delayed payment of Customs duty under section 28AA are being rationalized at 15%.

3. **CHANGE IN RATE OF DUTIES AND EXEMPTION:**

a. There are plethora of changes in the rates of basic customs duty and the same is neatly summarized as under:

b. Theamendmentsinvolvingincreaseinthedutyrateswillcomeintoeffectimmediatelyowingtoadeclarationunderthe ProvisionalCollectionofTaxesAct,1931

| Sr. No | Description of Goods | Old Rate | New Rate |
|---|---|---|---|
| INCREASE IN BASIC CUSTOMS DUTY FOR CERTAIN GOODS | | | |
| 1 | Natural latex rubber made balloons falling under specified headings | 10% | 20% |
| 2 | Primary aluminium | 5% | 7.5% |
| 3 | Zinc alloys | 5% | 7.5% |
| 4 | Imitation Jewellery | 10% | 15% |
| 5 | Industrial solar water heater | 7.5% | 10% |
| 6 | Increase the tariff rate of BCD for 96 specified tariff lines in Chapters 84, 85 and 90 | 7.5% | 10% |
| 7 | Cashew nuts in shell | Nil | 5% |
| 8 | Plans, drawings and designs | Nil | 10% |
| 9 | E-readers (electronic hardwares like kindle, ipadetc) | Nil | 7.5% |
| 10 | To exclude specified telecommunication equipment [certain products on which 10% BCD was imposed in | Nil | 10% |

| | | | |
|---|---|---|---|
| | 2014-15 Budget being non-ITA I bound] from the purview of the other exemption | | |
| 11 | Preform of silica for manufacture of telecom grade optical fibre /cables | Nil | 10% |
| 12 | Other aluminium products | 7.5% | 10% |
| 13 | Golf cars | 10% | 60% |
| 14 | Solar tempered glass / solar tempered (anti-reflective coated) glass, subject to actual user condition | Nil | 5% |
| 15 | Imports of specified goods for defence purposes by contractors of the Government of India, PSUs or sub-contractors of PSUs, with effect from 01.4.2016 | Nil | 7.5% |
| 16 | The exemption from basic customs duty on charger / adapter, battery and wired headsets / speakers for manufacture of mobile phone being withdrawn | Nil | 7.5% |
| CHANGES IN CVD FOR CERTAIN GOODS | | | |
| 1 | Gold dore bars. | 8% | 8.75% |
| 2 | Silver dore. | 7% | 7.75% |
| 3 | Specified machinery required for construction of roads | Nil | 12.5% |
| REDUCTION IN BASIC CUSTOMS DUTY FOR CERTAIN GOODS | | | |
| 1 | Cold chain including pre-cooling unit, packhouses, sorting and grading lines and ripening chambers | 10% | 5% |
| 2 | Refrigerated containers | 10% | 5% |
| 3 | Coal; briquettes, ovoids and similar solid fuels manufactured from coal | 2.5/10% | 2.5% |
| 4 | Lignite, whether or not agglomerated, excluding jet | 10% | 2.5% |
| 5 | Peat (including peat litter), whether or not agglomerated | 10% | 2.5% |
| 6 | Coal gas, water gas, producer gas and similar gases, other than petroleum gases and other gaseous hydrocarbons | 10% | 5% |
| 7 | Tar distilled from coal, from lignite or from peat and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars | 10% | 5% |
| 8 | Denatured ethyl alcohol (Ethanol) subject to actual user condition | 5% | 2.5% |
| 9 | Electrolysers, membranes and their parts required by caustic soda / potash unit using membrane cell technology | 2.5% | Nil |
| 10 | Wood in chips or particles for manufacture of paper, paperboard and news print | 5% | Nil |

| | | | |
|---|---|---|---|
| 11 | Specified fibres and yarns | 5% | 2.5% |
| 12 | Polypropylene granules / resins for the manufacture of capacitor grade plastic films | 7.5% | Nil |
| 13 | Parts of E-readers | 7.5% | 5% |
| 14 | Magnetron of capacity of 1 KW to 1.5 KW for use in manufacture of domestic microwave ovens subject to actual user condition. | 10% | Nil |
| 15 | Silica sand | 5% | 2.5% |
| 16 | Brass scrap | 5% | 2.5% |
| 17 | Aluminium Oxide for use in the manufacture of Wash Coat, which is used in the manufacture of catalytic converters, subject to actual user condition | 7.5% | 5% |
| 18 | Medical Use Fission Molybdenum-99 imported by Board of Radiation and Isotope Technology (BRIT) for manufacture of radio pharmaceuticals | 7.5% | Nil |
| 19 | Pulp of wood for manufacture of sanitary pads, napkins & tampons | 5% | 2.5% |
| 20 | Super Absorbent Polymer when used for the manufacture of sanitary pads, napkins & tampons | 7.5% | 5% |
| 21 | Braille paper | 10% | Nil |
| 22 | Disposable sterilized dialyzer and micro barrier of artificial kidney | 7.5% | Nil |
| 23 | Super Absorbent Polymer when used for the manufacture of sanitary pads, napkins & tampons | 7.5% | 5% |
| CHANGES IN SAD FOR CERTAIN GOODS | | | |
| 1 | Orthoxylene for the manufacture of phthalic anhydride subject to actual user condition | 4% | 2% |
| 2 | Machinery, electrical equipment and instrument and parts thereof (except populated PCBs) for semiconductor wafer fabrication / LCD fabrication units | 4% | Nil |
| 3 | Machinery, electrical equipment and instrument and parts thereof (except populated PCBs) imported for Assembly, Test, Marking and Packaging of semiconductor chips (ATMP) | 4% | Nil |
| 4 | Populated PCBs for manufacture of personal computers (laptop or desktop) | Nil | 4% |
| 5 | Populated PCBs for manufacture of mobile phone/tablet computer | Nil | 2% |
| REDUCTION OF EXPORT DUTIES FOR CERTAIN GOODS | | | |
| 1 | Iron ore fines with Fe content below 58% | 10% | Nil |
| 2 | Chromium ores and concentrates, all sorts | 30% | Nil |
| 3 | Bauxite (natural), not calcined or calcined | 20% | 15% |

4. **OTHER CHANGES:**

a. The exemption from basic customs duty, CV duty, SAD on charger / adapter, battery and wired headsets / speakers for manufacture of mobile phone is being withdrawn. Further inputs, parts and components, subparts for manufacture of charger / adapter, battery and wired headsets / speakers of mobile phones is being exempted, subject to actual user condition.

b. Parts and components, subparts for manufacture of Routers, broadband Modems, Set-top boxes for gaining access to internet, set top boxes for TV, digital video recorder (DVR) / network video recorder (NVR), CCTV camera / IP camera, lithium ion battery [other than those for mobile handsets] is being exempted from customs duty, CVD and SAD.

c. Specified goods required for exploration & production of hydrocarbon activities undertaken under Petroleum Exploration Licenses (PEL) or Mining Leases (ML) issued or renewed before 1st April 1999 is being exempted from payment of applicable customs duty, CVD and SAD.

d. Disposable sterilized dialyzer and micro barrier of artificial kidney is being exempted from payment of applicable customs duty, CVD and SAD.

e. Tools and tool kits when imported by MROs for maintenance, repair, and overhauling [MRO] of aircraft subject to a certification by the Directorate General of Civil Aviation is being exempted from payment of applicable customs duty, CVD and SAD.

f. The rate of 6% CVD on specified parts of electric and hybrid vehicles is being extended without any time limit.

5. **CHANGES IN VARIOUS RULES:**

a. The existing Baggage Rules, 1998 are being substituted with the Baggage Rules, 2016 so as to simplify and rationalize multiple slabs of duty free allowance for various categories of passengers. The said new rules are effective from 01.04.2016.

b. The Customs Baggage Declaration Regulations, 2013 is being amended so as to prescribe filing of Customs declaration only for those passengers who carry dutiable or prohibited goods.

c. The existing Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 are being substituted with the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 with a view to simplify the rules, including allowing duty exemptions to importer/manufacturer based on self-declaration instead of

obtaining permissions from the Central Excise authorities. Need for additional registration is also being done away with. The new Rules will be effective from 01.04.2016.

# CENTRAL SALES TAX

**Amendment proposed in the Central Sales Tax Act, 1956**

Section 3 of the Central Sales Tax Act, 1956 formulates principles for determining when a sale or purchase of goods takes place in the course of inter-State Trade or Commerce.

**Existing Provision:**

In the case of gas its physical movement is normally through a pipeline. However, in the C.S.T. Act, 1956 this mode of transportation is not expressly provided in Section 3 of the Act, though the same was recognised by way of judicial pronouncement by certain High Courts. The Allahabad High Court Judgment in 2012 in the case of Reliance Industries is one such example.

**Proposed Provision**:

Clause No. 221 of the Finance Bill, 2016 reads as follows:

In the Central Sales Tax Act, 1956, in section 3, after Explanation 2, the following Explanation shall be inserted, namely:—

"Explanation 3.-– Where the gas sold or purchased and transported through a common carrier pipeline or any other common transport or distribution system becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one State to another.".

The above clarification is in tune with the principles of section 3(a) of the C.S.T. Act, 1956. The explanation accepts the newer mode of transportation viz. through a pipeline. As mentioned earlier, somewhat similar view was taken by the Allahabad High Court in 2012 in the case of Reliance Industries.

With the insertion of the above Explanation the interpretation is made crystal clear i.e. , when gas is purchased or sold and it is transported with other gas through a common pipeline or system from one State to another it will be deemed to be a movement of goods from one State to another. And, therefore, the claim u/s section 3(a) can be allowed to all the dealers whose goods (gas) is being transported through a pipeline.

The proposed amendment is clarificatory in nature and will apply to all the transactions of the like nature in past too.

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# ABOUT THE CHAMBER

The Chamber of Tax Consultants is an Association, Comprising of Chartered Accountants, Advocates, Company Secretaries, Cost Accountants and Tax Practitioners. It was established in the year 1978 with the main objective of spreading knowledge amongst its members in particular and public at large in general. It is registered under the Bombay Public Trust Act, 1950 and Societies Registration Act, 1860.

The Chamber is regularly organizing Study Circle Meetings, Seminars, Workshops, Refresher Courses etc. on the subject of Direct and Indirect Taxes as well as on the subjects of professional and self-development.

Since last Twenty Five years, the Chamber is also been organizing Public Meetings on Union Budget. Large number of persons, comprising of business-men, industrialists, professionals and general public take the benefits of the meeting.

Since last Eighteen years the Chamber has also been coming out with a publication, within 48 hours of announcements of the proposals of the Union Budget, explaining the direct and indirect tax provisions in a lucid manner. It is well appreciated by professionals, business community and common men alike.

The Chamber also makes effective representations before the Union and State Governments and also before the Departmental Authorities of Income Tax, Sales Tax, Service Tax and Company Law.

The Chamber has taken-up the cause of Service to Society at large and is organizing Seminars for Trade Associations. The Chamber is also organizing activity of providing practical training to under graduate students on subjects of taxation and accounts.

In nutshell, the ultimate aim of the Chamber is to spread knowledge and create social awareness with untiring zeal.

**Contact us : maladchamber@gmail.com**

**www.mctc.in**

# The Malad Chamber of Tax Consultants

Regd.Office : B/6, Star Manor Apartment, 1st Floor, Anand Road Extn., Malad (West), Mumbai-400064. E-mail : maladchamber@gmail.com
Admn.Office : C/o. C/o. Brijesh Cholera : Shop No. 4, 2nd Floor, The Mall,Station Road, Malad (W), Mumbai – 400 064..
Tel.No. 022-2880 3123.

Date _____ **MEMBERSHIP FORM**

TO,
The Hon. Joint Secretaries ,
The Malad Chamber of Tax Consultants
Mumbai

Dear Sirs,

Being eligible to practice under the Direct and/or Indirect Taxes Laws, I hereby apply for admission as a member of the Malad Chamber of Tax Consultants with the following particulars:

1. NAME OF MEMBER MR /MRS /MISS ----------

2. FATHER'S/HUSBAND'S NAME ----------

3. QUALIFICATIONS ----------

4. MEM.NO, if any (with name of the association) ----------

5. PERSONAL DATA DATE OF BIRTH ---------- BLOOD GROUP ----------

SPOUSE'S NAME ---------- SPOUSE'S DATE OF BIRTH ----------

MARRIAGE ANNIVERSARY----------

(F) PROFESSION ADVOCATE ☐ CA ☐ ITP ☐ ICWAI ☐ ICSI ☐ STP ☐

5. OFFICE NAME ----------
OFFICE ADDRESS ----------
---
PIN CODE ---------- STATE ----------
TEL. NO. ----------
FAX NO. ---------- MOBILE NO. ----------
EMAIL I'd ----------

6. RESIDENTIAL ADDRESS ----------
---
PIN CODE ---------- STATE ----------
TEL. NO. ----------
FAX NO. ---------- MOBILE NO. ----------

7. COMMUNICATION TO BE SENT TO OFFICE ☐ RESIDENCE ☐

The amount of Rs.2500/- by Cheque/Draft No. _____ dated _____ drawn on ____

**UNDERTAKING**

I ,do hereby declare that whatever stated hereinabove is true to the best of my knowledge and belief. I also undertake to abide by the Rules, Regulation and constitution of the Association, as amended from time to time..

---
(Signature)

**FOR OFFICE USE ONLY FOR MEMBERSHIP APPLICATION**

Issued Acknowledgement Slip No. _____ Dated _____
Accepted by the Managing Committee in the Meeting held on
_____
Cheque No. _____ Dated _____ for Rs. 2,500/- Bank:- _____.

**NOTES**

2. Please attach educational qualification certificate for eligibility to practice tax laws.
3. Please write / type in capital letters.
4. Cheques should be drawn in favor of "The Malad Chamber of Tax Consultants "
5. Outstation remittance should be by Demand Draft payable at Mumbai only.
6. Please tick ☑ wherever applicable.
7. The form should be completed in all respects.
8. The membership application is subject to acceptance by the Managing Council.

**For Query & Submission of forms for Membership please contact any of the following Office Bearers**

| NAME | | CONTACT NO. | E-MAIL ID |
|---|---|---|---|
| **JAYPRAKASH M TIWARI,** | PRESIDENT | 9820496297 | jmt@jmtco.in |
| **ADARSH S PAREKH,** | VICE PRESIDENT | 9869105103 | adarshparekh@rediffmail.com |
| **VIPUL M. SOMAIYA,** | HON. TREASURER | 9223418790 | vipul@somaiyaco.com |
| **SWAPNIL MODI,** | HON. SECRETARY | 9833884273 | swapnil@modiconsultancy.com |
| **AMIT D KOTHARI,** | HON. JT.SECRETARY | 9004880001 | amit@adkothari.com |

**PLAESE SEND THE APPLICATION FORM TO FOLLOWING ADDRESS:-**

**BRIJESH CHOLERA & CO.**
CHARTERED ACCOUNTANT
SHOP NO.4,2ND FLOOR,
THE MALL,STATION ROAD,
MALAD-WEST,
MUMBAI-400064
TEL.NO. 28895161.