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## UNION BUDGET 2016

*"Steps in the right direction"*



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# Direct Tax Proposals Rate Card (1/4)



## For individuals, HUF& BOI

Gross Total Income	Tax Rate
Up to INR 2,50,000	Nil
INR 2,50,001 to INR 5,00,000	10%
INR 5,00,001 to INR 10,00,000	20%
Above INR 10,00,000	30%

## In case of Resident Individual of the Age of 60-80 years:

Gross Total Income	Tax Rate
Up to INR 3,00,000	Nil
INR 3,00,001 to INR 5,00,000	10%
INR 5,00,001 to INR 10,00,000	20%
Above INR 10,00,000	30%

## In case the Resident Individual of the age 80 years & above:

Gross Total Income	Tax Rate
Up to INR 5,00,000	Nil
INR 5,00,001 to INR 10,00,000	20%
Above INR 10,00,000	30%

## For Co-operative Societies and Non-Profit Organization

Particulars	Tax Rate
Up to INR 10,000	10%
INR 10,001 to INR 20,000	20%
Above INR 20,001	30%

## Corporate Tax Rate Card

Particulars	Tax Rate
Tax Rate for Domestic Companies with turnover not exceeding INR 5 crore in FY 2014-15.	29%
Tax Rate for Domestic companies with turnover of INR 5 crores or more in FY 2014-15	30%
Tax Rate for Foreign Companies	40%
Tax Rate for Partnership Firms, LLP's	30%
Societies Other Than Co-operative Societies	30%
Newly setup domestic company involved in manufacturing	25%

- Rate of tax as per above chart in case of Corporates are flat rates (excluding S.C. & Cess)
- Education cess is applicable @ 3%.
- Relief for Tax Payers in the first bracket of INR 2.50 lakhs to INR 5 Lakhs – A Tax Credit of INR 5000 or tax whichever is less to individuals with total income up to INR 5 lakhs.



## Direct Tax Proposals

### Rate Card

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#### Surcharge

Assessee	Income Range	Surcharge
Domestic Company	Up to INR 1 Cr	Nil
	INR 1 Cr to INR 10 Cr	7%
	Above INR 10 Cr	12%
Foreign Company	Up to INR 1 Cr	Nil
	INR 1 Cr to INR 10 Cr	2%
	Above INR 10 Cr	5%
Non Corporate assessee such as Firm, AOP, BOI	Up to INR 1 Cr	Nil
	Above INR 1 Cr	12%
Non Corporate assessee - individuals	Up to INR 1 Cr	Nil
	Above INR 1 Cr	15%

#### Various Tax Rates including Surcharge and Education Cess:

Taxes	Income Range	Tax Rate
AMT in case of other than sole proprietor	Up to INR 1 Cr	20.39%
	Above INR 1 Cr	21.34%
AMT in case of sole proprietorship	Up to INR 1 Cr	20.39%
	Above INR 1 Cr	21.91%
Minimum Alternative Tax	Up to INR 1 Cr	18.50%
	Above INR 1 Cr	20.72%
DDT after grossing up	-	20.36%
Maximum Marginal rate	-	35.535%

#### Rates of STT (Securities Transaction Tax)

Sr. No	Security Transaction Tax	Payable by whom	Rates
1	Purchase/Sale of equity shares ( delivery based )	Purchaser/ Seller	0.1%
2	Purchase of units of equity-oriented mutual fund(delivery based)	Purchaser	Nil
3	Sales of units of equity-oriented mutual fund	Seller	0.001%
4	Sale of equity shares, units of equity-oriented mutual fund(non-delivery based)	Seller	0.025%
5	Sale of an option in securities (Erstwhile 0.017%)	Seller	0.05%
6	Sale of option in securities, where option is exercised	Purchaser	0.125%
7	Sale of future in securities	Seller	0.01%
8	Sale of unit of equity oriented funds to Mutual Fund	Seller	0.001%
9	Sale of a commodity derivative	Seller	0.01%

# Direct Tax Proposals

## Rate Card (3/4)



### Withholding Rates for Non Residents:

Nature of Income	Tax Rates
Dividend (other than Dividend on which DDT has been paid)	20%
Interest received on loans given in foreign currency	20%
Income received in respect of units purchased in foreign currency of specified mutual funds/ UTI	20%
Sports persons and entertainers	20%
Interest received on notified infrastructure bond	5%
Interest on FCCB, FCEB/ Dividend on GDR"s	10%
Royalty / Fees for technical fees	10%
Interest income received by FII or QFI on rupee denominated bonds or government securities	5%
Distributed income in the nature of interest received by unit holder form the business trust	5%
Interest received from Indian Company or Business Trust on monies borrowed in foreign currency and approved by the Central government	5%

### Note : In case of Payments exceeding INR 1 crore:

- (i) The amount of TDS, in the case of payments to a non-resident person (other than a company), shall be increased by a surcharge at the rate of 15%
- (ii) 12% surcharge in case of payments to a firm or cooperative society
- (iii) 2% or 5% surcharge in case of Companies as the case may be



# Direct Tax Proposals

## Rate Card

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### Capital Gain Rates:

Gross Total Income	Short Term	Long term
Purchase sale of equity shares on which STT has been paid	15%	Nil
<b>Sale of any other asset other than as mentioned above</b>		
Individuals	As per the slab rates	
Firms & LLP's	30%	20 % with indexation: 10% without indexation in case of unlisted securities and zero coupon bonds (other than units).
Companies	30%	
Foreign Companies	40%	
Local authority	30%	
Co-operative societies	As per the slab rates	
Overseas Financial Organizations specified in section 115AB	40%(corporate) 30%(Non-Corporate)	10%
FII's	30%	10%

### Increase in threshold limit of deduction of tax at source on various payments made to resident assessees

Present Section	Particulars	Existing Threshold Limit (INR)	Proposed Threshold Limit (INR)	Rate
192A	Payment of accumulated balance due to an employee	30,000	50,000	10%
194BB	Winning from Horse Race	5,000	10,000	30%
194C	Payments to Contractors	Aggregate annual limit of INR 75,000	Aggregate annual limit of INR 1,00,000	1% or 2%
194LA	Payment of Compensation on acquisition of certain Immovable Property	2,00,000	2,50,000	10%
194D	Insurance Commission	20,000	15,000	5%
194G	Commission on sale of lottery tickets	1,000	15,000	5%
194H	Commission or brokerage	5,000	15,000	5%
194DA	Payment in respect of Life Insurance Policy	-	-	1%
194EE	Payments in respect of NSS Deposits	-	-	10%



# Direct Tax Proposals

## Personal Taxes

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- **Exit Tax on Charitable Trusts:** A new levy in the nature of an exit tax shall be imposed when a charitable organisation converts itself into a non-charitable organisation or gets merged with a non-charitable organisation or does not transfer the assets to another charitable organisation on dissolution. In such a case, the accreted income (Total assets less liabilities as on the specified date) shall be taxed at maximum marginal rate (effective from 1<sup>st</sup> June, 2016).

**Comments:** Under the existing law, there was no clear provision as to how the assets and income that have been accumulated for spending on charity in future (15% corpus can be carried forward for application in future years) shall be dealt in a case where the charitable trust winds up or merges etc. Hence to bring in clarity and to ensure no misuse of this provision happens, amendments have been brought in to tax the corpus that is sought to be transferred to a non-charitable entity/purpose.

- **Additional Incentive for First Home buyers:** In order to promote "housing for all", first-home buyers shall be allowed an additional deduction under section 80EE of amount up to INR 50,000 [erstwhile INR 1,00,000] in respect of interest on loan (borrowed between 1<sup>st</sup> April, 2016 to 31<sup>st</sup> March, 2017). The precondition is that the value of house property shall not exceed INR 50,00,000 and the loan amount shall not exceed INR 35,00,000. The benefit of deduction shall extend till the repayment continues. This deduction is over and above the limit of INR 2,00,000 under section 24 for self-occupied property (This additional benefit is effective from FY 2016-17).

**Comments:** This is an additional benefit introduced to encourage new home buyers in the low-cost housing segment which typically costs under INR 50 lakhs. This scheme was introduced earlier as well where the additional deduction was available up to INR 1 lakh towards interest paid on home loan. From April 1<sup>st</sup> 2016, any individual or HUF assessee who is a first-time home buyer shall be allowed a total deduction up to INR 2,50,000 for a new property purchased i.e. INR 2,00,000 under Section 24 and INR 50,000 under section 80EE.

- **Period eligible for construction of self-occupied house:** For claiming deduction of INR 2,00,000 under section 24(b) for interest payable on amounts borrowed for acquisition or construction of house property, the time limit for completion of construction or acquisition has been increased to 5 years instead of earlier 3 years from the end of financial year in which amount is borrowed. (Effective from FY 2016-17).

**Comments:** This means that the loans borrowed on which interest expense is claimed as a deduction shall be utilised on the house that can be constructed within a period of 5 years from the end of financial year in which loan is borrowed.

# Direct Tax Proposals

## Personal Taxes

(2/4)



- **Receipt of Outstanding Rentals:** Arrears of rent and unrealised rent whether allowed as deduction or not when received subsequently are now uniformly taxed under new section 25A and rent realised subsequently shall be charged to tax in the year in which such rent is received or realised. Also, 30% standard deduction shall be allowed to assessee's against receipt of outstanding rentals. (Effective from FY 2016-17).

**Comments:** Unrealised rent allowed as a deduction in the earlier years, unrealised rent not claimed as a deduction and arrears of rent were given different tax treatments in the year in which such outstanding rentals were received. Since the character of the income is more or less same it is now proposed to give a uniform tax treatment as and when outstanding rentals are received. Thus outstanding rentals shall be claimed as a deduction, which shall be offered for tax in the year of receipt of the outstandings.

- **Taxability in case of EPF:** The withdrawals from recognised provident fund and superannuation fund (covers principal and also interest) will be exempted upto 40% of accumulated balance attributable to contributions made after 1<sup>st</sup> April 2016 and balance 60% shall be taxable, which is a shift from the erstwhile EEE model. Further, employers contribution in excess of INR 1,50,000 p.a. shall be taxable in the year of such contribution

Any payment from an approved superannuation fund made to an employee in lieu of or incommutation of an annuity (covers only interest) purchased out of contributions made on or after 1<sup>st</sup> April 2016, which exceeds 40% of annuity will be taxable.

Any payment from National Pension System Trust to an employee on account of closure or his opting out of the pension scheme referred to in section 80CCD shall be exempt upto 40% of total amount payable.

**Comments:** This is a very important amendment and we need to understand these provisions in further detail. Under the existing laws every employee drawing a salary upto INR 15,000 shall be subject to 12% PF in an organization having 20 or more employees. An equivalent amount is added as an employer's contribution. Presently, the part deducted as employee's contribution is taxable since it forms a part of salary. However, employer's contribution is not taxable and the interest on the overall corpus is also not taxable. Further the contribution made towards this PF is allowed as deduction under section 80 C. On maturity when the employee receives these funds it is considered as exempt as we are under the EEE regime (Exempt at the time of investment, exempt at the time of returns and exempt at the time of maturity).

Now this budget proposes to change the tax regime to EET model. It proposes that going forward from April 1<sup>st</sup> 2016 contributions shall be taxable to the extent of 60% and 40% shall remain as exempt. It is to be noted that contributions after April 1<sup>st</sup> 2016 shall only be subject to tax and the corpus accrued prior to that date shall continue to remain exempt on the day of withdrawal. The logic of introducing this tax is that currently employer's contribution is tax free and hence in future that portion by way of 60% corpus would be taxed. Further, it is to be noted that the same provisions have not been made applicable in case of PPF where currently tax payers enjoy an EE model as the income invested under the PPF has already suffered tax





## Direct Tax Proposals

### Personal Taxes

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- **Admissible Deduction for Rents Paid:** Rents paid by Individuals is admissible as a deduction under section 80GG who are staying in a rented accommodation as a tenant and pay rentals to the landlords provided they are not granted any house rent allowance by their employer. The lower of the following limits as under shall be granted as a deduction:

1. INR 5,000 Per Month [erstwhile INR 2,000]
2. 25% of Total Income
3. Actual rent less 10% of Gross Total Income

**Comments:** The limit for this existing provision has been increased from INR 2, 000 to INR 5,000. This provision is helpful even to those assessee's whose Gross Total Income does not consist of only salaries. Accordingly deduction would be admissible even if the assessee's total income consists only of Capital Gains, Income from other sources, etc.

- **Taxability in respect to Shares received without consideration:** Any shares received by individual/HUF/firm/company as a result of demerger or amalgamation shall not attract the provisions of section 56 which levies tax on any money or property received by an assessee without consideration in excess of INR 50,000. (Applicable from FY 2016-17).

**Comments:** The existing provisions provided relief only where the recipients being firms or companies received such shares on demerger/amalgamation which was seen as a drafting error. These provisions have been aligned whereby Individuals and HUF have also been included in list of recipients.

- **Increase in Rebate of Income Tax:** Relief is provided to taxpayers by way of a Tax Rebate upto INR 5,000 (Erstwhile INR 2,000) against their tax liabilities which cannot result into a refund. The condition for claiming such rebate is that the GTI should be less than INR 5,00,000.
- **Gold Bond Scheme:** The Deposit Certificates issued under Gold Monetisation Scheme shall not be regarded as capital asset and hence exempted from capital gain and also the interest on Deposit Certificates shall be exempt from income-tax (applicable from FY 2015-16).

Further, the redemption of Sovereign Gold Bond by an individual shall not be treated as transfer and hence exempt from capital gains tax. Also, indexation benefits shall also be allowed to assessee's in case of long term capital gains that arise on account of transfer. (effective from FY 2016-17).

**Comments:** These provisions are brought to encourage assessee to purchase dematerialized gold which will in turn reduce the foreign outflow that goes towards purchase of physical gold and also to bring sovereign gold bond in parity with physical gold. Redemption will not be considered as transfer however, secondary market sale shall be construed as a transfer.

# Direct Tax Proposals

## Personal Taxes

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- **Rupee Denominated Corporate Bonds:** Exemption is provided to the non-resident investors from capital gains on rupee denominated bonds issued by Indian corporate's arising in case of appreciation of rupee between the date of issue and date of redemption against the foreign currency in which the investment is made (effective from FY 2016-17).

**Comments:** This beneficial provision is to compensate foreign investors who bear the risk of exchange fluctuation while investing in rupee denominated Indian bonds

- **Reduction in holding period of shares:** Finance Act 2014 had increased period of holding from year 1 to 3 years for shares of unlisted companies to qualify as long term capital asset. It is now proposed to reduce the holding period from 3 years to 2 years to get benefit of long term capital gain in case of unlisted companies.

**Comments:** The reduction in holding period of shares is a welcome move. Long term capital gains from sale of shares is taxed @20%/@10% as the case may be whereas tax on short term capital gain is as per slab rate. Therefore, this amendment of reducing the holding period of shares for the purpose of classifying the same as long term gives investors falling under maximum marginal tax rate a benefit. However, it is noted as no corresponding amendment has been made in the finance bill, for which a clarification is soon awaited.

### **Tax Collected at Source (w.e.f. 1<sup>st</sup> June, 2016):**

- With a view to tax the rich, provisions of TCS have been enlarged. Now, tax @1% will be collected on luxury cars exceeding value of INR 10 Lakhs, bought by cash or cheque.
- Carrying out transaction of sale of goods (other than bullion and jewellery) or providing any services (on which TDS is not deducted) for cash exceeding INR 2 Lakhs will also get attracted to TCS @1%

**Comments:** TCS provisions will be applicable on purchase of any motor car provided value of the car exceeds INR 10,00,000. The seller shall collect 1% TCS over and above the purchase price of car on road. The purchaser shall be eligible for credit of this Tax paid as TCS, against his income tax liability

### **Contribution made by employer to RPF to be made taxable**

- Currently, contribution made by the employer to RPF up to 12% of employee's salary is exempt in the hands of the employee
- Now, contribution made by the employer to RPF would be taxable in the hands of the employee for lower of the under:
  - (i) Amounts in excess of 12% of employee's salary, or
  - (ii) Amounts in excess of INR 1,50,000

**Comments:** This provision is again towards taxing the high income bracket assessee's. The employees falling under high bracket income would be eligible to a higher PF which would now be subject to tax if exceeds prescribed limit.

# Direct Tax Proposals

## Corporate Taxes

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### Provisions that will increase the tax collection

#### Taxation of Dividends:

- Taxation of Dividends in hands of shareholders: Dividend is now taxable in the hands of the recipients as well. This implies that if an assessee's dividend income is in excess of INR 10,00,000 per annum, one will have to pay tax @10% on the said dividend income. This scheme is to be made applicable from F.Y. 2016-17.

**Comments:** Dividend on which DDT has been paid is not taxed in the hands of recipient as "Income". It is to be noted that such dividend shall be taxed only in the hands of Individuals HUF and Firms only. Companies and LLP's are left out of the ambit and they shall continue to enjoy the exemption which appears to be an anomaly in drafting.

#### Equalisation Levy:

- A new provision has been introduced by way of an Equalisation Levy which shall be @6% of the amount of consideration received by Non-Residents not having a PE in India and engaged in providing online advertisement, digital advertising space, etc.
- The equalisation levy shall not be charged if the consideration received in the previous year is less than INR 1,00,000
- Equalisation Levy will be deducted from the payments made (similar to TDS provisions)
- Non-deduction and non-deposition of equalisation levy shall make the assessee liable to interest and penalty
- Effective date of the captioned provision will be notified by the Government

**Comments:** It is always very difficult to locate the exact country and place as to where e commerce transaction happen, thereby establishing a PE has become consistently difficult. Thus, to bring such revenues under the tax ambit and to provide a level playing field to companies not operating on an ecommerce model a tax by way of equalisation levy has been introduced. This tax would initially be levied only to services mentioned above which would be broadened at a later stage.

#### Buy-Back of Shares

- Under the existing provisions, only buy-back of shares as defined under section 77A of the Companies Act, 1956 was considered as taxable which was taxed at the rate of 20%. Now, the definition has been amended to include buy-back of any kind without restricting to the conditions mentioned in section 77A. Thus all kinds of buyback are now covered within the ambit of tax
- Another clarity that the current budget brings in is regarding the definition of "distributed income". There are various circumstances where the shares have been issued in tranches due to situations like amalgamation, mergers and demergers. So to remove ambiguity in calculating the distributed income in such cases, new rules would be framed to provide the manner of determination of income for shares being issued in tax neutral reorganisations.

# Direct Tax Proposals

## Corporate Taxes

(2/12)



**Phasing out of deductions – birds eye view on the roadmap ahead which will phase out deductions that are currently available**

Section	Incentive Currently Available	Proposed phased out measure
10AA – Benefit to newly established unit in SEZ	Profit linked deductions for exports of articles /things/services	No deductions for units commencing on or after FY 20-21
35AC – Expenditure on eligible schemes	100% exemption for payments made to psu's, approved institutions etc. eligible social development projects	No deduction from 1 <sup>st</sup> April,2017
35CCD – Expenditure on skill development projects	Weighted deduction of 150% of the expenditure incurred on notified skill development project by a Company	Deduction to be restricted to 100% from 1 <sup>st</sup> April, 2020
80IA – Development of Infrastructure 80IAB – Development of SEZ 80IB – Production of mineral oil	100% profit linked deductions carried on by industrial undertaking for development of infra, SEZ, mineral oil etc	No deduction shall be available if specified activity commences on or after 1 <sup>st</sup> April, 2017.
32 –Accelerated Depreciation	Accelerated depreciation available upto 100% in respect of certain block of assets such as solar, wind etc is available	<b>Highest rate of depreciation to be allowed shall be restricted to 40% from F.Y. 2017-18 onwards</b>
35(1)(ii) – Expenditure on scientific research	Weighted deduction to the extent of <b>175%</b> for sum paid to approved scientific research association or college	Weighted deduction shall be restricted to <b>150%</b> from 01/04/2017 to 31/03/2020, and <b>100%</b> from 01/04/2020
35(1)(iia) and 35 (1)(iii)– Expenditure on scientific research	Weighted deduction of 125% for sum paid to approved scientific research company and contribution to university	Deduction to be restricted to 100% with effect from 1 <sup>st</sup> April, 2017.
35(2AA) and 35(2AB) – Expenditure on scientific research and inhouse research facilities respectively	Weighted deduction of 200% of sum paid to National Laboratory or IIT or companies engaged in the business of bio technology	Weighted deduction shall be restricted to <b>150%</b> from 01/04/2017 to 31/03/2020, and <b>100%</b> from 01/04/2020
35AD – Deduction in respect of specified business	150% weighted deduction for cold chain facility, warehouse facility, housing project, hospital	Deduction to be restricted to 100% from 1 <sup>st</sup> April, 2017
35CCC - Expenditure on notified agricultural extension project	Weighted deduction of 150%	Deduction to be restricted to 100% from 1 <sup>st</sup> April, 2017



# Direct Tax Proposals

## Corporate Taxes

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### Certain Incentives to the Tax Payers:

#### Extending benefit of initial additional depreciation for power sector

- With effect from 1st April, 2016, assessee engaged in the business of transmission of power shall be allowed an additional depreciation @20% of actual cost of new machinery or plant acquired. This benefit was originally permitted only to companies in the generation of power which has now been extended to power transmission companies as well. Hence, an additional depreciation @ 20% shall be allowed over and above the normal depreciation that can be claimed on P&M.

#### Taxation of income from “Patents”

- With effect from F.Y. 2016-17 where a patentee (i.e. assessee who is a registered originator of an idea or an innovation) derives royalty income in respect of patent developed and registered in India, then such royalty shall be taxable @10% (plus surcharge and cess).
- No MAT shall be leviable on such income

**Comments:** This provision is introduced to encourage companies to develop new products and also retain them by registering them in India. In current scenario mostly these patents are registered abroad, thus to incentivize the exploitation of these patents in India Royalty taxed has been proposed only @ 10% if the patents are developed and registered in India. This can be used as a group tax structuring tool wherein expenses to exploit patent shall be allowable @ maximum rate whereas corresponding income shall be taxed only @ 10%. However, how strong the enforceability of patent authorities in India is to be seen. Further it is to be noted that selling of the patent or allowing outright usability of that patent will be subjected to capital gains and taxed accordingly.

#### Tax incentive for employment generation (Amendment to Sec. 80JJAA is a welcome provision)

- 30% additional deduction is available in respect of wages paid to new workmen whose remuneration is less than INR 25,000
- This additional deduction shall be allowable for a period of 3 years
- This is an existing provision however the terms for eligibility of this benefit have been brought down substantially
- With effect from FY 2016 -17 this benefit is now applicable to even service Sector
- Further, the number of days of employment have been reduced from 300 days to 240 days
- Also, the requirement of minimum 10% increase in number of employees has been scrapped out

**Comments:** This section though already in effect was not of a wide use to the Industry as there were stringent rules pertaining to requirement of increase of minimum 10% staff strength in comparison to the previous year. Thus, companies that are setting up new units or putting in an expansion can take benefit of this provision going forward.

# Direct Tax Proposals

## Corporate Taxes

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### Investment allowance incentive @15%

- As per the existing provisions if any company engaged in manufacturing makes investment in new P&M exceeding INR 25 crores, an investment allowance @15% of the value of such P&M is available to such companies.
- However, the taxpayers faced certain hardship with regards to claiming this benefit on account of applicability of dual condition of completing the acquisition and instalment of the newly acquired P&M in the same financial year.
- Accordingly the amendment states that even if the installation of the P&M is made in a year other than the year of acquisition, deduction is allowable in the year when the machinery is actually installed on or before 31<sup>st</sup> March 2017.
- The same is effective retrospectively from F.Y. 2015-16 and will continue till the F.Y. 2016-17.

**Comments:** These amendments are retrospective only with an aim to reduce litigation in terms of acquisition and installation for P&M of earlier year. For the new plant & machinery acquired in the financial year 2016-17, the installation shall be done in the same year on or before 31<sup>st</sup> March 2017.

### Tax Incentives for start-ups (The amendments are applicable from F.Y. 2016-17)

- An eligible business (i.e., a technology driven company that is certified as eligible by the inter-ministerial board of certification) is entitled to 100% deduction of profits and gains. One has to refer to the start-up policy introduced by the Government to be considered as an eligible business
- This benefit is available to any eligible start-up which is set up before 1<sup>st</sup> April, 2019.
- 100% deduction shall be available for a consecutive 3 year period out of a 5 year block from the date of incorporation of the start up
- In order to be continued as an eligible beneficiary the total turnover of the company shall not exceed INR 25 crores from FY 2016-17 to FY 2020-2021
- Presently exemption from long term capital gains on sale of residential property is available to an individual/ HUF under Section 54GB, when proceeds are invested in shares of an SME in which the assessee has more than 50% share capital or voting rights and the SME further utilizes such proceeds within 1 year for purchase of new assets. This has now been extended to investment in shares of eligible start-ups

**Comments:** Companies newly commencing with manufacturing activities do not automatically get covered under the start-up scheme. New manufacturing units would be entitled to a lower corporate tax @ 25% provided certain conditions are complied with but are not entitled to a 100% tax deduction under the start-up scheme. Further, in case of sale of a capital asset by promoters, they can look to take advantage of section 54GB and can invest in their own new MSME/ start-upsto claim exemption from long term capital gains



# Direct Tax Proposals

## Corporate Taxes

(5/12)

Further one should carefully analyse and select the years for opting of 100% tax deduction. As there would be likely chances that in the initial years a start-up might be incurring losses, then such losses would not be available for set off in later years when the start-up turns profitable and the income is subject to tax

### **New manufacturing companies to be taxed @25%**

- To facilitate Government of India's "Make in India" campaign, a new provision has been inserted so as to tax all the new companies engaged in manufacturing business at a lower rate of 25% instead of the existing rate of 30%. But to avail the above stated benefit, the assessee will have to comply with the following conditions
- The company must be a domestic company involved in business of manufacture or production
- The company should be registered and set up on or after 1st March, 2016
- The company while computing its total income should not have claimed any benefit of accelerated depreciation, benefit of additional depreciation, investment allowance, expenditure on scientific research, etc.

**Comments:** This new policy of the Government of taxing new manufacturing companies at a lower rate is an encouraging proposition. However, the actual benefit to the assessee in view of not availing various benefits will have to be worked out from case to case basis to identify the net actual advantage on taking a lower tax rate with no benefits vis-à-vis a higher tax rate with benefits.

### **Benefits to international financial services centre (A welcome move for GIFT City)**

With a view to promote International Financial Service Centres certain tax benefits have been extended to them as under:

- Long term capital gain arising from transfer of equity shares or units of equity oriented fund on a recognized stock exchange located in IFSC where consideration is received in foreign currency, even if STT is not paid shall be considered as exempt (with effect from 1<sup>st</sup> June 2016)
- For a company located in IFSC, deriving its income solely from convertible foreign exchange, MAT will be applicable @9% instead of MAT applicable in other cases @ 18.5 %
- No dividend distribution tax will be levied on income distributed by a company located in IFSC
- These amendments will be effective from F.Y. 2016-17

**Comments:** GIFT is a pet project of our Prime Minister and hence these benefits have been extended to lure companies to invest in the GIFT project. In our opinion these provisions would be very welcoming for companies operating in the financial sector that would give a much needed boost to

# Direct Tax Proposals

## Corporate Taxes(6/12)



### International taxation and foreign companies

**Beeps action plan – country by country report and master file (CbC report)**(The said amendment will be applicable from F.Y. 2016-17)

- A three tiered Transfer Pricing documentation has been prescribed for companies having a consolidated global group revenue of €750 MN as mandatory by the OECD report on BEPS Action Plan which is as under:
  - (i) Master File containing standardised information relevant to all group companies.
  - (ii) A local file referring to material transactions of local tax payer
  - (iii) A country-to-country report containing certain information relating to the entire group's incomes and taxes with certain indicators of the location of economic activity within the group.
- Other matters related to the documentation process are as under:
  - (i) The reporting provision shall apply in case of an international group having consolidated revenue above a threshold limit to be prescribed. The current international consensus is €750 million, the local currency equivalent of which comes to INR 5395 crores
  - (ii) If the parent organisation of the group is in India, such report needs to be furnished before the due date of filing of return
  - (iii) In case of a foreign parent who will furnish CBC report in his country, then the constituent entity in India shall furnish information regarding country of residence of the parent of the international group it belongs to and the country where it has submitted the CBC report.
  - (iv) Parent entity shall be responsible for preparing and submission of consolidated financials
  - (v) A report shall be furnished on the basis of a template provided in the OECD BEPS report
  - (vi) Non-furnishing of report would attract graded penalty which can be extended to INR 50,000 per day
  - (vii) For non-furnishing of information, a penalty of INR 5,00,000 shall be leviable

### Applicability of POEM deferred by one year

- A company was said to be a resident in India only if the control and management of the company was situated **wholly** in India. The said definition was amended in the Finance Act 2015, after which a foreign company was said to be a resident if its Place of Effective Management (POEM) in that year was in India.
- POEM 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 made.
- Thus the base is quiet widened that will make more foreign companies a resident in India.
- POEM based residence rule has been deferred by one year

**Comments:** Sensing various transitional issues in adopting management based rule of residence for foreign companies like payment of advance taxes, applicability of TDS, computation of total income, set off of losses, etc the provisions have been deferred which is a welcome move towards reducing potential future litigation.





# Direct Tax Proposals

## Corporate Taxes

(7/12)

### **Presence of Fund Managers not to constitute PE:**

- To promote the stay of the fund managers of offshore funds in India, section 9A was introduced which provided that any fund management activity carried on by “eligible fund manager” acting on behalf of the “offshore investment fund” would not constitute as a PE in India thereby granting these fund immunity from tax in India.
- However, “offshore investment funds” included tax resident funds of only those countries with whom India had signed a DTAA.
- Thus, to rationalise these provisions it is now proposed that such funds can be of any country that is notified by the Central Government

### **Furnishing of PAN by Non Residents done away with:**

- In cases where PAN is not being provided by Non Residents for payments made to them, it has been proposed that such payments would not be subject to higher withholding taxes than at a rate being provided in the domestic tax laws and the DTAA (if applicable) as the case may be.
- Furnishing alternate document in place of PAN such as Tax Identification number, Tax residency certificate etc has been introduced

**Comments:** A lot of litigation was going on in this matter where companies were not withholding tax at a higher rate (as mentioned in Indian Income Tax Act), since they followed the beneficial rates mentioned in the DTAA. This will be a welcome relief to the Non Resident companies providing services in India and to domestic companies for whom TDS is apart of the cost.

### **Exemption of income of Foreign Company from storage and sale of crude oil**

- Income received by foreign oil Companies for storing and selling crude oil in India shall not be included in the “total income” of such companies, thereby implying that no taxes will be charged for such income earned in India. This amendment will take effect retrospectively from F.Y. 2015-16. This benefit has been extended to encourage MNCS to store their crude in India so that India can strategically build up oil reserves

### **Exemption related to diamond trading in “SNZ”**

- A “Special Notified Zone” (SNZ) has been created to facilitate shifting of operations by Foreign Mining Companies (FMC) to India and to permit trading of rough diamonds in India.
- As per the amendment, income earned by FMC through display of uncut and assorted diamonds in SNZ shall not be considered to be accrued in India. Hence, no tax will be leviable. This amendment will take effect retrospectively from F.Y. 2015-16.
- The potential tax exposure on account of business connection in India was an area of concern for foreign mining companies stopping them to do business in India. This provision will enable them to commence their operations in India

# Direct Tax Proposals

## Corporate Taxes(8/12)



### **Non Applicability of Retrospective MAT on foreign Companies:**

- On account of certain amendments in Finance Act 2015, issues were raised regarding the applicability MAT on FII's who did not have a PE in India from retrospective years
- However, the government has clarified and stated that provisions of MAT will not apply to FII's if the FII is a resident of a country with which India has signed a DTAA and does not have a PE in India

**Comments:** *There was a great discomfort amongst the Foreign Financial Investors regarding proposed levy of this retrospective MAT. Many FII's had threatened to pull out of India if such a tax was introduced retrospectively. The government has put aside all fears by giving this clarification regarding non applicability of MAT in this regards.*

### **Other Amendments:**

#### **Furnishing of Form 15G/15H in case of Rental Income**

- Form 15G/15H is a declaration form that can be issued in case where the recipient of Income gives a self-declaration to the payer that he is not liable to pay any income tax on account of his income being below specified limits.
- A TDS under section 194I has to be deducted before making rental payments
- Now it is being proposed that such self-declaration forms can be given even in case of rental income to the person making the rent payments so that he does not deduct any tax under section 194I as TDS

#### **Deduction for developing Affordable Housing Projects:**

- 100% deduction will be available for profits from business of developing and building affordable housing projects from the FY 2016-17 provided certain conditions are complied with as under
  - The project is approved by the municipal corporation on or before 31<sup>st</sup> March 2019
  - The project is completed within a period 3 years from the date of approval
  - The built up area for commercial establishments does not exceed 3% of the total built up area
  - The size of residential unit is not more than 30 sq metres on a land measuring not less than 1000 Sq metres in case of metros
  - The size of residential unit is not more than 60 sq metres on a land measuring not less than 2000 sq metres in case of non-metros
  - Such companies shall be subject to MAT



# Direct Tax Proposals

## Corporate Taxes

(9/12)

### Conversion of Private Limited Company into a LLP:

- Under the existing provisions a tax free conversion of Private Limited Company into LLP was permissible only if the turnover of the Private limited company was less than INR 60,00,000.
- Now, an additional condition has been proposed which states that the total assets of the Private Limited Company shall not be in excess of INR 5 crores.

**Comments:** *This conditions are cumulative. Thus, assessee in order to avail tax free conversion of his private limited company into LLP shall follow both the conditions i.e. turnover and the assets both shall be below prescribed limit. However, many companies are taking benefit of the legal intention as brought out in the case of CIT Vs Texspin Engineering and manufacturing works (263 ITR 345) and going ahead with the conversion.*

### Provision for Bad and Doubtful Debts allowable in case of NBFC's:

- As per the existing provisions state financial corporations, public financial institutions etc are allowed a 5% bad and doubtful provision against their total Income
- Going forward Non-Banking Financial Institutions (NBFCs) will also be eligible for 5% provision for bad and doubtful debts with effect from Financial Year 2016-17.

**Comments:** *The Indian Income Tax provisions allow admissibility of bad and doubtful debts as a deductible expenditure only when the amount has been actually written off in the books. However, since NBFC is also in the business of lending similar to financial institutions, the admissibility is allowed on a provisional basis and actual write off is now no longer required.*

### Value of Consideration in case of transfer of immovable property (Section 50 C)

- Many times it so happens that there is a time gap between the agreement to sell a property and the actual sale of that property.
- On account of this time gap there are issues relating to fixation of the sale consideration which is based on stamp value
- Thus it has been proposed that in case of transfer of capital asset, the amount of consideration should be the stamp duty value on the date of agreement, provided atleast one account payee cheque has been paid on or before the date of agreement

**Comments:** *Usually the sale consideration based on stamp duty value is fixed at the time of agreement of sale. However, if there is a time gap in the date of agreement of sale and final sale there could be a situation where stamp duty value would increase. Hence, this amendment has been made to make way of such legal issues that would crop up provided some token cheque has been given on the date of agreement*

# Direct Tax Proposals

## Corporate Taxes(10/12)



### Taxation of Non-Compete Fee

- As per the existing provisions, non-compete fee paid by a business entity, was taxable in the hands of the recipient as "Business Income". However, the provisions did not cover professionals.
- The said provision has now been amended to include non-compete fee received/receivable in relation to any profession which shall be taxed as business income

**Comments:** All amounts received as non-compete fees will be chargeable to income under the head "Profits and Gains from Business and Profession" whereas transfer of any business or transfer of rights to carry on business will continue to be taxable under the head "Capital Gains"

### Clarification regarding definition of unlisted securities:

- Section 112 provides that long term gain arising from sale of securities would be taxable at the rate of 10%
- Here, there was an ambiguity in the expression "securities". Whether the term "securities" includes shares of private limited companies or not as certain courts were having diversified opinions

**Comments:** These amendments will put to rest a lot of litigations since long term capital gains on sale of shares of a private company shall also be taxed @10%

### Dividend paid by SPV in case of REIT exempt from DDT (applicable from 1<sup>st</sup> June, 2016)

- Real Estate Investment Trusts (REITs) being regulated by SEBI is considered as a "Pass through" entity. As per the existing provisions, the dividends distributed by REITs are not subject to DDT at the level of REIT but taxed in the hands of the respective investors.
- However, most REITs create an SPV wherein the income generating assets are held in that SPV which is generally of a "Company" or "LLP" structure.
- Now SPV being a company was taxed as per normal provisions and is also required to pay DDT on the income distributed to the REIT.
- Thus, since the SPV did not enjoy the pass through status, the objective of REIT was not being met which led to unnecessary tax deduction and tax levies and in turn the structure was not being construed useful.
- Hence in order to rationalize this, SPVs have been exempted from DDT, but this exemption is applicable only if REITs hold 100% share capital of SPV
- The exemption will be available only if dividend is paid out of current income and not out of accumulated reserves

**Comment:** As per SEBI regulations, both the SPV and the business trust are obligated to distribute 90% of their operating income to its investors, but no such requirement was present for normal real estate companies. Also, DDT was leviable on SPVs which was a major source of dissuasion for all the REITs. This provision has now been amended and SPVs, like REITs, are now exempt from DDT, which will encourage the growth of REIT structure.



# Direct Tax Proposals

## Corporate Taxes

(11/12)

### Exemption of Central Government Subsidy from definition of Income

- As per the existing provisions any general purpose grant or subsidy provided by Central Government for the budgetary support of a trust or for operationalizing certain schemes was taxable in the hands of trust as an Income.
- Only specific grants or subsidies which are against purchase of a specific asset and reduced from the cost of the asset were considered as exempt
- W.e.f F.Y. 2016-17, any grant or subsidy received for the corpus of a trust by Central Government or State Government even for general purpose shall not be taxable.

**Comment:** By amending the definition of income of trust, any subsidies or grants received towards the corpus of a trust have been eliminated. Therefore now, irrespective of subsidy being a special purpose subsidy or a general purpose subsidy, if it is for corpus of the fund, it would be exempt from tax.

### No Set off of losses against undisclosed Income

- Any unexplained incomes taxed during the course of assessment are currently being taxed @30% and no deduction in respect of any expenditure or allowance in relation to such unexplained income is allowable
- However, it was ambiguous as to whether losses could be adjusted against such unexplained income.
- This budget spells out the intention of the government which says that losses cannot be adjusted against such unexplained income

### Expenditure incurred for earning exempt income under section 14A

- Any expenditure, incurred to earn an exempt income is disallowed to a certain extent. The extent and method for calculating such disallowance has been listed down in Rule 8D
- The current budget proposes to amend the Rule 8D for calculating disallowance  
Now, the disallowance for earning exempt income will be lower of:

- (i) 1% of the monthly average investment, or
- (ii) Actual deduction claimed

**Comment:** The official rule notification is yet awaited which will provide more clarity in provisions pertaining to section 14A.

# Direct Tax Proposals

## Corporate Taxes(12/12)



### **Introduction of Presumptive taxation for professionals:**

- The benefit of presumptive taxation will also be extended under a new section 44ADA to professionals (architects, doctors, CAs, consultants, etc.) having gross receipts up to INR 50,00,000.
- Income of the assessee shall be higher of:
  - 50% of gross receipts
  - Actual income
- No other deductions shall be allowed to the assessee.
- Individuals, HUF & partnership firm can take benefit of this scheme (LLP is not eligible).
- Assessee opting for presumptive basis will not be required to maintain books of accounts and get the accounts audited.

### **Presumptive taxation for Business:**

- The turnover limit for presumptive taxation is being increased from INR 1 Crore to INR 2 Crore
- Salary, interest, etc. paid to partners is proposed not to be deducted while calculating the income. (Earlier it was allowed)
- An assessee who does not opt for presumptive basis of taxation in any particular financial year for consecutive 5 years from the first year of claiming presumptive taxation, then he shall not be eligible to claim benefit of presumptive taxation for succeeding next 5 years from the year in which the assessee opts out of the presumptive tax.

*Comments: It is to be noted that the corresponding limit of turnover for getting the books of accounts audited has not been increased to INR 2 crores under section 44AB of the Act. We are expecting a clarification for the same soon.*

# Direct Tax Proposals Assessment & Litigations

(1/4)



## The Income Declaration Scheme: (W.e.from 1st June,2016)

- Domestic Taxpayers are given opportunity to declare undisclosed income or income represented in the form of any asset of any Financial Year upto 2015-16 by paying tax, surcharge & penalty at a combined rate of 45% of the undisclosed income on or before notified date.
- Regarding income declared in these declarations, there will be no scrutiny or enquiry under the Income Tax Act or Wealth Tax Act & the declarants will have immunity from prosecution. Immunity from Benami Transaction (Prohibition) Act, 1988 is also proposed subject to certain conditions.
- The Scheme can not be availed by the assessee against which proceedings are pending under the income Tax Act and other litigations.

**Comments:** In our opinion, there will be very few takers for the IDS as the rates proposed for IDS are too high that will hold back tax payers from opting the IDS scheme.

## The Direct Tax Dispute Resolution Scheme:

- The Taxpayers are offered one-time settlement of cases in respect of which appeal is pending (for any amount) before the commissioner of Income-Tax (Appeals) or the commissioner of Wealth Tax (Appeals) as on 29th day February, 2016 by paying the basic tax demand & interest upto date of assessment. However, in case of disputed Tax exceeding INR 10,00,000 & pending appeal penalty order, 25% of the penalty leviable shall be paid.
- This scheme is also available to tax payers having dispute pending before the commissioner of Income Tax (Appeals) or the commissioner of wealth Tax (Appeals) emanating from retrospective amendment of Tax Laws. The Assessee will get relief from the payment of interest & penalty by paying Tax demand.
- For availing the benefit of the scheme, such declarant shall be required to withdraw any writ petition or any appeal filed against such specified tax before Commissioner (Appeals) or the Tribunal or High Court or Supreme Court.
- The proposed scheme can not be availed in cases i) where prosecution has been initiated before 29.02.2016 ii) search & survey conducted iii) relating to undisclosed Foreign income & assets. No matter covered by order of the Direct Tax Dispute Resolution shall be reopened in any other proceeding under the Income Tax Act, 1961 & wealth tax Act, 1957.

**Comments:** On account of proposing a levy of 25% penalty for cases exceeding INR 10 Lakhs, the assessee shall opt for TDRS in the case where there is a higher probability of having an unfavourable outcome.

## Provision for Bank Guarantee (W.e.f. 1st June, 2016)

- It is proposed to obtain Bank Guarantee instead of property to recover outstanding dues of Assessee. The Assessee will have to renew such Bank Guarantee periodically to prevent invocation of the bank guarantee and seizure of properties.

# Direct Tax Proposals

## Assessment & Litigations

(2/4)



### Filing of Return of Income:(W.e from 1<sup>st</sup> April,2017)

- An assessee shall be liable to file the return of income only when his/her GTI exceed the basic exemption limit without considering long term capital gain from the transfer of equity oriented funds which are subject to STT.
- The Tax payer has to file belated return of income for any previous year at any time before the end of relevant assesment year or before the completion of assessment, whichever is earlier.(Erstwhile the tax payer had 12 more months to file).
- Any person who has filed a belated return can also file a revised return.
- Merely non payment of self assesment tax & interest payable would not make the return defective return.

### Time Limit for Assesment, Reassesment&Recomputation: (W.e.f.1<sup>st</sup> June, 2016)

- The Time limit for completion of Scrutiny & Best Judgement assessmentis reduced to **twenty one months(earlier 24 months) from the end of the Assesment year**. The Time limit for completion of Income Escaping Assesment is reduced to **nine months (earlier 12 months)**. The Time Limit for completion of Fresh assesment in case of Rectification order & Commissioner Appeals order is reduced to **nine months** from the end of Financial year in which Rectification order is received .
- In order to give effect to an order of Commissiner Appeals or High Court or Supreme court or Settlement commission, the Assessing officer will be having **three months** from the end of the month in which order is received or passed .
- Consequential changes are provided in transfer pricing provisions for completion of assesment & reassesment.

### Time Limit for Assesment in search cases: (W.ef.1<sup>st</sup> June,2016)

- The Time limit for completion of assesment of the person under Search procedure is reduced to **twenty one months** from the end of financial year in which the authorizations for serach or requisition is executed.
- The Time Limit for completion of assesment in case of other person(in connection to /through the person mentioned above) is reduced to twenty one months from the end of financial year in which last of the authorization for search or requisition was executed or nine months from the end of the financial year in which books of account or documents or assets ceized by concerned AO whichever is later.

### Payment of Advance Tax & its interest: (W.e.f.1<sup>st</sup> June,2016)

- The Eligible Assesseees in respect of opting for computation of Profits or Gains of Business on presumptive basis, shall be required to pay advance tax of the whole amount in one instalment on or before the 15th March of the Fianancial Year.





# Direct Tax Proposals

## Assessment & Litigations

(3/4)

### **Payment of Interest on Refund: (W.e.f.1st June, 2016)**

- In order to ensure filling of Return within due date it is proposed to grant the interest on Refund from the date of Filling of return. The interest on any refund arising due to self assessment tax paid would be available for the period beginning from the date of payment of tax or filling of return whichever is later, to the date on which the refund is granted.
- The Assessee will be eligible to get additional interest at the rate of 3% for the period beginning from the date following the date of Expiry of the time limit specified to the date on which refund is granted in case of refund arises out of appeal effect by CIT (Appeals) or superiors being delayed.
- It is to be noted that rate of interest on refund is 6%. Only delayed refund from beyond specified rime limit shall attract additional 3%.

### **Rationalization of Penalty Provisions: (W.e.f.1st June,2017)**

- Concealment penalty Provisions have been replaced with new penalty provisions by way of "under reported & misreported" income.
- It is proposed that the penalty shall be 50% of the tax payable on under reported income. However, misreporting of income would be liable for penalty at the rate of 200% of the tax payable on such misreported income.
- Tax payable in case of comapny , firm or Local authority will be calculated as if the under-reported income is the total income (Thus tax equivalent to the amount of income will have to be paid). In any other case the tax payable will be thirty percent of under-reported income.

### **Extension of Time Limit to transfer Pricing officer in certain cases: (W.e.f.1st June, 2016)**

- In Case where Transfer Pricing Assesment proceedings are stayed by any court or where reference for Exchange of information has been made by the competent authority, the time available to the transfer pricing officer for making an order excluding the time for which assesment proceedings were satyed or the time taken for receipt of information, as the case may be, is less than sixty days, then such remaining period shall be extended to sixty days.

### **Time Limit for disposing applications for Interest & Penalty Waiver: (W.e.f.1st June,2016)**

- Principal Commissioner, Chief Commissioner, Principal Commissioner or commissioner are bound to pass the order accepting or rejecting application for Interest or penalty waiver as case may be within 12 months from the end of the month in which such application is received. Oppurtunity of being heard is to be given in case of rejection of application. At present no such time limit is prescribed.

# Direct Tax Proposals

## Assessment & Litigations

(4/4)



- Such application for waiver of interest & penalty can be made if the assessee feels if he has bonafide reasons regarding the claims made in the return of income or the tax liability is on account of retrospective levy etc. However in most cases either no disposition takes place or application are completely rejected.

### Enhanced scope of electronic processing of information: (W.e.f.1st June, 2016)

- The Notices & documents required to be issued by income tax authority will be signed & issued in paper form or communicated in electronic form in accordance with such procedure as may be prescribed.
- It is proposed to expand the scope of **adjustment** that can be made by Assessing Officer in order to remove mismatch between the return & the information available with the Department after intimating the assessee. Such adjustments can be made on the basis of audit report filed by the assessee, returns of earlier years of the assessee, 26AS statement, Form 16, Form 16A etc.

### Immunity from penalty & prosecution: (W.e.f.1st April, 2017)

- The Assessee may make an application for obtaining immunity from imposition of penalty & prosecution by paying Tax & interest specified in the demand notice & does not prefer an appeal against such assessment order.
- The Assessee will have to make an application within one month from the end of the month in which the assessment order is received by the assessee to show his intention to get immunity from such proceedings.
- Such immunity can not be granted in case of misrepresentation or suppression of facts, failure to record investments, income & any international transaction, false entry in the books, wrong claim of expenditure in the books etc.

### Provisions related to Appellate Tribunal:

- Power of Commissioner to direct Assessing Officer to make an appeal against the order passed in pursuance of the directions given by Dispute Resolution Panel within 60 days of the date on which the order sought to be appealed against is passed by Assessing officer is done away with. This amendment will take effect from 1st day of June, 2016.
- The Appellate Tribunal may rectify any mistake apparent from the record in its order at any time within **six months** instead of **Four Years** from the end of the month, in which the order was passed. This Amendment will take effect from 1st day of June, 2016.
- Single Member bench may dispose of a case where the total income as computed by the Assessing officer does not exceed INR fifty Lacs in view of recent increase in monetary limit for filing an appeal before ITAT & to speed up the process of Dispute Resolution at the level of ITAT. This amendment will take effect from 1st Day of June, 2016.

# Indirect Tax Proposals

## Service Tax

(1/4)



### Change in the effective rate of service tax

- A Krishi Kalyan Cess at the rate of 0.5% is proposed to be levied on all taxable services from 1<sup>st</sup> June, 2016.
- Still clarity is awaited on Input Tax Credit of Krishi Kalyan Cess as to which such cess can be used as input tax credit.
- The effective service tax rate w.e.f 1<sup>st</sup> of June 2016 shall be 15% on all services provided as well as services under the reverse charge mechanism

### Following services have been included under the ambit of service tax regime:

- Services provided by a senior advocate ( As recognised by the Bar Council of India ) to an advocate or partnership firm of advocates providing legal services (Effective from 01-04-2016 under forward charge)
- Services provided in the capacity of an arbitrator in a tribunal or otherwise
- Services in relation to construction, erection, commissioning or installation of original works related to monorail or metro. It shall be applicable on contracts entered into on or after 1<sup>st</sup> March, 2016.
- Service of transportation of passengers, by ropeway, cable car or aerial tramway. (Effective from 01-04-2016)
- Transportation of passengers by way of stage carriage (Any vehicle having capacity of carrying 6 or more passengers) is being omitted from negative list from 1st June, 2016. Going forward tax shall be levied at abated rate of 60% without credit of inputs, input services and capital goods only on Air conditioned stage carriages.
- Service provided by Shipping Lines, of transportation of goods by a vessel from outside India up to the custom station in India.
- The services provided by mutual fund agent/ distributor to a mutual fund or asset management company. ( Previously these services were covered under the Reverse Charge Mechanism which going forward will be covered under the forward charge)



# Indirect Tax Proposals

## Service Tax

(2/4)

### **Following services have been specifically excluded from the purview of Service tax:**

- Services by way of:
  1. Construction services provided to the Government, a local authority or a governmental authority, in respect of construction of govt. Schools, hospitals, etc.
  2. Services of construction of ports, airports. (With retrospective effect from F.Y. 2015-16)
- Services provided by way of construction, maintenance etc. of canal, dam or other irrigation works provided to bodies set up by Government whether or not by an Act of Parliament or a State Legislature (even applicable for services provided from 1<sup>st</sup> July, 2012 to 29<sup>th</sup> January, 2014. Further it shall be applicable retrospectively with consequential refunds as well.)
- Services provided by any artist performing in folk or classical form of music, dance or theatre, if the amount charged is less than INR 1,50,000. ( Earlier INR 1,00,000 )
- Services of Information Technology Software on media bearing RSP, provided Central Excise Duty is paid on RSP. (With effect from 1<sup>st</sup> March, 2016)
- Service of life insurance business provided by way of annuity under the National Pension Scheme. (Effective from 01-04-2016)
- Services provided by Employees' Provident Fund Organisation to employees. (Effective from 01-04-2016)
- Services provided by Insurance Regulatory and Development Authority of India. (Effective from 01-04-2016)
- The regulatory services provided by Securities and Exchange Board of India. (Effective from 01-04-2016)

# Indirect Tax Proposals

## Service Tax

(3/4)



### Other changes in Service tax Regime:

- Credit of input services is being allowed on the below mentioned services (Effective from 01-04-2016):
  1. Transport of passengers by rail
  2. Transport of goods by rail
  3. Transport of goods by vessel
- Abatement in respect of transport of goods in containers by rail is reduced to 60% (earlier 70%). Hence the effective rate of service tax has increased from 4.2% to 5.6%. (Effective from 01-04-2016)
- In respect of services by way of construction of residential complex, building, civil structure is proposed at uniform rate of 70%. (Earlier 70%, 75%) (Effective from 01-04-2016)
- Abatement in respect of services by tour operator is proposed at uniform rate of 70%. (It includes packaged tours and services other than packaged tours.) (Effective from 01-04-2016)
- Abatement in respect of shifting of used household goods by GTA is proposed to be charged at a uniform rate of 60%. (Effective from 01-04-2016)
- The rate of Service Tax on single premium insurance policies is reduced from 3.5% to 1.4% of the premium provided the amounts allocated to savings/investments are not intimated to the policy holder at the time of buying the policy (Effectively only pure risk policies shall be covered. Policies with money back guarantees shall not be covered)

### Interest Rate:

- Going forward w.e.f the date on which the finance bill receives the assent of the president the Interest rates on delayed payment of service tax will attract a uniform rate of 15% p.a. (Earlier interest rates 18%, 24%, 30% as the case and length of the delay may be).
- In case of assessee, who has already been issued a notice having value of taxable services in preceding year/years of less than INR 60 lakhs, the rate of interest on delayed payment of Service Tax will be 12% (Instead of 18/24/30 as the case may be). In all other cases for the notices served in respect of previous years the erstwhile provisions of 18,24,30% shall apply.
- However, in case the Service Tax has been collected by the service provider but not deposited to the government, the rate of interest will be 24%

# Indirect Tax Proposals

## Service Tax

(4/4)



### Relief Measures:

- One Person Company and HUF is being eligible to have benefit of making quarterly payments of Service Tax.
- One Person Company shall be eligible to make payment of Service Tax on receipt basis.

### Reduce Litigation and providing certainty in taxation:

- Indirect tax Dispute Resolution Scheme, 2016 provides that even in respect of cases pending before Commissioner, the assessee, can file a declaration by paying duty, interest and penalty equivalent to 25% of duty if he feels the need to do so. In such cases the proceedings against the assessee will be closed and no prosecution shall be held against him *(Earlier the assessee was given an option to pay the service tax, interest thereon and an amount of 25% penalty before the issue of Show Cause Notice in order to avail this benefit)*

### Return Filing:

- An assessee files 2 bi-annual service tax returns in a financial year.
- Going forward the CBEC will provide for e-filing of another return which will be an "Annual return". The annual return will have to be filed by Service Tax Assessee, having a certain threshold limit yet to be notified. *(Effective from 01-04-2016)*

### CENVAT reversal in case of Banks for providing of exempted services:

- It is proposed that banks and other financial institutions can reverse credit in respect of exempted services, on actual basis or 50% reversal on input services. *(earlier no option available to reverse Cenvat on actual basis)*

### Miscellaneous:

- The power to arrest in Service Tax is limited to situation where the amount of tax collected and not deposited by tax payer is more than INR 2 crores.

***Unless otherwise specifically mentioned in this presentation, all the amendments mentioned under the service tax shall be applicable from the date that will be notified by central government in due course of time.***



## Glossary

### Glossary:

- AY-** Assessment Year
- BEPS-** Base Erosion and Profit Shifting
- CbC Report-** Country by Country Report
- DDT-** Dividend Distribution Tax
- DTAA-** Double Taxation Avoidance Agreement
- EET-** Exempt, Exempt, Tax
- EPF-** Employee Provident Funds
- FCCB-** Foreign Currency Convertible Bond
- FCEB-** Foreign Currency Exchangeable Bond
- FII-** Foreign Institutional Investors
- FMC-** Foreign Mining Companies
- FY-** Financial Year
- GAAR-** General Anti- Avoidance Rule
- GDR-** Global Depository Receipt
- GIFT-** Gujarat International Finance Tech-City
- GTA-** Goods Transport Agency
- HGV-** Heavy Goods Vehicles
- HUF-** Hindu Undivided Family
- IFSC-** Indian Financial System Code
- INR-** Indian Rupees
- LLP-** Limited Liability Partnership
- MAT-** Minimum Alternate Tax
- MNC-** Multinational Companies
- MSME-** Micro, Small & Medium Enterprise
- MSMED-** Micro, Small and Medium enterprises Development
- NBFC-** Non Banking Financial Institutions
- NOC-** National Oil Companies
- NR-** Non Residents
- NSS Deposits-** National Savings Scheme Deposits
- OECD-** Organisation for Economic Co-operation and Development
- P&M-** Plant & Machinery
- PAN-** Permanent Account Number
- PE-** Permanent Establishment
- POEM-** Place of Effective Management
- PSU-** Public Sector Unit
- PY-** Previous Year
- QFI-** Qualified Foreign Investors
- R & D-** Research & Development
- REIT-** Real Estate Investment Trust
- RPF-** Recognized Provident Fund
- RSP-** Retail Sales Price
- SEBI-** Securities and Exchange Board of India
- SEZ-** Special Economic Zone
- SME-** Small & Medium Enterprise
- SNZ –** Special Notified Zone
- SPV-** Special Purpose Vehicle
- STT –** Security Transaction tax
- TDS –** Tax Deducted at Source
- UTI –** Unit Trust of India