THE CHAMBER OF TAX CONSULTANTS

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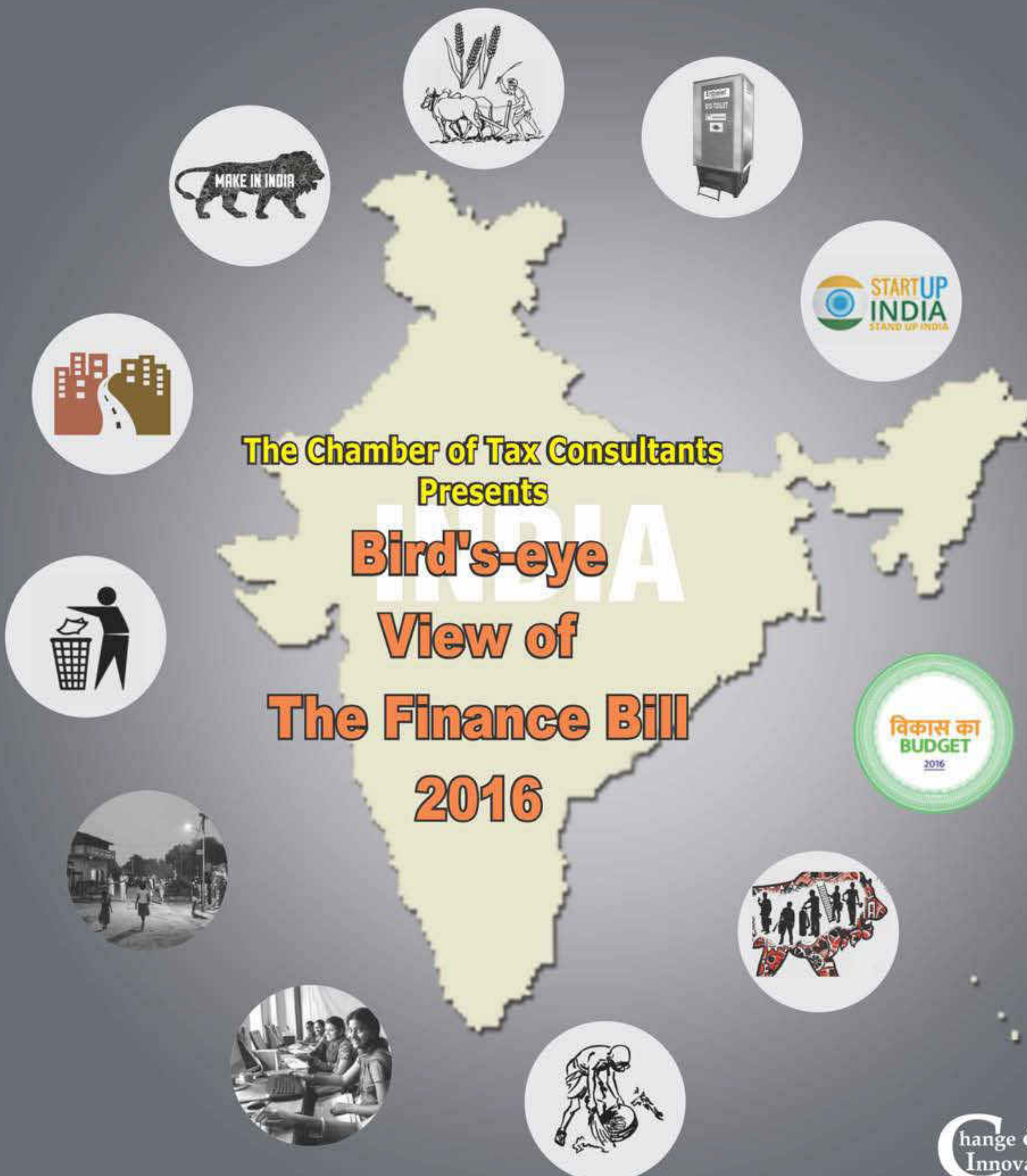

The Chamber of Tax Consultants
Presents

Bird's-eye View of The Finance Bill 2016

Change & Innovation

3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai 400 020.
Tel: 91 22 - 2200 1787 / 2209 0423 | Fax: 2200 2455
E-mail: office@ctconline.org | Website: www.ctconline.org

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About CTC

The CTC established in 1926, is one of the oldest voluntary non-profit making organisation formed with the object of educating and updating its members on the Direct Tax Laws and other Allied Laws. It has a robust membership strength exceeding 3,500 members comprising of Chartered Accountants, Advocates, Tax Practitioners, Corporate Members and Student Members.

- The CTC regularly organises Workshops, Seminars, Lecture Meetings, Study Circle Meetings, Study Group Meetings, Outstation Conferences, etc., for the benefit of members which keeps them up-to-date with the latest developments in Tax and Allied Laws.

- Its popular monthly journal 'The Chamber's Journal' consists of Special Issues covering in depth analysis on topics day to day of professional interest. These special issues have found a permanent place in libraries of leading tax professionals.

- CTC functions through various sub-committees comprising of above 250 core group members and maintains excellent rapport with the Tax Department and Government authorities.

- CTC is active in filing public interest litigation, for instance TDS, DIS, Service Tax, etc., presenting pre and post-budget memorandum and making representations on various Tax and Corporate Laws to the Government and regulatory authorities.

- CTC manages two libraries at prominent places at Aayakar Bhavan, New Marine Lines and Pratyakshakar Bhavan, Bandra, which are widely used by the professionals. These libraries have more than 4,000 titles, various leading law journals/magazines and books.

- The members of the CTC enjoy a unique bond of fellowship and brotherhood which is evident in all its activities and programmes. Its monthly newsletter, The CTC NEWS keeps members updated on various events.

Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre–eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

THE CHAMBER OF TAX CONSULTANTS

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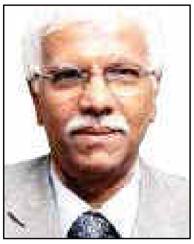
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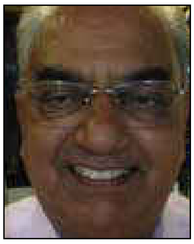
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Authors


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Atul Suraiya


Sanjay Chokshi


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Dilip Sanghvi


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Rahul Hakani


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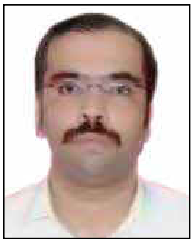
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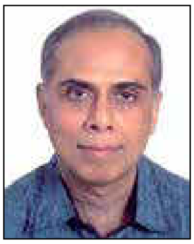

Rajkamal Shah


Vikram Mehta


Bakul Modi


Hasmukh Kamdar


Jayesh Gogari


Vasant Bhatt


Pranav Kapadia

The Project Team


Rahul Hakani


Paras S. Savla


Nirav Jani


Heneel Patel


Amit Purohit


Neelam Jadhav


Divyesh Jain


Mallika Devendra


Pratik Poddar


Viraj Mehta

PRESIDENT'S MESSAGE

Dear Readers

The Union Budget 2016-2017 has focused on the rural economy and pushed for higher investment in infrastructure without breaching the fiscal deficit target.It has a long-term view for the growth of the economy and lays down a clear path of anchoring India's growth in an uncertain global economic scenario.The continued commitment to improve ease of doing business in India,along with fostering a conducive environment for research and development,is a very positive outcome of the budget.There are a number of well-defined measures for energizing key sectors and bringing more and more people into the mainstream economy.

The Indian stock market,which surprised analysts on Monday 29.02.2015 with its lacklustre reaction to the Union budget,rallied on Tuesday 01.03.2015 amid some favourable news flow from the global markets,the markets veered around to the view that the fiscal prudence demonstrated by the government in the Union budget,along with a possible rate cut by the Reserve Bank of India,will help lift investor sentiment.

The Prime Minister's vision of Start-up India left a clear mark on the budget speech with several mentions of startups and micro and medium enterprises(MSMEs)with policy changes aimed at easing hurdles that startups face and making it convenient for MSMEs to operate.Startups have been freed from paying tax on their profits for three out of first five years of existence.Further,the limit for presumptive taxation for MSMEs has been increased to a turnover of Rs.2 crore freeing them from the need to maintain detailed books and getting audits done.The option for small shops to remain open on all seven days along with the opening up of road transport for passengers segment should help traders and entrepreneurs,respectively,and boost availability of service in urban areas.

On the personal finance front,the common man has lots to cheer for.The tax deduction for income below Rs.5 lakhs has been increased to Rs.5000 with the house rent allowances deduction enhanced to Rs.60000.The additional exemption of Rs.50000 for housing loans up to Rs.35 lakhs for properties upto Rs.50 lakhs is a welcome move for first-time homebuyers.Additionally,the 100% tax exemption available to builders for houses upto 30 sq.meter in the four metros and 60 sq.meter elsewhere should enhance affordability and supply.

While I have seen sops for the common man,the affluent have to prepare to pay more. The introduction of 0.5% Krishi Kalyan cess applicable on all services will take the effective service tax to 15% making living expensive.The surcharge on income tax for individuals earning in excess of Rs.1 crs has been increased from 12% to 15%,levy of infrastructure cess of 2.5% and 4% on cars and TCS of 1% on purchase of luxury cars over Rs.10 lakhs In terms of investments,gorss dividends in excess of Rs.10 lakhs will attract a 10% tax.

The Budget has transformative agenda built on nine pillars-agriculture and farmer's welfare,rural employment and infrastructure,social sector,education,skills and job creation,infrastructure and investment,financial sector reforms,governance and ease of doing business,fiscal discipline and tax reforms.The task now is to sustain the growth in an even more difficult global environment.The achievements of government are remarkable,given the continuing global headwinds and two successive poor monsoons.

It has often been argued that the secrecy around the Budget exercise is hugely overdone.As tax rates have become more stable,paving the way for a more rule-based and non-discretionary taxation regime,there is no reason why Budgets should not be framed in an open environment of free exchange of views and ideas before they actually get discussed and approved by Parliament.If what one saw this time in the run-up to the Budget for 2016-17 is an indication of such progressive and reformist thinking,the finance minister and his team deserve the nation's compliments for launching yet another major path breaking reform initiative.

The Chamber of Tax Consultants was established in1926,One of our objectives is to spread Knowledge amongst the professionals and society.To fulfill this objective our The Research and Publication committee under the Chairmanship of Mr Rahul Hakani Advocate and his team came out with this first e-Book of Chamber of Budget 2016-2017.

My compliment and thanks to the entire team of to publish this e-Book within 72 hours from the budget speech 2016-2017 given by Our Finance Minister. Arun Jaitley.

I acknowledge the support of Dr.K Shivram Sr.Advocate,Mr Dinesh Vyas Sr.Advocate, All The Editor,Mentors and Contributors of the e-Book on Budget 2016-2017.

I must extend my thanks to all Past Presidents,office Bearers,Managing Council members for allowing us to publish this e-book at Nil cost to the readers.For the benefit of our society at large I request all readers to share this e-Book with friends and society.

I thank and appreciate all our readers,members who form the backbone of our publication.I am sure this publication will help us to understand in a nutshell the amendments and implications of the proposal made by our Finance Minister in Budget Speech 2016-2017.For detail analysis on The Finance Bill 2016-2017,readers and members may refer to the March 2016 issue of The Chamber Journal,which will be published soon.

With Personal Regards

Avinash Lalwanii

President

The Chamber of Tax Consultants

CHAIRMANS MESSAGE

Dear Readers,

Taxes both direct and indirect is an inevitable and an indispensible part of today's society. A peculiar feature of developing economies like India is huge economic inequality among its citizens and disparity in development of various regions. Taxes act as a bridge to bring about economic equality and uniform regional growth.

What Indian citizens as well foreign entities doing business in India fear is not chargeability of tax but uncertainty of such charge, high-handedness of the administration, denial of principles of natural justice, discretionary powers, no time-limits and lack of accountability on the part of the administration.

Further, there cannot be a society without disputes and no one really expects such a society. In fact existence of disputes in a society is an indicator of the fact that citizens of a country are exercising their rights and freedom. However, what rips apart is the apathy in dispute resolution mechanism.

The present Finance Bill, 2016 I feel is a revolutionary Finance Bill as it gives a clear impression that this bill wants to be citizen friendly, business friendly and is perhaps for the people, by the people and of the people. This is further evident from the Memorandum to the Finance Bill which has a broad category tilted " G. Ease of Doing Business & Dispute Resolution". I believe it must be for the first time in the history of India that such a citizen comforting category must have formed part of the Finance Bill. It must be appreciated that not a single amendment prejudicial to the assessee is given retrospective application. All this indicates the direction and vision which the present dispensation wants to implement. Though the proof of the pudding is in eating but at least there is a start and a clear vision is laid out. In fact one can also witness that such assessee friendly attitude is slowly but steadily percolating in the tax administration.

India is a country with a huge aspiring young population and employment is a big challenge. One of the solution to this challenge is creating self employment or entrepreneurs as well as giving impetus to employment generation. Thus ,introduction of concessional taxation regime for Income from patents to encourage indigenous research and development activities , tax incentives for start-ups, incentives for promoting affordable housing ,tax incentive for employment generation and tax incentives to international Financial Services Centre in the Financial bill are all in the correct direction.

The Finance Bill particularly introduces two landmark chapters. Firstly it introduces both under direct and indirect tax regimes a detailed code or a scheme being Dispute Resolution Scheme. This scheme if implemented appropriately can bring about a sea change in the attitude of taxpaying citizens towards the tax administration. Secondly, introduction of the Income declaration scheme addresses the burning issue of unearthing black money stashed within the country. The said scheme may have some grey shades of being discriminatory to honest taxpaying citizens but it surely is the need of the hour and said scheme must be construed as purely a policy decision.

Removal of discretionary power to decide rate of penalty and fixing time limit to decide waiver petitions under the Income Tax act are welcome changes.

The several positive changes Incorporated in the Finance Bill by levy of new taxes and modification of the existing tax structure would loose its lusture if the implementing authorities keep ostrich like attitude. Hence, the government must now take sincere efforts to put their words into actions.

This is perhaps the first time that the chamber of tax consultants has decided to come out with an E-Publication of the Finance Bill. This Publication was indeed the vision of Chambers President Shri Avinash Lalwani. The purpose is to disseminate analysis done by tax experts to public at large. In fact, the professionals can circulate this publication amongst its clients. Time was an essence of this publication. Though the Research And Publication Committee had arranged a strong team of 39 authors and 11 editors, the Finance Bill with large number of amendments and introduction of new chapters both under direct and indirect taxes really made us nervous. However, the dedication of authors and editors towards this publication made us sail through this mammoth task easily. Their efforts need sincere appreciation keeping in mind that the entire task of writing and editing was to be done on working days.I am indeed grateful to the authors and editors for their support and co-operation. We have made efforts to help readers have ease of reading this publication by providing appropriate hyperlinks. I would also like to thank Shri Dinesh Vyas and Dr K Shivram, Senior Advocates for their contribution to this Publication. My special thanks to Shri Rajiv Luthia without whose efforts this publication would not have seen the light of the day.

With Personal Regards,

Rahul Hakani

Chairman,

Research and Publication Committee

The Chamber of Tax Consultants

Foreword –Finance bill, 2016

Finance Bill, 2016 – Honest attemptto bring stability in tax law andreduce the tax litigation – But, is allwell?

Presenting budget for the biggest democracy in the world has never been an easy task, but the Honourable Prime Minster of India and Honourable Finance Minster deserve to be appreciated for making an honest attempt to bring stability in tax law and reduce tax litigation.I am of the opinion that the Honourable FinanceMinister has donehis bestto take interests of all thecitizens of our Country.As tax practitioners,we may have take lead to see that the various schemesannounced by the Government really benefit the persons for whom they are meant.

Some of the amendments which requires to be appreciated are

- Presumptive scheme of taxation for professionals;
- Interests on delayed refunds @ 9%;
- Stay of recovery by paying 15% of the disputed tax;
- Amendment to one of the most litigious provision of Rule 8D;
- Tax exemptions for eligible start-ups;
- Introduction of Direct Tax Dispute Resolution Scheme, 2016;
- Reducing the time limit available with the ITAT for passing orders rectifying mistake apparent from the record from four years to six months.

However, there are certain provisions which have come as a surprise to all. For example, taxability of withdrawals from PF of employees. Taxing PF withdrawals may not only unnecessarily burden the salaried class but may also be contrary the principle of promissory estoppel.

The Amnesty scheme rechristened as Compliance Window providing an opportunity to defaulting tax payers to come clean and pay taxes is another such example. In my view, this scheme will prove to be a disincentive to honest tax payers who have paid taxes honestly. While the Department is in most casesimpetuous in levying penalties on any and every addition made @ 100 – 300% of amount of tax, penalty on incomes declared in the scheme will be charged @ 25% of tax. It is to be seen whether the scheme serves the purpose for which it is introduced or not.It also appears to be a half hearted attempt by giving only three months' time.

Another budget proposal to levy tax on senior advocates may result in practical difficulties. Firstly, the issue of levy of service tax on advocates is sub judice before the Hon'ble Supreme Court. The Supreme Court (SLP NO 13944/2015 DT 10-08 2015) has stayed the operation of the Bombay High Court order upholding the levy of service tax on advocates. Therefore, in my view, the introduction of this provision is ill-timed and may result in further challenge to the provision before the Supreme Court. Secondly, when a junior advocate briefs a senior advocate, the junior advocate may not be able to claim set off of the service tax paid to the senior advocate.

The total overhauling of the penalty provisionsmay result in increased litigation in the years to come. Another provision which could see challenge before higher Courts is the taxability of dividends in excess of Rs. 10 lakhs. This would not only result in double taxation (since the company declaring dividend would be liable to pay DDT) but could also be held to be violative of Article 14 of the Constitution.

But, in substance, this budget seems to have its heart in the right place and attempts have been made to reduce tax litigation. The increase in the limit of single member cases (SMC) in ITAT from Rs. 15 lakh to Rs. 50 lakh will help to reduce the pendency before the ITAT. As on today, the total pendency before the ITAT is onlyabout 92,000 and byincreasing the limit of SMCcases, at least 30% of total pendency of appeals may be disposed off by the SMC benches.The ITAT has95 members and another 17 are likely to join.Hence, the total number of members will be 112 i.e. not more than 825 appeals per member. In the years to come, the tax payer will be able to get a judgment from the final fact finding authority within six months of the filing of the appeal.

So many matters are pending before various Courtsin respect of prosecution relating to technical defaults.There could have been a provision for compounding of such offencesby taking a nominal compounding fee.There is no provision introduced in the Act to bring in accountability in taxation.

As tax practitioners, whenever good provisions are introduced, we must appreciate them and when there are retrogradeprovisions, we must make representations and even move the judiciary, if need be.

The Chamber is doing excellent service to tax professionals andtax payers of our Country. Every year, the Chamber publishes special issue on Finance Bill which always comes handy to understand the various provisions of the Finance Bill. For the first time, the Chamber has decided to bring out an e-publication on the Finance Bill. I must congratulate the President of the Chamber, Mr. Avisnah Lalwani and the Chairman of the Research and Publication Committee, Mr. Rahul Hakani and their dedicated team to bring out this publication with in sort span of 72 hours of the presentation of the Budget.This publication has analysed all the provisions clause by clause and expressed their views on the various provisions.I am sure this publication willbea useful referenceto all the stake holders including the tax administration in better understanding of the provisions. This publication will also help in preparing effective representations before the Government.

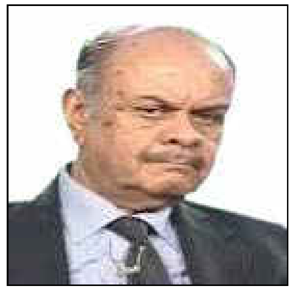
My best wishes to the team of the Chamber for bringingout the e-publication on Finance Bill, 2016. I am sure this is the beginningand in the years to come there could be innovation and better presentation after getting feedback from the stake holders.

Jai Hind

Dr. K. Shivaram

Senior Advocate

Past President



BACKGOUND TO THE FINANCE BILL 2016

BY

DINESH VYAS, SENIOR ADVOCATE

The Union Budget 2016-17 presented by Shri Arun Jaitley, the Finance Minister, Government of India, before the Parliament on 29/2/2016 is one of the most transparent and honest presentation of Budget proposals of independent India. What is stated by the Finance Minister in his Budget speech is reflected in the provisions of the Finance Bill and what is contained in the Finance Bill is truly explained in the Notes on Clauses. It is a very refreshing change in comparison to the past and it should set the right trend for future legislative exercises.

If the provisions of the Finance Bill and the related documents are examined in detail and are compared with similar presentations of the past, it appears that the followings are the chief characteristics thereof.

No surprises and no hidden agendas

First, there are no surprises and hidden agendas in the Finance Bill 2016 documents. In the past, on innumerable occasions it was seen that making a reference to the controversial and anti-assessee amendments was totally avoided in the Finance Minister's speech before the Parliament. On most occasions, such amendments were hidden from public attention and directly dealt with only in the Finance Bill. The present budgetary proposals seem to reverse the above negative trend. Important amendments have been dealt with in a very sincere and open manner in the Finance Minister's speech itself.

No irrelevant justification

Secondly, need and the justification for an amendment has been fully and truly stated in the Finance Bill documents. In the past, such open and truthful approach was seldom adhered to. If an anti-department judgment was to be done away with, it was seldom acknowledged that this indeed was the purpose. The justification given for the controversial amendment was in most cases inaccurate or irrelevant. In the present Budget full and truthful justification and reasoning for every amendment is clearly spelt out without any attempt to hide the real objective.

Fulfilment of commitments

Thirdly, what is more significant is the fact that the Finance Minister has fully honoured the commitments made by the Prime Minister and by himself with regard to totally ruling out retrospective amendments. A judgment of the Income-tax Appellate Tribunal at Mumbai in the case of Tata Consultancy Services would have been a great temptation for any Finance Minister to come out with a retrospective amendment. In this case, the Tribunal held that a Circular issued by the Central Board of Direct Taxes which directed the Assessing Officers to make a reference to the Transfer Pricing Officer detracts from the provisions of the Income-tax Act; that Central Board of Direct Taxes cannot interfere with the judicial functioning of the Assessing Officer and the Commissioner of Income-tax. On this line of reasoning, the Tribunal invalidated the Transfer Pricing adjustments and deleted the additions. Between 2003 and 2016, the additions made in implementation of the above Circular may totally be around Rs.3,00,000 Crores. Ordinarily, any Finance Minister would have attempted to undo the Tribunal judgement with a retrospective amendment. But, this has not been done and the commitment given by the Prime Minister and the Finance Minister remains honoured and kept. The Finance Minister without doubt deserves compliments for this act of fairness.

Introduction of accountability of Officers – A Historical event

The fourth point is one where a sort of History is made. For several decades there was a consistent demand from a responsible section of the tax payers that the tax authorities must be made accountable and must be made to pay the price for their unjustified wrong doings to honest tax payers. The past has witnessed a large number of unreasonable high-pitched assessments and demands which cannot pass though a judicial approval. In this context, a consistent demand was being made to introduce an accountability for such irresponsible tax officers. For the first time, such accountability has been introduced. The new proposal is that the Government will pay interest at the rate of 9% p.a. against normal rate of 6% p.a. in case there is delay in giving effect to Appellate Order beyond ninety days. The Officers who delay it, will be accountable for this loss to Government. This is a historical moment and there is no reason to believe that such History will not repeat itself. The proposed accountability operates in a limited field but now that the accountability is acknowledged and established, there will be good reasons to widen the scope for such accountability including unsustainable high-pitched demands and similar unwarranted judicial actions.

The Finance Bill needs to be studied, examined and analysed in the above background. Moreover, there appears to be a healthy coordination between the bureaucracy on the one hand and the political leadership on the other hand, both of which constitute and form the Government. If what is stated above is kept in mind, one should look forward to effective and fair administration of tax laws in the days ahead.

DIRECT TAXES

1 Rates of Income Tax for AY 2017-18

In respect of income of all categories of assessee's liable to tax for the assessment year 2016-17, the rates of income tax have been specified in Part I of the First Schedule to the Finance Bill 2016, which is similar to that of the Finance Act 2015.

However, Part III of the First Schedule to the Finance Bill, 2016, has provided Rates for the purposes of computation of "Advance Tax", deduction of tax at source from "Salaries and charging of tax payable in certain cases" for the Assessment Year 2017-18.

- **Tax Rate Chart**

For Individual other than Resident Individuals mentioned below, Every HUF, AOP/BOI/Artificial Juridical Person.		
Sr	**Net Income Range**	**Income Tax Rate**
1	Up to Rs 2,50,000	Nil
2	Rs 2,50,001 to Rs 5,00,000	10%
3	Rs 5,00,001 to Rs 10,00,000	20%
4	Above Rs 10,00,000	30%

For Resident Individuals Who is of the age 60 Years or more but less then age of 80 yrs at any time during the Previous year		
Sr	**Net Income Range**	**Income Tax Rate**
1	Up to Rs 3,00,000	Nil
2	Rs 3,00,001 to Rs 5,00,000	10%
3	Rs 5,00,001 to Rs 10.00,000	20%
4	Above Rs 10,00,000	30%

For Resident Individuals Who is of the age 80 Years or more at any time during the Previous year		
Sr	**Net Income Range**	**Income Tax Rate**
1	Up to Rs. 5,00,000	Nil
3	Rs 500001 to Rs 10,00,000	20%
4	Above Rs 10,00,000	30%

- **There has been no change in Rate of Taxes in Cases other than Domestic Company. The rates in all these other cases are as under:**

Sr	Type of Assessee			Income Tax Rate
1	**Co-operative societies**			
	Net Income Range			
	I	Up to Rs. 10,000		10%
	ii	Rs 10,001 to Rs 20,000		20%
	iii	Above Rs 20,000		30%
2	**Firms**			30%
3	**Domestic company**			
	i	where its total turnover or the gross receipt in the previous year 2014-15 does not exceed 5 crore		29%
	ii	other than that referred to in item (i)		30%
4	**Companies' other than Domestic Co.**			
	i	On the Income Consisting of		
		A	Royalties in pursuance of agreement entered on or after 01/04/1961 but on or before 31/03/1976	50%
		B	F.T.S. received in pursuance agreement entered on or after 01/03/1964 but on or before 31/03/1976	50%
	ii	On the balance income		40%

- **Minimum Alternate Tax (MAT) u/s 115 JB and Alternate Minimum Tax (AMT) u/s 115JC**

The effective MAT rate for domestic companies u/s 115JB and under the special provisions of MAT applicable to persons other than Company claiming deduction under heading C of Chapter VI-A or section 10AA also remain unchanged and would be:

Sr	Net Income Range	Income Tax Rate including surcharge and E.cess
1	up to Rs. 1 crore	19.055%
3	between 1 and 10 crore	20.38885%
4	Above Rs 10 Crore	21.3416%

- **Tax deducted at source**

Section	Nature of income	When to deduct	Rate of TDS
192	Salary	Monthly- at the time of payment where estimated yearly net taxable salary exceeds tax free limit.	On the average rates on the basis of per rates for individuals.
192A	Payment of accumulated balance due of Employees' Provident Fund Scheme, 1952, to Employees	When the amount of payment or aggregate amount of payment exceeds Rs. 50,000/-	10%
193	Interest on securities	At the time of credit or payment, whichever is earlier, when the amount exceeds Rs. 5,000/-	10%
194	Dividends	Before making payment to' shareholder, other than dividend declared U/s. 115-0, when amount exceeds Rs. 2,500/-	20%

Section	Nature of income	When to deduct	Rate of TDS
194A	Interest other than "Interest on securities"	At the time of credit or payment, whichever is earlier, when the amount exceeds Rs. 5,000/-. However, limit is Rs. 10,000/- in case of interest credited by banks including co-operative banks to its members.	10%
194B	Winnings from lottery, cross word puzzles, card games, games of any sort	At the time of payment when it exceeds Rs. 10,000/-	30%
194BB	Winnings from horse race	At the time of payment when it exceeds Rs. 10,000/-	30%
194C	Payment to contractors/ sub-contractors	At the time of credit or payment, whichever is earlier, when the amount of a particular contract exceeds Rs. 30,000/- or the total amount of contract during the whole year exceeds Rs. 1,00,000/-	2% – For payments to contractor/Sub-contractor who is not an Individual/HUF 1% – For payment to contractor/Sub-contractor who is an Individual/HUF
194D	Insurance Commission	At the time of credit or payment, whichever is earlier when the amount exceeds Rs. 15,000/-	5%
194DA	Payment under life insurance policy (including Bonus)	At the time of payment when the amount or the total amount during the whole year exceeds Rs. 1 ,00,000/-	1%
194E	Payments to Non-residents sportsmen or sports associations	At the time of credit or payment, whichever is earlier	20%

Section	Nature of income	When to deduct	Rate of TDS
194EE	Payments in respect of deposits under NSS	At the time of payment when it exceeds Rs. 2,50,000/-	10%
194F	Payments on a/c of repurchase of units by Mutual Fund or UTI	At the time of payment of amount referred in section 80CCB(2)	20%
194G	Commission on sale of lottery tickets	At the time of credit or payment, whichever is earlier when the amount exceeds Rs. 15,000/-	5%
194H	Payment of commission brokerage	At the time of credit or payment whichever is earlier when the amount exceeds Rs. 15,000/-	5%
194I	Rent	At the time of credit or payment, whichever is earlier, when the amount exceeds Rs. 1 ,80,000/-	10% – If rent is for land, building or furniture 2% – If the rent is for Machinery, Plant or Equipment
194IA	Payment on transfer of immovable property other than agricultural land	At the time of credit or payment, whichever is earlier, when the amount exceeds Rs. 50,00,000/-	1%
194J	Any sum paid by way of a) Fee for professional services b) Fee for technical services c) Royalty d) Remuneration/fee/commission to a director other than 192 e) Sum referred in 28(va)	At the time of credit or payment, whichever is earlier, when the amount exceeds Rs. 30,000/-	10%
194IA	Payment on transfer of certain immovable property other than agriculture land.	At the time of credit or payment, whichever is earlier, when the land is situated in specified area when amount exceeds Rs. 50 lacs	1%

Section	Nature of income	When to deduct	Rate of TDS
194LA	Compensation on account of compulsory acquisition	At the time of payment when it exceeds Rs. 2,50,000/-	10%
194LB	Payment of interest on infrastructure debt fund to non resident or foreign company	At the time of credit or payment whichever is earlier	5%
194LBA	Payment of distributed income to resident unit holder by a business trust and Payment of distributed income to non resident unit holder by a business trust	At the time of credit or payment whichever is earlier	5%
194LBB	Payment of distributed income to unit holder in respect of units of an investment fund	At the time of credit or payment whichever is earlier	In case of resident, 10% In case of non-resident, rates in force
194LBC	Income is payable in respect of an investment in a securitization trust	At the time of credit or payment whichever is earlier	Individual or HUF – 25% Other than above – 30%
194LC	Payment of interest by an Indian Company or a business trust in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond)	At the time of credit or payment whichever is earlier	5%
194LD	Payment of interest on rupee denominated bond of an Indian Company or Government securities to a Foreign Institutional Investor or a Qualified Foreign Investor	At the time of credit or payment whichever is earlier	5%

- **Education Cess**

The Education Cess and Secondary Higher Education Cess will be continued to be levied @ 2% and 1% respectively in all cases except for TDS u/s 193 to 194LA.

- **Surcharge**
  a The surcharge @15% of tax shall be levied in case of individual, HUF, AOP/BOI, artificial juridical person and 12% in other cases where the Income of the above referred person exceeds Rs. 1 Crore except as stated in clauses b, c and d below.
  b The surcharge shall be levied in respect of income liable to tax in case of domestic company, having total income exceeding 1 crore rupees but not exceeding 10 crores @7% of such income tax and in cases where the Income exceeds Rs. 10 crores the Surcharge shall be levied @ 12%.
  c In case of a Company, other than mentioned in b above, having total income exceeding 1 crore rupees, but not exceeding 10 crores @ 2% of such income tax and in case where the Income exceeds Rs. 10 crores the surcharge shall be levied @ 5%.
  d The marginal relief is continued to be allowed in appropriate cases where total income exceeds Rs. 1 crore rupees or Rs. 10 Crore as the case may be.

2 Definition

2.1 Amendment to Sec 2(14)

Existing Provision:

Sub-clause (a) of sub section (14) defines "capital asset" and item (vi) of the said clause (14) excludes from the definition of capital asset, inter alia, Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

Proposed Amendment:

Clause 3 seeks to amend section 2 (vi) of the said clause (14) so as to also exclude the deposit certificates issued under the Gold Monetisation Scheme, 2015 from the definition of capital asset.

Effective Date:

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

2.2 Insertion of New Sec 2(23C)

Proposed Amendment:

Clause 3 of the Bill proposed to insert a new clause (23C) to define the term "hearing" so as to include communication of data and documents through electronic mode.

Effective Date:

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

Reasons and Implication:

This amendment is in furtherance of the resolve of the government towards ease of doing business and Dispute resolution. The current Finance Bill has provided legal framework for automation of various processes and paperless assessment in order to enhance the efficiency and reduce the burden of compliance. A series of changes are introduced and one among them is insertion of Section 10(23C).

2.3 Amendment to Sec 2(24)(xviii)

Existing Provision:

Sub-clause (xviii) of clause (24) of the aforesaid section, inter alia, provides that any assistance in the form of a subsidy or grant or cash incentives, etc., by the Central or a State Government to any assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset, in accordance with Explanation 10 to clause (1) of section 43, shall be included in the definition of income.

Proposed Amendment:

It is proposed to amend the said sub-clause (xviii) so as to provide that subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be, shall not form part of income.

Effective Date:

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

Reasons and Implication:

The Finance Act, 2015 had amended the definition of income under clause (24) of section 2 of the Act so as to provide that the income shall include assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43 of the Income-tax Act. As a result grant or cash assistance or subsidy etc. provided by the Central Government for budgetary support of a trust or any other entity formed specifically for operationalizing certain government schemes will be taxed in the hands of trust or any other entity. Thus as a rationalisation measure this amendment is made.

3 Rationalisation of tax treatment of recognised provident funds, pension funds and national pension scheme

Section 10(11) and 10(12) of the Act deal with exemption on payments from provident funds i.e. withdrawals, while section 80C of the act deals with allowance of deductions on contributions to provident funds.

3.1 Amendment to Section 10(12)

Existing Provision:
Section 10(12) provides that 100% of the accumulated balance due and becoming payable to an employee participating in a recognized provident fund will not form part of his total income.

Proposed Amendment (Clause 7(A) of the Finance Bill)
Only 40% of the accumulated balance attributable to contributions after 1st April 2016 being due and payable from the recognized provident fund shall be exempt. Balance 60% will be taxable in the hands of the employee.

Effective Date
This provision is inserted with effect from 1st April 2017.

Reason and Implications
To encourage more number of private sector employees to go for pension security after retirement instead of withdrawing the entire money from provident fund account. It is expected that the employees of private companies will place the remaining 60% of corpus in Annuity, out of which they can get regular pension.

3.2 Insertion of Section 10(12A)

Proposed Amendment (Clause 7(A) Of the Finance Bill)
It is proposed that 40% of any payment from the National Pension System Trust to an employee on closure of his account or on opting out of pension scheme referred in section 80CCD will be exempt from tax.

Effective Date
This provision is inserted with effect from 1st April 2017.

Reason and Implications
To encourage more number of private sector employees to go for pension security after retirement instead of withdrawing the entire money from provident fund account. It is expected that the employees

of private companies will place the remaining 60% of corpus in Annuity, out of which they can get regular pension.

3.3 Amendment to Section 10(13)

Existing Provision:
Section 10(13) provides that 100% of any payment received from an approved superannuation fund is exempt from tax.

Proposed Amendment (Clause 7(A) Of the Finance Bill)
- Only 40% of the payment from an approved superannuation fund attributable to contributions after 1st April 2016 shall be exempt. Balance 60% will be taken into account in computing total income.
- Clause (v) is inserted to provide that any payment received from an approved superannuation fund by way of transfer to the account of the employee under a pension scheme referred to in section 80CCD is exempt from tax.

Effective Date
This provision is inserted with effect from 1st April 2017.

3.4 Amendment to Section 17(2)(Vii)

Existing Provision:
The Existing Provision of clause (vii) of sub-section (2) to section 17 provides that any amount by the Employer to the Approved Super Annuation Fund is in Excess of Rs. 1 lakh, then such excess over Rs. 1 Lakh shall be treated as perquisite in the hands of the employee as Salary.

Proposed Amendment (Clause 9)
Under the Proposed amendment the limit of Rs. 1 Lakh has been raised to Rs. 1.5 Lakh and, accordingly, if any amount by the employer to an approved superannuation fund is in excess of Rs. 1.5 lakh, then such excess over Rs. 1.5 Lakh shall be treated as perquisite in the hands of the employee as Salary.

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

Reason and Implications
The amendment seems to have been brought to keep the hardships faced by the salaried employees in mind and looking at the inflationary conditions and higher cost of living. The raising of the limit from Rs. 1 Lakh to Rs. 1.5 Lakh will also reduce the tax burden depending on the slab of Income Tax rate in which the employee is falling.

3.5 Amendment to Section 80CCD

Existing Provision:

Under the existing provisions of section 80CCD, a deduction is provided for contribution to the Notified Pension Scheme (NPS) of the Central Govt., to the Individuals, irrespective of his being Resident or Non-Resident to the extent of (a) 10% of the Salary in the case of an employee; and (b) in any other case, 10% of his Gross Total Income, but restricted to 1 lakh.

However upon closure of the said account of NPS, the same was taxable in the hands of the assessee or his nominee.

Proposed Amendment (Clause 36)

It is proposed by way of a proviso that if the account of NPS has to be closed due to the death of the assessee and the amount is paid to the nominee of the assessee, then the same shall not be treated as income in the hands of the nominee.

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.

Reason and Implications

The amendment is a welcome provision as the amount received by the nominee upon the death is nothing but a capital receipt.

3.6 Amendment to Fourth Schedule– Part A

Existing Provision:

Employer's annual contributions, when deemed to be income received by employee.

6. *That portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognised provident fund as consists of—*

(a) contributions made by the employer in excess of twelve per cent of the salary of the employee, and

(b) interest credited on the balance to the credit of the employee in so far as it is allowed at a rate exceeding such rate as may be fixed by the Central Government in this behalf by notification in the Official Gazette,

shall be deemed to have been received by the employee in that previous year and shall be included in his total income for that previous year, and shall be liable to income-tax.

…………

Exclusion from total income of accumulated balance.

8. *The accumulated balance due and becoming payable to an employee participating in a recognised provident fund shall be excluded from the computation of his total income—*

(i) if he has rendered continuous service with his employer for a period of five years or more, or

(ii) if, though he has not rendered such continuous service, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business or other cause beyond the control of the employee, or

(iii) if, on the cessation of his employment, the employee obtains employment with any other employer, to the extent the accumulated balance due and becoming payable to him is transferred to his individual account in any recognised provident fund maintained by such other employer.

Proposed Amendment: (clause 112)

In the Fourth Schedule to the Income-tax Act, in Part A, with effect from the 1st day of April, 2017,—

(a) in rule 6, in clause (a), after the word "employee", the words "or one hundred and fifty thousand rupees, whichever is less" shall be inserted;

(b) in rule 8,—

(i) in clause (iii), for the words "such other employer" occurring at the end, the words "such other employer; or" shall be substituted;

(ii) after clause (iii) and before the Explanation, the following clause shall be inserted, namely:—

"(iv) 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

Reason and Implications

Amendments to Fourth Schedule are similar and consequential amendments as made in the Act, and to streamline the schedule with the amendments in the act.

Remarks

Post Budget there was an outcry for taxing RPF and NPS. The Government has come with the press release to clarify their stand. The Press release reads as under;

3.7 Clarification about Changes made in the Tax Treatment for Recognised Provident Fund & National Pension System (NPS)

There seems to be some amount of lack of understanding about the changes made in the General Budget 2016-17 in the tax treatment for recognised Provident Fund & NPS.

The following clarifications are given in this matter:-

(i) The purpose of this reform of making the change in tax regime is to encourage more number of private sector employees to go for pension security after retirement instead of withdrawing the entire money from the Provident Fund Account.

(ii) Towards this objective, the Government has announced that Forty Percent(40%) of the total corpus withdrawn at the time of retirement will be tax exempt both under recognised Provident Fund and NPS.

(iii) It is expected that the employees of private companies will place the remaining 60% of the Corpus in Annuity, out of which they can get regular pension. When this 60% of the remaining Corpus is invested in Annuity, no tax is chargeable. So what it means is that the entire corpus will be tax free, if invested in annuity.

(iv) The Government in this Budget has also made another change which says that when the person investing in Annuity dies and when the original Corpus goes in the hands of his heirs, then again there will be no tax.

(v) The idea behind this mechanism is to encourage people to invest in pension products rather than withdraw and use the entire Corpus after retirement.

(vi) The main category of people for whom EPF scheme was created are the members of EPFO who are within the statutory wage limit of Rs.15,000 per month. Out of around 3.7 crores contributing members of EPFO as on today, around 3 crore subscribers are in this category. For this category of people, there is not going to be any change in the new dispensation.

(vii) However, in EPFO, there are about 60 lakh contributing members who have accepted EPF voluntarily and they are highly - paid employees of private sector companies. For this category of people, amount at present can be withdrawn without any tax liability. We are changing this. What we are saying is that such employee can withdraw without tax liability provided he contributes 60% in annuity product so that pension security can be created for him according to his earning level. However, if he chooses not to put any amount in Annuity product the tax would not be charged on 40%.

(viii) There is no change in the existing tax treatment of Public Provident Fund (PPF).

(ix) Currently there is no monetary ceilings on the employer contribution under EPF with only ceiling being that it would be 12% of the salary of the employee member. Similarly, there is no monetary ceiling on the employer contribution under NPS, except that it would be 10% of salary.

(x) Now the Finance Bill 2016 provides that there would be monetary ceiling of Rs1.5 lakh (Annul) on employer contribution considered with the ceiling of the 12% rate of employer contribution, whichever is less.

(xi) We have received representations today from various sections suggesting that if the amount of 60% of corpus is not invested in the annuity products, the tax should be levied only on accumulated returns on the corpus and not on the contributed amount. We have also received representations asking for not having any monetary limit on the employer contribution under EPF, because such a limit is not there in NPS. The Finance Minister would be considering all these suggestions and taking a view on it in due course.

4 Income from House Property

4.1 Amendment to Section 24

Existing Provision:

The existing proviso to Clause (b) of section 24 provides that interest payable on capital borrowed for acquisition or construction of a house property shall be deducted while computing Income from house property.

The second proviso to the said clause provides that a deduction of an amount of two lakh rupees shall be allowed where a house property referred to in sub-section (2) of section 23 (self-occupied house property) has been acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within three years from the end of the financial year in which the capital was borrowed.

Proposed Amendment (Clause 10):

The second proviso of clause (b) of section 24 is proposed to be amended to provide that the deduction under the said proviso on account of interest paid on capital borrowed for acquisition or construction of a self-occupied house property shall be available if the acquisition or construction is completed within five years from the end of the financial year in which capital was borrowed.

Effective Date:

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

Reason and Implications:

In view of the fact that housing projects often take a long time for completion, many assessees were unable to take the benefit of the beneficial provision. The new time limit for acquisition or construction of five years from the end of the financial year in which capital was borrowed will provide much needed relief in being eligible for the deduction.

4.2 Amendment to Section 25A, 25AA and 25B

Existing Provision:

The existing provisions of Section 25A and 25AA provide for the scheme of taxation of unrealized rent subsequently received and to be taxed in the year of receipt by the assessee irrespective of whether the assessee is the owner of that property or not.

Section 25B provided a deduction of 30% from arrears of rent received

Proposed Amendment (Clause 11):

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 that thirty per cent of the arrears of rent or the unrealised rent realised subsequently by the assessee shall be allowed as deduction.

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.

Reason and Implications:

This proposal is made to simplify the existing provisions and merge them under a single new section 25A and bring uniformity in tax treatment of arrears of rent and unrealised rent.

5 Profits and Gains of Business or Profession

5.1 Amendment to Section 28

Existing Provision:

Any sum received or receivable in cash or in kind under an agreement for not carrying out activity in relation to any 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 are chargeable as business income under the existing clause (va) of section 28 of the Act. Further, the transfer of right to manufacture, produce or process any article or thing or right to carry on any business, which are chargeable to tax under the head "Capital gains", are not be taxable as profits and gains of business or profession. However, non-compete fee received/receivable in relation to carrying out of profession are not covered under these provisions.

Proposed Amendment (Clause 12):

It is proposed to amend clause (va) of section 28 of the Act to bring the non-compete fee received/receivable in relation to not carrying out any profession within the scope of section 28 of the Act, i.e., the charging section of profits and gains of business or profession. 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 and gains of business or profession. It is also proposed to amend section 55 so as to provide that the 'cost of acquisition' and 'cost of improvement' for working out "Capital gains" arising out of transfer of right to carry on any profession shall also be taken as 'nil'.

Effective Date:

From 1st April, 2017 (A.Y. 2017-18 and subsequent years.)

Reason and Implications:

Supreme Court in the case of G.K. Choksi & Co. v. CIT [2007] 295 ITR 376 (SC) had held that wherever Legislature intended that benefit of a particular provision should be for both business or profession, it has used words ‘business or profession’ and wherever it intended to restrict benefit to either business or profession, it has used either word ‘business’ or word ‘profession’. Recently Delhi Tribunal in the case of Satya Kant Khosla v. ITO (2015) 63 taxmann.com 293 ruled that the provisions of section 28(va) are not applicable in case of non-compete fees in relation to profession because the word ‘profession’ is not mentioned in section 28(va). The said decision has been negated by this specific amendment.

5.2 Amendment to Section 32

Existing Provision:

Under the existing provisions of section 32(1)(iia) of the Act, additional depreciation of 20% is allowed in respect of the cost of new plant or machinery acquired and installed by certain assessees engaged in the business of generation and distribution of power

Proposed Amendment (Clause 13):
It is proposed to amend clause (iia) of sub section (1) of section 32 of the Act to provide that an assessee engaged in the business of transmission of power shall also be allowed additional depreciation at the rate of 20% of actual cost of new machinery or plant acquired and installed in a previous year.

Effective Date:
From 1st April, 2017 (A.Y. 2017-18 and subsequent years.)

Reason and Implications:
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. The proposed amendment will act as an incentive to the power transmission sector.

5.3 Amendment to Section 32AC

Existing Provision:
The existing provision of sub-section (1A) of section 32AC of the Act provides for investment allowance at the rate of 15% on investment made in new assets (plant and machinery) exceeding Rs.25 crore in a previous year by a company engaged in manufacturing or production of any article or thing, subject to the condition that the acquisition and installation has to be done in the same previous year.

Proposed Amendment (Clause 14):
It is proposed to amend sub-section (1A) of section 32AC so as to provide that only the acquisition of the plant & machinery of the specified value has to be made in the previous year. The installation of the said plant & machinery need not be in the year of acquisition itself. The installation may be made by 31.03.2017 in order to avail the benefit of investment allowance of 15%. It is further proposed to provide that where the installation of the new asset is in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new asset is installed.

Effective Date:
From 1st April, 2016 (A.Y. 2016-17 and 2017-18)

Reason and Implications:
The dual condition of acquisition and installation causes genuine hardship in cases in which assets having been acquired but could not be installed in same previous year. The proposed amendment removes the hardship in such cases. However assets purchased prior to 31.03.2017 but installed post 31.3.2017 may not get the deduction.

5.4 Insertion of New Section 35ABA: Expenditure for obtaining right to use spectrum for telecommunication services

Proposed Amendment (Clause 16):
It is proposed to insert a new section 35ABA in the Act to provide for tax treatment of spectrum fee. The section seeks to provide:

(i) any capital expenditure incurred and actually paid for by an assessee for the acquisition of any right to use spectrum for telecommunication services by paying spectrum fee will be allowed as a deduction in equal instalments over the period for which the right to use spectrum remains in force,
(ii) the above deduction shall be allowable from the year of commencement of business or the year of payment of spectrum fees, whichever is later,

(iii) where the spectrum is transferred and proceeds of the transfer are less than the expenditure remaining unallowed, a deduction equal to the expenditure remaining unallowed as reduced by the proceeds of transfer, shall be allowed in the previous year in which the spectrum has been transferred,

(iv) if the spectrum is transferred and proceeds of the transfer exceed the amount of expenditure remaining unallowed, the excess amount shall be chargeable to tax as profits and gains of business in the previous year in which the spectrum has been transferred,

(v) unallowed expenses in a case where a part of the spectrum is transferred would be amortised during the remaining period for which the right to use spectrum remains in force,

(vi) under a scheme of amalgamation, if the amalgamating company sells or transfer the spectrum to an amalgamated company, being an Indian Company, then the provisions of this section will apply to the amalgamated company as they would have applied to amalgamating company, if the latter has not already transferred the spectrum earlier.

Effective Date:
From 1st April, 2017 (A.Y. 2017-18 and subsequent years)

Reason and Implications:
Government has newly introduced spectrum fee for auction of airwaves. There is uncertainty in tax treatment of payments in respect of spectrum, i.e., whether spectrum was an intangible asset and the spectrum fees paid is eligible for depreciation under section 32 of the Act or whether it is in the nature of a 'license to operate telecommunication business' and eligible for deduction under section 35ABB of the Act. Insertion of a specific provision for deduction in respect of spectrum fees removes the uncertainty.

5.5 Amendment to Section 35AD

Existing Provision:

Section 35AD provides investment linked deduction for capital expenditure incurred by a specified business.

Proposed Amendment (Clause 18):

It is proposed that the deduction u/s 35AD be extended to the activity of developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility. Infrastructure facility is defined to mean: Roads (including toll road, bridge, railway system); highway project (including housing / other activities being integral to the same); water supply project / water treatment system/ irrigation project / sanitation and sewerage system or solid waste management system; port, airport, inland waterway, inland port or navigational channel in the sea. Further such business can be owned by a domestic company or by a consortium or by an approved SPV and this entity should enter into an agreement with a Central / State Government or a statutory body for this purpose. The business must commence on or after 1.4.2017.

Effective Date:

This provision is inserted with effect from 1st April 2018 – however it must be assumed to be applicable from A Y 2018-19 and for a facility set up on or after 1.4.2017.

Reason and Implications:

The section seems to be intended to provide an incentive for infrastructure facility development. Why it is made applicable only after 1.4.2017 is also unknown since it could have been extended to projects that are set up from 1.4.2016 onwards.

5.6 Amendment to Section 36

Existing Provision:

In case of Public Financial Institutions, State Financial Corporations and State Industrial Investment Corporations, a deduction in respect of any provision for bad and doubtful debt is allowed under the existing provisions of sub-clause (c) of clause (viia) of sub-section (1) of section 36 of the Act, limited to an amount not exceeding five per cent of the gross total income, computed before making any deduction under the aforesaid clause and Chapter VI-A.

Proposed Amendment (Clause 21):

It is proposed to insert a new sub-clause (d) in clause (viia) of sub-section (1) of section 36 of the Act to provide a similar deduction on account of provision for bad and doubtful debts to the extent of five per cent of the total income (computed before making any deduction under this clause and Chapter-VIA) to Non-Banking Financial Companies (NBFCs)

Effective Date:
From 1st April, 2017 (A.Y. 2017-18 and subsequent years.)

Reason and Implications:
The Kerala High Court, in the case of Art Leasing Ltd. v. CIT (2010) 229 CTR 272 (Ker.), has held that NBFCs are not covered by section 36(1)(viia) and, therefore, they are not entitled to deduction of any provision created for bad and doubtful debts, even though such provision is created based on guidelines issued by RBI. Deduction could be claimed only for actual bad debts under clause (vii) of sub-section (1) of section 36. Considering the fact that Non-Banking Financial Companies (NBFCs) are also engaged in financial lending to different sectors of society, a deduction at par with Public Financial Institutions, State Financial Corporations and State Industrial Investment Corporations has been provided to them.

5.7 Amendment to Section 40

Existing Provision:
Sub-clause (ia) of clause (a) of section 40 provides for disallowance of 30% of expenditure liable for tax deduction, in case of non-deduction of tax at source or non-payment of tax deducted upto the due date of filing return of income u/s 139(1).

Proposed Amendment (Clause 22):
A new Chapter VIII is proposed to be introduced in the Finance Bill proposing an equalisation levy on transactions in digital economy. Equalisation levy of 6 % of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India, is proposed. Correspondingly a new sub-clause (ib) is proposed to be inserted in clause (a) of section 40 to provide for disallowance of 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, if 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.

It is also 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

Effective Date:
From 1st June, 2016 (A.Y. 2017-18 (effective from 1st June 2016) and subsequent years.)

Reason and Implications:
Every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India shall become liable to deduct an equalisation levy from the amount

paid or payable to a non-resident in respect of the specified service (being online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement or any other service as may be notified by the Central Government) at the rate of 6%, if the aggregate amount of consideration for specified service in a previous year exceeds one lakh rupees. Any failure to deduct or pay the equalization levy shall result in 100% disallowance of the expenditure (unlike 30% disallowance in case of sub-clause(ia) of clause(a) of section 40 in respect of TDS defaults).

5.8 Amendment to Section 43B

Existing Provision:

Under the existing provisions of section 43B of the Act, any sum payable by the assessee by way of tax, cess, duty or fee, employer contribution to Provident Fund, etc., is allowable as deduction of the previous year in which the liability to pay such sum was incurred (relevant previous year) only if the same is actually paid on or before the due date of furnishing of the return of income irrespective of method of accounting followed by a person.

Proposed Amendment (Clause 23):

A new clause (g) is proposed to be introduced in section 43B to include within its ambit, any sum payable by the assessee to the Indian Railways for the use of railway assets

Effective Date:

From 1st April, 2017 (A.Y. 2017-18 and subsequent years.)

Reason and Implications:

Inclusion of payments made to the Indian Railways for use of railway assets shall ensure prompt payment of dues to Railways. Assessees incurring expenditure in the course of business for use of railway assets will have to ensure the payment of such amounts to the Indian Railways upto the due date of filing return of income u/s. 139(1) or face disallowance. However, the clause does not cover amounts payable to Statutory Corporations like Indian Railways Catering and Tourism Development Corporation Ltd., etc.

6 Presumptive taxation and tax audit

6.1 Amendment to Section 44AA

Existing Provision:

As per Sub-section (2)(iv) of Section 44AA, every person carrying on business or profession [not being a profession referred to in sub-section(1)] shall, where the profits and gains from the business are deemed to be the profits and gains under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax during such previous year, keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Act.

Proposed Amendment (Clause 24):

Clause 24 of the Bill seeks to amend section 44AA of the Income-tax Act relating to maintenance of accounts by certain persons carrying on profession or business.

It is proposed to amend the sub-section *(2) (iv)* of the aforesaid section so as to provide that every person carrying on the business shall, if the provisions of sub-section *(4)* of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax, keep and maintain such books of account and other documents for computing his total income in accordance with the provisions of this Act.

Effective Date:

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

Reason and Implications:

The clause is proposed to be amended pursuant to proposed amendment in sub-section (4) of section 44AD. Thus, this clause is applicable to an eligible assessee those covered by provisions of proposed sub-section (4) of section 44AD and whose income exceeds the maximum amount which is not chargeable to tax. Section 44AD(4) is discussed in detail at para 6.3.

6.2 Amendment to Section 44AB

Existing Provision:

Clause (b) of Section 44AB:

The said clause provides that every person carrying on a business is required to get his accounts audited before the specified date if his gross receipts in a previous year exceed twenty-five lakh rupees.

Clause (d) of Section 44AB:
The said clause provides that every person carrying on a business is required to get his accounts audited before the specified date if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

Proposed Amendment (Clause 25):
Clause 25 of the Bill seeks to amend section 44AB of the Income-tax Act relating to audit of accounts of certain persons carrying on business or profession.

Clause (b) of Section 44AB:
The proposed sub-clause (b) of Section 44AB provides that every person carrying on a profession is required to get his accounts audited before the specified date if his gross receipts in a previous year exceed fifty lakh rupees.

Clause (d) of Section 44AB:
The proposed clause (d) of the said section 44AB provides that in the case of an assessee, who is covered under the new proposed section 44ADA, the audit of books of account is required if he claims that the profits and gains from the profession are lower than the profits and gains computed in accordance with the provisions of sub-section (1) of the proposed new section 44ADA and if his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

New inserted clause (e) in Section 44AB:
Clause (iii) of the clause 25 of the Bill seeks to insert a new clause (e) in the said section 44AB so as to provide that every person carrying on the business is required to get his accounts audited before the specified date, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to tax in any previous year.

Effective Date:
This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent years.

Reason and Implications:
The section 44AB is proposed to be amended pursuant to proposed amendment in sub-section (4) of section 44AD and insertion of new section 44ADA.

A person earning income in the nature of commission or brokerage or carrying on any agency business will require to get his accounts audited u/s 44AB(a) if his turnover or gross receipts exceeds Rs. one crore.

6.3 Amendment to Section 44AD

Existing Provision:

Section 44AD provides for presumptive taxation to eligible assessee carrying on eligible business. Resident Individual, HUF, Partnership firm whose total turnover or gross receipts does not exceed Rs. One Crore and declaring profits of 8% of total turnover or gross receipts or such higher amount as claimed to have been earned, are not required to maintain books of account. For partnership firm, deduction of interest and remuneration to partners is allowable from the profit computed u/s 44AD(1) subject to the provisions of section 40(b).

Further they are not required to pay advance tax in respect of presumptive income.

However, if amount claimed to have been earned is lower than 8% of total turnover or gross receipts and Total Income of assessee exceeds maximum amount not chargeable to tax, assessee is required to maintain books of account and is required to get them audited u/s.44AB.

Proposed Amendment (Clause 26):

Finance Act, 2016 proposes to increase the threshold limit of one crore rupees specified in the definition of "eligible business" to two crore rupees.

Further it proposes that persons declaring income as per provisions of section 44AD shall pay advance tax on or before 15th day of March of financial year in respect of presumptive income.

It is proposed to substitute sub-sections (4) and (5) of the aforesaid section to provide that where an assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1). It is further proposed that an assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB

Effective Date:

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

Reason and Implications:

Eligible assessee carrying on eligible business can opt for the benefit of this section upto turnover, gross receipts of rupees two crore. All eligible assessee will be required to pay advance tax by 15th March of the financial year. Under the proposed amendment, 8% profit so computed of turnover/gross receipt u/s.44AD(1) does not allow deduction of salary and interest paid to partners by a firm. The Proviso allowing interest and remuneration to partners is omitted. Salary and interest paid to partners shall be deemed to be allowed u/s.44AD(2). The said benefit is discontinued as Section 40 does not provide for allowance of any expenditure, it puts restrictions on expenditure which is otherwise allowable u/s. 30 to 38. In hands of Partner, interest and remuneration shall be taxable u/s.28 to the extent deduction is allowed while determining income u/s.44AD(1).

The proposed amendment to subsection (4) has placed restrictions in exercising the option under this provision. For any assessment year commencing from A. Y. 2017-18, if an eligible assessee declares profit for any previous year in accordance with the provisions of this section and in any of the succeeding five previous years does not declare profit in accordance with the provisions of section 44AD then he shall not be eligible to claim the benefit of the provisions of this section for the five assessment years subsequent to previous year in which the profit has not been declared in accordance with the provisions of section 44AD(1). i.e. Once opted to declare profit u/s.44AD(1) for any of the assessment year commencing from assessment year 2017-18 then to take the benefit of this provisions he has to declare profit for subsequent five assessment years under section 44AD(1). Once after opting to take benefit u/s.44A(1), he does not declare profit u/s.44AD(1) for the succeeding assessment year, he shall not eligible to declare profit u/s.44AD(1) for five succeeding assessment years subsequent to the Assessment Year in which he has not declared profit u/s.44AD(1).

6.4 Insertion of New Section 44ADA

Proposed Amendment (Clause 27):
Clause 27 of the Bill seeks to insert a new section 44ADA in the Income-tax Act relating to special provision for computing profits and gains of profession on presumptive basis.

The proposed new section 44ADA seeks to provide that notwithstanding anything contained in sections 28 to 43C, in the case of an assessee, being a resident in India, who is engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent of the total gross receipts of the assessee in the previous year on account of such profession, or as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax under the head “Profits and gains of business or profession”.

Any deduction allowable under the provisions of sections 30 to 38 shall be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

The written down value of any asset of profession shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

It is also proposed to provide that an assessee who claims that his profits and gains from the profession are lower than the profits and gains specified in sub-section (1) of the proposed section and whose total income exceeds the maximum amount which is not chargeable to income-tax shall be required to keep and maintain such books of account and other documents under sub-section (1) of section 44AA and get them audited under section 44AB.

Effective Date:
This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent years.

Reason and Implications:
The section 44ADA is inserted to cover the assessee carrying on the profession. Under the existing provisions of the Income-tax Act, the person carrying on the profession is not covered by the provisions of computing profits and gains of profession on presumptive basis.

In case of firm, the profit computed (i. e. 50% of gross receipts) under this provision is after allowing interest and remuneration to partners.

6.5 Amendment to Section 211

Existing Provision:
Section 211 provides that a company shall pay advance tax in 4 installments whereas all other assessee shall pay advance tax in 3 installments.

Proposed Amendment (Clause 87):
Section 211 is proposed to be amended to provide that all assesses shall henceforth pay advance tax in 4 installments as under:
By June 15th – 15%; by September 15th - 45%; by December 15th - 75% and by March 15th – 100%.

The exception to this shall be: An assessee who opts to pay a presumptive tax u/s 44AD – who shall have to pay advance tax in only one installment viz. by 15th March

Effective Date:
With effect from 1st June 2016 – hence shall be applicable for all advance tax that falls due thereafter. Thus, for the year ending March 2017, Advance tax will have to be paid as per the proposed amended provision.

Reason and Implications:

This amendment has its seeds in the recommendations of the Expenditure Management Commission and further the reason stated is that most tax is now paid electronically.

However, not all assesses have to pay tax electronically and this would certainly be a larger administrative burden for individuals who do not have any business income. It would have been more prudent to provide for 4 installments only in cases where a tax audit was applicable, since these would be assessee of a larger size.

Also, while that seems unintentional, professionals who are subject to presumptive tax have not been given the option to pay the tax in one installment – whereas businessmen who opt for presumptive tax have been given that facility and this may need alignment.

7 Capital Gains

7.1 Amendment to Section 47

Section 47 of the Act lists down certain transactions which are not regarded as transfer and provides that nothing contained section 45 shall apply to such transactions. There are many clauses in the section which contains the transactions which are not regarded as transfers.

Proposed Amendment and Reason & Implication:

- **Insertion of new clause – (viic) in the section**

Proposed Amendment:
Clause 28 (A) of the Finance Bill seeks to insert one more clause namely clause (viic) in the section. Clause (viic) seeks to provide that any transfer of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015, by way of redemption by an assessee being an individual shall not be regarded as transfer.

Reason and Implication
The Government of India has introduced the Sovereign Gold Bond Scheme with the aim of reducing the demand for physical gold so as to reduce the outflow of foreign exchange on account of import of gold. The Gold Bond is a mode for substitution of physical gold and also provides security to the individual investor who invests in Gold for meeting their social obligation. The amendment is sought to be made with a view to providing parity in tax treatment between physical gold and Sovereign Gold Bond. Since it is sought to be provided that the redemption of such Gold Bond will not be regarded as a transfer, there will not be any capital gains on redemption of such Gold Bonds.

- **Amendment to clause (xiiib) of section 47**

Existing Provision:
Clause (xiiib) of section 47 provides that any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a LLP in accordance with the provisions of section 56 or 57 of the Limited Liability Partnership Act 2008 shall not be regarded as transfer.

The proviso to the said clause lists down various conditions which are to be fulfilled for the conversion to be not regarded as a transfer. As per the existing provisions, there are six such conditions enumerated under clauses (a) to (f) in the proviso.

Proposed Amendment:
Clause 28 (B) of the Finance Bill seeks to insert one more condition by insertion of clause (ea) in the proviso. The clause (ea) seeks to provide additional condition that the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place shall not exceed five crore rupees.

Reason and Implication:
As per the Memorandum explaining the provisions, this amendment is proposed as a rationalization measure. It is pertinent to note that there is already a condition in the said proviso which provides that the company's gross receipts, turnover or total sales in any of the preceding three years shall not exceed amount of Rs. 60 Lakhs. The condition now provided further puts a restriction on the book value of the assets in any of the three preceding previous years to be maximum Rs. 5 Crores. As such, the amendment has the effect of creating further difficulties for the companies which wish to convert itself in LLP. All the conditions listed in the proviso are cumulative and therefore violation of any one of the same results in the transaction losing the benefit of not being a transfer which ultimately leads to levy of capital gain tax on such transfers.

- **Insertion of new clause – (xix) in the section**

Proposed Amendment:
Clause 28 (C) of the Finance Bill seeks to insert one more clause namely clause (xix) in the section. Clause (xix) seeks 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 regarded as transfer.

The Explanation to the clause seeks to explain the meaning of certain terms for the purpose of this clause. As per the explanation, "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;

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

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

Reason and Implication:
Clause (xviii) of section 47 excludes any transfer by a unit holder of a unit or units in the consolidating scheme of a mutual fund in consideration of the allotment of a unit or units, in the consolidated scheme of the mutual fund. SEBI has issued guidelines for consolidation of mutual fund plans within a scheme. The present clause (xviii) does not cover the cases of consolidation of plans within the same scheme.

Accordingly, the new clause is inserted with a view to extend the tax exemption on merger or consolidation of plans within the same scheme of the mutual fund. For Example, if one converts the growth plan in a particular scheme to a dividend plan of the same scheme, the said transaction will not be regarded as transfer due to the insertion of the new clause (xix).

Effective Date:
All the amendments to section 47 are sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year: 2017-18.

7.2 Amendment to Section 48

Existing Provision:
Section 48 of the Act lays down the mode of Computation of Capital Gains chargeable under the Act. The second proviso to the section provides that for the long term capital gains arising from transfer of an asset (Other than capital gain arising to a non-resident from transfer of shares in or debentures of an Indian company as described in the first proviso), the assessee shall be entitled to indexation in respect of cost of acquisition and cost of improvement of the asset transferred. The third proviso provides that the indexation benefit shall not be available in respect of any bond or debenture other than the capital indexed bonds issued by the Government.

Proposed Amendment (Clause 29):
Clause 29 of the Finance Bill seeks to amend the third proviso and also insert another proviso in section 48 of the Act. The third proviso is sought to be amended so as to provide that the indexation benefit shall not be available in respect of any bond or debenture other than (a) capital indexed bonds issued by the government or (b) Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme 2015. The amendment therefore, effectively permits indexation benefits to long terms capital gains arising on transfer of Sovereign Gold Bond to all the assessee's.

The new proviso sought to be inserted provides that in the case of a non-resident assessee, 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 shall be ignored for the purpose of computation of full value of consideration under section 48.

Effective Date:
The amendments to section 48 are sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year: 2017-18

7.3 Amendment to Section 50C

Existing Provision:

Section 50C of the Act provides for replacing the value adopted or assessed by stamp valuation authority for the purpose of stamp duty, in place of full value of consideration, for the purpose of computation of capital gains in a case of transfer of a capital asset being land or building or both. This is subject to certain exceptions as provided in the section itself.

Proposed Amendment (Clause 30):

Clause – 30 of the Finance Bill seeks to insert two provisos to sub-section (1) of section 50C. The first proviso seeks 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.

The second proviso however puts a further condition that the first proviso shall apply only in a case where the amount of consideration 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 for transfer.

Effective Date:

The amendment to section 50 is sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year: 2017-18.

Reason and Implications:

The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that the existing provisions of section 50C do 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. The amendment is proposed to be made with a view to bring a parity between the provisions of section 43CA, which applies to transfer of stock in trade and section 50C, which applies to transfer of capital asset.

However, it is pertinent to note that under sub-section (4) of section 43CA the benefit of taking the stamp duty value of the earlier date is made available in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement. As against this the second proviso sought to be inserted in section 50C(1) permits adopting the earlier value only when the consideration is 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 for transfer.

Accordingly, it may be noted that in a case of receipt of consideration by journal entry or such other mode, sub-section (4) of section 43CA gets complied with and therefore the assessee is eligible to get the valuation of the earlier date. However, in similar situation the second proviso to section 50C(1) do not get complied and it will not be possible for the assessee to adopt the value as on the date of agreement. To this extent the amendment is restrictive in nature as compared to the provisions of section 43CA

7.4 Insertion of New Section 54EE - capital gain not to be charged on investment in units of a specified fund

Proposed Amendment (Clause 31):
it is proposed to insert a new Section 54EE to provide exemption from capital gains tax if the long term capital gains proceeds are invested by an assessee in units of such specified fund, as may be notified by the Central Government in this behalf, subject to the condition that the amount remains invested for three years failing which the exemption shall be withdrawn. The investment in the units of the specified fund shall be allowed up to Rs. 50 lakh.

Effective Date:
From the 1st day of April, 2017 and accordingly applicable from Assessment Year 2017 -2018 and subsequent assessment years.

Reason and Implications:
In order to promote the start-up ecosystem in the country, it is envisaged in 'start-up India Action Plan' to establish a Fund of Funds which intends to raise Rs 2500 crores annually for four years to finance the start-ups. Keeping this objective in view, new Section 54EE is inserted to provide exemption from capital gains tax if the long term capital gains proceeds are invested by an assessee in units of such specified fund, as may be notified by the Central Government in this behalf, subject to the condition that the amount remains invested for three years failing which the exemption shall be withdrawn. The investment in the units of the specified fund shall be allowed up to Rs. 50 lakh. If assessee invests portion of the capital gain, the assessee will be entitled to proportionate exemption.

7.5 Amendment to Section 54GB

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. Further the section 54GB also 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 (Clause 32):

It is proposed to amend section 54GB so as to 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 an eligible start-up subject to other specified conditions. It is further proposed to amend section 54GB so as to provide that the expression “new asset” includes computers or computer software in case of technology driven start-ups so certified by the Inter- Ministerial Board of Certification notified by the Central Government in the Official Gazette.

Effective Date:

From the 1st day of April, 2017 and accordingly applicable from Assessment Year 2017 -2018 and subsequent years.

Reason and Implications:

Where in case of Individual or HUF, the capital gain arises from the transfer of a long term capital asset being a house or plot of land invests net consideration in a company which qualifies to be a small or medium enterprises under The Micro, Small and Medium Enterprises Act, 2006, the capital gain was not chargeable to Capital Gains tax. If the proportionate net consideration is invested then the capital gain tax will be proportionately exempt. The net consideration is to be invested before the due date of furnishing return of income under sub section 1 of sec 139. Sec 54GB has been amended to provide exemption to Individuals/ HUF willing to set up start-up company by selling a residential property to invest in the shares of such company. It is provided that the long term capital gain arising on account of transfer of 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. The eligible start up has been defined to be a company engaged in eligible business i.e. business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. The total turnover of business of such eligible start up should not exceed Rs. 25 crores in any of the previous years beginning on or after 01.04.2016 and ending on 31.03.2021. The said company should also hold a certificate of eligible business from the Inter- Ministerial Board of Certification. Further existing section 54GB requires that the company should invest the proceeds in purchase of new plant and machinery but do not include computer software. The amendment is also made in sec 54GB to provide that the new asset includes computers or computer software in case of technology driven start-ups so certified by the Inter-Ministerial Board of Certification.

7.6 Amendment to Section 55

Existing Provision:

Sub-clause (1) of clause (b) of sub-section (1) of the section 55 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 section 55 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 (Clause 33):
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 said section so as to include the right to carry on the profession also under its scope.

Effective Date:
From the 1st day of April, 2017 and accordingly applicable from Assessment Year 2017 -2018 and subsequent years

Reason and Implications:
The existing provision of clause (va) of section 28 of the Act includes within the scope of "profit and gains of business or profession" any sum received or receivable in cash or in kind under an agreement for not carrying out activity in relation to any 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 and is chargeable to tax as business income. Further, the provisions clarify that receipts for transfer of right to manufacture, produce or process any article or thing or right to carry on any business, which are chargeable to tax under the head "Capital gains", would not be taxable as profits and gains of business or profession. Under section 45 of the Act, any capital receipt arising out of transfer of any business or commercial rights is taxable under the head "Capital gains". The amount of "Capital gains" is computed according to section 48 of the Act. For this purpose, 'cost of acquisition' and 'cost of improvement' are defined under section 55. However, non-compete fee received/receivable in relation to carrying out of profession are not covered under these provisions. It is proposed to amend clause (va) of section 28 of the Act to bring the non-compete fee received/receivable(which are recurring in nature) in relation to not carrying out any profession, within the scope of section 28 of the Act i.e. the charging section of profits and gains of business or profession. 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 and gains of business or profession. It is also proposed to amend section 55 so as to provide that the 'cost of acquisition' and 'cost of improvement' for working out "Capital gains" on capital receipts arising out of transfer of right to carry on any profession shall also be taken as 'nil'.

7.7 Amendment to Section 112

Existing Provision:

Section 112(1)(c) of the Act provides that in the case of a non-resident, tax rate shall be 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 (32 of 1956)('SCRA').

Proposed Amendment (Clause 48):

Clause 48 of the Finance Bill seeks to amend the provisions of clause (c) of sub-section (1) of section 112 of the Income- tax Act. The proposed clause seeks to provide that long-term capital gains arising from the transfer of a capital asset being unlisted securities, or shares 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.

Effective Date:

The amendment to section 112 is sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year: 2017-18.

Reason and Implications:

A view has been taken by the courts that shares of a private company are not "securities". The amendment is sought to be made with a view to clarify the position so far as taxability is concerned.

8 Income from other sources - amendment to section 56(2)(vii) of the Act

Existing Provision:

Section 56(2)(vii) of the Act provides that where an individual or HUF receives in any previous year from any person various assets as prescribed in the section, in excess of sum of Rs. 50,000/-, the amount in excess of Rs. 50,000/- shall be chargeable to income-tax under the head "Income from Other Sources". Clause (c) includes any property other than immovable property received by an individual or HUF within the ambit of section 56(2)(vii) of the Act. Second proviso to the clause (c) provides that the clause shall not apply to any sum of money or any property received in various prescribed situations

Proposed Amendment (Clause 34):

Clause 34 of the Finance Bill seeks to add one more clause in the second proviso by insertion of clause (g) in the second proviso. It seeks to provide that any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company shall not attract the provisions of clause (vii) of sub-section (2) of section 56.

Effective Date:

The amendment to section 56(2)(vii) is sought to be made w.e.f. 1-4-2017 and accordingly will be applicable on and from assessment year: 2017-18.

Reason and Implications:

The existing provisions of section 56(2)(vii) also apply where shares of a company are received as a consequence of demerger or amalgamation of a company. Such a transaction is not regarded as transfer where the recipient is a firm or a company. The amendment is proposed with a view to bring uniformity in tax treatment. Further at present, there is a dichotomy between section 47 which grants exemption to such transaction from capital gains and section 56 which brings such transactions in the tax net under Income from Other Sources. The amendment will result in avoiding such anomaly also.

9 Carry forward and set off

9.1 Amendment to Section 80

Existing Provision:

Section 80 of the Act provides that where a loss which has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 130, it 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 (Clause 35):

It is proposed to amend section 80 so as to include within its ambit 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.

Effective Date:

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

Reason and Implications:

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. However this loss was allowed to be carried forward for set-off in the subsequent Year even if the Return was filed beyond the time limit as prescribed u/s 139(3). To bring this in line with the other provisions and in accordance with the scheme of the Act, the loss computed in respect of any specified business referred to in section 35AD and to be carried forward as per provisions of Section 73A 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.

10 Deduction

10.1 Amendment to Section 80CCD

Existing Provision:

Under the existing provisions of section 80CCD, a deduction is provided for contribution to the Notified Pension Scheme (NPS) of the Central Govt., to the Individuals, irrespective of his being Resident or Non-Resident to the extent of (a) 10% of the Salary in the case of an employee; and (b) in any other case, 10% of his Gross Total Income, but restricted to 1 lakh.

However upon closure of the said account of NPS, the same was taxable in the hands of the assessee or his nominee.

Proposed Amendment (Clause 36):

It is proposed by way of a proviso that if the account of NPS has to be closed due to the death of the assessee and the amount is paid to the nominee of the assessee, then the same shall not be treated as income in the hands of the nominee.

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.

Reason and Implications:

The amendment is a welcome provision as the amount received by the nominee upon the death is nothing but a capital receipt.

10.2 Amendment to Section 80EE

Existing Provision:

The existing provisions of section 80EE provided for a deduction of up to 1 lakh rupees in respect of interest payable on a loan taken by an individual from a financial institution for acquisition of a residential house property. This benefit is available for the two assessment years beginning on the 1stday of April 2014 and on the 1st day of April 2015 subject to the fulfilment of certain Terms and Conditions.

It is further provided that if the deduction of Interest is claimed under this section, no deduction shall be allowable under any other section of the Act

Proposed Amendment (Clause 37):
It is proposed to incentivise first-home buyers availing home loans, by providing additional deduction in respect of interest on loan taken for residential house property from any financial institutions up to Rs. 50,000.

This incentive is proposed to be extended to a house property of a value less than fifty lakhs rupees in respect of which a loan of an amount not exceeding thirty five lakh rupees has been sanctioned during the period from the 1st day of April, 2016 to the 31st day of March, 2017.

It is also proposed to extend the benefit of deduction till the repayment of loan continues. The deduction under the proposed section is over and above the limit of Rs 2,00,000 provided for a self-occupied property under section 24 of the Act

Effective Date:
These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Reason and Implications:
This Amendment is proposed to furtherance of the goal of the Government of providing 'Housing for All'**.**

10.3 Amendment to Section 80GG

Existing Provision:
The existing provisions of Section 80GG provides for a deduction of any expenditure incurred by an individual in excess of ten per cent of his total income towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence if he is not granted house rent allowance by his employer, to the extent such excess expenditure does not exceed two thousand rupees per month or twenty-five per cent of his total income for the year, whichever is less, subject to other conditions as prescribed therein

Proposed Amendment (Clause 38):
It is proposed to amend section 80GG so as to increase the maximum limit of deduction from existing Rs. 2000 per month to Rs. 5000 per month, keeping all other conditions unchanged.

Effective Date:
These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Reason and Implications:
The proposed amendment has been in order to provide relief to the individual tax payers. However, such a relief is a non–realistic relief. The realistic approach should have been to bring the same in pari-materia with the provisions of section 10(13A) of the Act.

10.4 Insertion of new section 80-IAC for start-ups

Proposed Amendment (Clause 41):
The new proposed section 80-IAC provides 100% deduction to the Company being an eligible start-up, in respect of the profits and gains derived from a business involving innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.

The benefit of deduction of 100% of the profit derived from such business can be availed by eligible start-ups for three consecutive assessment years out of five years, at the option of the Assessee, subject to

i It is incorporated after 1st day of April,2016 and before 1st day of April, 2019; &
ii the total turnover does not exceed Rs. 25 Crores in any of the Financial year beginning on or after 1st April,2016 ending upto 31st March 2021; &
iii it holds the Certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette

Certain other conditions are also prescribed for safeguarding the interest of the revenue for non- diversion of the existing business in the garb of the start-ups and provision of sub-sections (5) & (7) to (11) to section 80-IA have also been applied mutatis mutandis to this section

Effective Date:
These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years

Reason and Implications:
The proposed provision is a welcome provision for the small and medium enterprise. However by putting a turnover criteria, the focus of the section has narrowed down the impetus of growth. The turnover criteria has been worded in such a manner that to remain an eligible start up for the purpose of deduction of under this section in any of the years, the turnover should not exceed Rs. 25 Crores in any of the financial years ending as on 31st March 2021, as otherwise it would lose the status of being an eligible start up and be liable for tax for all the years.

To provide the impetus to growth the criteria of turnover may remain a hindrance and also discourage the large capex investments in these sectors.

Further the start-ups shall also be liable to MAT as no amendment has been made to section 115JB for such Companies not being liable to MAT.

10.5 Insertion of new section 80-IBA for start-ups

Proposed Amendment (Clause 43):

It is proposed to insert a new section so as to provide for 100% deduction of the profits of an assessee developing and building affordable housing projects if the housing project is approved by the competent authority after the 1st day of June, 2016 but before the 31st March, 2019, subject to certain major conditions which, inter alia, include:

i the project is completed within a period of three years from the date of approval;

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

iii here a residential unit is allotted to an individual, no other residential unit shall be allotted to the individual or the spouse or the minor children of the individual.

It has been expressly being provided that nothing in the section shall apply to any undertaking which execute the housing project as a works-contract awarded by any person (including the Central Government or the State Government).

It has also been proposed that if the deduction is granted during any of the years and the project is not completed with the time frame as stated above then such deduction will become an income chargeable as profits and gains of business, of the year in which the period for completion of the project expires

Effective Date:

These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years

Reason and Implications:

With a view to incentivise affordable housing sector as a part of larger objective of 'Housing for All'. The Provisions are on similar lines to that of the deduction provided U/s 80-IB (10). However the size of the houses mentioned for the four Metros is too small to attract the builders/ developers to make such houses. The size of the Houses mentioned herein are akin to the size of the house provided under SRA schemes, which are only for the resettlement of the slum dwellers and, therefore, to attract any buyer for this size of house looks very bleak.

It is further to be noted such assessee shall also be liable to MAT or AMT as no amendment has been made to section 115JB or 11JC for such an assessee not being liable to MAT or AMT

10.6 Amendment to Section 80JJAA

Existing Provision:

The existing provisions of Section 80-JJAA provide for a deduction of thirty percent of additional wages paid to new regular workmen in a factory for three years.

The provisions apply to the business of manufacture of goods in a factory 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

Proposed Amendment (Clause 44):

It is proposed to provide that the deduction under the said provisions shall be available in respect of cost incurred on any employee whose total emoluments are less than or equal to twenty five thousand rupees per month.

No deduction, however, shall be allowed in respect of cost incurred on those employees, for whom the entire contribution under Employees' Pension Scheme notified in accordance with Employees' Provident Fund and Miscellaneous Provisions Act, 1952, is paid by the Government.

It is further proposed to relax the norms for minimum number of days of employment in a financial year from 300 days to 240 days and also the condition of ten per cent 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.

It is also proposed to provide that in the first year of a new business, thirty percent of all emoluments paid or payable to the employees employed during the previous year shall be allowed as deduction

Effective Date:

This amendment will take effect from 1st April, 2017 and will accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

Reason and Implications:

This amendment is proposed with a view to extend employment generation incentive to all sectors rather than limiting it to the manufacturing sector only.

11 Phasing Out of Deductions/ Exemptions

11.1 Amendment to Section 10AA, 35, 35AC, 35AD, 35CCC, 35CCD, 80IA, 80IAB AND 80IB

Existing Provision & Proposed Amendment:

Section 10AA provides a profit linked deduction to an entrepreneur who sets up a unit in a Special Economic Zone after 1.4.2005 - Proposed amendment to restrict deductions to units set up in a Special Economic Zone upto 31.3.2020. Such units will get the tax deductions assured u/s 10AA. Units set up after this date will not get any tax deduction u/s 10AA.

Section 35(1)(ii) provides for a 175% deduction for sums paid to a Research Association. Proposed amendment to 150% for Financial Year 2017-18 onwards and further to 100% from Financial Year 2020-21.

Section 35(1)(iia) provides a 125% deduction for sums paid to a company used for Scientific Research. Proposed amendment to 100% for Financial Year 2017-18 onwards.

Section 35(1)(iii) provides a 125% deduction for sums paid to a Research Association undertaking research in social science or statistical research. Proposed amendment to 100% for Financial Year 2017-18 onwards.

Section 35(2AA) provides a 200% deduction for sums paid to a National Laboratory or University or an IIT to be used for an approved Scientific Research programme. Proposed amendment to 150% for Financial Year 2017-18 onwards and further to 100% from Financial Year 2020-21.

Section 35(2AB) provides a 200% deduction for sums spent on scientific research in an in-house research and development facility. Proposed amendment to 150% for Financial Year 2017-18 onwards and further to 100% from Financial Year 2020-21.

Section 35AC provides a 100% deduction for contribution to organizations for carrying out eligible projects approved by the National Committee. Proposed amendment, No deduction u/s 35AC to be available for contributions made from financial year 2017-18 onwards.

Section 35AD(1A) provides for a weighted deduction of 150% of capital expenditure incurred for assesses engaged in cold chain facilities, warehousing of agricultural produce, 100+ bed hospitals, housing projects and fertilizer units set up after 1.4.2012. Proposed amendment to make the deduction 100% for Financial Year 2017-18 onwards.

Section 35CCC provides a 150% deduction for amounts spent on a notified agricultural extension project. Proposed amendment to 100% for Financial Year 2017-18 onwards.

Section 35CCD provides a 150% deduction for amounts spent on a notified skill development project. Proposed amendment to 100% for Financial Year 2020-21 onwards.

Section 80IA(4) provided for a 10 year deduction of 100% of profits for projects dealing with infrastructure facility. Proposed amendment to provide that no deduction will be available for infrastructure facility set up after 1.4.2017. Units already set up will be allowed the deduction assured to them.

Section 80IAB provided for a 10 year deduction of 100% of profits made by developer of a Special Economic Zone. Proposed amendment to provide that no deduction will be available for a development of an SEZ that starts after 1.4.2017. Units already set up will be allowed the deduction assured to them.

Section 80IB provides for a 7 year deduction of 100% of profits made by an undertaking engaged in commercial production of mineral oil; natural gas licensed under NELP VIII or Round IV CBM. Proposed amendment to provide that no deduction will be available for units engaged in commercial production of mineral oil or natural gas which begin commercial production after 1.4.2017. Units already set up will be allowed the deduction assured to them.

Effective Date:

Different for each section as explained above.

Reason and Implications:

As per the Budget Speech, on account of various incentives and deductions, the effective corporate tax rate is 24.67% while the applicable corporate tax rate is 30%. There was a proposal to reduce the corporate tax rate from 30% to 25% over a period accompanied by rationalization and removal of various tax exemptions and incentives. The current budget has paved the way for this by giving a road map for the phase out of various profit linked incentives and weighted deductions given based on amounts spent. Fortunately, the truncation of benefits has been linked to units set up after the sunset date – for units that are set up prior to that or for expenditure incurred prior to the sunset date, the tax benefits assured have been retained. For e.g. an undertaking that was entitled to a 10 year holiday will get its holiday for the entire assured period. But a new unit set up after the sunset date will get no exemption at all.

Entrepreneurs can therefore work on setting up their units before the onset of the sunset dates.

12 Rebates and Reliefs

12.1 Amendment to Section 87-A

Existing Provision:

The existing provisions of section 87-A of Income-tax Act, provide for a rebate of an amount equal to hundred per cent of such income-tax or an amount of two thousand rupees, whichever is less, from the amount of income-tax to an individual resident in India whose total income does not exceed five hundred thousand rupees.

Proposed Amendment (Clause 11):

With the objective to provide relief to resident individuals in the lower income slab, it is proposed to amend section 87-A so as to increase the maximum amount of rebate available under this provision from existing Rs.2,000 to Rs.5,000.

Effective Date:

This amendment will take effect from 1st April, 2017 and will accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

Reason and Implications:

The proposed amendment will provide some tax relief to the small tax payers.

13 Transfer Pricing

13.1 Amendment to Section 92CA

Existing Provision:

As per sub-section 3A of Section 92CA, where a case has been referred to a Transfer Pricing Officer ('TPO'), he is required to pass an order determining the arm's length price of the international transactions or specified domestic transactions at least 60 days prior to the time limit u/s. 153 or 153B for completion of assessment, reassessment, recomputation or fresh assessment.

Further, as per clauses (ii) and (viii) of Explanation 1 to Section 153, the time available to an Assessing Officer ('AO') for passing an order is extended in case the proceedings are stayed by a court or the period spent on account of reference made for exchange of information under an agreement for avoidance of double taxation under sections 90 or 90A and receipt of information thereunder. However, no provision exists to deal with the situation where the time available to a TPO, on account of the aforesaid circumstances, either lapses or is less than 60 days

Proposed Amendment (Clause 46):

As per Clause 46 of the Finance Bill 2016, a proviso is proposed to be inserted in sub-section 3A to extend the time available to a TPO to pass his order to 60 days in case the time remaining is less than 60 days after excluding the time for which the proceedings are stayed by a court or the period spent on account of reference made for exchange of information under an agreement for avoidance of double taxation under sections 90 or 90A and receipt of information thereunder.

Effective Date:

The above amendment is proposed to be applicable with effect from 1st June 2016 (A.Y. 2016-2017)

Reason and Implications:

The assessment proceedings, including proceedings before the TPO can be stayed by a court where the assessee has filed a writ before the court. Further, in several cases of transfer pricing, information sought from foreign jurisdictions under exchange of information mechanism is relevant for determining the arm's length price. The time required to obtain such information is generally significant and can delay the TP assessment/Audit proceedings. Explanation 1 to section 153 already ensures that the time available to the AO is considered after excluding the time lost in the above situations. The proposed amendment will now permit exclusion of time from the proceedings pending before the TPO, so that such proceedings do not automatically become time barred.

13.2 Amendment to Section 92D, 271AA, 273B Special Provisions Relating to avoidance of Tax / Penalties Imposable / Miscellaneous- Country- By- Country Reporting

Existing Provision:

As per section 92D, an enterprise having international transactions or specified domestic transactions is required to maintain prescribed information and documents in accordance with Rule 10D in respect of such transactions and furnish the same to the AO or the Commissioner (Appeals), when such information and documents are called for.

Further, in case of non-maintenance of the prescribed information and documents or maintenance of incorrect information or document or failure to report an international transaction or specified domestic transaction, section 271AA prescribes a penalty of 2% of the value of the transaction. This penalty is in addition to the penalty under section 271 and 271BA.

Proposed Amendment (Clauses 47, 100, 102, 106 and 110):

As per Clause 47 of the Finance Bill 2016, a proviso is proposed to be inserted in section 92D(1) to provide that a constituent entity of an international group shall be required to maintain prescribed documentation. Further, sub-section (4) is proposed to be inserted in section 92D to provide that such documentation shall be furnished to the prescribed authority on or before the prescribed date.

Further, as per Clause 110 of the Finance Bill, new section 286 is proposed to be inserted in the Act, requiring Country-by-Country Reporting ('CbCR') of each entity within an international group in certain cases. This amendment proposes to introduce reporting in line with Action 13 of the BEPS Action Plan, which suggests that for each international group, CbCR should be undertaken in the country of residence of the parent entity of the group.

As per the proposed amendments, the CbCR will need to be filed with the prescribed authority in India if the parent entity of the international group is in India. Further, if the CbCR filed by the parent in another country, of which it is a resident, is not made available to the Indian authorities either on account of no agreement between India and that country or due to non-cooperation of that country for providing such information, then, the Indian entity will be required to file a CbCR in India, even if it is not a parent entity of the group. Also, it is proposed that CbCR reporting will apply only where the consolidated turnover of the international group exceeds Euro 750 billion.

The prescribed date for filing the CbCR is proposed to be the due date of filing of return of income for the relevant assessment year for which the report is being furnished. The report shall contain of several parameters of each entity of the international group such as profit / Loss before tax, income tax paid and accrued, capital, accumulated earnings, tangible assets, etc. The prescribed authority is proposed to be given the powers to issue a notice to call for any information to verify the correctness of the report filed. The format of the report and guidelines on filing shall be prescribed by way of Rules.

Further, as per Clause 100, Section 271AA shall be amended to include a penalty of Rs. 5 lakhs for non-furnishing of the CbCR. Also, as per Clause 102, new Section 271GB is proposed to be introduced to levy progressive penalties for failure to furnish the report or information called for by the prescribed authority or furnishing of wrong information, ranging from Rs. 5,000 per day to Rs. 50,000 per day.

Effective Date:
The above amendment is proposed to be applicable with effect from 1st April 2017 (A.Y. 2017-2018)

Reason and Implications:
The CbCR reporting under Action 13 of BEPS Action Plan is being widely implemented by various jurisdictions across the world due to the ease of availability of information to the tax authorities, which will enable them to identify the risk areas in transfer pricing cases and get an overview of the operations of multi-national groups. While the amendments proposed to be introduced are with the same intention, the requirement of furnishing the same before the due date of filing return of income will be an onerous compliance burden. In addition to that, the burden of the penalties is significant, especially considering that for multinational groups having hundreds of group entities, the collation of information itself will be near to impossible.

14 Tax in Certain Special Cases

14.1 Insertion of Section 115BA : Tax on Income of certain domestic companies

Proposed Amendment (Clause 49):

Clause 49 of the Bill seeks to insert a new section 115BA in the Income-tax Act relating to tax on income of certain domestic companies. The same is as under:

"115BA.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 111A and section 112, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017, shall, at the option of such person, be computed at the rate of twenty-five per cent., if the conditions contained in sub-section (2) are satisfied.

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) the company has been set-up and registered on or after the 1st day of March, 2016;

(b) the company is engaged in the business of manufacturing or production of any article or thing; and

(c) the total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AC or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AC or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and

(iii) depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

The option by the person referred to in sub-section (1) shall be exercised in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the relevant previous year."

Effective Date:
The said Section shall be implemented from the 1st day of April, 2017 i.e. A.Y. 2017-18 relevant to F.Y. 2016-17.

Reason and Implications:
The proposed new section provides an option to the domestic company to compute and pay taxes on their Total Income at the rate of twenty-five per cent if the conditions contained in sub-section (2) of the said section are satisfied. The said tax rate is applicable to total income other than capital gains which is taxed under section 111A and 112.

The conditions to be satisfied as enumerated in sub-section (2) are as under:

(a) the company has been set up and registered on or after the 1st day of March, 2016;
(b) the company is engaged in the business of manufacturing or production of any article or thing; and
(c) the total income of the company has been computed, –
(i) without claiming any deductions as under:
  a. under the provisions of section10AA – in relation to unit in SEZ
  b. clause (iia) of sub-section (1) of section 32 – Additional Depreciation on machinery
  c. section 32AC – Investment in new plant and machinery
  d. section 32AD–Investment allowance for investment in new plant and machinery in certain backward areas
  e. section 33AB – Deposits for Tea, Coffee and Rubber Development
  f. section 33ABA – Site Restoration
  g. sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of subsection(1) or sub-section (2AA) or sub-section (2AB) of section 35 – Scientific Research
  h. section 35AC – Expenditure on eligible projects or schemes
  i. section 35AD – Deduction in respect of expenditure on specified business
  j. section 35CCC–Expenditure on agricultural extension project
  k. section 35CCD – Expenditure on skill development project
  l. under any provisions of Chapter VI-A under the heading "C.– Deductions in respect of certain incomes" other than the provisions of section 80JJAA;
(ii) The set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i) shall not be allowed; and

(iii) depreciation under section 32, other than clause (iia) of sub-section (1) of the said section is determined in the manner as may be prescribed.

Further, sub-section (3) of the proposed new section provides that the loss referred to in sub-clause (ii) of clause (c) of sub-section(2), i.e., any carried forward losses shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year as set off.

The option to opt for the said section shall be exercised by the assessee company in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the relevant previous year.

The said incentive of reduced tax is given to provide relief to start-up companies to encourage the make in India initiative of the present government. But there are many deductions which are otherwise allowable but cannot be claimed by the domestic company under this section. Further, in the initial years there would be huge investment in machinery leading to huge additional depreciation on the said machinery. Also there would be initial start-up losses for such companies. Thus, the number of such start-up companies deriving and claiming benefits from such relief may not be substantial.

14.2 Insertion of new section 115BA : Tax On Certain Dividends Received From Certain Domestic Companies

Proposed Amendment (Clause 50):
Clause 50 of the Bill seeks to insert a new section 115BBD in the Income-tax Act relating to tax on certain dividend received from certain domestic companies. The same is as under:

‘115BBDA.

(1) Notwithstanding anything contained in this Act, where the total income of an assessee, being an individual, Hindu undivided family or a firm, resident in India, includes any income exceeding ten lakh rupees, by way of dividends declared, distributed or paid by a domestic company, the income-tax payable shall be the aggregate of—
   (a) the amount of income-tax calculated on the income by way of such dividends, at the rate of ten per cent.; and
   (b) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income by way of dividends.

(2) No deduction in respect of any expenditure or allowance or set off of loss shall be allowed to the assessee under any provision of this Act in computing the income by way of dividends referred to in clause (a) of sub-section (1).

In this section, “dividends” shall have the same meaning as is given to “dividend” in clause (22) of section 2 but shall not include sub-clause (e) thereof.’

Effective Date:
The said Section shall be implemented from the 1st day of April, 2017 i.e. A.Y. 2017-18 relevant to F.Y. 2016-17.

Reason and Implications:
The said new section 115BBDA seeks to impose tax on certain dividends received from domestic companies. Section 10(34) of the Income Tax Act provides that dividends shall be exempt if dividend distribution tax under section 115-O is paid on such income.

The said new section provides 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 and to define the term dividend.

It is pertinent to note that DDT under section 115–O was introduced in the Act with an intention to bring to tax all the dividends which were declared by domestic companies and where the said income escaped tax in case of small tax payers or small shareholders wherein the dividend received was small and the same was therefore not taxable in the hands of such assessee. Now a new tax has been introduced to tax such dividend income in excess of Rs. 10 lacs which would lead to double taxation of the said dividend income, once at the time of distribution by the company and a second time by the recipient assessee. Further, the said tax is only in the case of resident assessees thus discriminating them from non residents. Additionally, even expenditure incurred on the same is also not allowed as a deduction against the same, thereby increasing the overall impact of taxes on the income. At times it may so happen that the said tax would be required to be paid even in case of a loss when the dividend earned is less than the interest paid on the loans taken for acquiring such shares.

14.3 Amendment to Section 115BBE

Existing Provision:
At present sub-section 2 of section 115BBE reads as under:
"(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1)."

Proposed Amendment (Clause 51):
Clause 51 of the Finance Bill proposes to amend section 115BBE of the Income-tax Act, wherein in sub-section (2), after the word "allowance", the words "or set off of any loss" shall be inserted.

After the proposed amendment the said clause shall read as under:

"(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance **or set off of any loss** shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1)."

Effective Date:
The said change shall be effective from the 1st day of April, 2017, i.e., A.Y. 2017-18 relevant to F.Y. 2016-17.

Reason and Implications:
Sub-section (1) of the section 115BBE provides that in case of addition made to the total income of the assessee under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D, such additions to the total income 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.

At present, if there are any losses which are incurred during the concerned assessment year or brought forward losses the same were allowed to be set off and, if the total income was nil after such set off, there would be no tax payable under this section. It is proposed to amend the said sub-section (2) of section 115BBE so as to provide that the set off of any losses shall also be not allowable in respect of incomes under the aforesaid sections.

Therefore, after the said amendment if additions are made under the said section 68 or section 69 or section 69A or section 69B or section 69C or section 69D, the brought forward losses would not be allowed to be set off and the assessee would be required to pay tax at 30% on such additions.

14.4 Insertion of New Section 115BBF - Tax on Income from Patents.

Proposed Amendment (Clause 11):
Clause 52 of the Bill seeks to insert a new section 115BBE in the Income-tax Act relating to tax on income from patents. The same is as under:

‘115BBF.

(1) Where the total income of an eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income by way of royalty in respect of the patent at the rate of ten per cent.; and
(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the income referred to in clause (*a*).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the eligible assessee under any provision of this Act in computing his income referred to in clause (*a*) of sub-section (*1*).

Explanation.—For the purposes of this section,—

1. "developed" means the expenditure incurred by the assessee for any invention in respect of which patent is granted under the Patents Act, 1970 (herein referred to as the Patents Act);

2. "eligible assessee" means a person resident in India and who is a patentee;

3. "invention" shall have the meaning assigned to it in clause (*j*) of sub-section (*1*) of section 2 of the Patents Act;

4. "lump sum" includes an advance payment on account of such royalties which is not returnable;

5. "patent" shall have the meaning assigned to it in clause (*m*) of sub-section (*1*) of section 2 of the Patents Act;

6. "patentee" means the person, being the true and first inventor of the invention, whose name is entered on the patent register as the patentee, in accordance with the Patents Act, and includes every such person, being the true and first inventor of the invention, where more than one person is registered as patentee under that Act in respect of that patent;

7. "patented article" and "patented process" shall have the meanings respectively assigned to them in clause (*o*) of sub-section (*1*) of section 2 of the Patents Act;

8. "royalty", in respect of a patent, means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains" or consideration for sale of product manufactured with the use of patented process or the patented article for commercial use) for the—
   (i) transfer of all or any rights (including the granting of a licence) in respect of a patent; or
   (ii) imparting of any information concerning the working of, or the use of, a patent; or
   (iii) use of any patent; or
   (iv) rendering of any services in connection with the activities referred to in sub-clauses (*i*) to (*iii*);

"true and first inventor" shall have the meaning assigned to it in clause (*y*) of sub-section (*1*) of section 2 of the Patents Act.'

Effective Date:
The said Section shall be implemented from the 1st day of April, 2017, i.e., A.Y. 2017-18 relevant to F.Y. 2016-17.

Reason and Implications:
The said section 115BBF is introduced with two-fold objectives:

1. Firstly, to encourage indigenous research & development activities and to make India a global R & D hub. The aim of the concessional taxation regime is to provide an additional incentive for companies to retain and commercialise 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.

2. Secondly, to align the taxation of patents with the recommendation of the Organization for Economic Cooperation and Development (OECD), in Base Erosion and Profit Shifting (BEPS) project under Action Plan 5. The said Action Plan 5 suggests 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.

With the above two-fold objectives in mind-which seem to be contradictory to each other- a new section 115BBF is proposed to be introduced. It provides that where the total income of the eligible assessee income includes any income by way of royalty in respect of a patent developed and registered in India, 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 the 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 the Patents Act, 1970 in respect of that patent.

From the reading of the said section, one concludes that the said section is a code in itself. The first sub-section provides for the quantum of taxes to be paid in case of income earned by way of royalty. The second sub-section provides that no expenditure shall be allowed against such income. Thus it proposes to disallow all the expenditure incurred for the purposes of creation and development of the patent. The explanation to the section defines the various terms referred to in the section.

The section is introduced with the above mentioned two-fold objectives in mind. They seem to be contradictory since one of the objectives is to provide concessional rate of taxation and encourage such activities in India, but, on the other hand, it wants to adopt the nexus approach provided for in BEPS-Project Action Plan 5, which is an anti-avoidance measure.

Further, since no expenditure is allowed to be claimed against such income, it may so happen that tax is required to be paid even in case of losses if the expenditure incurred is more than the income which will be received. It would be a deterrent instead of an incentive to that extent.

14.5 Amendment to Section 115QA

Existing Provision:

At present subsection 115QA reads as under:

115QA. (1) Notwithstanding anything contained in any other provision of this Act, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount of distributed income by the company on buy-back of shares (not being shares listed on a recognised stock exchange) from a shareholder shall be charged to tax and such company shall be liable to pay additional income-tax at the rate of twenty per cent on the distributed income.

Explanation.—For the purposes of this section,—

(i) "buy-back" means purchase by a company of its own shares in accordance with the provisions of **section 77A of the Companies Act, 1956 (1 of 1956)**;

(ii) "distributed income" means 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**.

Section 115QA was introduced in 2013 with a view to curb the practice by foreign companies of avoiding dividend distribution tax by going for a buy back of shares and especially to counter the decision in the case of In re 'A' (2012)343 ITR 455(AAR).

Proposed Amendment (Clause 56):

Clause 56 of the Finance bill proposes to amend section 115QA of the Income-tax Act wherein**,** in sub-section (1), in the Explanation,

(a) in clause (i), for the words, figures and letter "section 77A of the Companies Act, 1956", the words "any law for the time being in force relating to companies" shall be substituted;

(b) in clause (ii), for the words "the amount which was received by the company for issue of such shares", the words "the amount, which was received by the company for issue of such shares, determined in the manner as may be prescribed" shall be substituted.

Effective Date:

The amendment shall be made applicable to all buy backs on or after the 1st day of June, 2016.

Reason and Implications:

The amendment replaces the words Section 77A of the Companies Act, 1956 with the words "Any law for the time being in force relating to companies". There was doubt raised about the applicability of the section to reduction under the new Companies Act, 2013. The proposed amendment now covers all types of reductions where payment is made for its own shares. It also does not require any changes in the law in case of changes in the company law in future.

The section provides for taxation of the difference between the amount paid by the company on buy back of shares as reduced by the amount received for issue of such shares. There was a doubt about whether the premium paid would be allowed as a deduction for the issue of shares. There would also be a question as to what would be the issue price of bonus shares. There are situations where shares may have been issued by the company in tranches, for different considerations, at different points of time or may have been issued in lieu of existing shares of another company under amalgamation, merger or demerger. The amendment gives power to the government to prescribe a method of ascertaining the issue price of such shares.

14.6 Amendment of section 115TA and 115TC of Income-tax Act by substituting a new section 115TCA

Existing Provision:
The Finance Act 2013 introduced Chapter XII-EA for taxation of distribution of income by securitization trusts. The said sections 115TA to 115TC provided for taxation of income at the point of time it is distributed by the securitization trust.

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 (Clause 57-59):
It is now proposed to reverse this taxation of gross income distributed by the securitization trust and to tax the ultimate investors who have invested in the securitization trust and therefore a sunset clause is sought to be added as clause (5) to section 115TA to state that the said section will not apply after 1-6-2016.

Section 115TC is proposed to be amended to also include a trust set-up by a securitisation company or a reconstruction company formed, for the purposes of the SARFESI Act, 2002, or in pursuance of any guidelines or directions issued for the said purposes by the Reserve Bank of India.

A new section 115TCA is inserted which provides for taxability of the income accrued or received from the securitisation trust in the hands of investor in the same manner and to the same extent as it would have happened had the investor made investment directly in the underlying assets and not through the trust;

Effective Date:
The amendment to section 115TA and 115TC shall be made applicable with effect from 1st day of June, 2016. The insertion of new section 115TCA is with effect from 1st April, 2017

Reason and Implications:
The existing provisions of Chapter-XII-EA of the Act provide 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. The disallowance of expenditure in respect of income received from securitisation trust increases the effective rate of taxation. Further, investors are unable to take benefits of their specific tax status.

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 SARFESI Act, 2002 and their activities are regulated by the Reserve Bank of India.

The proposed amendments substitute the existing special regime for securitisation trusts by a new regime having the following elements: -

(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 set up by a securitisation company or a reconstruction company in accordance with the SARFAESI Act;

(ii) The income of the 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 the 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 individuals or HUFs and @ 30% in case of others. In case of payments to non-resident investors, the deduction shall be at the 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 break-up regarding nature and proportion of its income to the investors and also to the prescribed income-tax authority.

The section rationalises the taxation for investors as the effective rate to the individual investors would be less and the investor would be able to claim expenses incurred by him on making investments.

Section 115TA is sought to be omitted from 1-6-2016 and the new section 115 TCA is sought to be made applicable from 1-4-2016. Thus if the trust is to distribute any income during the period 1-4-2016 to 1-6-2016 then the same is likely to be taxed under both sections.

14.7 Insertion of new chapter XII-EB: Special provisions relating to tax on accreted income of certain trusts and institutions

Proposed Amendment (Clause 60):
Clause 60 of the Finance bill proposes to insert a new Chapter XII-EB which constitutes of Sections 115TD to 115TF to the Income tax Act.

It proposes to levy tax in the nature of exit tax where the charitable institution ceases to exist or converts into a non-charitable organization.

“**115TD**.
(1) Notwithstanding anything contained in this Act, where in any previous year, a trust or institution registered under section 12AA has—

(a) converted into any form which is not eligible for grant of registration under section 12AA;
(b) merged with any entity other than an entity which is a trust or institution having objects similar to it and registered under section 12AA; or
(c) failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, within a period of twelve months from the end of the month in which the dissolution takes place, then, in addition to the income-tax chargeable in respect of the total income of such trust or institution, the accreted income of the trust or the institution as on the specified date shall be charged to tax and such trust or institution, as the case may be, shall be liable to pay additional income-tax (herein referred to as tax on accreted income) at the maximum marginal rate on the accreted income.

(2) The accreted income for the purposes of sub-section (1) means the amount by which the aggregate fair market value of the total assets of the trust or the institution, as on the specified date, exceeds the total liability of such trust or institution computed in accordance with the method of valuation as may be prescribed:

Provided that while computing the accreted income in respect of a case referred to in clause (c) of sub-section (1), assets and liabilities, if any, related to such asset, which have been transferred to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, within the period specified in the said clause, shall be ignored.

(3) For the purposes of sub-section (1), a trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AA in a previous year, if,—

(i) the registration granted to it under section 12AA has been cancelled; or

(ii) it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it,—

(a) has not applied for fresh registration under section 12AA in the said previous year; or

(b) has filed application for fresh registration under section 12AA but the said application has been rejected.

(4) Notwithstanding that no income-tax is payable by a trust or the institution on its total income computed in accordance with the provisions of this Act, the tax on the accreted income under sub-section (1) shall be payable by such trust or the institution.

(5) The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from,—

(i) the date on which the order cancelling the registration is received by the trust or the institution in a case referred to in clause (i) of sub-section (3);

(ii) the end of the previous year in a case referred to in sub-clause (a) of clause (ii) of sub-section (3);

(iii) the date on which the order rejecting the application is received by the trust or the institution in a case referred to in sub-clause (b) of clause (ii) of sub-section (3);

(iv) the date of merger in a case referred to in clause (b) of sub-section (1);

(v) the date on which the period of twelve months referred to in clause (c) of sub-section (1) expires.

(6) The tax on the accreted income by the trust or the institution shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the trust or the institution or by any other person in respect of the amount of tax so paid.

(7) No deduction under any other provision of this Act shall be allowed to the trust or the institution or any other person in respect of the income which has been charged to tax under sub-section (1) or the tax thereon.

Explanation.—For the purposes of this section,—

(i) "date of conversion" means,—

(a) the date of the order cancelling the registration under section 12AA, in a case referred to in clause (i) of sub-section (3); or

(b) the date of adoption or modification of any object, in a case referred to in clause (ii) of sub-section (3);

(ii) "specified date" means,—

(a) the date of conversion in a case falling under clause (a) of sub-section (1);

(b) the date of merger in a case falling under clause (b) of sub-section (1); and

(c) the date of dissolution in a case falling under clause (c) of sub-section (1).

115TE.

Where the principal officer or the trustee of the trust or the institution and the trust or the institution fails to pay the whole or any part of the tax on the accreted income referred to in sub-section (1) of section 115TD, within the time allowed under sub-section (5) of that section, he or it shall be liable to pay simple interest at the rate of one per cent for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

115TF.

(1) If any principal officer or the trustee of the trust or the institution and the trust or the institution does not pay tax on accreted income in accordance with the provisions of section 115TD, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

(2) Notwithstanding anything contained in sub-section (1), in a case where the tax on accreted income is payable under the circumstances referred to in clause (c) of sub-section (1) of section 115TD, the person to whom any asset forming part of the computation of accreted income under sub-section (2) thereof has been transferred, shall be deemed to be an assessee in default in respect of such tax and interest thereon and all the provisions of this Act for the collection and recovery of income-tax shall apply:

Provided that the liability of the person referred to in this sub-section shall be limited to the extent to which the asset received by him is capable of meeting the liability."

Effective Date:

The insertion of the new chapter is with effect from 1st June, 2016

Reason and Implications:

The chapter proposes to charge a tax in the nature of an Exit tax when the charitable institution ceases to exist or converts into a non-charitable organization. This additional tax has to be paid at the maximum marginal rate on the accreted income of the trust or institution. The section further provides that the accreted income of the trust is to be calculated by taking the fair market value of the assets less the liabilities of the trust on the specified date in accordance with the method of valuation as may be prescribed. However the amount donated to a trust with similar object within the period of 12 months from dissolution would be reduced from the above amount.

The trust is deemed to be converted into a form not eligible for registration under section 12AA in the previous year, if

1. the registration is cancelled under section 12AA; or
2. the trust has modified its objects and the said objects do not confer to the conditions of registration and -
    a. the trust has not applied for fresh registration.
    b. the application of the trust for registration is rejected due to any reason.

The trust is liable to pay taxes under the Act, inter alia, within 14 days of (i) the cancellation or (ii) the completion of twelve months from the dissolution, to the credit of Central Government irrespective of the fact that the trust is otherwise not liable to tax on its income.

The trust will not be allowed any deduction under any other provision of the Act from the income chargeable to tax as above.

Section 115TE:- The section provides that the trust will be liable to pay a simple interest at the rate of 1% for every month or part of a month the taxes are not paid in time.

Section 115TF:- If a trustee or the person in charge of the trust affairs fails to pay the tax and the interest due then he will be deemed to be an assessee in default.

Following issues arise from the proposed insertion of the chapter :

- The Income tax Act provides for taxation of income qua an assessment year and a previous year, the assets less liabilities cannot be said to be the income of that particular year as there is no deeming fiction treating such assets less liability as income.

- The said taxation apparently is trying to tax capital receipts without amending the definition of 'income' under section 2(24) to include such receipts which are capital in nature.

- The trust may have received corpus donations which are capital in nature and cannot be taxed as revenue receipts in the previous year. The above sections are likely to lead to litigation.

- There could also be a situation where the trust has paid tax on income and lying as an asset. Taxation of the assets less liability would lead to double taxation of such income.

- It is very likely that trust assets may not be in liquid form and the payment of taxes in fourteen days may be practically impossible and there would be cash flow issues.

The section also does not take into account that the assesse may be in appeal against the cancellation / non granting of registration and hence it would be difficult to implement the section in such a situation.

14.8 Amendment to Section 115UA - Special provisions relating to business trusts

Existing Provision:

At present section 115UA(3) reads as under:

"If in any previous year, the distributed income or any part thereof, received by a unit holder from the business trust is of the nature as referred to in clause 23FC or clause 23FCA of section 10, then, such distributed income or part thereof shall be deemed to be income of such unit holder and shall be charged to tax as income of the previous year."

The said section provides for taxation of business trusts. The said section bifurcates the income for taxation between the trust and the unit holder. For 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. The regime provides that the interest income and the rental income earned by the trust is not taxed in the hands of the trust but is passed through to the unit holder and taxed in the hands of the unit holder.

Proposed Amendment (Clause 61):

In section 115UA of the Income-tax Act, in sub-section (3), for the words, brackets, figures and letters "in clause (23FC)", the words, brackets, letters and figures "in sub-clause (a) of clause (23FC)" shall be substituted with effect from the 1st day of April, 2017.

Effective Date:

The said amendment shall be implemented from the 1st day of April, 2017, i.e., A.Y. 2017-18 relevant to F.Y. 2016-17.

Reason and Implications:

Section 115UA(3) provides for such income which is exempt in the hands of the trust and is taxed in the hands of unit holder. The amendment under this section was necessitated due to the changes in section 10(23FC) vide clause 7 of the Finance Bill.

Section 10(23FC) has been amended by clause 7 and the section provides for exemption for two types of incomes under that section viz., (a) interest income earned and (b) dividend referred to in section 115-O(7).

This amendment requires that the section 115UA(3) which refers to section 10(23FC) be amended, as the otherwise the unit holder will have to pay tax again on the income which has already been taxed under section 115-O at the time of distribution of income. The amendment therefore changes the reference to only clause (a) of section 10(23FC).

14.9 Insertion of New Section 115LBC: Income in respect of investment in securitisation trust.

Proposed Amendment (Clause 82):

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* to section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of 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.

Sub-section *(2)* of the proposed new section seeks to provide that where any income is payable to an investor, being **a non-resident (not being a company) or a foreign company**, in respect of an investment in a securitisation trust specified in clause *(d)* of the *Explanation* to section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, **deduct income-tax thereon, at the rates in force.**

It is also proposed to provide an *Explanation* under the proposed new section to provide that the term "investor" shall have the meaning assigned to it in clause *(a)* of the *Explanation* to section 115 TCA; and also that where any income referred to in the proposed section 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.

Effective Date:

1st June, 2016. (A Y 2017-18)

15 Tax deducted at source and Collected at source

15.1 Amendment to section 192A

Existing Provision:
The Trustees of the Employees' Provident Fund Scheme, 1952 or any person authorized under the scheme to make payment of accumulated balance due to employees, who are withdrawing the amount within five years of becoming a member, are required to deduct tax @ ten percent, if the amount of withdrawal exceeded **Rupees thirty thousand.**

Proposed Amendment:
Clause 70 of the Bill seeks raise the threshold limit to **RUPEES FIFTY THOUSAND.**

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions.

15.2 Amendment to section 194BB

Existing Provision:
Any person responsible for paying to any person any income by way of winning from horse race in excess of **Rupees five thousand** shall deduct income-tax on such payment at the rates in force.

Proposed Amendment:
Clause 71 of the Bill seeks raise the threshold limit to **RUPEES TEN THOUSAND.**

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions.

15.3 Amendment to section 194C

Existing Provision:
Any person responsible for making payment to any resident contractor, for carrying out any work, pursuant to a contract, is required to deduct income-tax at the rates stated in the section, provided the

amount of payment exceeds Rupees thirty thousand or if the aggregate of the amount of such sums exceeded **Rupees seventy five thousand.**

Proposed Amendment:
Clause 72 of the Bill seeks raise the aggregate amount to **RUPEES ONE LAKH.**

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions.

15.4 Amendment to section 194D

Existing Provision:
The commission, remuneration or rewards paid to Insurance Agents who solicit or procure business for Insurance Companies is subjected to tax deduction if the aggregate amount exceeded **Rupees Twenty thousand.**

Proposed Amendment:
Clause 73 of the Bill seeks **reduce** the threshold limit to **RUPEES FIFTEEN THOUSAND.**

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions. All other provisions under the Chapter have raised the threshold limits or rates applicable upwards, whereas this section is being amended to reduce the threshold limit.

15.5 Amendment to section 194DA

Existing Provision:
Normally the proceeds of a life insurance policy are exempt under section 10 (10D). However, in the case of any sum received under a Keyman Insurance Policy and a policy where the premium payable for any of the years exceeds ten percent of the actual capital sum assured, such proceeds are taxable in the hands of the recipient. The payer of such sum is required to deduct income tax at the rate of **two percent from such proceeds.**

Proposed Amendment:
Clause 74 of the Bill seeks **reduce the percentage of tax to ONE percent.**

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions.

15.6 Amendment to section 194EE

Existing Provision:
Deposits made under the National Saving Scheme or Annuity plan of LIC (Jeevan Suraksha) entitled the assessee to deduction under section 80CCA for A Y 1990-91 and 1991-92. However sub section (2) of Section 80CCA laid down that at the time of withdrawal, the amount withdrawn (whether interest or principal) is to be taxed. In order to ensure that the amount withdrawn is taxed, section 194EE was introduced in 1991 for deduction of income tax on the withdrawal at the rate of **twenty percent,** subject to the minimum limit of Rupees two thousand five hundred.

Proposed Amendment:
Clause 75 of the Bill seeks reduce the percentage of deduction of income-tax to **TEN percent**.

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions.

15.7 Amendment to section 194G

Existing Provision:
Deduction of income-tax at the rate of **ten per cent** is being made in a case where, the amount of income exceeding **one thousand rupees** relating to stocking, distribution, purchase or sale of lottery tickets, whether by way of commission or remuneration or prize is credited to the account of the payee or at the time of payment of such income in cash or by the issue of cheque or a draft or by any other mode, whichever is earlier during the financial year.

Proposed Amendment:
Clause 76 of the Bill seeks **reduce the percentage of deduction of income-tax to Five percent** and threshold is to be increased to **Rupees Fifteen thousand.**

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions.

15.8 Amendment to section 194H

Existing Provision:
Deduction of income-tax at the rate of **ten per cent** is being made in a case where, the amount of income or the aggregate of the amounts of income, relating to commission or brokerage exceeding **five thousand rupees** is credited to the account of the payee or at the time of payment of such income in cash or by the issue of cheque or a draft or by any other mode, whichever is earlier during the financial year.

Proposed Amendment:
Clause 77 of the Bill seeks **reduce the percentage of deduction of income-tax to Five percent** and threshold is to be increased to **Rupees Fifteen thousand.**

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions

15.9 Amendment to section 194LA

Existing Provision:
The compensation or aggregate of compensation of such sum relating to acquisition of immovable property (other than agricultural land) is subjected to deduction of income tax of the sum exceeds **Rupees Two lakhs**.

Proposed Amendment:
Clause 79 of the Bill seeks **increase the threshold to Rupees Two Lakh Fifty thousand.**

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions

15.10 Amendment to section 194LBA

Existing Provision:

Income tax is required to be deducted from any distributed income referred to in section 115UA, being of the nature referred in section 10(23FC) - (business trust receiving interest from a special purpose vehicle), Tax deduction at 10%.

Proposed Amendment:

Clause 80 of the Bill seeks to give reference to clause (a) of section 10(23FCA) i.e. interest from SPV as opposed to dividend referred in section 115-O(7)**. This amendment is consequential in nature.**

Effective Date:

1st June 2016 – AY 2017-18

Reason and Implications:

The amendment is proposed in order to rationalize the rates and base for TDS provisions

15.11 Amendment to section 206AA

Existing Provision: Requirement to furnish Permanent Account Number

The existing provision of section 206AA, *inter alia*, provides that any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVIIB of the Act shall furnish his Permanent Account Number to the person responsible for deducting such tax, 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. The provisions of section 206AA also apply to non-residents with an exception in respect of payment of interest on long-term bonds as referred to in section 194LC.

Proposed Amendment:

The amendment extends the exclusion for non-residents to other payments as well, subject to conditions to be prescribed.

Effective Date:

This amendment will take effect from 1st June, 2016, by when the relative rules are expected to be notified.

Reason and Implications:

There was an ongoing controversy about the non obstante section 206AA, which provides for minimum TDS @ 20% in absence of PAN would override a lower rate agreed under a DTAA signed by India with another country. The Pune Tribunal had in DDIT v. Serum Institute of India Limited [2015] 56 taxmann.com 1 held that the 20% rate cannot be applied in a treaty scenario, even if PAN of the assesse is not available. Perhaps accepting that view, In order to reduce compliance burden, it is proposed to amend the said section 206AA so as to provide that the provisions of this section shall also not apply to a non-resident, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, subject to such conditions as may be prescribed. It remains to be seen what conditions are being prescribed in this regard.

15.12 Amendment to section 194LBB

Existing Provision: Income in respect of units of investment fund

The Finance Act, 2015 had inserted a special taxation regime in respect of Category-I and II Alternative Investment Funds (investment fund) registered with SEBI. The special taxation regime was intended to ensure tax pass through status in respect of these investment funds which are collective investment vehicles. The special regime is contained in sections 10(23FBA), 10 (23FBB), 115UB and 194LBB of the Act. Under this regime, the income of the investment fund (not being in the nature of business income) is exempt in the hands of investment fund but income received by the investor from the investment fund (other than income which is taxed at the level of investment fund) is taxable in the hands of investor. The taxation in the hands of investors is in the same manner and in the same proportion as it would have been, had the investor received such income directly and not through the investment fund. The existing provisions of section 194LBB provide that in respect of any income credited or paid by the investment fund to its investor, a tax deduction at source (TDS) shall be made by the investment fund @ 10% of the income. Under section 197 of the Act, facility for certificate for deduction of tax at lower rate or no deduction is available in respect of sections enumerated therein, if the Assessing Officer is satisfied that total income of the recipient justifies issue of such certificate, section 194LBB is currently not included in this provision.

Proposed Amendment:

The amendment provides that TDS under section 194LLB at the rates in force where the payee is a nonresident. As such, in a treaty scenario, the rate will get reduced as per the treaty. Besides, section 197 is being amended to include interest covered under this section to enable the payee to obtain a certificate for lower / NIL TDS.

Effective Date:

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

Reason and Implications:

The existing TDS regime created certain difficulties. The non-resident investor is not able to claim benefit of lower or NIL rate of taxation which is available to him under the relevant Double Taxation Avoidance Agreement (DTAA), and deduction of tax @10% has to be done mandatorily even if under DTAA, the income is not taxable in India. There is no facility for any investor to approach the Assessing Officer for seeking certificate for TDS at a lower or NIL rate in respect of deductions made under section 194LBB. In order to rationalise the TDS regime in respect of payments made by the investment funds to its investors, it is proposed to amend section 194LBB to provide that the person responsible for making the payment to the investor shall deduct income-tax under section 194LBB at the rate of ten per cent 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 no deduction of tax can be obtained. Consequential changes are also proposed to be made to the definition of "rates in force" so as to include section 194LBB in it.

15.13 Amendment to section 197: Certificate of Deduction at Lower Rate

Existing Provision:
Section 197A provides that no deduction of tax shall be made under specific sections referred to therein, if the resident individuals furnish to the persons responsible for paying any income of the nature referred to in specified sections, a declaration in writing in duplicate in the prescribed form, viz. 15H/ 15G and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*

Proposed Amendment: (Clause 84)
Clause 84 seeks to amend **section 197A** to give reference of **section 194-I Payment of Rent,** therein so as to provide that payments in the nature of rent may be allowed to be received without deduction of tax.

Effective Date:
1st June 2016 – AY 2017-18

Reason and Implications:
The amendment is proposed in order to rationalize the rates and base for TDS provisions. The changes made are welcome and may provide some relief in respect of the rigours of TDS procedures. However the real impact can be seen if all the provisions are divided in Salaries (to be taxed as per the slabs, as is being done) and Other Payments – to be listed and one uniform rate of 2% or 3% is prescribed for true rationalisation and simplification.

15.14 Amendment to section 206C

Existing Provision:
Section 206C(1) currently provides that a seller of various specified items will collect a tax from the buyer as Tax Collected at Source and deposit the same with the Government against the PAN of the buyer. For the buyer, this will amount to a payment of tax and he can claim credit for the same against his tax liability for that Assessment Year.

Section 206C(1D) currently provides that a seller who receives any amount in cash as consideration for sale of bullion / jewellery must collect 1% tax from the buyer at source.

Proposed Amendment:

Section 206C(1) is proposed to be amended to include collection of Tax at Source of 1% for purchase of a motor vehicle exceeding Rs. 10 lakhs.

Section 206(1D) dealing with sales in cash is now proposed to be extended to sale of any goods, other than bullion or jewellery, and to sale of services, both for cash exceeding Rs. 200,000.

Effective Date:

1st June 2016.

Reason and Implications:

For every motor vehicle exceeding Rs. 10 lakhs purchased on or after 1st June 2016, the seller will collect 1% of the value as TCS and the same will be deposited against the PAN of the buyer. While this will amount to a payment of tax by the buyer and to be utilized to discharge his regular tax liability, information of purchase of such motor vehicles will get reported to Tax Authorities and will be a part of their information base. This is probably intended to discourage the purchase of luxury motor vehicles unless the source of the fund can be explained.

For purchases in cash of goods or services, the seller will collect the 1% TCS and the PAN will thus record a purchase using cash of an amount higher than Rs. 200,000 leading to a possible enquiry into the same, particularly of the source of payment.

These are therefore steps apparently taken to curb the use of black money.

The section provides that a class of buyers may be prescribed to whom these conditions do not apply.

16 Collection and Recovery

16.1 Amendment to section 220

Existing Provision:
Section 220(2A) empowers the Principal Chief Commissioner / Commissioner to reduce or waive interest levied on an assessee u/s 220(1) – being interest levied for delay in payment of tax as claimed in a notice issued u/s 156 of the Act – and in circumstances mentioned in the said sub section 2A.

Proposed Amendment: (Clause 88 of the Finance Bill)
Section 220(2A) is proposed to be amended to further provide as under:-

- an order must be passed within 12 months from the end of the month in which an application seeking such waiver/ reduction is received.
- An order rejecting the said application should not be passed unless the assessee is given an opportunity to be heard.
- For applications pending as of 1st June 2016, the orders shall be passed by 31st March 2017.

Effective Date:
The said section applies to all applications made after 1st June 2016. For applications made before 1st June 2016, the disposal thereof is also provided as mentioned above.

Reason and Implications:
This appears to be a part of the project to bring about accountability within Revenue Authorities by providing time limits for performance of various acts.

Unfortunately though the said proposal does not provide that what if the said application is not disposed of within the time mentioned? It should be proposed that if an application is not disposed of, then the waiver/ reduction sought is deemed to have been given to the assessee.

16.2 Amendment to section 234C

Existing Provision:
Section 234C provides for levy of interest in case of a shortfall in payment of advance tax during any of the installments.

Proposed Amendment: (Clause 89 of the Finance Bill)
As Section 211 is amended to provide that all assesses shall henceforth pay advance tax in 4 installments as under:

By June 15th – 15%; by September 15th - 45%; by December 15th - 75% and by March 15th – 100%, Section 234C is also consequentially amended to provide for levy of interest for a default in each of these installments.

The section also further provides that the said interest shall not be levied in a case where an assessee has income under the head "Profits and Gains of business or profession" for the first time. In such cases, so long as the assessee has paid the advance tax thereon by 31st March there will be no interest levied u/s 234C.

Effective Date:
With effect from 1st June 2016 – hence shall be applicable for shortfall in advance tax for the year ending March 2017.

Reason and Implications:
The said proposed amendment is largely consequential in nature.

Also, the same makes it easier for a person who has earned income from business / profession for the first time and who may not have the necessary infrastructure in place to pay regular advance tax or who may have commenced the business after dates of installments due have already passed by.

16.3 Amendment to section 244A

Existing Provision:
Section 244A deals with the payment of interest at 6% p.a. on refunds due to an assessee. Interest on taxed paid as TDS/ TCS or advance tax commences from the 1st of April of the Assessment year.

Proposed Amendment:
Section 244A is now proposed to be amended to provide that interest will start from 1st April only in a case where the tax return has been filed within the time prescribed u/s 139(1).

For cases where the tax return is filed under any other provision of Section 139 (such as loss returns u/s 139(3); belated return u/s 139(4), revised return u/s 139(5) etc.), interest u/s 244A will commence only form the date of furnishing the return.

On Self-Assessment tax paid, interest will be paid from the date of payment or filing of return, whichever is later. This seems to apply even to a case where a return is filed in time.
The said section does not seem to provide now for any interest to be paid when tax is paid otherwise than as above e.g. tax paid on assessment.

Section 244A is also amended to provide for payment of an additional interest of 3% p.a. in cases where a refund arises due to an order u/s 250 / 254/ 260 / 262 - (appeal effects) / 263 /264 - (Revision proceedings) and the order is not passed within a period of 3 months from the end of the month when the order is received by the Revenue – unless this period has been extended upto 6 years by the Principal Commissioner of Income Tax.

Effective Date:
With effect from 1st June 2016 – hence shall be applicable for all interest that falls due after 1st June 2016.

Reason and Implications:
In the past, assesses who were entitled to tax refunds often did not file returns in time since the refund was anyways eligible for interest. This amendment will make assesses file the Return of Income on time. However while the amendment ought to have excluded only belated filings, it seems to have inadvertently excluded filing of loss returns as well as revised returns, where the original returns were filed on time. The payment of interest also seems to have inadvertently excluded payment of interest of taxes paid on assessment. The said amendment also now provides for a further interest of 3% where there is delay beyond 3 months in giving effect to appellate orders – which is a welcome step and will lead to accountability. The Budget speech did mention that the officer who delays this will be accountable for the loss to the Government – however amendments to that effect would be needed in the form of administrative guidelines.

17 Income Tax Authorities

17.1 Amendment to section 119

Existing Provision:

Under the exiting provision, CBDT has powers to issue instructions/orders/directions to subordinate authorities viz. income tax authorities towards execution/enforcement of the Act. It is well settled that CBDT instructions are binding on the lower authorities. The CBDT is empowered to provide its interpretation of a particular section/provisions and such interpretation is binding on the authorities.

Proposed Amendment: (Clause 62)

Now it is proposed that penalty for concealment/furnishing of inaccurate particulars section 271 shall be levied under the newly inserted section 270A with effect from 1st April, 2017. The new section 270A provides for levy of penalty in cases of under reporting and misreporting of income. As a consequential amendment, clause 62 of the Finance Bill proposes, to include in the Board's power u/s. 119 of the Act, the power to issue instructions/directions/orders in relation to the penalty under the newly inserted section 270A. Hence the amendment seeks to include the letter/word "270A" in sub-sec (2) of section 119.

Effective Date:

This amendment would be w.e.f. 1.4.2017. viz. Asst. Year 2017-18.

Reason and Implications:

This amendment will empower the CBDT to tone down the rigours of the newly inserted penalty provision. For e.g. the CBDT may issue directions that even in cases covered u/s 270A(8)&(9) penalty shall not be levied in certain circumstances .

This is a consequential amendment and would empower the CBDT to ease the harshness of the new penalty provisions. This amendment is in consequence of the insertion of section 270A. It may be noted that the existing provision empowers the CBDT to tone down the rigours of present section 271.

17.2 Amendment to Section 124

Existing Provision:

The existing sub-section (3) of the section 124 provides that no challenge shall lie, to the jurisdiction of an Assessing Officer, in a case where return is filed under section 139, after the expiry of one month from the date on which he was served with a notice issued under sub-section (1) of section 142 or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier.

Proposed Amendment: (Clause 63)
The existing provision does not specifically cover notices issued under section 153A or section 153C viz. assessments in cases where a search and seizure action has been taken or cases connected to such cases. In order to remove ambiguity, it is proposed to inserted provision viz., clause (c) to sub-sec (3) of sec.124.

Effective Date:
This amendment would be w.e.f. 1.6.2016. & shall apply to notices issued u/ss. 153A(1) & 153C(2) and assessments completed u/ss. 153A, 153C, after 1st June 2016.

Reason and Implications:
This amendment brings on par the assessments u/ss. 153A, 153C with regular assessments made u/s. 143(3), vis-à-vis challenge to the jurisdiction u/s. 124.

The object of the amendment is to avoid turning the assessment into a nullity on technical ground of jurisdiction, after the assessment proceedings are initiated/completed.

There have been Instances where the jurisdiction of an Assessing Officer, in such cases, has been challenged, at the appellate stages {See: *Computer Engg Services (I) Ltd. 172 TTJ (Del.) 317*}. In order to remove ambiguities, it is proposed to amend sub-section (3) of section 124 to specifically provide that cases where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, no person shall be entitled to call into question the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.

By this amendment, the income tax law departs from the general civil law principle that **in execution proceedings, challenge to the jurisdiction of the Court passing the decree is maintainable on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it.**

This amendment implies that in cases of notices issued u/ss. 153A(1), 153C(2) and/or assessments completed u/ss. 153A, 153C, after 1st June 2016, the jurisdiction of the AO to pass the order cannot be challenged viz. in case of notices issued , the challenge will have to be raised within 1 month.

17.3 Amendment to section 133C

Existing Provision:
The existing provisions of section 133C empower the prescribed income-tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession.

Proposed Amendment: (Clause 64)

The new provision would provide legal backing for making available to the AO the results of the information processed by other authorities.

Effective Date:

This amendment would be w.e.f. 1st June 2016.

Reason and Implications:

This provision would relieve the AO from making efforts to process the information and make readily available the information processed by other authorities. This amendment would enable the AO to rely on the information made available by other authorities.

This amendment would debar the assessees from raising an objection that the AO has blindly relied on information from other authority/ies and has not conducted any investigation himself and thereby rendering the reliance by the AO on such information as invalid. We very often find that this objection that AO cannot blindly rely on information received from DGIT(Inv.) is often raised. In view of this amendment such objection cannot be raised in cases where information is made available after 1st June 2016.

18 Procedure for assessment

18.1 Amendment to 139, sixth proviso - Return of Income u/s. 139

Existing Provision:

Under the existing provisions of sub-section (1) of section 139, every person referred to therein shall file a return of income on or before the due date. The sixth proviso to the said section provides that every person, being an individual or Hindu undivided family or an association of person or a body of individual, whether incorporated or not or any artificial juridical person, if his total income or of any other person in respect of which he is assessable under this Act 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 furnish return on or before the due date. Under the existing provisions, if one's income from long term capital gains on shares sold on the floor of stock exchange (having suffered the Securities Transaction Tax) is ignored and the person is falling below the maximum amount not taxable, then one need not file a return.

Proposed Amendment (Clause 65) :

It is proposed to amend the sixth proviso to sub-section (1) of the section 139 to include that if a person during the previous year earns income which is exempt under clause (38) of section 10 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.

Effective Date:

This amendment would be w.e.f. 1st April 2017 and shall apply from Asst. Year 2017-18.

Reason and Implications:

Now, for the purpose of filing a return, a person's exempt income u/s. 10(38) will have to be taken into account for the purpose of filing the return.

18.2 Amendment to section 139 sub section (3)

Existing Provision:

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, sections 80 & 139(3) of the Act inter-alia provide that in order to claim set off & carry forward of a loss , 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, return has to be filed u/s. 139(1) viz. within the time limit stated u/s.139(1) of the Act.

Proposed Amendment:

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.

Effective Date:

This amendment would be w.e.f. 1st April 2017 and shall apply from Asst. Yr. 2017-18.

Reason and Implications:

This amendment brings the eligibility criteria for set off/carry forward of losses in specified businesses u/ss. 73A, 35AD, vis-à-vis filing of the return at par with losses under other businesses. After this amendment, set off/carry forward of losses in specified businesses u/s. 35AD would not be available unless return u/s. 139(1) is filed within the time limit. However power u/s. 119(2)(b) for condonation of delay can be taken recourse to.

18.3 Amendment to Section 139(4)

Existing Provision:

Under the existing provision, a person who has not filed a return u/s. 139(1) can file the same within expiry of one year from the relevant assessment year, u/s. 139 (4)- viz. what is normally referred to as the extended period.

Proposed Amendment:

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

Effective Date:

This amendment would be w.e.f. 1st April 2017.

Reason and Implications:

This amendment shortens the extended period and now the return would have to be filed before the expiry of the relevant assessment year. This would, inter alia, impact the exemption provisions u/ss. 54, 54F. Now the investment in new residential houses would have to be done before the expiry of the assessment year or the amounts would have to be parked in Capital Gains Scheme Account. There were earlier decisions wherein the assessees were allowed the exemptions where investment was made within the time period of section 139(4), without keeping the funds in the said account {See: ***Fatima Bai 32 DTR***

(Kar.)* 243**; ***Jagriti Agarwal 339 ITR 610 (P & H.) } This time period is now cut short. This would also have implications u/s. 201 i.e. the deductor's liability.

18.4 Amendment to Section 139(5)

Existing Provision:
Under Sub-section (5) of the section 139 provides that if any person, having furnished the return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142 discovers any omission or any wrong statement therein, he may furnish a revised return at any time before one year from the end of the relevant assessment year or completion of assessment, whichever is earlier.

Proposed Amendment: (Clause 65)
It is proposed to substitute sub-section (5) of the aforesaid section so as to provide that if any person, having furnished a return under sub-section (1) or under sub-section (4), or in a return furnished in response to notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return 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.

Effective Date:
This amendment would be w.e.f. 1st April 2017 and shall apply to Asst.Yr 2017-18.

Reason and Implications:
By this amendment, a return filed within the extended time limit of s. 139(4) can also be revised u/s. 139(5). Under the existing provisions, only a return filed u/s. 139(1) can be revised u/s. 139(5) though there are some contrary views which state that a return filed u/s. 139(4) is at par with a return filed u/s.139(1).

18.5 Amendment to section 139(9) - explanation Clause (aa)

Existing Provision:
Clause (aa) of Explanation to sub-section (9) of the section 139 provides that a 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 section 140A, has been paid on or before the date of furnishing of return.

Proposed Amendment: (Clause 65)
It is proposed to omit clause (aa) of the Explanation to sub-section (9) of aforesaid section to provide that a 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.

Effective Date:
This amendment would be w.e.f. 1st April 2017. Asst. Yr. 2017-18.

Reason and Implications:
This implies that a return will not be rendered 'defective' merely because self-assessment tax u/s. 140A is not paid by the assessee along with the return.

18.6 Amendment to Section 143(1)(a) - intimation u/s. 143

Existing Provision:
Clause (a) of sub-section (1) of section 143 provides that, a return filed is to be processed and total income or loss is to be 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: (Clause 66)

The amendment proposes to expand the scope of the corrections u/s. 143(1)(a) so as to provide that the following errors can be corrected in an order u/s. 143(1)(a):

- Disallowance of loss claimed under a return not filed within the time limit u/s. 139(1).
- Disallowance of expenditure stated as not deductible in the audit report but not added back in the computation.
- Disallowance of deductions u/ss. 10AA, 80-IB….. under a return not filed within the time limit u/s. 139(1).
- Addition of income reflected in Form 26AS, Form 16, Form 16A, not included in the return.

Effective Date:
This amendment would be w.e.f. 1st April 2017.

Reason and Implications:
The amendment also provides that before making any such additions, an intimation should be given to the assessee, soliciting his say. And further if the assessee does not reply within 30 days, the addition shall be final. If the assessee replies within 30 days, his say shall be taken into consideration.

The amendment is likely to open floodgates of litigation. With great respect, it is submitted that an addition on account of mismatch of Form 26AS/Form 16 ought not to be made u/s. 143(1)(a). Such kind of addition calls for a proper scrutiny. The remedy of intimation and calling for assessee's say in the addition, would be rendered illusory because as per the amended section 143(1D) a return is required to be processed u/s. 143(1)(a), before an order u/s. 143(3) is passed. That means by the time order u/s. 143(3) is passed, addition demand u/s. 143(1) would be raised.

Further, in appeal, the appellate authorities will have no way to know how the AO has applied his mind to the representation made by the assessee, in response to the intimation. Such an addition would require detailed analysis and evidences which should not be made in summary proceedings.

There is a long line of judicial decisions which state that an addition cannot be made merely because there is a mismatch between Form 26AS and the assessee's return. The deduction of tax is not a levy of tax. Deduction of tax at source is merely one of the modes of collection of tax. The amount on which TDS is deducted is subject to charge as per the provisions of the Act. For example, the recipient maintains account on cash basis which may not match with the amounts certified in the TDS certificate due to the reason that the deductor has maintained the account on mercantile basis. Naturally the deductor will deduct the tax on accrual basis, however, the recipient shall disclose the income on receipt basis. In this situation, there shall always be a mismatch between the amount of receipt as per TDS certificate and the taxable income offered by the assessee. Also there can be an instance that the TDS was deducted on the income which may not be subject to tax at all, such as, eligible for deduction under s. 10A etc. Further the income from the tax deducted at source may be assessable in some other assessee's hands viz. not assessable in the hands of the deductee or not fully assessable in the hands of the deductee. So the deduction of tax on an income does not ipso facto declare that the amount referred in the TDS certificate is subject to tax on the whole figure that too on the same year mentioned in the certificate. The provisions relating to TDS are not the provisions for the computation of income. An income of a taxpayer is not required to be computed merely with reference to the TDS certificate but assessment of an income is altogether an independent exercise

18.7 Amendment to Section 143(1D)

Existing Provision:
Under the existing provision of sub-section (1D) of section 143, processing of a return is not necessary where a notice has been issued to the assessee under sub-section (2) of the said section.

Proposed Amendment: (Clause 66)
It is proposed to amend sub-section (1D) of the aforesaid section to provide that before making an assessment under sub-section (3) of section 143, a return shall be processed under sub-section (1) of section 143.

Effective Date:
This amendment would be w.e.f. 1st April 2017.

Reason and Implications:
An intimation u/s. 143(1)(a) would be mandatory before an order u/s. 143(3) is issued.

18.8 Amendment to Section 147-insertion of clause (ca) in Explanation 2.

Existing Provision:
This is a newly inserted provision viz. clause (ca) in Explanation 2 and would be consequential to insertion of new provision u/s. 133C.

Proposed Amendment: (Clause 67)
It is also proposed to amend Explanation 2 to section 147 to provide for reopening of cases by the AO on the basis of the information so received. The new provision of section 133C would provide legal backing for making available to the AO the results of the information processed by other authorities.

Effective Date:
This amendment would be w.e.f. 1st June 2016.

Reason and Implications:
This amendment to section 133C would debar the assessees from raising an objection that the AO has blindly relied on information from other authority/ies and has not conducted any investigation himself and thereby rendering the reliance by the AO on such information as invalid. We very often find that this objection that AO cannot blindly rely on information received from DGIT(Inv.) is often raised in cases of bogus purchases. In my view this objection cannot be raised in cases where information is made available after 1st June 2016.

Now the amendment to section 147 would enable the AO to hold reasons to believe that income has escaped assessment, on the basis of report from other authorities. **This** amendment would debar the assessees from raising an objection to the jurisdiction u/s. 147 that the AO cannot rely on information from other authority/ies.

18.9 Amendment to Section 153

Existing Provision & Proposed Amendment

The Finance Bill, 2016 seeks to substitute section 153 of the Income-tax Act with a new section relating to time limit for completion of assessment, reassessment and re-computation.

Sr. No.	Particulars	Existing	Proposed
1.	The period, for completion of assessment u/s. 143 or section 144 of the Act.	**Two (2) years** from the end of the assessment year in which the income was first assessable.	**Twenty – one (21)** months from the end of the assessment year in which the income was first assessable.
2.	The period for completion of assessment u/s. 147 of the Act	**One (1) year** from the end of the financial year in which the notice under section 148 was served upon the assessee	**Nine (9) months** from the end of the financial year in which the notice under section148 was served upon the assessee
3.	The period for completion of fresh assessment in pursuance of an order under section 254 or section 263 or section 264 of the Act, setting aside or cancelling an assessment .	**One (1) year** from the end of the financial year – **(i)**in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. **(ii)** in which the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner	**Nine (9) months** from the end of the financial year – **(i)**in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. **(ii)** in which the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner
4.	The period for giving effect to an order, under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section *(4)* of section 245D, where effect can be given wholly or partly otherwise	----------	The order shall be passed by the Assessing Officer within **three (3) months** from the end of the month in which order is received or passed, as the case may be, by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

Sr. No.	Particulars	Existing	Proposed
	than by making a fresh assessment or reassessment.		Further, it is also proposed that in a case where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such reasons in writing from the Assessing Officer, if satisfied, may allow additional period of **six (6) months** to give effect to the order.
5.	The period for the completion of assessment, reassessment or re-computation to made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under sections 250, 254, 260, 262, 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Act.	----------	The order shall be passed by the Assessing Officer within shall be made on or before the expiry of **twelve (12) months** from the end of the month in which such order is received by the Principal Commissioner or Commissioner.
6.	Where an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147 of the Act.	----------	The assessment shall be made by the Assessing Officer on or before the expiry of **twelve (12) months** from the end of the month in which the assessment order in the case of the firm is passed.
7.	Consequential changes in time limit for completion of assessment or reassessment by the Assessing Officer in accordance with the extension of time limit provided to the Transfer Pricing Officer in certain cases by amendment in sub-section (3A) to section 92CA.		

Effective Date:
These amendments to section 153 of the Act will take effect from 1st day of June, 2016.

However, the provisions of section 153 of the Act as they stood immediately before their amendment by the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or re-computation made before the 1st day of June, 2016.

Further, as far as amendments mentioned above at:

Sr. No. 4: where effect to an order is pending as on 1st June, 2016, effect to the same shall be given by the 31st March, 2017;

Sr. No. 5: for cases pending as on 1st June, 2016 action shall be taken by 31st March, 2017 or within twelve months from the end of the month in which order is received, whichever is later.

Sr. No. 6: cases pending as on 1st June, 2016, assessment of partner can be made by 31st March, 2017 or within twelve (12) months from the end of the month in which assessment order in case of firm is passed.

Reason and Implications
The amended to section 153 of the Act are made to simplify the provisions existing section 153;

Only those provisions that are relevant to the current provisions of the Act are retained;

Further, the amended are made to finalised the assessment proceedings more expeditiously

Lastly, the memorandum explaining the provisions of the Finance Bill, 2016 narrates that due digitisation process efficiency in handling workload within the Department has enhanced.

Similar amendments were made by Finance Act, 2006 curtailing the period for completion of assessment.

18.10 Amendment to Section 153B

Existing Provision & Proposed Amendment

The Finance Bill, 2016 proposes to amend the time limit for completion of assessments made under section 153A or section 153C cases to bring it in line with the new time limits provided for other cases. Accordingly, u/s. 153B of the Act following changes in time limit is made:

Sr. No.	Particulars	Existing	Proposed
1.	The period, for completion of assessment u/s 153A of the Act, in respect of each assessment year falling within six (6) assessment years referred to in clause (b) of sub-section (1) of section 153A and in respect of the assessment year relevant to the previous year in which search is conducted u/s. 132 or requisition is made u/s. 132A of the Act.	**Two (2) years** from the from the end of the financial year in which the last of the authorisations for search u/s. 132 or for requisition u/s. 132A of the Act was executed.	**Twenty – one (21)** months from the end of the financial year in which the last of the authorisations for search u/s. 132 or for requisition u/s. 132A of the Act was executed.
2.	The period, for completion of assessment in case of other person referred to in section 153C of the Act.	- **Two (2) years** from the end of the financial year in which the last of the authorisation for search u/s. 132 or requisition u/s. 132A was executed; or - **One (1) year** from the end of the financial year in which the books of account or documents or assets seized or requisition are handed over u/s. 153C of the Act to the Assessing Officer having jurisdiction over such other person, **whichever is later**.	- **Twenty – one (21) months** from the end of the financial year in which the last of the authorisation for search u/s. 132 or requisition u/s. 132A was executed; or - **Nine (9) months** from the end of the financial year in which the books of account or documents or assets seized or requisition are handed over u/s. 153C of the Act to the Assessing Officer having jurisdiction over such other person, **whichever is later**.

Effective Date

These amendments to section 153 A & C of the Act will take effect from 1st day of June, 2016. However, the provisions of section 153 of the Act as they stood immediately before their amendment by the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or re-computation made before the 1st day of June, 2016.

Reason and Implications

The proposed amendment in section 153B of the Act for completion of assessments made under section 153A or section 153C of the Act, is made cases to bring it in line with the new time limits provided for other cases. Similar amendments were made by Finance Act, 2006 curtailing the period for completion of assessment.

19 Appeals and revision

19.1 Amendment to Section 249 (2)

Existing Provision:

Form of appeal and limitation.

249. (1) …

(2) The appeal shall be presented within thirty days of the following date, that is to say,—

(*a*) …

(*b*) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty:

Provided 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, or

Proposed Amendment (Clause 91):

In section 249 of the Income-tax Act, in sub-section (2), in clause (b), with effect from the 1st day of April, 2017,—

(ii) *after the proviso, the following proviso shall be inserted*, namely:—

“Provided further 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 be excluded, or”

Effective Date

From the 1st day of April, 2017 and accordingly applicable from Assessment Year 2017 -2018 and subsequent years.

Reason and Implications

Under the present provisions of the Act, against an order of assessment or an order imposing penalty u/s 271(1)(c), an appeal can be filed before the CIT (Appeals) u/s 246A of the Act. However from AY 2017-18 penalty provisions are being substantially changed by incorporating a new section 270A.

Further new section 270AA is also inserted to provide that 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 subject to certain conditions. The appeal against penalty order could be filed if the application for immunity is rejected. The above amendment provides for exclusion of the period from the date of making an application seeking immunity from penalty on newly introduced concept of *under-reported income* (ref. Clauses 96 and 97 of the Finance Bill incorporating section 270A and 270AA in the Act) till the date of service of the order rejecting such an application from the total limitation period of 30 days within which an appeal has to be filed before the Commissioner (Appeals).

The above amendment seeks to streamline litigation on penalty on under-reported income u/s 270A by providing for powers granting immunity in deserving cases and at the same time excluding the time as stated above in order to secure the Right of Appeal against the penalty order u/s 270A.

19.2 Appeals to the Appellate Tribunal

Amendment to Section 252:

Existing Provision:
Existing clause (b) of sub-section (3), sub-section (4A) and sub-section (5) of section 252 provide for the appointment and powers of Senior Vice- President of the Appellate Tribunal

Proposed Amendment (clause 92):
In section 252 of the Income-tax Act, with effect from the 1st day of June, 2016,—
(a) in sub-section (3), in clause (b), the words “the Senior Vice-President or” shall be omitted;
(b) sub-section (4A) shall be omitted;
(c) in sub-section (5), the words “Senior Vice-President or a” shall be omitted.

Reason and Implications
As per the Explanatory Memorandum, the said amendment is sought to be made in view of the fact that there are no extra-judicial or administrative duties or difference in the pay scale attached with the post of Senior Vice-president in the Tribunal. As such the reference of "Senior Vice-President" is proposed to be omitted.

The above amendment seeks to abolish the post of Senior Vice President and thereby bringing all Vice Presidents at an equal rank without any discrimination on the basis of Appointment by the Central Government. It may be viewed as a step towards furthering the independence of functioning of the Income Tax Appellate Tribunal.

Amendment to Section 253

Existing Provision:

Appeals to the Appellate Tribunal

253. (1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(*a*) an order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 250, section 271, section 271A or section 272A; or

…

…

(*c*) an order passed by a [Principal Commissioner or] Commissioner under section 12AA or under clause (*vi*) of sub-section (5) of section 80G or under section 263 or under section 271 or under section 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a [Principal Chief Commissioner or] Chief Commissioner or a [Principal Director General or] Director General or a [Principal Director or] Director under section 272A; or

…

(2) …

(2A) The [Principal Commissioner or] Commissioner may, if he objects to any direction issued by the Dispute Resolution Panel under sub-section (5) of section 144C in respect of any objection filed on or after the 1st day of July, 2012, by the assessee under sub-section (2) of section 144C in pursuance of which the Assessing Officer has passed an order completing the assessment or reassessment, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

(3) …

(3A) Every appeal under sub-section (2A) shall be filed within sixty days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel under sub-section (5) of section 144C.

(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) or the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, 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 time specified in sub-section (3) or sub-section (3A).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) …

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub- section (4).

(7) …

Proposed Amendment (Clause 93):

In section 253 of the Income-tax Act,—

(A) in sub-section (1), with effect from the 1st day of April, 2017,—

(i) in clause (a), after the word and figures “section 250,”, the word, figures and letter “section 270A,” shall be inserted;

(ii) in clause (c), after the words and figures “or under section 263”, the words, figures and letter “or under section 270A” shall be inserted;

(B) with effect from the 1st day of June, 2016,—

(a) sub-section (2A) and sub-section (3A) shall be omitted;

(b) for sub-section (4), the following sub-section shall be substituted with effect from the 1st day of June, 2016, namely:—

“(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals), has been preferred under subsection (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).”;

(C) in sub-section (6), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2012, namely:—

“Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2), or, ***sub-section (2A) as it stood before its amendment by the Finance Act*, 2016**, or, a memorandum of cross objections referred to in sub-section (4).”.

Reason and Implications and Effective Date

Sub-clause A of Clause 93:

The said amendment seeks to provide for a right of appeal against an order passed u/s 270A (ref. clause 96) imposing penalty on under-reported / misreported income by the Commissioner / Commissioner (Appeals) before the Income Tax Appellate Tribunal. The said provision will apply from 1st April 2017 i.e. Assessment Year 2017 – 18.

Sub-Clause B of Clause 93:

As per the Memorandum explaining the provisions of the Finance Bill, sub-sections (2A) and (3A) of Section 253 are omitted in order to minimise litigation by taking away the powers of the CIT in directing the Assessing Officer to file an appeal against an order passed by him u/s 144C pursuant to certain directions of the DRP on any objection raised by the Assessee. Accordingly the filing of appeal by the Assessing Officer against the order of the DRP is sought be taken away. The said provision is effective from 1st June, 2016.

Sub-Clause C of Clause 93:
The said amendment is introduced with a view to provide that for appeals which have already been filed by the Department u/s 253 (2A) and pending before Tribunal no fee shall be payable. This amendment operates retrospectively from 01.07.2012 i.e. since the time sub-section (2A) and amendment to sub-section (4) providing for Department's Cross-objections was enacted. The said provision is effective retrospectively from 1st July, 2012.

The amendment vide *sub-clause A of Clause 93* is only consequential to insertion of section 270A (ref. clause 96) and only provides for a right of appeal against the order passed by Commissioner / Commissioner (Appeals) imposing penalty u/s 270A. It is important to note that even in this finance bill the provisions relating to imposition of penalty by Commissioners under other sections of Chapter XXI of the Income Tax Act (eg. Section 271FA) have remained as it is meaning thereby that such orders are appealable only before the CIT (A) inspite of the fact that Commissioner and Commissioner (Appeals) are of same rank in the Department.

As per Sub-Clause B of Clause 93 the Department will have no right to appeal against orders passed u/s 144C by the Assessing Officer pursuant to directions issued by the DRP nor any right to file a cross objection against the assessment order as stated above. It is a positive amendment seeking to curtail avoidable litigation and also to promote the DRP route for taxpayers. Looking at explanatory memorandum and the intent and purpose behind this enactment, there is a likelihood that this provision may be interpreted to be applicable with retrospective effect from the date when sub-sections (2A) and (3A) were introduced in the Act i.e.07.07.2012 (ref. Virendra & CO. - (2012) 253 CTR (Bom) 488, Vijaya V. Kavekar - (2013) 350 ITR 0237, Madhukar Inamdar - (2010) 229 CTR (Bom) 77 & CIT v/s Sunny Sounds – ITR No. 213 of 1997).

Sub-Clause C of Clause 93 merely provides that no fee shall be payable where Department has already filed appeal against an order u/s 144C of the Act in pursuance of a direction issued by DRP.

Amendment to Section 254

Existing Provision:
Orders of Appellate Tribunal
254. (1) …
(2) The Appellate Tribunal may, at any time ***within four years from the date of the order***, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer :

…

(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) or sub-section (2) or ***sub-section (2A)*** of section 253 :

Proposed Amendment (Clause 94)

In section 254 of the Income-tax Act, with effect from the 1st day of June, 2016,—

(a) in sub-section (2), for the words "four years from the date of the order", the words "***six months from the end of the month in which the order was passed***" shall be substituted;

(b) in sub-section (2A), the words, brackets, figure and letter "or sub-section (2A)" shall be omitted.

Effective Date

From the 1st day of June, 2016

Reason and Implications

As per the memorandum explaining the provisions of the Finance Bill, the said amendment is sought to be made in order to bring certainty to the order of ITAT.

The above amendment seeks to achieve the Government's goal of reducing litigation from the taxpayers side too by trying to put finality on the orders of the Appellate Tribunal. While the objective of this amendment appears to be very good, non-incorporation of a clause providing powers to condone delay in deserving cases may lead to genuine difficulties to small assessees or companies who were in liquidation at the time of filing appeal, etc. For example, many a times Tribunal's orders don't get delivered to the Assessee's on their address mentioned in the Appeal Memo for various reasons. In fact there have been cases where genuinely the Assessees are not aware about an order being passed in their case and the said order remains undelivered due to some technical reason without any fault of either party. In such situations if after procuring the order from the Registry an appeal is filed before the High Court the same may not be admitted if it does not involve substantial question of law meaning thereby that a factual error apparent on record may as well become final leading to hardships to many assessees. It is therefore essential that a provision granting powers to the Tribunal to condone delay in deserving cases be incorporated. In the alternative instead of providing for six months from the date on which the order is passed, the time limit should be amended to mean six months from the date on which the order is served on the Assessee or received by him. As far as the assessee's who have already received their orders and have not yet sought a rectification (if required), it's time to pull up your socks!

Amendment to Section 255

Existing Provision:

255. (1) …

(2) …

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a

member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed [**fifteen lakh rupees**], and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

Proposed Amendment (Clause 95)

In section 255 of the Income-tax Act, in sub-section (3), for the words “fifteen lakh rupees”, the words ***“fifty lakh rupees”*** shall be substituted with effect from the 1st day of June, 2016.

Effective Date

From the 1st day of June, 2016

Reason and Implications

As per the memorandum explaining the provisions of the Finance Bill, the said amendment is made in view of the recent increase in monetary limit for filing appeal before ITAT and to expedite the process of dispute resolution at the level of ITAT. The said amendment provides for increasing the pecuniary jurisdiction of a single member (SMC) bench to cases where the total income as computed by the Assessing Officer does not exceed fifty lakh rupees.

The above amendment is aimed at increasing the pecuniary jurisdiction of the SMC Bench of the Tribunal from Rs.15 lakhs to Rs. 50 lakhs. It will certainly help in reducing the load on other division benches of the Tribunal. It may also help to effectively counter the acute shortage of members of the Tribunal by conferring SMC status to more members of the Tribunal and conducting more hearings before the SMC Bench. The only difficulty in expediting the process of dispute resolution at the ITAT level at which the said amendment is aimed is the lack of adequate infrastructure based on which the hearings and disposals can be expedited.

20 Penalties and prosecution

20.1 Amendment to Penalty Provision u/s 271(1)(c) and insertion of new section 270A

Existing Provision:

Under the existing penal provision u/s 271(1)(c), the AO/CIT(A)/Pr. CIT/CIT, if satisfied that the assesse has concealed the particulars of his income or has furnished inaccurate particulars of his income, could levy penalty between 100% to 300% of amount of tax sought to be evaded. Further Explanation 1 to Explanation 7 specified circumstances where the income in respect of which the particulars were deemed to have been concealed.

The provision of sec 271 of the Act shall not apply from 1/4/2017.(as per clause 98 of the Finance bill by inserting sub section 7 to sec 271)

Proposed Amendment – (Clause 96)

New Section - 270A - Penalty for Underreporting and Misreporting of Income

Under the new section, the cases for levy of penalty have been bifurcated as under-reporting of income and misreporting of income. The Provision is explained hereunder:

a. The AO/CIT(A)/CIT/ Pr. CIT may direct that any person who has under-reported his income shall be liable to pay a penalty @ 50% in addition to tax.

b. In following cases there is under-reporting of income:

   In case of regular assessment where income is taxable as per the normal provisions:

   i. income assessed is greater than the income determined u/s 143(1)(a)

   ii. income assessed is greater than the maximum amount not chargeable to tax where no return has been furnished

   In case of Reassessment

   iii. income reassessed is greater than the income assessed or reassessed immediately before such reassessment

   In case where the income computed under 115JB/ 115JC is the deemed total income:

   iv. amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed u/s 143(1)(a).

   v. amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed

In case of conversion of loss into income or reduction of loss

vi. income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

c. **Computation of under-reported income**:

If assessed for the first time

i. If Return has been furnished then difference between the assessed income and the amount of income determined u/s 143(1)(a)

ii. Where no Return has been filed,

1. In case of firm, company or local authority - assessed income
2. In any other case – difference between the assessed income and maximum amount not chargeable to tax.

In any other case

iii. difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order

In case where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC

iv. under-reported income will be calculated as per the formula –

(A-B) + (C-D)

where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (general provisions);

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;

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

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:

Where amount is considered under both normal provision and MAT/AMT, then such amount shall not be reduced from total income assessed while determining the amount under item D.

Effect of reducing loss or converting loss into income

v. difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

d. 270A(10) - Tax payable in respect of the under-reported income shall be:

i. In case of company, firm or local authority – as if such income were the total income
ii. In other case – 30% of the amount of under-reported income.

e. 270A(4) is somewhat similar to erstwhile Explanation 2 to section 271(1) and provides that where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in any preceding assessment year and no penalty was levied in such preceding assessment year then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

Further, section 270A(5) specifies that the amount for the purpose of sub-section (4) shall firstly be from the immediately preceding assessment year and then from the year preceding that and so on.

f. **Sec. 270(6) specifies the cases, where there would be no under-reported income**:
Explanation is offered
   i. the amount of income in respect of which the assessee offers an explanation **and** the AO/CIT/CIT(A) is satisfied that the explanation is bona fide **and** the assessee has disclosed all the material facts to substantiate the explanation offered

   Estimated income
   ii. the amount of under-reported income is determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the AO/ CIT(A)/ CIT/ Pr. CIT, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom.

   iii. the amount of under-reported income is determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue and has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance

   Transfer Pricing additions
   iv. the amount of under-reported income is represented by any TP addition made in conformity with the ALP determined by the TPO, 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

   Search cases covered by section 271AAB
   v. the amount of undisclosed income referred to in section 271AAB

g. Penalty is levied in case of under –reported income at 50% of the amount of tax payable on under reported income.

h. 270A(8) provides that incase where the under-reporting is because of misreporting than provision of sub-section(6) shall not apply and also that the penalty shall be levied at 200% of the amount of tax payable on under reported income.

i. Misreporting has been defined as under

i. misrepresentation or **suppression** of facts;
ii. failure to record investments in the books of account;
iii. claim of expenditure not substantiated by any evidence;
iv. recording of any **false** entry in the books of account;
v. failure to record any receipt in books of account having a bearing on total income; and
vi. 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.

j. The order passed under section 270A should be in writing

Effective Date

With effect from the 1st day of April, 2017 - Assessment year 2017 -2018 and subsequent years

Reasons and Implications

a. Under the erstwhile section 271(1)(c) penalty was leviable in case of furnishing inaccurate particulars of income or for concealment of particulars of income. That concept is proposed to be replaced by two new concepts viz. under-reporting of income and misreporting of income.

b. Under the proposed section no satisfaction is required as under the erstwhile section 271(1). Further, in the erstwhile section the penalty could have been initiated during the course of any proceedings which condition is not found in the proposed section. Whether reliance can be placed on the judgment of Hon'ble Supreme Court in case of CIT vs. Jai Laxmi Rice Mills (379 ITR 521) to argue that satisfaction is still required and it should be initiated in the course of any proceedings?

c. Penalty has been reduced to flat 50% in case of under-reporting of income and flat 200% in case of misreporting of income of the tax amount as compared to minimum 100% to 300% of tax sought to be evaded.

d. Penalty levied is at the discretion of the AO, CIT(A), Pr. CIT and CIT as the word used is 'may'.

e. Under reporting has being given an exhaustive definition as stated above unlike erstwhile section where there was no such definition given for concealment or furnishing inaccurate particulars. Further, the definition is so wide that where any addition is made, it amounts to under-reporting of income. Thus, penalty can now be levied on wholesale basis without recording any satisfaction.

f. The formula of calculating the under-reported income only states that the difference between the assessed income and returned income is under-reported income. Whereas where finally tax is payable as per 115JB/ 115JC then the calculation of under-reported income is as per the formula, wherein the calculation says under-reported income is difference between the assessed income and 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. Thus, there is inconsistency in the two methods itself. One penalises the entire difference and one only the quantum of under-reported income.

g. Also, in respect of clause (i) and (ii), where the AO wants to levy penalty only in respect of one issue out of 2, or where in respect of one of the issue there is no under-reporting of income because of 270A(6), the formula would warrant the under-reported income to be the difference between the assessed income and the income determined u/s 143(1)(a) which shall include both the disallowances, which means penalty shall also be leviable on income which is not under-reported.

h. Only where the income computed u/s 115JB/ 115JC is deemed to be the total income of the assessee, is the formula '(A-B) + (C-D)' applicable. Where the income is finally assessable under normal provisions only, then any adjustment in Book profit u/s 115JB and 115JC shall not attract penalty and rightly so. This, argument shall also prevail in case of misreporting of income because misreporting can happen only when under-reporting happens.

i. In case where no return has been filed, the clause specifies that under-reported income shall be difference between the assessed income and maximum amount not chargeable to tax in case of persons other than company, firm and local authority. Whereas in the erstwhile section the amount of tax sought to be evaded in such cases was the difference between the assessed income and the amount of tax paid, which seems more logical. If the tax is paid by the assessee then there shall arise no case of levying penalty on the assessed income merely because no return has been furnished.

j. Calculation of tax payable
   i. Tax payable on under-reported income shall be calculated in case of firm, company or local authority as if it was the total income. Thus, in case of a company which opts for section 115BA it shall be calculated at 25%. However, if the income of the company is taxable u/s 115JB, then the tax rate will be 18.5%, but to calculate tax payable on under-reported income there is no clarity as to what rate one has to take.

   ii. Further, as per the formula, under-reported income includes addition under normal provision as also under MAT/AMT provision which totals up to form the under-reported income. Then what shall be the rate applicable to compute the tax payable in such case.

   iii. In case of any other person at 30% of such income. This seems to be very harsh. Assuming the assessed income of the person is less than Rs. 10 lakh or where under-reported income is chargeable at special rate say 10%. In such cases, tax payable for penalty shall be calculated at 30% instead of the lesser rate.

k. 270A(4) has roped in the same effect as in Explanation 2 to section 271(1), however, in explanation even the unexplained expenses of current year sourced out of income of earlier years were covered, which is not covered in 270A(4)

l. 270A(6) provides exclusion from under-reporting of income.
   i. Clause (a) provides for three condition to come out of under-reported income viz. assessee should offer an explanation, AO should be satisfied that the explanation is bonafide and all the material facts to substantiate the explanation offered. Thus, now the case of Reliance Petroproducts Pvt. Ltd – (322 ITR 158) which held that on furnishing of material facts no penalty is leviable, will now no longer help the assessee's from under-reporting of income, though they may help the assessee to get out of misreporting of income. The claim of debatable issue may still be upheld if the AO accepts that the explanation is bonafide. Further, in so far as under-reporting of income is concerned, there is no onus on Department to demonstrate mens-rea.

   ii. Clause (b) provides for a case where income is estimated provided the accounts are not rejected and only the method applied by the assessee was not correct

   iii. Clause (c) again deals with a case where the income is estimated, if 3 conditions are satisfied viz. the assessee has on its own estimated a low amount of addition or disallowance, has included such amount in the computation and has disclosed all material facts. Thus, the argument that the income has been estimated or there has been an ad hoc disallowance and therefore, the penalty should be per se deleted will not apply. Now the case has to fall under clause (b) or (c) as given above.

   iv. Clause (d) deals with TP provision, again imposes 3 conditions viz. assessee had maintained information and documents, declared the international transaction under Chapter X and disclosed all the material facts

   v. Clause (e) deals with those cases covered by section 271AAB where corresponding amendment has been made.

   vi. Thus, the AO in this case can levy penalty on a wholesale basis unless the above conditions are satisfied which again is contingent upon the satisfaction of the AO.

m. The above exclusions shall not apply where the under-reporting is a consequence of misreporting. If AO alleges misreporting, then the onus will be on the AO to demonstrate that the conditions of section 270A(9) is satisfied.

n. Misreporting of income has been defined. One can argue that principle of mens rea should apply in so far as misreporting of income is concerned, as the element of crime is more in such case which justifies it being separated from under-reporting. Especially the wordings of clause (a) and (d) so justify. Once that is accepted and provisions of 270AA are satisfied, then the AO cannot levy penalty at all.

o. It is said that the amendment has been made to rationalize and bring objectivity, certainty and clarity in the penalty provisions, however the new sections shall pose new and different challenges like getting a case from misreporting to under-reporting thereby reducing the quantum of penalty which shall require demonstration that all the facts have been disclosed.

20.2 Insertion of New Section - 270AA

Proposed Amendment (Clause 97 and 91 of Finance Bill, 2016):
An assessee may make an application for grant of immunity from levy of penalty u/s 270A &initiation of prosecution proceeding u/s 276C subject to below conditions –

- Tax and interest payable as per the assessment / reassessment order u/s 143 (3) or 147 respectively, has been paid within the period specified in such notice of demand; and
- No appeal is filed against the said order.

Application u/s 270AA shall be made within one month from the end of the month in which the order u/s 143(3) or 147 is received in such form & manner as prescribed

Assessing Officer shall grant immunity subject to the below conditions –

A. Payment of taxes & interest has been made as per the order u/s 143 (3) or 147

B. Time limit for filing the appeal u/s 249(2) has been elapsed (Time from the date of filing the application till the rejection of application by the AO shall be excluded for counting thirty days u/s 249(2)

C. Penalty proceedings u/s 270A has not been initiated for the below reasons specified under sun-section 9 of section 270A –

   (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; and
   (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.

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. In case of rejection, an opportunity of being heard shall be granted to the assessee.

It is proposed that order of Assessing Officer under the said section shall be final.

Once the application u/s 270AA is accepted, no appeal u/s 246A or revision application u/s 264 shall be accepted against the assessment or the reassessment order.

Effective Date

With effect from the 1st day of April, 2017 - Assessment year 2017 -2018 and subsequent years

Reason and Implications

- If penalty is initiated for under-reporting of income then on fulfillment of the above conditions the penalty has to be deleted and there's no discretion given to the AO.

- It may not be binding on the AO to reject the application, in case the penalty proceedings initiated for misreporting of income u/s 270A(9).

- In case the order u/s 143(3) or 147 contains the case of both mis-reporting of income and under-reporting of income, does the AO has the power to reject the application in part and grant immunity only to the extent of under-reporting of income is to be seen.

- In case of two grounds of appeal, whether the assessee has an option to make an application u/s 270AA for one ground and file an appeal for the other ground. Whether application u/s 270AA can be dealt in parts or it shall be qua Assessment / Reassessment order.

- No appeal against rejection of application shall cause hardships to the assessee.

<u>Amendment to Section 271AAB</u>

Existing Provision

Section 271AAB provides for penalty in case where search is initiated for specified assessment years. 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, 2016):
Apart from the consequential amendment in respect of section 270A, it is proposed to amend the said rate of minimum 30% and maximum 60% of the undisclosed income and to make it non-discretionary by providing a flat rate of 60% of the undisclosed income.

Effective Date
With effect from the 1st day of April, 2017 - Assessment year 2017 -2018 and subsequent years

Reasons and Implications
The amendment is to rationalise the rate of penalty and to reduce discretion.

20.3 Amendment to Section -272A

Existing Provision
271(1)(b) – Failure to comply with Notices
Section 271(1)(b) levied penalty for failure to comply with a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or to comply with a direction issued under sub-section (2A) of section 142.

Proposed Amendment (Clause 103 & 111 of Finance Bill, 2016)
Penalty for failure to comply with a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or to comply with a direction issued under sub-section (2A) of section 142 which was erstwhile levied u/s 271(1)(b) has been proposed to be brought under section 272A by inserting clause (d) to sub-section (1) of section 272A.

The amount of penalty of Rs.10,000 is the same.

The power to impose such penalty has been granted upon the income-tax authority who had issued the notice or direction referred u/s 272A(1)(d).

Consequential amendment is proposed to be brought u/s 288(4)(b) of the Income Tax Act, wherein person who has been convicted of an offence by way of penalty u/s 272(1)(ii) was allowed to be an authorized represent of an assessee. Thus penalty imposed u/s 272A(1)(d) has also been included in the exceptions under clause (b) of sub-section (4) of section 288 for the enabling the person to be eligible to be an authorized representative u/s 288.

Effective Date:
With effect from the 1st day of April, 2017 - Assessment year 2017 -2018 and subsequent years

Reason and Implications
Since, entire section 271 has been deleted, the penalty for failure to comply with a notice under 142(1) or 143(2) or to comply with a direction issued u/s 142(2A) has been brought under section 272A.

20.4 Amendment to Section 273A

Existing Provision:

Section 273A provides for the power of Pr. CIT/ CIT to reduce or waive penalty levied u/s 271(1)(iii) if the conditions given are fulfilled. Sub-section (4) of section 273A, inter alia, provides that the Pr. CIT or the CIT 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.

Proposed Amendment (Clause 104)

It is proposed that a new sub-section (4A) be inserted under section 273A for providing specific time-lines for passing such order u/s 273A.

In view of the same, it is proposed that such application shall be decided (either accepted / rejected) within a period of twelve months from the end of the month in which such application is received. In respect of applications already pending as on June 1, 2016, the same shall be disposed off on or before May 31, 2017.

Further, it has also been proposed to amend the provision to provide the assessee an opportunity of being heard (in the interest of natural justice) in case the application for grant of such immunity is being rejected by the Pr. CIT or the CIT.

Effective Date

With effect from the 1st day of April, 2017 - Assessment year 2017 -2018 and subsequent years

Reasons and Implications

a) Since, the existing section did not provide any specific time-lines for passing the order u/s 273A, the same has been introduced by insertion of sub-section (4A) to section 273A.

b) Further, there was no provision entitling assessee the opportunity of being heard in case the application u/s 273A is rejected by Principal Commissioner or Commissioner. In view of the same, amendment is proposed to entitle the assessee an opportunity of being heard in case of rejection of such application.

20.5 Amendment to Section 273AA

Existing Provision:

Section 273AA provides for grant of immunity from penalty on application made by the assessee to the Principal Commissioner or Commissioner in case where the settlement application made u/s 245C has been abated u/s 245HA and the penalty proceedings have been initiated under the Act.

Further, Principal Commissioner or Commissioner has the power to grant such immunity if he is satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income, subject to such conditions as he may think fit.

Proposed Amendment (Clause 105):
It is proposed that a new sub-section 3A be inserted under section 273AA for providing specific time-lines for passing such order of grant of immunity u/s 273AA.

In view of the same, it is proposed that such application for grant of immunity shall be decided (either accepted / rejected) within a period of twelve months from the end of the month in which such application is received. In respect of applications already pending as on June 1, 2016, the same shall be disposed off on or before May 31, 2017.

Further, it has also been proposed to amend the provision to provide the assessee an opportunity of being heard (in the interest of natural justice) in case of application for grant of such immunity is being rejected by the Principal Commissioner or Commissioner.

Effective Date:
With effect from the will take effect from June 1, 2016.

Reason and Implications:
Since the existing section did not provide any specific time-lines for passing the order u/s 273AA, the same has been introduced by insertion of sub-section (3A) to section 273AA.

Further, there was no provision entitling assessee the opportunity of being heard in case the application u/s 273AA is rejected by Principal Commissioner or Commissioner. In view of the same, amendment is proposed to entitle the assessee an opportunity of being heard in case of rejection of such application.

20.6 Amendment to Section 281B - Provisional Attachment to Protect Revenue in certain cases

Existing Provision:
Section 281B provides for provisional attachment of the property belonging to the assessee during pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment for the purpose of protecting the interests of the revenue.

Proposed Amendment (Clause 108):
It is proposed that sub-sections (3) – (9) be inserted under section 281B for substituting such provisional attachment of property by a bank guarantee provided by the assessee, subject to certain conditions.

Below are the proposed amendments to section 281B

- AO may revoke the provisional attachment made under sub-section (1), if the assessee furnishes a bank guarantee from a scheduled bank for an amount not less than the fair market value (FMV) of the property provisionally attached or in case of a lower amount, if the AO is satisfied that lower amount is sufficient to protect the interests of the revenue.

- Reference to Valuation Officer (referred to in section 142A) may be made by the AO if found necessary to determine the FMV of the property provisionally attached.

- Valuation Officer shall estimate the FMV of the property and submit a report of the estimate to the Assessing Officer within 30 days from the date of receipt of such reference.

- Order for revoking the provisional attachment shall be made by the AO within
  - 45 days from the date of receipt of the guarantee, where a reference is made to the Valuation Officer or
  - 15 days from the date of receipt of guarantee in any other case.

- Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice, AO may invoke the bank guarantee furnished, wholly or in part, to recover the amount.

- AO shall invoke the bank guarantee, if the assessee fails to renew the guarantee or fails to furnish a new guarantee for an equal amount before fifteen days of the expiry of the previous guarantee.

- Amount realised by invoking the guarantee shall be adjusted towards the existing demand payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner as specified.

- In case the AO is satisfied that the guarantee is no longer required to protect the interests of the revenue, he shall release that guarantee forthwith.

Effective Date:
With effect from the will take effect from June 1, 2016.

Reason and Implications
- Provisional attachment is being substituted by bank guarantee to be provided by the assessee equivalent to the FMV of the property attached.

- Further, the section also empowers the AO to invoke the bank guarantee in case of
  - Nonpayment of tax as per the notice of demand or
  - Non- renewal of the bank guarantee
  - Non provision of new guarantee before 15 days of expiry of existing bank guarantee

- No opportunity to the assessee of being heard before invoking such bank guarantee especially on has to see the impact of stay of demand on the invocation of bank guarantee.

20.7 Amendment to Section 282A - Authentication of Notices and other documents

Existing Provision:
Section 282A(1) provides that in case of any a notice or other document is required to be issued by any income-tax authority, such notice or other document shall be signed in manuscript by that authority. In other words, such notice / document would be required to be manually signed by the income tax authority.

Proposed Amendment (Clause 109)
With a view to providing legal framework for automation of various processes and paperless assessment, it is proposed that such notices and documents required to be issued by income-tax authority under the Act may also be communicated by such authority, at their option, in electronic form in accordance with such procedure as may be prescribed.

Effective Date:
With effect from the will take effect from June 1, 2016.

Reason and Implications
- The issuing authority has an option to either send the notices / documents in signed paper form or in electronic mode as per the rules which may be prescribed.

- Electronic communication of notices and other documents is a welcome step towards paperless assessments.

- Rules for the same are awaited for more clarity.

- In the Budget speech it is mentioned that cases selected for scrutiny will be scrutinized in e-environment whereby unless the assessee himself wants to be heard, or for special reasons to be recorded, the assessing officer wants to hear the party, there will be no face to face contact of IT Department with assessee

20.8 Consequential Amendment to Section

271 – Failure to furnish Returns, comply with Notices, concealment of Income, etc.
271A - Failure to keep, maintain or retain books of account, documents, etc.
271AA- Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions
271AAB- Penalty where search has been initiated
273A- Power to reduce or waive penalty etc. in certain cases
279 - Prosecution to be at instance of Principal Chief Commissioner Or Chief Commissioner Or Principal Commissioner Or Commissioner

Existing Provision:

- Section 271 provided for penalty for failure to comply with notice etc. and for concealment and furnishing inaccurate particulars of income.

- Section 271A provides for penalty where there is failure of keep, maintain or retain books etc.

- Section 271AA provides for penalty in respect of Transfer Pricing documents

- Section 271AAB provides for penalty for specified assessment years in case where search is initiated.

- Section 273A provides for the power of Pr. CIT/ CIT to reduce or waive penalty levied u/s 271(1)(iii) if the conditions given are fulfilled.

- Section 279 provides that prosecution it to be at the instance of the Pr. CCIT, CCIT, Pr. CIT, CIT. Sub-section (1A) provides that where the penalty u/s 271(1)(iii) has been waived off or reduced u/s 273A, then no such person shall be proceeded against.

Proposed Amendment (Clause 98, 99, 100, 101, 104 and 107)
As stated earlier section 271(1)(c) has been proposed to be effectively substituted by a new section 270A. Accordingly, all the consequential amendments are also proposed as follows:

a. In section 271, a sub-section(7) is proposed to be inserted which provides that nothing contained in section 271 shall apply from AY 2017-18 onwards.

b. Section 271A, 271AA is without prejudice to the provisions of section 271 and therefore consequential amendment is proposed to make it without prejudice to provisions of section 270A also.

c. Section 271AAB provides for penalty in case of specified assessment years where search has taken place. Those assessment years are outside the ambit of section 271(1)(c) as per section 271AAB(2). Now, amendment is proposed to keep those assessment years outside the ambit of section 270A also.

d. Section 273A is proposed to apply to section 270A and the Pr. CIT/CIT shall have the power to waive or reduce penalty levied under the said section.

e. Section 279(1A) is proposed to be amended to provide that where the penalty u/s 270A has been waived or reduced u/s 273A then no prosecution can be initiated.

Effective Date:
With effect from the 1st day of April, 2017 - Assessment year 2017 -2018 and subsequent years

Reasons and Implications:
All the proposed amendments are consequential to substitution of section 271(1)(c) by section 270A.

In case of section 273A, where the Pr. CIT/ CIT has the power to reduce or waive penalty levied u/s 271(1)(c), now is proposed to include section 270A also. However, penalty can be waived if the Pr. CIT/ CIT is satisfied that prior to detection by the AO of the concealment of the particulars or inaccuracy of the particulars, voluntary and full disclosure is made by the assessee. Section 270A deals with under-reporting and misreporting of income and not with furnishing inaccurate particulars or concealment of particulars of income. Therefore, mere insertion of section without changing the ingredients of the section would create an anomaly.

21 Place of Effective Management (PoEM) & Income deemed to accrue or arise in India

21.1 PoEM

The provisions of Section 6(3) of the Income-tax Act, 1961 (Act) provides that a company is resident in India, if it is incorporated in India or whole of the control and management is situated in India. The Finance Act, 2015, had amended the provisions of section 6(3) of the Act to provide that a person being a company shall be said to 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.

Further, 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. These provisions were applicable from AY 2016-17.

Many representations were made before the Central Board of Taxes (CBDT) to address the following issues in case where PoEM of the foreign company is determined to be in India: -

1. Method to compute income of foreign company;
2. Treatment of unabsorbed depreciation;
3. Set off or carried forward of losses;
4. Collection and recovery of taxes;
5. Special provisions relating to avoidance of tax;
6. Specific provisions of the Act relating to Advance Tax;
7. Applicability of Tax Deducted at Source (TDS);
8. Application of Transfer Pricing provisions.

The CBDT had issued the draft guidelines principles for determination of PoEM of a company. However, the same were not notified by the CBDT. Also, the draft did not provide enough clarity on the aforesaid issues.

In order to reduce the ambiguity surrounding the provisions of PoEM, the said provisions have been deferred by a period of one year. Accordingly, the determination of residency of a foreign company based on the provisions of PoEM shall be applicable from AY 2017-18.

Further, the Central Government shall issue notification(s) with respect to the guidelines on the above issues. A welcoming step is that the same shall be laid before each house of the Parliament.

21.2 Taxability of offshore funds

Finance Act, 2015 inserted a new section 9A of the Act, wherein in the case of an eligible investment fund, any fund management activities are carried out by such investment fund through an eligible fund manager, then such activities would not constitute any business connection in India. Further, merely because the activities are carried out by the fund manager in India on behalf of investment fund, the investment fund would not be treated as Resident of India as per section 6 of the Act.

Section 9A(3) specifies the conditions for the eligibility of the investment fund. One of the conditions was that the fund should be **a resident of a country** or a specified territory with which India has entered into Double Taxation Avoidance Agreement (DTAA) or Tax Information Exchange Agreement (TIEA).

However, there are instances where a fund may not qualify as a tax resident of a country due to domestic tax laws or legal framework of the country as the global structure of these funds are based on applicable legal and regulatory framework of their country of incorporation and not based on the country where the investments are made.

In order to rationalise the issue, Finance Bill, 2016 proposes that w.e.f AY 2017-18 that fund is also treated as an eligible investment fund if such fund is **established or incorporated or registered in a country** or a specified territory notified by the Central Government in this regard. It is also proposed that such eligible investment fund can now carry on or control or manage, directly or indirectly any business from India which was earlier prohibited.

21.3 Activity related to diamond trading in Special Notified Zone

A "Special Notified Zone" (SNZ) has been created to facilitate shifting of operations by Foreign Mining Companies (FMC) to India to facilitate the imports and trading of rough diamonds which will boost the gems and jewellery sector.

Section 5 r.w. s. 9 of the Act, where one of the circumstances providing for income to be deemed to accrue or arise in India is, 'any income directly or indirectly derived by a Non-resident through or from a "business connection" in India'. 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.

In order to reduce the tax exposure of the FMC's and to facilitate the FMCs to undertake activity of display of uncut diamond (without any sorting or sale) in the SNZ, it is proposed to amend section 9 of the Act where any foreign company engaged in the business of mining of diamonds, income shall not 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 SNZ as notified by the Central Government in the Official Gazette in this behalf.

22 International Financial Services Centre

22.1 Amendment to Section 10(38) (3rd Proviso)

Proposed Amendment: (Clause 7)
Income generated from transfer of securities 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 shall not be subject to capital gains tax even when Security Transaction Tax (STT) is not paid.

Effective Date:
01st April 2017 i.e. A.Y. 2017-18 [i.e. All transactions entered into w.e.f. 1st April 2016 (Previous Year 2016-17) would be covered by the Amendment]

Reason and Implications:
The concept of International Financial Services Centres (IFSC) is in vogue in number of jurisdictions including London, New York, Singapore, Dubai etc. Recognising the importance of IFSC, India also has set up its first ever IFSC in a GIFT City, at Gandhinagar in Gujarat in April 2015. In order for an IFSC to succeed various tax and non-tax incentives are required. It also requires capital account convertibility. SEZ Act of 2005 provided necessary mechanism for setting up IFSC. RBI issued the Notification No. FEMA 339/2015-RB dated 2nd March, 2015 permitting capital account transactions without any restrictions by any Financial Institution (FI) set up in an IFSC.

Now the Finance Bill, 2016 seeks to provide various tax incentives for making IFSC attractive. It is provided that capital gains arising in IFSC to cases specified under section 10(38) will not be subject to capital gains tax even where STT is not paid.

22.2 Amendment To Section 115JB(7)

Proposed Amendment (Clause 53)
Company, being a unit, located in an International Financial Services Center and deriving its income solely in convertible foreign exchange would be liable to pay Minimum Alternate Tax at the rate of 9% on the amount of profit derived after making adjustments as specified under the normal provisions of 115JB.

Effective Date:
01st April 2017 i.e. A.Y. 2017-18 [i.e. All transactions entered into w.e.f. 1st April 2016 (Previous Year 2016-17) would be covered by the Amendment]

Reason and Implications:
Minimum Alternate Tax (MAT) was introduced for the purpose of levying tax on units which claimed 100% deduction of their taxable profits (such as deductions under Section 10AA) due to various incentives and deductions. The rates under the MAT regime at the time of its introduction were 7.50%. However, the rates were gradually increased and presently, the MAT rate is 18.50% under the Income – tax Act, 1961.
With a view to provide a competitive tax regime, MAT is proposed to be reduced to nine per cent in case of a unit located in an International Financial Services Center.

22.3 Amendment To Section 115-O(8)

Proposed Amendment (Clause 55):
Company, being a unit of an International Financial Services Centre and deriving income solely in convertible foreign exchange for any assessment year shall not pay tax on distributed profits 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.

Effective Date:
01st April 2017 i.e. A.Y. 2017-18 [i.e. All transactions entered into w.e.f. 1st April 2016 (Previous Year 2016-17) would be covered by the Amendment]

Reason and Implications:
Similar to the MAT provisions, the provisions pertaining to Dividend Distribution Tax (DDT) have also been a major obstacle in furtherance of the endeavor to make India an attractive destination to carry on business. In addition to tax on corporate profits, DDT at the rate of 20.36% is payable under section 115-O of the Act. In addition to economic double taxation, this raises the effective incidence of tax in the hands of the investor and thereby making India unattractive.

In order to address this issue, it has been proposed to eliminate applicability of DDT for IFSC earning income solely in convertible foreign exchange.

22.4 Amendment to Section 113A

Proposed Amendment (Clause 230):
Securities Transaction Tax will not be levied on transactions entered by any person on a recognised stock exchange located in an International Financial Services Centre where the consideration for such transaction is paid or payable in foreign currency.

Effective Date:
01st June 2016

Reason and Implications:
Non-levy of securities transaction tax is an add-on tax incentive under the proposed scheme of IFSC. Section 10(38) of the Act, which exempts long term capital gains on sale of equity shares and equity oriented funds only if STT is paid, has also been suitably amended to extend the beneficial exemption provisions to transactions on a recognized stock exchange located in IFSC..

22.5 Insertion Of Section 132A

Commodity Transaction Tax (CTT) will not be levied on transactions entered into by any person on a recognised association located in an International Financial Services Centre, where the consideration for such transaction is paid or payable in foreign currency.

Effective Date:
01st June 2016

Reason and Implications:
Removal of multiple taxes such as securities transaction tax, commodities transaction tax, etc. is with the intent of granting incentives to the financial sector for such businesses. Further, elimination of such taxes means more disposable income in the hands of the business which provides a thrust to further expansion.

Thus, aforementioned proposals aim at making India a financial hub.

Summary of Tax Incentives Proposed to entities/units located in IFSC:

- Exemption from Capital Gains where the consideration for such transaction is paid or payable in foreign currency;

- Exemption from STT and CTT where the consideration for such transaction is paid or payable in foreign currency;

- MAT at 9 % of the book profits;

- No DDT on distribution of dividends.

23 Equalisation Levy

- **Introduction of "Equalisation Levy" in E-Commerce Transactions**

The new levy is provided in Clauses 160 to 177 of the Finance Bill 2016.

- **Charge of "Equalisation Levy"**

1 This Chapter provides for charge of Equalisation levy at the rate of 6% of the consideration received or receivable by a non-resident, not being a non-resident who has a permanent establishment (PE) in India and the specified service is effectively connected with such PE, subject to the following conditions-

a. the payment is received/receivable for providing any specified service , viz., online advertisement , any provision of digital advertising space or any other facility or service for the purpose of online advertisement and includes any other notified services.

b. the payer (herein after referred to as 'assessee') is either a person resident in India or a non-resident having a PE in India.

c. the aggregate amount of consideration received / receivable in a previous year from a payer exceeds Rs.1,00,000.

d. the payment for the specified service by the person resident in India or the PE in India is for the purpose of carrying out business or profession.

- **Collection and Recovery, payment to Central government and filing of Annual Return**

2 The assessee shall deduct, the levy from the amount paid/payable, if the aggregate amount of consideration for specified service in a previous year exceeds Rs.1,00,000 and pay the said sum to the credit of the Central Government by the seventh day of the month immediately following the calendar month in which the deduction is made.

3 The assessee who fails to deduct the levy from the amount paid/payable shall, notwithstanding such failure, be liable to pay the levy to the Central Government by the seventh day of the month immediately following the calendar month in which the amount is paid/payable.

4 Every assessee shall file an Annual statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed, in respect of all specified services during such financial year.

- **Interest**

5 Every assessee who fails to credit the levy or any part thereof to the credit of the Central Government within seventh day of the next month immediately following the month in which the amount is

paid/payable shall be liable to pay simple interest at the rate of 1 % of such levy for every month or part of a month by which such crediting of tax or any part thereof is delayed.

- **Penalties**

6 The following penalties shall be levied on a assessee-

SR. No.	Nature of penalty	Amount of penalty
1.	For non-deduction in full or in part of the levy	penalty equal to the amount of equalization levy that the assessee failed to deduct
2.	For deducting but failing to pay within the due date	penalty of Rs.1,000 for every day during which the failure continues subject to the amount of penalty not exceeding the amount of levy that the assessee failed to pay
3.	For failure to furnish the annual statement within prescribed date	penalty of Rs.100 for each day during which the failure continues.

7 No penalty shall be imposable for any failure referred to above, if the assessee proves to the satisfaction of the Assessing Officer (AO) that there was reasonable cause for the said failure.

- **Prosecution**

8 If a person -

a. makes a false statement in any verification under this Chapter or any rule made there under, or

b. delivers an account statement which is false,

and which he either knows or believes to be false , or does not believe to be true, he shall, subject to the previous sanction of the Chief Commissioner of Income-tax, be punishable with imprisonment for a term which may extend to 3 years and with fine.

9 Notwithstanding anything contained in the Code of Criminal Procedure, 1973 ,the abovementioned offence shall be deemed to be non-cognizable within the meaning of the Code

- **Procedural provisions**

a. Failure of assessee to file the statement

10 If assessee fails to furnish the Annual statement within the prescribed time, the AO may serve a notice on such assessee requiring him to do so within such prescribed time.

b. Processing of statement

11 The Annual statement filed by the assessee shall be processed in the following manner-

(i). the equalisation levy shall be computed after making the adjustment for any arithmetical error in the statement, (ii). the interest , if any, shall be chargeable on the basis of sum deductible as computed in the statement ,

(iii). the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the interest calculated as given above and the interest payable for delay in payment of the levy and any amount paid otherwise by way of tax or interest.

(iv). an Intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable , or the amount of refund due to him.

(v). no Intimation shall be sent after the expiry of 1 year from the end of the financial year in which the statement is furnished.

c. Rectification of mistake

12 With a view to rectifying any mistake apparent from record, the AO, suo moto or on any mistake brought to his notice by the assessee , may amend any intimation within 1 year from the end of the financial year in which the intimation sought to be amended was issued.

13 An amendment which has the effect of increasing the liability of the assessee or reducing a refund, shall not be made unless the AO given notice to the assessee of his intention to do so and has given the assessee a reasonable opportunity of being heard.

- **Appeal to CIT(A) and Tribunal -**

14 Appeal to CIT(A) can be filed within 30 days of receipt of Penalty Order from the AO. There is no appeal against the quantum demand, if any.

15 Appeal to the Tribunal can be filed either by the assessee or the Department who are aggrieved with the order of the CIT(A) .

16 The relevant provisions of the Income tax Act, 1961 regarding appeal are applicable here too.

- **Miscellaneous provisions-**

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

18 The Central Government may, by notification in the Official Gazzette, make rules for carrying out the provisions of this Chapter.

19 If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order published in the Official Gazzette, not inconsistent with the provisions of this Chapter remove the difficulty . However, no such order shall be made after the expiry of a period of two years from the date in which the provisions of this Chapter come into force.

- **Other amendments, in the Income tax Act, 1961 related to this Chapter**

Amendment to sec.10

20 Clause 7 to the Finance Bill has inserted sub-section (50) to sec.10

The income of a non-resident from any specified service provided and chargeable to equalisation levy shall be exempt u/s. 10.

Amendment to sec. 40

21 Clause 22 to the Finance Bill has inserted sub-clause (ib) to clause (a) of sec.40-

No deduction will be available to the payer of the consideration paid/payable to a non-resident for a specified service on which equalisation levy is deductible, if such levy has not been deducted or after deduction, has not been paid on or before the due date specified in sec.139(1) for filing return of income . However, If such levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified u/s.139(1) , such sum shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid.

- **Effective Date**

Clause 160(2) to this Chapter provides that it shall come into force on such date as the central Government may, by notification in the Official Gazzette appoint.

- **Reason and Implications**

This Chapter has been brought in, to tax e-commerce transactions wherein payments are made from residents to non-residents who are carrying on business in digital domain and which could be located anywhere in the world. The new business models rely more on digital and telecommunication network which do not require physical presence and derive substantial value from data collected and transmitted from such networks. The typical direct tax issues relating to e-commerce are the difficulties of characterising 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 (PE) rules.

The OECD has recommended in Base erosion and Profit Shifting (BEPS) project under Action Plan 1 several options to tackle the direct tax challenges including -

(i). modifying the existing PE rule to include an enterprise which maintains a significant digital presence in another country's economy; or

(ii). 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; or

(iii). Impose a final Withholding tax (WHT) on certain payments for digital goods or services provided by a foreign e-commerce provided ; or

(iv). Imposition of Equalisation levy on consideration for certain digital transactions.

The Indian revenue authorities have adopted the last approach by imposing Equalisation Levy on the resident Indian or non-resident having a PE in India who have to make payments to non-residents in the advertisement space above a threshold limit.

Whether the non-resident recipient will take a hit of 6% on its receipt or whether the said levy will have to borne by the payer only time will tell. If the burden to pay the levy falls on the payer, this may increase the cost of advertising to the payer and thus he may have to take a hit in its bottom line. Further grossing up will add to his woes.

24 The Direct Tax Dispute Resolution Scheme, 2016

Finance Bill 2016 proposes to introduce “The Direct Tax Dispute Resolution Scheme, 2016” (‘**The Scheme**’) so as to reduce the huge backlog of cases to enable the government to realise its dues expeditiously. It is an alternate mechanism to resolve disputes under the Direct Taxes laws. It is similar to the Kar Vivad Samadhan Scheme 1998 issued by the Govt. The present Scheme also covers tax dispute arising on account of retrospective amendment introduced in Finance Act .Scheme is a complete code by itself. Its object was to put an end to all pending matters in the form of appeals, references, revisions and writ petitions under the IT Act/WT Act. The Scheme in substance is a recovery scheme though it was nomenclatured as a 'The Direct Tax Dispute Resolution Scheme' and is different from earlier Kar Vivad Samadhan Scheme.

Rationale of Introducing scheme:

Budget Speech of Finance Minister spells out intention to introduce “The Direct Tax Dispute Resolution Scheme” as under:

“Litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the tax payers and administrative cost for the Government. There are about 3 lakh tax cases pending with the 1st Appellate Authority with disputed amount being Rs. 5.5 lakh crores. In order to reduce this number, I propose a new Dispute Resolution Scheme (DRS).

In order to give an opportunity to the past cases which are ongoing under the retrospective amendment, I propose a one-time scheme of Dispute Resolution for them, in which, subject to their agreeing to withdraw any pending case lying in any Court or Tribunal or any proceeding for arbitration, mediation etc. under BIPA, they can settle the case by paying only the tax arrears in which case liability of the interest and penalty shall be waived.”

A Salient Features of the Scheme:

1. **The Scheme shall come into force from 1st June, 2016**

2. The scheme defines, inter alia, two terms, viz. “specified tax” and “tax arrears”. “Specified tax” pertains to a tax dispute which is pending as on 29th February, 2016, as a result of retrospective amendment. Whereas, “tax arrears” 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.

3. **Person may make declaration in prescribed form in respect of tax arrears and specified tax on or after the date of commencement of the Scheme i.e.01.06.2016 but before date to be notified, to a designated authority i.e. Commissioner Of Income Tax .**

4. Notwithstanding anything contained in the Income Tax Act or any other provision of any law for the time being in force amount payable under the scheme IS

Sr.no.	Particulars	Tax and Interest	Penalty
1	In case of pending appeal related to tax arrear		
	(a)being Tax and interest(against an assessment order) (i) Where Disputed tax ≤ 10 lacs	Whole of Disputed tax and interest thereon till the date of assessment / Reassessment	NIL
	(ii) In any other case	Whole of Disputed tax and interest thereon till the date of assessment / Reassessment	25% of the minimum penalty leviable
	(b) Pending appeal relates to penalty order	the tax and interest payable on the total income finally determined	25% of the minimum penalty leviable
2	In case of Specified Tax (tax dispute on account of retrospective amendment)	Amount of such tax so determined	NIL

5. Where declaration is w.r.t. tax arrears consequent to such declaration, appeal in respect of the disputed income and disputed wealth and tax arrears pending before the Commissioner (Appeals) shall be deemed to have been withdrawn.

6. Where declaration is in respect of specified tax , such declarant shall be required to withdraw any appeal/ or writ petition (wherever applicable) filed against such specified tax before the Commissioner (Appeals) or the Tribunal or High Court or Supreme Court, before making the declaration and shall also be required to furnish a proof of such withdrawal.

7. Further if any proceeding for arbitration conciliation or mediation has been initiated by the declarant or he has given any notice under any law or agreement entered into by India, whether for protection of investment or otherwise, he shall be required to withdraw such notice or claim for availing benefit under this Scheme.

8. It is proposed that person making declaration in respect of specified tax shall be required to furnish an undertaking in the prescribed form and verified in the prescribed manner, waiving the right, whether direct or indirect, to seek or pursue any remedy or claim in relation to the specified tax which

otherwise be available to them under any law, in equity, by statute or under an agreement, whether for protection of investment or otherwise, entered into by India with a country or territory outside India.

9. It is proposed that no Appellate authority or Arbitrator or Conciliator or Mediator shall proceed to decide an issue relating to the specified tax mentioned in the declaration in respect of which an order is made by the designated authority or in respect of the payment of the sum determined to be payable.

10. It is proposed that where the declarant violates any of the conditions referred to in the scheme or any material particular furnished in the declaration is found to be false at any stage, it shall be presumed as if the declaration was never made under this Scheme and all the consequences under the Income-tax Act or Wealth-tax Act under which the proceedings against declarant were pending, shall be deemed to have been revived.

11. Time and manner of payment:

(I) the designated authority within 60 days from the date of receipt of declaration determine the amount payable by declarant and grant a certificate stating the particulars of the tax arrears or specified tax and the sum payable.

(II) the declarant shall pay the amount stated the certificate within 30 days of its receipt and intimate the same to the designated authority along with proof and the designated authority shall thereupon pass an order stating that the declarant has paid the sum

(III) the order passed shall be conclusive as to matters stated therein and no matter covered by such order shall be re-opened in any other proceeding under Income tax Act, Wealth-tax Act or any other law or agreement entered into by India with any other country or territory outside India.

12. Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases

(I) The designated authority shall grant -

a. immunity from instituting any proceedings in respect of an offence under the Income-tax Act or Wealth-tax Act
b. immunity from imposition or waiver of penalty under the Income-tax Act or Wealth-tax Act in respect of specified tax or tax arrears covered in declaration to the extent the penalty exceeds the amount of penalty referred as per the scheme (difference between the Penalty leviable and penalty as per scheme)
c. waiver of interest under the Income-tax Act or Wealth-tax Act in respect of specified tax covered in declaration or tax arrears covered in declaration to the extent the interest exceeds the amount of interest referred in the scheme i.e. (interest on leviable and interest till the date of assessment or reassessment)

13. Any amount paid in pursuance of declaration shall not be refundable

14. It is also proposed that nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

15. Scheme not to apply in certain cases:

(I) in respect of tax arrears or specified tax

a. relating to an assessment made under section 153A or 153C (relating to search) of the Income-tax Act or assessment or reassessment under sections 37A (relating to Search) or 37B (relating to requisition) of the Wealth-tax Act if it relates to any tax arrears

b. relating to an assessment or reassessment in respect of which survey was conducted under section 133A of the Income-tax Act or section 38A of the Wealth-tax Act if it relates to any tax arrears

c. relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration under this scheme

d. relating to undisclosed income from a source or an undisclosed asset, located abroad

e. relating to an assessment or reassessment on the basis of information received under DTAA under section 90 or section 90A of the Income-tax Act where the declaration is in respect of tax arrears

(II) to any person in respect of whom an order has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

(III) cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

(IV) person notified under Special Court Act, 1992

16. The Central Government may, by order remove the difficulty by an order not after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

B Kar Vivad Samadhan Scheme, 1998:

Kar Vivad Samadhan Scheme, 1998 similar to The Direct Tax Dispute Resolution Scheme, 2016 was announced by Government of India in 1998. The memorandum explaining provisions of the scheme states that the said scheme seeks to provide a quick and voluntary settlement of tax dues outstanding as on 31.3.1998, both in various direct tax enactments as well as indirect taxes enactment by offering waiver of a part of the arrear taxes and interest and providing immunity against institution of prosecution and imposition of penalty. The assessee on his part shall seek to withdraw appeals pending before various appellate authorities and Courts.

Difference between The Direct Tax Dispute Resolution Scheme 2016 and Kar Vivad Samadhan Scheme, 1998 is given as under:

Sr. No.	Particulars	The Direct Tax Dispute Resolution Scheme 2016	Kar Vivad Samadhan Scheme, 1998
1.	Applicability in respect of	Tax arrears and specified tax (tax dispute on account of retrospective amendment) outstanding as on 29.02.2016	Tax arrears outstanding as on 31.03.1998
2.	Tax arrears under which acts covered	• Income tax Act, 1961 • Wealth tax Act, 1957	• Income tax Act, 1961 • Wealth tax Act 1957, • Gift tax Act, 1958 • Expenditure-tax Act 1987 • Interest-tax Act, 1974
3.	Penalty	<u>**In case of pending appeal related to tax arrear**</u> a) being Tax and interest(against an assessment order) i. Where Disputed tax $\leq$ 10 lacs Tax and Interest - Whole of Disputed tax and interest thereon till the date of assessment / Reassessment Penalty - Nil ii. In any other case Tax and Interest - Whole of Disputed tax and interest thereon till the date of assessment / Reassessment Penalty - 25% of the minimum penalty leviable b) Pending appeal relates to penalty order Tax and interest - the tax and interest payable on the total income finally determined Penalty - 25% of the minimum penalty leviable <u>**In case of Specified Tax (tax dispute on account of retrospective amendment)**</u> Tax and Interest - Amount of such tax so determined Penalty – Nil	<u>**Under Income tax Act, 1961**</u> 1. Tax arrears(comprising of income-tax, interest payable or penalty levied) • in case of Company or a firm- 35% of disputed income • in case of others - 30% of disputed income 2. Tax arrears(comprising of interest payable or penalty levies) • 50% of tax arrear 3. Tax arrears determined under search and seizure proceedings • in case of Company or a firm- 45% of disputed income • in case of others - 40% of disputed income <u>**Under Wealth tax Act, 1957**</u> 1.Tax arrears (includes wealth-tax, interest or penalty levied) - 1% of Disputed Wealth 2.Tax arrears (includes only interest or penalty levied) - 5% of tax arrear 3.Tax arrears determined under search and seizure proceedings - 2% of disputed wealth

C Constitutional validity of such scheme:

Apex Court in case of UOI vs Nitdip Textile Processors Pvt. Ltd (2011) 245 CTR 241 (SC) while deciding the while deciding whether section 87(m)(ii)(b) of Kar Vivad Samadhan Scheme is violative of Article 14 of the Constitution of India insofar as it seeks to deny the benefit to those who were in arrears of Excise duties, etc., as on 31-3-1998 but to whom the notices were issued after 31-3-1998 held that *"The Legislature, in its wisdom, has thought it fit to extend the benefit of the scheme to such of those assessees whose tax arrears are outstanding as on 31-3-1998, or who are issued with the demand or show-cause notice on or before 31-3-1998, though the time to file declaration for claiming the benefit is extended till 31-1-1999.*

The classification made by the Legislature appears to be reasonable for the reason that the Legislature has grouped two categories of assesses, namely, the assessees whose dues are quantified but not paid and the assessees who are issued with the demand notice and show-cause notice on or before a particular date, month and year.

The distinction so made cannot be said to be arbitrary or illogical which has no nexus with the purpose of legislation. In determining whether classification is reasonable, regard must be had to the purpose for which legislation is designed. The legislation is based on a reasonable basis which is firstly, the amount of duties, cesses, interest, fine or penalty must have been determined as on 31-3-1998 but not paid as on the date of declaration and secondly, the date of issuance of demand or show-cause notice on or before 31-3-1998, which is not disputed but the duties remain unpaid on the date of filing of declaration. Therefore, the Scheme 1998 does not violate the equal protection clause where there is an essential difference and a real basis for the classification which is made.

To satisfy the test of permissible classification, it must not be ''arbitrary, artificial or evasive' but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the Legislature. The taxation laws are not exception to the application of this principle of equality enshrined in article 14."

In case of All India Federation Of Tax Practitioners V UOI (1998) (101 taxman 401) (Delhi) it has been held that classification between litigants who are in arrears of tax and those who are not in arrears of tax irrespective of whether tax was paid voluntarily by assessee or realised involuntarily by department resorting to coercive means of recovery or by making adjustment could not be held arbitrary or unreasonable in view of two-fold objectives sought to be achieved by Scheme.

The scheme carves out two different classes for settlement of dispute

a. arising on account of retrospective amendment pending before any forum
b. arising on account of any other dispute and pending before CIT (A)

Two different treatment has been provided for two different classes for settlement of disputes. Declarant, in case of settlement of dispute arising on account of retrospective amendments need to pay only tax determined whereas in other cases he needs to pay tax determined and concessional interest and penalty wherever applicable. In the second class of cases a person is denied benefit of scheme in case of tax arrears where dispute is pending before higher forum such as Tribunal or High court. Further it provides differential tax treatment to two different classes. Whether denying benefit of scheme where dispute is pending before higher forum in case of tax arrears and providing differential tax treatment for two classes will be valid or hold good or could be held as reasonable classification or is discriminatory in nature, is a question which may be tested in the court of Law.

25 The Income Declaration Scheme, 2016

Introduction:

Finance Bill 2016 propose to introduce “The Income Declaration Scheme 2016” (‘ **The Scheme**’) whereby an opportunity will be provided to persons to come forward and declare their undisclosed income and pay tax, surcharge and penalty at the specified in the Scheme. Govt has set the ball rolling for unearthing black money in the Finance Bill 2016 while detailed procedure of the scheme will be announced later on. Similar Scheme was announced in the year 1997 as Voluntary Disclosure of Income Scheme 1997 (VDIS,1997)”.One needs to consider whether such type of schemes are disincentive to honest tax payers and encourage dishonest tax payers to evade tax. Hon'ble Bombay High Court has considered constitutional validity of such scheme viz. VDIS, 1997 on the ground of discrimination as it violates Article 14 of the Constitution of India. All these issue have been dealt with in later part of this article.

Rationale for introducing scheme:

Budget Speech of Finance Minister spells out intention to introduce “The Income Declaration Scheme” as under:

“We are moving towards a lower tax regime with non-litigious approach. Thus, while compliant taxpayers can expect a supportive interface with the department, tax evasion will be countered strongly. Capability of the tax department to detect tax evasion has improved because of enhanced access to information and availability of technology driven analytical tools to process such information. I want to give an opportunity to the earlier non- compliant to move to the category of compliant.

Our Government is fully committed to remove black money from the economy. Having given one opportunity for evaded income to be declared once, we would then like to focus all our resources for bringing people with black money to books.”

A Salient Features of the Scheme:

1. **The Scheme shall come into force from 1st June, 2016**

2. **Person may make declaration in respect of undisclosed income on or after the date of commencement of the Scheme i.e. 01.06.2016 but before date to be notified which will be 30.9.2016 as per the budget speech of Finance Minister ,**

3. **Declaration of Undisclosed income:**
   (I) declaration shall be in respect of any income chargeable to tax under the Income Tax Act prior to AY 2017-18 (i.e. up to FY 2015-16);
      (i) For which person has failed to furnish return under section 139 of the Income Tax Act or
      (ii) where a person has filed return of Income but has failed to disclose in a return of income before the commencement of scheme; or
      (iii) which has escaped assessment by reason of omission or failure on the part of such person to furnish a return or to disclose fully and truly all material facts necessary to assessment or otherwise .

(II) where income is declared in the form of investment in any asset , the fair market value of such asset as on the date if commencement of scheme, shall be deemed to be undisclosed income

(III) The fair market value of asset shall be determined in such manner as may be prescribed.

(IV) No deduction in respect of any expenditure or allowance shall be allowed against the income declared under the scheme.

4. **Charge of Tax ,Surcharge and Penalty:**

Income Tax at 30%, and surcharge (to be called the Krishi Kalyan cess) @25% of the tax payable i.e. 7.5% and penalty @25% of tax Payable i.e. at 7.5%, which is a total of 45% of the undisclosed income

5. **Manner of Declaration:**

(i) Declaration of undisclosed income shall be made to the Principal Commissioner or the Commissioner in the prescribed form and shall be signed by the declarant or any other eligible person on his behalf

(ii) Person shall not be entitled to make declaration in respect his income or as a representative assessee in respect of the income of any other person, once he has made declaration in respect of his income or income of such other person and any such declaration, if made , shall be void.

6. Time for payment of Tax:

(i) Tax , Surcharge and Penalty payable shall be paid before the notified date i.e. due within two months of declaration as mentioned in budget speech.

(ii) Declarant shall file proof of payment of taxes, surcharge and penalty with the Principal Commissioner or the Commissioner as the case may be

(iii) If declarant fails to pay tax, surcharge and penalty , the declaration filed by person shall be deemed never to have been made under this scheme.

Non-payment of Tax , Surcharge and Penalty up to the date so notified shall render the declaration made under the scheme void.

7. **Undisclosed income declared not to be included in total income**:

Undisclosed income declared shall not to be included in the total income of the declarant for any assessment year once the payment of tax, surcharge and penalty has been made in accordance with the scheme.

8. **Undisclosed income declared not to affect finality of completed assessments.**

Declarant shall not be entitled in respect of undisclosed income declared under the scheme to reopen any assessment or reassessment made under the Income Tax Act or Wealth Tax Act or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

9. **Immunity:**

It is proposed to provide that declarations made under the scheme shall be exempt from wealth-tax in respect of assets specified in declaration. It is also proposed that no scrutiny and enquiry under the

Income-tax Act and Wealth-tax Act be undertaken in respect of such declarations and immunity from prosecution under such Acts be provided. Immunity from the Benami Transactions (Prohibition) Act, 1988 is also proposed for such declarations subject to conditions **that the asset existing in the name of benamidar is transferred to declarant or his legal representative within a time period specified.**

10. Any amount of tax, surcharge or penalty paid shall not be refundable.

11. Declaration not admissible in evidence :
Declaration made by the declarant shall not be considered as admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty except under the scheme , or for the purpose of prosecution under the Income Tax act or Wealth Tax Act .

12. Declaration to be void:
Declaration made by misrepresentation or suppression of facts shall be void and deemed to have never been made.

13. Cases not be eligible for the scheme:
(i) where notices have been issued under section 142(1) or 143(2) or 148 or 153A or 153C, or
(ii) where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired, or
(iii) where information is received under an agreement with foreign countries regarding such income,
(iv) cases covered under the Black Money Act, 2015, or
(v) persons notified under Special Court Act, 1992, or
(vi) cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

14. It is also proposed that nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme.

15. In cases where any declaration has been made but no tax and penalty referred to the scheme has been paid within the time specified, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.

16. In cases where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under the Scheme such income shall be deemed to have accrued, arisen or received, or the value of the asset acquired out of such income shall be deemed to have been acquired or made, in the year in which a notice under section 142, section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

17. The Central Government may, by order remove the difficulty by an order not after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

B Voluntary Disclosure of Income Scheme 1997 (VDIS):

VDIS Scheme similar to Income Disclosure Scheme 2016 was announced by Government of India on June 18,1997 . The memorandum explaining provisions of VDIS states that in order to mobilise resources and to channelize fund in to priority sectors of economy and to offer an opportunity to persons who have evaded tax in past, to declare their undisclosed income, pay reasonable tax and in future adopt the path of rectitude and civic responsibility a VDIS is proposed to be introduced.

Difference between Income Disclosure Scheme 2016 and VDIS is given as under:

Sr. No.	Particulars	Income Disclosure Scheme 2016	VDIS 1997
1.	Period for disclosure of Income	Prior to AY 2017-18	Prior to AY 1998-199
2.	Rate of Tax	Flat 30% for all types of assessees	Tax @ 35% in case of Companies and Firms And 30% in case of any other assessee's
3.	Surcharge	Surcharge of 25% of Tax Payable i.e 7.5%	Nil
4.	Penalty	Penalty of 25% of Tax Payable (to be called the Krishi Kalyan cess) i.e 7.5%	Nil
5.	Interest on delayed payment of undisclosed amount	Presently no such interest has been stated in the scheme introduced in finance bill	Simple interest @ 2% every month or part of the months shall be levied from the date if filing declaration and ending on date of payment within a period of 3 months.
6.	Immunity	Income Tax Act, Wealth Tax Act, Benami Transactions (Prohibition) Act, 1988	Income Tax Act, Wealth Tax Act, Erstwhile act FERA 1973, Companies Act
7.	Secrecy of declaration	Presently not specified in the scheme	All particulars contained in declaration shall be treated as confidential not withstanding anything contained in any law. No public servant shall disclose any particular contained in such declaration except to any officer

			employed in the execution of Income Tax Act, Wealth Tax Act or any officer appointed by CAG
8.	Undisclosed Income not to be included in total Income	Undisclosed income shall not be included in total income of declarant he has paid Income Tax, Surcharge and penalty within specified time in accordance with the scheme. There is no such requirement to credit undisclosed amount or asset in books of account. However as natural corollary assessee is required to bring the undisclosed amount or asset in books.	Undisclosed income shall not be included in total income of declarant credits such amount in books of accounts and Income Tax is paid within specified time in accordance with the scheme

C Constitutional validity of such disclosure scheme:

Supreme Court in case of All India Federation Of Tax Practitioners Vs Union Of India 98 Taxman 446 while deciding a Special Leave Petition against the judgment of the Hon'ble Bombay High Court in case of All India Federation of Tax Practitioners V Union Of India [1997] 228 ITR 68, which upheld the constitutional validity of the Voluntary Disclosure of Income Scheme, 1997,*has relied on the statement made by Attorney General on behalf of the Government and has declined to interfere with the impugned judgement of Bombay High court*.

The learned Attorney-General has placed the following statement indicating the policy the Government is following and will be following in checking tax evasion and the said statement is reproduced as follows:

"1. After December 31, 1997, the Income-tax Department will considerably step up survey operations under section 133A of the Income-tax Act, 1961, and search operations under section 132 of the Income-tax Act, 1961.

2. According to Chapter XIV-B of the Income-tax Act as amended with effect from 1-1-1997, if in the course of a search undisclosed income is detected, then the assessee is liable to the following :

(*i*) tax at the rate of 60 per cent ;

(*ii*) penalty which can be up to 300 per cent on the tax evaded ;

(*iii*) interest under section 158BFA.

3. In addition, the Finance Minister has announced that in every case of detection of undisclosed income, prosecution will be launched. The relevant provisions are in Chapter XXII of the Income-tax Act.

4. Besides tightening up of legal provisions, the following steps have also been taken :

(*i*) Acceleration of the process of issuing Permanent Account Number (PAN);

(*ii*) Acceleration of the computerisation of the Income-tax Department;

(*iii*)Installation of software to detect the assessees who satisfy the criteria laid down under the proviso to section 139(1) of the Income-tax Act.

5. The Government is committed to making a success of the VDIS, 97 for fulfilling the objectives set by the Government in the Finance Minister's Budget Speech. We also wish to emphasise that section 72 of the VDIS, 97 guarantees complete confidentiality in respect of declarations."

Some excerpts of decision of Bombay High Court in case of All India Federation of Tax Practitioners V Union Of India [1997] 228 ITR 68,

"it would not be permissible for the Court while exercising jurisdiction under article 226 of the Constitution to substitute its own decision in place of the policy decision taken by the Parliament by enacting the Scheme. This course is not permissible. It is well-established law that, with regard to taxation matters and economic affairs, it is for the Executive and the Parliament to decide a suitable method and take policy decisions for the purpose of taxation. It is also established law that, with regard to policy matters, it is for the Parliament to enact appropriate law after taking into consideration various aspects.

It is difficult to find out the best solutions for unearthing black money. The Scheme may be unjust, to some extent, to honest taxpayers, but, according to the Parliament, that is required for adjustment or compensating for further injustices to the society by parallel economy of unaccounted money.

Keeping the aforesaid well-settled law in mind, it would be difficult to arrive at a conclusion that, as more benefits are given to tax-evaders, the provisions of the Scheme are arbitrary and violative of article 14. It is adopted by the Parliament after taking into consideration the economic and social conditions prevailing in the society."

However in the proposed Income Disclosure Scheme the Govt has levied Surcharge of 25% of Tax payable to be called as "Krishi Kalyan Cess" to be utilised for the welfare of farmers thereby meeting economic criteria . It seems in order to avoid such scheme generating a disincentive to honest tax payers who will be at discount as compared to Tax evaders who take undue advantage under such income disclosure scheme , penalty of 25% of the Tax Payable has been introduced thereby a distinction has been carved out between VDIS 1997 and income Disclosure Scheme 2016. One will not be surprised that validity of such scheme once again may be tested before the Court of Law.

The Hon'ble finance Ministers while interacting with Press after presenting the budget has sated "that this scheme is not a VDIS and is not an amnesty. Inequality arises in amnesty, where under certain exemptions, you as a honest tax payer has paid 30% and I come and join after 20 years and say that I would also pay 30% . This is not structured that way. You pay 30% tax and 7.5% as surcharge and another 7.5% as penalty. So 45% overall. You end up paying one and half times more. So you are paying penalties for not paying tax on time. This is intended to bring some money from out the system into the system."

Source : businesstoday.in date: 29.02.2016

INDIRECT TAXES

A Service Tax

1 Rate of Service Tax & Krishi Kalyan Cess

There is no change in rate of Service Tax which is presently 14% along with 0.5% Swachh Bharat Cess thereby making effectively levy of 14.5% currently.

A new Cess called as "Krishi Kalyan Cess" is proposed to be levied @ 0.5% on the value of taxable services. This Cess is in addition to Service Tax & Swachh Bharat Cess.

This Cess is proposed to be levied in order to finance and promote initiatives to improve agriculture. As a result of this Cess, the effective rate of Service Tax and Cess would now be 15% on value of taxable services.

In Budget Speech, Honourable Finance Minister had said that Cenvat Credit of this new Cess will be available. However, since the levy itself is not legally enforceable as on date, no notification has been issued in respect of Cenvat Credit. It is expected that in due time notification to this effect may be issued after Enactment of Finance Bill, 2016.

Since this is a new levy, the Point of Taxation shall be determined as per Rule 5 of Point of Taxation Rules, 2011.
(Effective from : 1st June,2016)

2 Payment of service tax & rate

Following amendments are made in Service Tax Rules, 1994 vide Notification No.19/2016-ST dated 1st March,2016.

a) 1st proviso to Rule 6(1) of the Service Tax Rules, 1994 provides for payment of Service Tax on quarterly basis for individual, proprietary firm or partnership firm.

The said proviso is amended to extend the said benefit to HUF as well as One Person Company (OPC) whose aggregate value of taxable services provided from one or more premises is Rs.50 Lacs or less in previous financial year.

b) 3rd Proviso to Rule 6(1) gives an option individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is Rs.50 Lacs or less in the previous financial year to pay Service Tax only after receiving consideration towards value of taxable services provided or to be provided upto a total of Rs.50 Lacs in the current financial year.

The said proviso is amended to extend the said benefit to One Person Company (OPC) also.

c) Presently, option is granted to pay Service Tax on the premium on risk cover in case of an insurer carrying out life insurance business.

Now, in case of a single premium annuity policy, service provider will have an option to pay the Service Tax @1.4% of total premium charged if the amount allotted for investment or saving is not intimated to the policy holder at the time of providing of service.
(Effective from : 1st April,2016)

3 Point of taxation rules, 2011

The Point of Taxation Rules, 2011 (herein after referred as “POTR”) have been framed under provisions of Section 94(1)(a) and (hhh). Now, specific power is also being obtained under Section 67A so as to make rules regarding point in time with respect to rate of Service Tax. Thus, if any doubt about the applicability of Service Tax rate or apparent contradiction between Section 67A and POTR would be taken care of.

Rule 5 of POTR applies when new services comes into the Service Tax regime. Although, in the case of new levy, provisions of Chapter V of the Finance Act, 1994, and rules made there under, are invariably made applicable in relation to the levy and collection of the new levy. However, doubts have been raised regarding it’s applicability in case of new levy. Therefore an Explanation is being inserted in Rule 5, which clarifies that the same is applicable in case of new levy on services.

Further, in Rule 5 of POTR, it is provided that in two specified situations, the new levy would not apply. Further it has been clarified in Explanation that in situations other than those specified where new levy or tax is not payable, the new levy or tax shall be payable.
(Effective from : Enactment of Finance Bill,2016)

4 Interest on delayed payment

Section 75 provides for payment of simple interest at following rates in case of delay in payment of Service Tax.

Period of Delay	Rate of Interest p.a.
Upto 6 months	18%
More than 6 months upto 1 year	18% for delay upto first 6 months & 24% for delay beyond 6 months
More than 1 year	18% for delay upto first 6 months, 24% for delay beyond 6 months upto 1 year & 30% for any delay beyond one year

The said Section is proposed to be amended to provide differential rate of interest in case of a person who collects any amount as Service Tax but fails to pay such amount on or before the due date.

Vide Notification No.13/2016-ST dated 1st March, 2016, following rates of interest are notified

Situation	Rate of Interest p.a.
Collection of any amount as Service Tax but failing to pay the amount so collected on or before due date	24%
Other than covered above	15%

The benefit of reduction in rate by 3% in case of a service provider whose value of taxable services does not exceed Rs.60 Lacs during any of the financial year covered by notice or during the last preceding financial year is continued.
(Effective from : Enactment of Finance Bill,2016)

5 Interest on amount collected in excess

Section 73B provides for payment of interest @ 18% p.a. on delayed payment of any amount in excess of the Service Tax assessed or determined or paid for any taxable services.

Vide Notification No.14/2016-ST dated 1st March,2016, the said rate of interest is reduced to 15% p.a.

The benefit of reduction in rate by 3% in case of a service provider whose value of taxable services does not exceed Rs.60 Lacs during any of the financial year covered by notice or during the last preceding financial year is continued.
(Effective from : Enactment of Finance Bill,2016)

6 Annual return

Vide Notification No.19/2016-ST dated 1st March, 2016, Rule 7(3A) is inserted to prescribe filing of annual return for the financial year by 30th November of the succeeding financial year. The form and the manner of such return shall be notified by separate notification. The central government shall have power to exempt such assessee or class of assesses from filing annual return. Such annual return can be revised within a period of 1 month from the date of submission of the original return.

In case of return filed after due date, the assessee shall be liable to pay late fees @ Rs.100/- per day for the period of delay subject to maximum of Rs.20,000/-.
(Effective from : 1st April,2016)

7 Reverse charge

Vide Notification No.18/2016-ST & 19/2016-ST both dated 1st March,2016, the services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company are removed from Reverse Charge Mechanism and hence, Service Tax would be payable by such mutual fund agents or distributors themselves.
(Effective from : 1st April,2016)

8 Abatements

a Transport of goods by rail:

Presently, abatement of 70% is available to services of transport of goods by rail subject to condition of non-availment of CENVAT Credit in respect of inputs, capital goods & input services.

The said abatement is reduced to 60% in case of transport of goods in containers by any person other than India Railways.

Also, the condition related to non-availment of CENVAT Credit in respect of input services is done away with. However, the restriction on availment of CENVAT Credit in respect of inputs & capital goods is continued.
(Effective from : 1st April,2016)

b Transport of passengers by rail:

Presently, abatement of 70% is available to services of transport of goods by rail subject to condition of non-availment of CENVAT Credit in respect of inputs, capital goods & input services.

The condition related to non-availment of CENVAT Credit in respect of input services is done away with. However, the restriction on availment of CENVAT Credit in respect of inputs & capital goods is continued.
(Effective from : 1st April,2016)

c Transport of goods by road:

Presently, abatement of 70% is available to services of transport of goods by road.

The said abatement is reduced to 60% in respect of services of transport of used household goods. The services transport of other goods continues to enjoy abatement of 70%.

The condition regarding non-availment of CENVAT Credit in respect of inputs, capital goods & input services by the service provider is continued.
(Effective from : 1st April,2016)

d Foreman of chit fund:

Presently, no abatement is available to services provided by foreman of chit fund in relation to chit.

An abatement of 30% is provided to such services subject to condition of non-availment of CENVAT Credit in respect of inputs, capital goods & input services. Accordingly, Service Tax would be payable on 70% of the gross value of such taxable services.
(Effective from : 1st April,2016)

e Transport of goods in a vessel:

Presently, abatement of 70% is available to services of transport of goods in a vessel subject to condition of non-availment of CENVAT Credit in respect of inputs, capital goods & input services.

The condition related to non-availment of CENVAT Credit in respect of input services is done away with. However, the restriction on availment of CENVAT Credit in respect of inputs & capital goods is continued.
(Effective from : 1st April,2016)

f Tour operator's services:

Presently, following abatements are available to services by a tour operator

Description of Service	Abatement
In relation to package tour	75%
Solely of arranging or booking accommodation	90%
Any other service	60%

The abatement of 90% in respect of services of arranging or booking accommodation is continued. However, the abatement in respect of other services is unified at 70% hence Service Tax would be payable on 30% of the gross value of such taxable services.

The conditions related to
- ✓ non-availment of CENVAT Credit in respect of inputs, capital goods & input services (other than input services of a tour operator); and
- ✓ inclusion of charges for such tour or cost of such accommodation, as the case may be, in the invoice/bill/challan issued

  are continued.

Consequently, the definition of "package tour" as contained in clause 2(b) is omitted.
(Effective from : 1st April,2016)

g Construction services:

Presently, following abatements are available in respect of construction services

Description of Service	Abatement
For residential unit having carpet area upto 2,000 Sq. Feet and having value less than Rs.1 Crore	75%
For residential unit having carpet area exceeding 2,000 Sq. Feet or having value more than Rs.1 Crore	70%
For commercial properties	70%

The said abatements are unified at 70% hence, Service Tax would be payable on 30% of the gross value of such taxable services.

The conditions related to
- ✓ non-availment of CENVAT Credit in respect of inputs; and
- ✓ inclusion of value of land in the gross value

  are continued.

  (Effective from : 1st April,2016)

h Renting of motor cabs:

Presently, abatement of 60% is available to the services of renting of motorcab subject to condition of non-availment of CENVAT Credit in respect of inputs, capital goods & input services (other than input services of renting of motorcab to be availed in prescribed manner).

The said abatement is now subjected to additional condition that the gross value shall include fair market value (determined in accordance with generally accepted accounting principles) of all goods (including fuel) and services supplied by the service recipient, whether or not supplied under the same contract or any other contract.
(Effective from : 1st April,2016)

9 Power to grant rebate

Section 93A of the Act empowers Central Government to grant rebate of Service Tax paid on taxable services which are used as input services for manufacturing, processing or removal of export of such goods or for providing taxable services, only by way of Rules. The power to grant benefit of rebate by way of notification was hitherto missing in section 93A which is now proposed to be incorporated in section 93A.
(Effective from : Enactment of Finance Bill,2016)

10 Rebate & refund

From 01/07/2012, exporter of goods was entitled to rebate under Notification No.41/2012-ST dtd.29/06/2012 in respect of Service Tax paid on specified taxable services received by such exporter and used for export of goods. In case of excisable goods, such specified taxable services included only those taxable services used beyond the place of removal, for the export of said goods. For this purpose 'place of removal' was assigned the meaning as given in section 4 of the Central Excise Act.

Due to ambiguities pertaining to scope of specified services covered under the said notification, the language of the said notification was simplified by Notification No.1/2016-ST dtd.03/02/2016 to clarify the wide scope of services qualifying for the purpose of rebate; thereby allowing the rebate in respect of Service Tax paid on all taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export.

In order to achieve the effect of this amended notification, Clause 157 of the Finance Bill, 2016 proposes to amend the main Notification No.41/2012-ST in order to extend benefit of rebate in respect of all such services, during the interim period (i.e. 01/07/2012 to 02/02/2016). The clause also provides for filing of claim in respect of such services (rebate of which may have been denied during the said interim period), within one month from the date of commencement of the Finance Act 2016.
(Effective from : Enactment of Finance Bill,2016)

11 Educational services

a Section 66D(l) of the Act:

Services by way of
(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;

(iii) education as a part of an approved vocational education course;

are presently covered under Negative List and hence not taxable.

It is proposed to omit the above provision from the Negative List.

However, above referred educational services and approved vocational education courses will continue to remain exempt under entry 9 of an exemption Notification No. 25/2012-ST dated 20.06.2012 **(**hereinafter referred to as **'Mega Exemption Notification')**

The term "educational institution" is defined under clause 2 (oa) of Mega Exemption Notification.
(Effective from : Enactment of Finance Bill, 2016)

b Section 65B(11) of the Act:

Definition of "approved vocational education course" contained in Section 65B (11) is proposed to be omitted.

The said definition will be inserted in clause 2(ba) of Mega Exemption Notification.

Hence, said definition will be applicable for assessing eligibility for exemption under Mega Exemption Notification.
(Effective from : Enactment of Finance Bill, 2016)

c Entry 9B of Mega Exemption Notification

This entry grants exemption to services provided by Indian Institute of Management by way of post graduate programs in management (other than executive development program) admission to which are conducted by common admission test(CAT) and 5 years integrated program in management and fellowship program in management.
(Effective from : 1st March,2016)

d Entry 9C of Mega Exemption Notification

This entry grants exemption to services provided by assessing bodies empanelled centrally by director general of training ministry of skill generation and entrepreneurship for the work of assessment under Skill Development Initiative.
(Effective from : 1st March,2016)

e Entry 9D of Mega Exemption Notification

This entry grants exemption to services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council for Vocational Training.
(Effective from : 1st March,2016)

12 Lottery distributors & selling agents

Presently, Explanation 2 to Section 65B (44) of the Act clarifies that expression "transaction in money or actionable claim" shall not include any activity carried out by a lottery distributor or selling agent in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner.

The said explanation is proposed to be amended to clarify that activities carried out by lottery distributors or selling agents **on behalf of State Government in accordance with provisions of Lotteries (Regulations) Act, 1998** will not be regarded as "Transaction in Money or Actionable Claim".

Hon'ble Sikkim High Court in the case of Future Gaming & Hotel Services Pvt. Ltd. & Others Vs UOI (2015) 40 STR 833 has held that *the activity of the Petitioners comprising of promotion, organising, reselling or any other manner assisting in arranging the lottery tickets of a State Lottery does not establish the relationship of a principal and an agent but that of a buyer and a seller on principal to principal basis.*

It appears that in order to overcome the above decision, the amendment is being proposed.

Consequently, activities carried out by lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998) will be covered under definition of 'Service' and will be liable to Service Tax.
(Effective from : Enactment of Finance Bill, 2016)

13 Transportation of passengers

a) **Section 66D(o)(i) of the Act:**
Presently, service of transportation of passengers, with or without accompanied belongings, by a stage carriage is covered under Negative List and hence, not taxable.

This provision is proposed to be omitted from Negative List.

However, exemption is granted in respect of passenger transportation by a non-air-conditioned stage carriage under entry no. 23(bb) of Mega Exemption Notification.

Transportation of passenger by non-air conditioned stage carriage continues to remain exempt.

Consequently, transportation of passenger by air-conditioned stage carriage will be liable to Service Tax.

An abatement of 60% is granted by Notification No.8/2016-ST dated 1st March, 2016 subject to non-availment of CENVAT Credit in respect of inputs, capital goods & input services.
(Effective from : 1st June,2016)

b) Entry No. 23(c) of Mega Exemption Notification is omitted thereby transport of Passengers by way of Ropeway, Cable Car or Aerial Tramway has been withdrawn.
(Effective from : 1st April,2016)

14 Transportation of goods by air & vessel

Section 66D(p)(ii) of the Act:
Presently, services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance in India are covered under Negative List and hence, not taxable.

This provision is proposed to be omitted from Negative List.

However, exemption is granted in respect of transportation of goods by an aircraft from a place outside India up to the custom station of clearance in India (air freight for imports) under entry no. 53 of Mega Exemption Notification.

Consequently, Transportation of goods by vessel from outside India upto the custom station of clearance in India (Ocean Freight for import) will be liable to Service Tax.

An abatement of 70% would be available under entry no. 10 of Notification No.26/2012-ST dated 20th June,2012 subject to non-availment of CENVAT Credit in respect of inputs & capital goods. CENVAT Credit will be available on input services.
(Effective from : 1st June,2016)

15 Services provided by government or local authority

Presently, 'support service' provided by government or local authority to business entity is liable to tax. The word 'support service' is substituted by 'any service' and Section 65B (49) defining the term 'support service' is omitted w.e.f. 1st April,2016. Hence, any service provided by government or local authority to business entity becomes taxable.

Vide entry no. 48 of Mega Exemption Notification, any service provided by government or local authority to any business entity having turnover upto Rs.10 Lacs in preceding financial year is exempted.

Vide Notification No.16/2016-ST & 17/2016-ST both dated 1st March,2016, Service Tax in respect of any service provided by government or local authority to business entity is required to be discharged under reverse charge mechanism except in respect of following services –

i) Services by the department of post by way of speed post, express parcel post, life insurance and agency service;

ii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

iii) Transport of goods or passengers

(Effective from : 1st April,2016)

16 Legal services

Presently, Entry No.6 of Mega Exemption Notification grants exemption to following legal services provided by an individual as an advocate or a partnership firm of advocates

i) An advocate or partnership firm of advocates providing legal services;

ii) Any person other than a business entity; or

iii) A business entity with a turnover of Rs.10 Lacs in preceding financial year

The exemptions mentioned under clauses (i) & (iii) hereinabove are restricted to an advocate other than a senior advocate hence the above said services rendered by a senior advocate would be taxable.

However, services provided to any person other than a business entity by a senior advocate continue to be exempted. Also the exemption granted to services provided by a person represented on an arbitral tribunal to an arbitral tribunal is also withdrawn.

Service Tax on legal services is to be discharged by senior advocate under forward charge.

The term 'senior advocate' is defined in clause 2 (zdd) of Mega Exemption Notification to mean senior advocate as per Section 16 of the Advocates Act, 1961.

(Effective from : 1st April,2016)

17 Construction related services

a) Under Entry No.12 (a), (c) & (f) respectively of Mega Exemption Notification, exemption was granted to following services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of –

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

ii) A structure predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

iii) A residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation I to Section 65B (44).

The said exemption was withdrawn w.e.f. 1st April, 2015 vide Notification No.6/2015-ST dated 1st March,2015.

Section 102 is proposed to be inserted to grant retrospective exemption to above said services for the period from 1st April,2015 to 29th February,2016 provided under a contract entered into before 1st March,2015 on which appropriate stamp duty, wherever applicable, has paid before 1st March,2015.

It is also proposed to grant refund of such Service Tax which has been collected but which would not have been collected during the material period owing to such exemption. The claim for such refund to be filed within 6 months of date of Enactment of Finance Bill, 2016.

Similar exemption in respect of contracts entered into before 1st March,2015 is continued after 1st March,2016 till 31st March,2020 under newly inserted Entry No.12A of Mega Exemption Notification vide Notification No.9/2016-ST.
(Effective from : 1st March,2016)

b) Under Entry 13(ba) exemption is sought to be granted to services by way of constructions, erections etc of civil structure or any other original work pertaining to “In – Situ rehabilitation of existing slum dwellers using land as resources through private participation.” Under the housing for all urban mission/ Pradhan Mantri Awas Yojana only for existing dwellers.
(Effective from : 1st March,2016)

c) Under Entry 13(bb) exemption is sought to be granted to services provided by way of construction, erections etc. of civil structure or any other original work pertaining to “Beneficiary led individual house construction enhancement “ under the housing for all urban mission / Pradhan Mantri Awas Yojana.
(Effective from : 1st March,2016)

d) The exemption granted under Entry 14(a) to contracts of construction, erection, commissioning etc. of original works pertaining to monorail & metro has been withdrawn in respect of all

contracts entered into after 01/03/2016. The exemption shall continue for all eligible contracts entered prior to 1st March 2016 on which appropriate stamp duty is paid.
(Effective from : 1st March,2016)

e) Under Entry 14(ca) exemption is sought to be granted to services by way of constructions, erections etc. of civil structure or any other original works pertaining to low cost house up to a carpet area of 60 sq. m. of per house in a housing project approved by competent authority under

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

(ii) any housing scheme of a State Government.
(Effective from : 1st March,2016)

f) The services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port were exempted under Entry No.14 (a) of Mega Exemption Notification.

The said exemption was withdrawn w.e.f. 1st April, 2015 vide Notification No.6/2015-ST dated 1st March,2015.

Section 103 is proposed to be inserted to grant retrospective exemption to above said services for the period from 1st April,2015 to 29th February,2016 provided under a contract entered into before 1st March,2015 on which appropriate stamp duty, wherever applicable, has paid before 1st March,2015 subject to condition that the Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st day of March, 2015.

It is also proposed to grant refund of such Service Tax which has been collected but which would not have been collected during the material period owing to such exemption. The claim for such refund to be filed within 6 months of date of Enactment of Finance Bill,2016.

Similar exemption in respect of contracts entered into before 1st March,2015 is continued after 1st March, 2016 till 31st March,2020 under newly inserted Entry No.14A of Mega Exemption Notification vide Notification No.9/2016-ST.
(Effective from : 1st March,2016)

g) Taxable services provided to "governmental authority" by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or irrigation works are exempted under Entry 12(d) of the Mega Exemption Notification with effect from 01/07/2012.

The "governmental authority" was intended to include all autonomous bodies or instrumentalities of the Central & State Governments, which are either set up under the Act of parliament or established by government with more than 90% participation towards its capital or by way of control; to carry out any function entrusted to a municipality under Article 243W of the Constitution.

In order to clarify the intention, definition of "governmental authority" as contained in Para (s) of the said Notification was modified with effect from 30/01/2014 to suitably expand the benefit of exemptions to such services provided to large number of government instrumentalities.

However, during the interim period (i.e.01/07/2012 to 29/01/2014), only those establishments satisfying *both the conditions*, namely (i) 90% or more participation by way of equity or control by government *as well as* (ii) set up by an Act of Parliament or State Legislature; could qualify as "governmental authority". Therefore, services provider providing similar services to other government instrumentalities could not enjoy the exemption.

In order to extend the benefit of exemption during the said interim period, a new section 101 is proposed to be inserted. The amendment not only exempts such services during the said interim period, but also provides for granting of refund of Service Tax paid for such period, if an application for refund is made within a period of six months from the date on which the Finance Bill,2016 receives the presidential assent.
(Effective from : Enactment of Finance Bill,2016)

18 Information technology software

Vide Notification No.11/2016-ST dated 1st March,2016, exemption is granted to service in relation to Information Technology Software when such Information Technology Software is recorded on a media under Chapter 85 of the First Schedule to the CETA, 1985, on which it is required, under the provisions of the Legal Metrology Act, 2009 or the rules made thereunder or under any other law for the time being in force, to declare on package of such media thereof, the retail sale price, from whole of the Service Tax subject to the condition that-

(i) the value of the package of such media domestically produced or imported, for the purposes of levy of excise duty or the additional customs duty leviable U/s.3 (1) the CTA, 1975, if imported, as the case may be, has been determined U/s.4A of the CE Act, 1944; and

(ii) (a) the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of such media manufactured in India; or

(b) the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of such media which has been imported into India;

(iii) a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on such media has been recovered from the customer.

19 Radio frequency spectrum

It is proposed to insert sub clause (j) in definition of Declared Service [Section 66D] so as to make it clear that assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers of such assignment would be considered as "service" and it would be covered within the regime of Service Tax levy. Thus such right to use would not be considered as sale of intangible goods and trading in spectrum right is a "service".

Service Tax paid for assignment by Government or any other person shall be eligible for Cenvat Credit. Such Cenvat Credit of taxes paid shall be spread over the period of time for which the rights have been assigned. It is also being provided that where service provider further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a consideration, balance Cenvat Credit not exceeding the Service Tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. It is also being provided that Cenvat credit of annual or monthly user charges payable in respect of such assignment shall be allowed in the same financial year.
(Effective from : Enactment of Finance Bill,2016)

20 Services by bio-incubators

Notification No.32/2012-ST dated 20th June,2012 grants exemption all services provided by Technology Business Incubator (TBI) and Science & Technology Entrepreneurship Park (STEP) recognised by National Science & Technology Entrepreneurship Development Board (NSTEDB) from whole of Service Tax.

Vide Notification No.12/2016-ST dated 1st March, 2016, the said exemption is extended to bio-incubators recognized by the Biotechnology Industry Research Assistance Council.

21 Exemption to services provided by certain entities

Exemptions are granted to services provided by certain entities vide Mega Exemption Notification w.e.f. 1st April,2016

(a) **Entry No. 23C**:-Services of life insurance provided by way of annuity under national pension system regulated by PFRDA.

(b) **<u>Entry No. 26(q)</u>**:- Services of general insurance provided under Niramaya Health Insurance Scheme implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

(c) **<u>Entry No. 49</u>**:-Services provided by EPFO to persons covered by Employees' Provident Funds and Miscellaneous Provisions Act,1952

(d) **<u>Entry No. 50</u>** :-Services provided by IRDA to insurer.

(e) **<u>Entry No.51</u>** :-Services provided by SEBI by way of protecting the interests of the investors and to promote, develop and regulate securities market.

(f) **<u>Entry No.52</u>** :-Services provided by National Centre for Cold Chain Development by way of cold chain knowledge dissemination.

(g) **<u>Entry No.16</u>** :- Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre are currently exempted, if the consideration charged for such performance is not more than Rs.1 Lac. The said limit of consideration is increased to Rs.1.5 Lacs. The exclusion of such exemption to services provided by such artist as a brand ambassador is continued.

22 Issuance of notice

Section 73 provides for limitation period of 18 months for issuance of notice for recovery of Service Tax in cases not involving fraud, collusion, willful misstatement, suppression of facts etc.

The said normal period of limitation is proposed to be enhanced to 30 months.

The Central Excise Officer can now issue Show Cause Notice for recovery of Service Tax within 30 months from the relevant date in cases not involving fraud, collusion, willful misstatement, suppression of facts etc.
(Effective from : Enactment of Finance Bill,2016)

23 Penalty on directors etc.

In case of specified offences by a company, Section 78A provides for penalty upto Rs.1 Lac on any director, manager, secretary or other officer who was responsible for conduct of business and was knowingly concerned with such contravention.

The said section is proposed to be amended to provide that the proceedings against such director, manager etc. shall be deemed to have been concluded when the proceedings against such company have been concluded on

i) payment of Service Tax & Interest within 30 days from the date of service of notice in cases not involving fraud, collusion etc.; or

ii) payment of Service Tax, Interest & Penalty of 15% of such Service Tax within 30 days from the date of service of notice in cases involving fraud, collusion etc.

(Effective from : Enactment of Finance Bill,2016)

24 Offences and penalties

Presently, in terms of Section 89(1) prosecution for offences involving services can be launched in following cases;

a. Assessee knowingly evades the payment of Service Tax
b. Availment and utilization of Cenvat credit without receipt of inputs or input services
c. Maintaining false books of accounts or failure to supply any information or submitting false information
d. Non-payment of collected amount of Service Tax for a period of more than six months

In cases of offences specified in (a), (b) or (c) above, where the amount of Service Tax is more than 50 lacs, imprisonment can extend upto 3 years

In case of offence specified in (d) above, where amount of Service Tax is more than 50 lacs, imprisonment can extend upto 7 years

In other cases, imprisonment can extend upto 1 year.

It is proposed to raise the monetary limit in above offences to Rs. 2 Crore. It is also important to note that by virtue of CBEC Circular No. 1009/16/2015-CX dated 23rd October, 2015, instructions were issued that no prosecution shall be generally launched where amount involved is upto Rs. 1 Crore.

(Effective from : Enactment of Finance Bill,2016)

25 Cognizance of offences

Presently, in terms of Section 90(2), all offences except offence specified in Section 89(1)(ii) are non-cognizable and bailable. In other words, cases involving non-payment of collected amount of Service Tax above prescribed monetary limit for a period of more than six months are cognizable and all other offences specified in Section 89(1) above shall be non-cognizable and bailable.

It is proposed to omit Section 90(2) which specified the nature of offences that shall be non-cognizable and bailable.

(Effective from : Enactment of Finance Bill,2016)

26 Power to arrest

Presently, in terms of Section 91, power to arrest any person where amount of duty involved is more than the prescribed monetary limit has been given to Central Excise Officer not below the rank of Superintendent whether the offence is cognizable or non-cognizable and bailable.

It is proposed to restrict the power to arrest any person only in case of cognizable offence i.e. cases involving non-payment of collected amount of Service Tax above Rs. 2 Crore for a period of more than six months. Now, power to arrest in case of following offences has proposed to be withdrawn;

a. Assessee knowingly evades the payment of Service Tax.

b. Availment and utilization of Cenvat credit without receipt of inputs or input services.

c. Maintaining false books of accounts or failure to supply any information or submitting false information

(Effective from : Enactment of Finance Bill,2016)

B Cenvat Credit Rules, 2014

1 Capital goods

i) Wagons covered under subheading 860692 of the Central Excise Tariff and equipment and appliance used in an office located within a factory are included in definition, so as to allow Cenvat Credit on the same.*[Rule2(A)(a)(i) and condition No.(1)].*

ii) Cenvat Credit on capital goods used for pumping of water, for captive use in the factory, is allowed even where such capital goods are installed outside the factory.*[Rule2(A)(a), condition(1A)].*

iii)

2 Exempt service

i) Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is excluded from the definition w.e.f. 01/03/2016. This would allow shipping lines to take Cenvat Credit on inputs, input services and capital goods used for providing the said service.*[Rule2(e)]*

3 Inputs

i) Cenvat Credit on inputs used for pumping of water for captive use in the factory is allowed.*[Rule 2(k) (iii)].*

ii) All capital goods having value up to Rs. 10,000/ per piece are included in the definition. This would allow an assessee to take whole credit on such capital goods in the same year in which they are received*. [Rule 2(k)(v)]*

4 Input service distributor

i) An outsourced manufacturing unit is included in the definition, so that credit can be distributed to such units by Input Service Distributor. *[Rule 2(m]*

5 Conditions for allowing cenvat credit

i) Manufacturer of final products is allowed to take Cenvat Credit on tools covered under Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer whom manufactures the goods as per specification of manufacturer of final products. It is also provided that a manufacturer can send these goods directly to such other manufacturer or job-worker without bringing the same to his own premises.*[Rule4(5) (b)]*

ii) The time limit of permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance from there on payment of duty is extended from one financial year to three financial years. *[Rule4(6)].*

iii) It is provided that Cenvat credit of Service Tax paid on amount charged for assignment by Government or any other person of a natural resource such as radio-frequency spectrum, mines etc. shall be spread over the period of time for which the rights have been assigned. It is further provided that where the manufacturer of goods or provider of output service further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a consideration, balance Cenvat Credit not exceeding the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. It is also provided that Cenvat credit of annual or monthly user charges payable in respect of such assignment shall be allowed in the same financial year. *[Rule 4(7)]*

6 Obligation of a manufacturer or producer of final products and a provider of output service.

i) Rule 6 which provide for reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services is completely over hauled with the objective of simplifying and rationalizing the reversal of credit.

ii) Sub rule(1) provides that Cenvat credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted services. It is further provided that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations. *Explanations* 3 and 4 are appended to sub-rule (1) so as to encompass an activity which is not a 'service' under exempted service and it's valuation for the purpose of reversal of Cenvat Credit on inputs/input services which have been commonly used in providing taxable output service.

iii) Sub-rule (2) provides that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay/reverse the entire credit and effectively not be eligible for credit of any inputs and input services used.

iv) Sub-rule (3) provides that when a manufacturer who manufactures two classes of goods for clearance up to the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services who provides two classes of services, namely exempted services and output services excluding exempted services, then the manufacturer or the provider of the output service shall exercise one of the following two options;

a) pay an amount equal to 6% of value of the exempted goods and 7% of value of the exempted services (2% in case of transportation of goods or passengers by rail), subject to a maximum of the total credit available at the end of period to which the payment relates; or

b) pay an amount as determined under sub-rule (3A).

v) The maximum limit prescribed in the first option i.e. (a) above would ensure that the amount to be paid does not exceed the total credit available during the relevant period. It is also provided that once any option out of above two options is exercised then same cannot be withdrawn during the remaining part of the financial year.

vi) Sub-rule (3A) provides the procedure and conditions for calculation of credit allowed and credit not allowed and further provides that such credit not allowed shall be paid/reversed provisionally for each month. The option to pay an amount under sub-rule (3A) is required to be intimated to the Department by furnishing prescribed particulars. The steps for calculating the credit required to be paid/reversed are as under-

a) No credit of inputs or input services used exclusively in manufacture of exempted goods or for provision of exempted services shall be available;

b) Full credit of input or input services used exclusively in final products excluding exempted goods or output services excluding exempted services shall be available;

c) Credit left thereafter is common credit and shall be attributed towards exempted goods and exempted services by multiplying the common credit with the ratio of value of exempted goods manufactured or exempted services provided to the total turnover of exempted and non-exempted goods and exempted and non-exempted services during the preceding financial year;

d) When neither final products are manufactured nor output services are provided in the preceding financial year, then the ineligible common credit shall be deemed to be 50% of the common credit.

e) Final reconciliation and adjustments, after the end of the financial year, for short or excess reversal for credit not allowed on common credits have to be done on or before 30thJune of the succeeding financial year. The short reversal of common credit has to be done on or before 30th June and in case of delay it is to be paid along with interest @ 15% p.a. from 30th June till the payment/reversal date. The credit of excess reversal of common credit not allowed can be taken. The details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit month wise/year wise have to be intimated within 15 days to the jurisdictional Superintendent.

f) A new sub-rule (3AA) is inserted to provide that a manufacturer or a provider of output service, who has failed to follow the procedure of giving prior intimation, may be allowed by a Central Excise officer to follow the procedure and pay the amount prescribed subject to payment of interest @15%p.a.

vii) A transitional provision in the form of sub-rule (3AB) is inserted to provide that the existing rule 6 would continue to be in operation upto 30/06/2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.

viii) Sub-rule (3B) is amended so as to allow banking company and other financial institutions to reverse credit in respect of exempted services on actual basis as provided in sub rules (1), (2) and (3) in addition to the option of 50% reversal of Cenvat credit availed on inputs and input services.

ix) Sub-rule (4) is substituted to provide that where the capital goods are used exclusively for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no Cenvat Credit shall be allowed on such capital goods. This provision is not applicable to final products or output services which are exempt from whole of duty/tax under any notification where exemption is granted based upon the value of quantity of clearance made or services provided in financial year. In respect of capital goods installed after the date of commencement of commercial production or provision of service, the period of two years shall be computed from the date of installation of such capital goods.

x) Sub-rule (7) is amended so as to provide that credit taken on inputs and input services used in providing a service by way of "transportation of goods by a vessel from customs station of clearance in India to a place outside India" shall not be required to be reversed by the shipping lines w.e.f. 01/03/2016. It is important to note that this service presently qualifies as an "exempted service" on account of Rule 10 of Place of Provision of Supply Rules, 2002. The above amendment read with the corresponding amendment in the definition of Exempted Service would facilitate credit availability of eligible inputs, input services and capital goods for providing the said service. The credit available may be used to pay service tax on the services of transportation of goods by a vessel from outside India to the customs station of clearance in India, which would become taxable w.e.f. 01/06/2016.

7 Manner of distribution of credit by input service distributor

i) Rule 7 dealing with distribution of credit on input services by an Input Service Distributor (ISD) is completely redrafted to allow an ISD to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units. Outsourced manufacturing unit is defined to mean either a job-worker who is required to pay duty on the value determined under the provisions of rule 10A of the Central Excise Valuation (Determination of Price Of Excisable Goods) Rules, 2000,onthe goods manufactured for the ISD or a manufacturer who manufactures goods, for the ISD under a contract, bearing the brand name of the ISD and is required to pay duty on value determined under the provisions of section4A of the Central Excise Act, 1944.

ii) At present, rule 7 provides that credit of service tax attributable to service used by more than one unit shall be distributed pro rata, based on turnover, to all the units. It is now provided that an ISD shall distribute Cenvat Credit in respect of Service Tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, *interalia*, the following conditions,

a) Credit distributed against a document cannot exceed the amount of Service Tax paid thereon;

b) Credit attributable to a particular unit shall be attributed to that unit only;

c) Credit attributable to more than one unit but not to all, shall be attributed to those units only and not to all units.

d) Credit attributable to all units shall be attributed to all units.

e) Credit shall be distributed *prorate* on the basis of turnover as provided in the present rules.

f) An outsourced manufacturing unit shall maintain separate account of credit received from each of the ISD and shall use it for payment of duty on goods manufactured for ISD concerned.

g) The credit of Service Tax paid on input services, available with the ISD as on 31/03/2016 shall not be distributed to an outsourced manufacturing unit.

h) Further, provisions of rule 6 of CCR, 2004 relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply to the units availing the Cenvat Credit distributed by ISD and not to the ISD.

8 Distribution of credit on inputs by warehouse of manufacturer

i) Rule 7B is inserted so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units**.** It is also provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs.

Further, the procedure applicable to a first stage deals or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer.

9 Documents and accounts.

i) As per existing provision, an invoice issued by a manufacturer for clearance of inputs or capitals goods is a valid document for availing Cenvat credit. Now it is provided that an invoice issued by a service provider for clearance of inputs or capitals goods shall also be a valid document for availing Cenvat Credit. *[Rule9(a) (i)]*

10 Annual return

i) Rule 9A is substituted to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the30thday of November of the succeeding year in the form as notified by the Board.

11 Recovery of cenvat credit wrongly taken or erroneously refunded.

i) The existing sub-rule(2) of rule14 prescribes a procedure based on FIFO method for determining whether a particular credit, *especially* inadmissible credit availed, has been utilized. The said sub-rule is omitted. Now, whether a particular credit has been utilized or not shall be ascertained by verifying whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

12 Others

i) It is provided that Cenvat credit cannot be utilized for payment of Infrastructure Cess. Further, no credit of this Cess would be available under the Cenvat Credit Rules, 2004. *[Rule 3(4)]*

ii) With effect from 01/03/2016, rule 3(4) is amended so as to provide that Cenvat credit of any duty specified in sub-rule (1) except NCCD cannot be utilized for payment of NCCD leviable under section 136 of the Finance Act, 2001 on any product. *[Rule 3(4)]*

[Notification No. 13/2016-CE(NT)dated01.03.2016, effective from 01/04/2016 otherwise specified above].

13 Refund of cenvat credit

Notification No.27/2012–C.E.(N.T.) is amended so as to provide that time limit for filing application for refund of Cenvat Credit under Rule 5 of the CCR, 2004,in case of export of services, shall be one year from the date of–

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

(b) The date of issue of invoice, where payment for the service has been received in advance prior to the date of issue of the invoice.

[Notification No. 14/2016-CE(NT)dated01.03.2016 effect from 01/03/2016].

C The Indirect tax dispute resolution scheme, 2016

The Government has proposed to introduce Indirect Tax Dispute Resolution Scheme, 2016, where in in respect of appeals pending before Commissioner (Appeals) as on 01/03/2016, the appellant, can file a declaration of disputed tax on or before 31/12/2016 to designated authority for resolution of dispute.

The declarant has to pay duty/tax, interest and 25% of penalty imposed, within 15 days of the receipt of acknowledgement from designated authority and intimate the details along with proof of such payment within 7 days of making such payment. The designated authority within 15 days of the receipt of such proof shall pass an order of discharge of dues. Thereafter the proceedings against the declarant will be disposed off and will also get immunity from prosecution.

The said order of discharge cannot be reopened thereafter in any proceeding before any authority or court. The said order shall not be deemed to be an order on merits and have no binding effect. No refund of the amounts paid in pursuance of declaration will be allowed.

However, the above scheme shall not apply to pending appeals in respect of following cases

a) Search and seizure proceedings;

b) Prosecution of any offence under the Act which has been instituted before the 01/06/2016;

c) Narcotic drugs or other prohibited goods;

d) Any office punishable under Indian Penal Code or Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or

e) Detention order passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

(Effective from 1st June,2016).

D Central Sales Tax,1956

1 Amendment to section 3 of the Central Sales Act, 1956

a) Section 3 of the Central Sales Tax Act, 1956 determines when a sales or purchases of goods is said to take place in the course of inter-state trade or commerce.

b) As per clause 221 of the Finance Bill, 2016, Section 3 of the Central Sales Tax Act, 1956 is being amended so as to insert an explanation 3 which provides that ' Where the gas sold or purchased and transported through a common carrier pipeline or any other common transport distribution systems 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".

c) The amendment shall be effective from passing of the Finance Bill. The amendment being inserted by way of an explanation to the existing section would make it applicable to the earlier periods also.

d) The issue regarding whether such sales should be treated as interstate sales or local VAT sales in the other state has been the subject matter of litigation and the insertion of the explanation will bring clarity to the issue. Kindly refer BG EXPLORATION AND PRODUCTION INDIA LIMITED VS STATE OF GUJARAT [2016] 65 taxmann.com 147 (Gujarat) - Period 1997-98 to 2001-02 - Panna-Mukta oil and gas field is located in west-coast off-shore - Government of India entered into Production Sharing Contracts (PSCs) with assessee for development and exploration of oil and gas which would be property of Government - ONGC had to transport gas through its pipeline and deliver same to government agency at Hazira (Gujarat) - Natural gas was separated from condensates and measured at oil fields itself - Thereafter ONGC took delivery at offshore tie-in point into its pipeline - In view of commercial expediency., ONGC mixed gas with others gases at its 'offshore processing facility' and transported gas - After transport, gas was separated and sweetened at ONGC plant at Hazira - Government agency took possession thereafter.
The following issues were raised in aforesaid Judgement

- Whether delivery point was at downstream weld at underwater connection between sellers' pipeline and ONGC's underwater gas transmission line/lines, and not downstream of sweetening and separation facility owned and operated by ONGC at Hazira

- Whether since situs of sale was 'offshore processing facility' where goods were appropriated to contract and goods were delivered and title had passed to buyer outside State of Gujarat, same was not amenable to tax under provisions of Gujarat Sales Tax Act –

The Hon'ble Gujarat High Court has pronounced it's Judgement in favour of Assessee in respect of the said transaction not being local but an Inter-State Transaction.

In the case of Reliance Industries Ltd. Vs. State of U.P[2012] 28 taxmann.com 396 (Allahabad) , RIL had filed a writ petition that said the state government didn't have the jurisdiction to impose VAT on the sale of gas to consumers in the state, since it was an inter-state transaction on which the company was paying central sales tax. The Uttar Pradesh government had claimed that since the gas came from RIL's D6 field in the Krishna-Godavari basin off the eastern coast of India via pipelines and land at Auraiya in the state before being transported to the factory gate of end users, it constitutes an intra-state transaction liable to be taxed by the local government. The Uttar Pradesh government had been directed by the Allahabad high court to refund the entire value added tax (VAT) collected by the state from Reliance Industries Ltd (RIL) on the sale of natural gas to customers. The court also found the state government's act of levying VAT on the transaction "a blatant abuse of power".

It seems that to put rest on debate for levy of VAT or CST the said Explanation has been inserted in Section 3 of the CST Act.

E Central Excise Act

1 Non-tariff amendments

- **Amendment vide clause 140 of the finance bill, 2016**

Existing provisions-

The Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid, or which has been so short levied or short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Proposed amendment-

Amended Section 11A of the Central Excise Act, 1944 is as under-

The Central Excise Officer shall, within ***two*** years from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid, or which has been so short levied or short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Effective date

- Effective from the date of passing of Finance Bill 2016.

Reasons & implications

- The normal period for issue of Show Cause notice is increased from one year to two years, in cases not involving fraud, suppression of facts, wilful misstatement, etc. This will enable the department to issue show cause for longer period.

- **Amendment vide clause 141 of the finance bill, 2016**

Existing provisions

- Section37B. Instructions to Central Excise Officers. -

The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board

Provided that no such orders, instructions or directions shall be issued-

a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

b) so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

Proposed amendment

Clause 141 seeks to amend section 37B of the Central Excise Act, to insert the words "or for the implementation of any other provisions of this Act" in section 37B so as to empower the Board to issue orders, instructions and directions for the implementation of any other provisions of the said Act.

Effective date - 1st April, 2016

Reasons & implications

- Now the Board is further empowered to issue order, instructions, and directions for implementation of any other provisions if the said act.

- **Amendment vide notification no. 5/2016 – ce (n.t)**

Existing provisions

- Rule 9, sub-rule (2) provides that every person specified under sub-rule (1) of rule 9, unless exempted from doing so by the Board under sub-rule (2) of rule 9, shall get himself registered with the jurisdictional Superintendent of Central Excise by applying online registration in the form specified in Annexure-I. If the person has more than one premises requiring registration, separate registration certificate shall be obtained for each of such premises.

Proposed amendment

—Amended sub-rule (2) of rule 9 of Central Excise Rules, 2002 is as under

i) The Central Board of Excise and Customs hereby exempts from the operation of said rule, every manufacturing factory or premises engaged in the manufacture or production of articles of jewellery other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under chapter heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (herein after referred to as the specified goods), where the manufacturer of such goods has a centralized billing or accounting system in respect of such specified goods manufactured or produced by different factories or premises and opts for registering only the factory or premises or office, from where such centralized billing or accounting is done and where the accounts/records showing receipts of raw materials and finished excisable goods manufactured or received back from job workers are kept.

ii) For availing the exemption contained herein, the manufacturer taking the centralized registration shall give details of all premises (other than those of job worker's), from where such specified goods are removed for domestic clearance.

iii) Notwithstanding anything contained in this notification, a manufacturer of specified goods may also take separate registrations for all factories or premises where the accounts/records showing receipts of raw materials and finished excisable goods manufactured or received back from job workers are kept;

Effective date - 1st March, 2016

Reasons & implications

- To promote ease of doing business, scheme for centralised registration has been introduced to the manufacturers manufacturing goods falling under Chapter heading 7113 i.e. Articles of jewellery where centralized billing or accounting system is maintained. However, manufacturer needs to provide details of all the premises from where such goods are removed.

- **Amendment vide notification no. 6/2016 – ce (n.t.)**

Existing provisions

- Notification No. 35/2001 as amended from time to time in clause (8) reads as follows-

Physical verification (i) The authorized officer shall verify the premises physically within seven days from the date of receipt of application through online. Where errors are noticed during the verification process or any clarification is required, the authorized Officer shall immediately intimate the same to the assessee for rectification of the error within fifteen days of the receipt of intimation failing which the registration shall stand cancelled. The assessee shall be given a reason opportunity to represent his case against the proposed cancellation, and if it is found that the reasons given by the assessee are reasonable, the authorized Officer shall not cancel the registration to the premises.

(ii) On the physical verification of the premises, if it is found to be non-existent, the registration shall stand cancelled. The assessee shall be given a reason opportunity to represent his case against the proposed cancellation, and if it is found that the reasons given by the assessee are reasonable, the authorized Officer shall not cancel the registration to the premises recording the complete and correct address.

Proposed amendment

—Amended notification reads as follows-

Sub-clause (iii) has been inserted-

"(iii) Every manufacturing factory or premises engaged in the manufacture or production of articles of jewellery other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under chapter heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), shall be exempted from sub-clauses (i) and (ii) above.".

Effective date - 1st March, 2016

Reasons & implications

- In case of jewellery manufacturer, requirement of physical verification post registration is done away with for promoting the concept of 'ease of doing business'.

- **Amendment vide notification no. 7/2016- ce (n.t)**

Existing provisions

- Jewellery has been bought under levy of Central excise vide notification No. 1/2011 to be levied at the rate of 1% without CENVAT Credit. To determine the value for the purpose of Excise, tariff value of 30% has been prescribed by notification no, 9/2012. Further exemption was provided to Jewellery items vide notification no. 23/2012.

Proposed amendment

- Jewellery has been bought again under Central Excise at the rate of 1% without CENVAT credit or 12.5% with CENVAT Credit. Notification No. 9/2012 which provides the tariff value of 30% to calculate the Central excise duty has been rescinded.

Effective date - 1st March, 2016

Reasons & implications

- Now the duty is required to be discharged on 100% of the transaction value instead of 30% of tariff value i.e. Central Excise duty will be calculated at the rate of 1% of the transaction value without availing CENVAT Credit or 12.5% of the Transaction value after availing CENVAT Credit.

- **Amendment vide notification no. 8/2016- ce (n.t) refer point no. 2 of this notification.**

Existing provisions

- Rule 7, sub-rule 4 of the Central excise rules, 2002 states that

(4) The assessee shall be liable to pay interest on any amount payable to Central Government, consequent to order for final assessment under sub-rule (3) at the rate specified by the Central Government by notification issued under section 11AA of the Act from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof.

Proposed amendment

- Rule 7, sub-rule 4 of the Central excise rules, 2002 has been substituted which are as follows-

"(4) The assessee shall be liable to pay interest on any amount paid or payable on the goods under provisional assessment, but not paid on the due date specified under sub-rule (1) of rule 8 and the first proviso thereto, as the case may be, at the rate specified by the Central Government, vide, notification under section 11AA of the Act, 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.

Effective date - 1st March, 2016

Reasons & implications

- Previously Interest was only payable on amount due to the Central Government consequent to final assessment from the 1st day of the month succeeding the month for which such amount was determined till the date of payment thereof. Now the assessee shall be liable to pay interest on any amount paid or payable on the goods under provisional assessment but not paid on due date specified under rule 8(1) and first proviso thereto at the rate specified under notification issued under section 11AA of the Central Excise Act for the period starting 1st day after the due date till the date of actual payment.

- **Amendment vide notification no. 8/2016- ce (n.t) refer point no. 3 of this notification-**

Existing provisions

- Rule 8, in the second proviso, for explanation-1 of the Central Excise Rules, 2002 states that Explanation -1- For the purposes of this proviso , it is hereby clarified that an assessee shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification did not exceed rupees four hundred lakhs.

Proposed amendment

- Rule 8, in the second proviso, for explanation-1 of the Central Excise Rules, 2002 has been substituted which are as follows-

"Explanation-1. – For the removal of doubts, it is hereby clarified that,-

(a) an assessee, engaged in the manufacture or production of articles of jewellery, other than articles of silver jewellery but inclusive of articles of silver jewellery studded with diamond, ruby, emerald or sapphire, falling under chapter heading 7113 of the First Schedule of the Tariff Act shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees twelve crore;

(b) an assessee, other than (a) above, shall be eligible, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed rupees four hundred lakhs.

Effective date - 1st March, 2016

Reasons & Implications

- Relaxation given to jewellery sector up to the clearance of 12 hundred lakhs in the preceding financial year for the purposes of calculating SSI Limits. Such assessee shall be eligible to avail exemption under notification based on value of clearances in a financial year and pay duty electronically on goods cleared during a quarter of the financial year by sixth day of the month following the quarter .

- **Amendment vide notification no. 8/2016- ce (n.t) refer point no. 4 of this notification-**

Existing provisions

- Rule 11, sub-rule (8) of the Central Excise Rules, 2002 states that an invoice issued under this rule by a manufacturer may be authenticated by means of digital signature.

Provided that where the duplicate copy of the invoice meant for transporter is digitally signed, a hard copy of the duplicate copy of the invoice meant for transporter and self-attested by the manufacturer shall be used for transport of goods.

Proposed amendment

- Amended Rule 11, in sub-rule (8) states that an invoice issued under this rule by a manufacturer may be authenticated by means of a digital signature.

Provided that where the duplicate copy of the invoice meant for transporter is digitally signed, a hard copy of the duplicate copy of the invoice meant for transporter shall be used for transport of goods.

Effective date - 1st March, 2016

Reasons & implications

- Relaxation given in procedure in relation to issuance of Invoice by doing away with the requirement of providing self-attested copies of digitally signed duplicate invoices for the purposes of transportation of goods.

- **Amendment vide notification no. 8/2016 – central excise (n.t) refer point 5(i) & (ii) of this notification-**

Existing provision

In rule 12, in sub rule (2), in clause (a) and (b) of the Central Excise Rules, 2002 the existing provision is as follows

"(2) (a) Notwithstanding anything containing in sub-rule (1), every assessee shall submit to the Superintendent of Central Excise , an Annual Financial Information Statement for the preceding financial year to which the statement relates in the form specified by notification by the Board by 30th day of November of the succeeding year

(b) The Central Government may, by notification, and subject to such conditions or Limitations as may be specified in such notification, specify assessee or class of assessees who may not require to submit such an Annual Financial Information Statement"

Proposed amendment

Amended rule 12, sub-rule (2) of the Central Excise Rules, 2002 as follows

"(2) (a) Notwithstanding anything containing in sub-rule (1), every assessee shall submit to the Superintendent of Central Excise , an Annual Returns for the preceding financial year to which the return relates in the form specified by notification by the Board by 30th day of November of the succeeding year

(b) The Central Government may, by notification, and subject to such conditions or Limitations as may be specified in such notification, specify assessee or class of assessees who may not require to submit such Annual Returns
(c) The provision of this sub-rule and clause (b) of sub-rule (8) shall *mutandis mutandis* apply to a hundred per Export Unit"

Effective date 1st April, 2016

Reasons and implications
Amendment is made under Rule 12 which states that the manufacturer has to file annual return instead of 'Annual Financial Information Statement' or 'Annual Installed Capacity Statement', which reduces the Number of Returns to be filed by a central excise assesse. The regular returns (Monthly or Quarterly) will continue to be filed. Further Rule 12 (2), clause (b) shall also apply to 100% EOU.

- **Amendment vide notification no. 8/2016- ce (n.t) refer point 5(iii) of this notification**

Existing provisions
- In Rule 12(2A) of the Central Excise Rules, 2002;
"(2A) (a) Every assessee shall submit to the Superintendent of Central Excise , an Annual Installed Capacity Statement declaring the annual production capacity of the factory for the Financial year to which the statement relates in the form specified by notification by the Board by 30th day of April of the succeeding financial year
Provided that for the year 2007-08, the said statement shall be furnished by the 31st day of October,2008.
(b) The Central Government may, by notification, and subject to such conditions or Limitations as may be specified in such notification, specify assessee or class of assessees Who may not require to submit such an Annual Installed Capacity Statement"

Proposed amendment
Rule 12 sub-rule 2A of the Central Excise rules, 2004 shall be omitted

Effective date 1st April, 2016.

Reasons and implications
Filling of Annual Installed Capacity statement is proposed to be done away with.

- **Amendment vide notification no. 8/2016- ce (n.t) refer point 5(iv) of this notification-**

Existing provisions

- In rule 12(6) of the Central Excise Rules, 2004

Where any return or Annual Financial Information Statement or Annual Installed Capacity Statement referred to in this rule is submitted by the Assessee after due date as specified for every return or statements, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day subject to a maximum of twenty thousand rupees for the period of delay in submission of each return or statement.

Proposed amendment

Amended rule 12, sub rule (6) of the Central Excise Rules, 2004, is inserted as under (The words "or Annual Financial Information Statement or Annual Installed Capacity Statement'' shall be omitted.) Where any return referred to in this rule is submitted by the Assessee after due date as specified for every return or statements, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of one hundred rupees per day subject to a maximum of twenty thousand rupees for the period of delay in submission of each return or statement.

Effective date - 1st April, 2016

Reasons & implications

Provides for penalty of Rs. 100 per day for delay in submission of Annual return subject to maximum of Rs. 20,000.

- **Amendment vide notification no. 8/2016- ce (n.t) refer point 5 (v) of this notification-**

Existing provisions

- No such provision existed in rule 12 of the Central Excise Rules, 2002.

Proposed amendment-

Amended rule 12, sub-rule (8) of the Central Excise Rules, 2002 has been inserted which is as follows-

(8) (a) An assessee, who has filed a return in the form referred to in sub-rule(1) within the date specified under that sub-rule or the second proviso thereto, may submit a revised return by the end of the calendar month in which the original return is filed.

Explanation - Where an assessee submits a revised return under clause (a), the "relevant date" for the purpose of recovery of Central Excise duty, if any, under section 11A of the Act shall be the date of submission of such revised return.

(b) An assessee who has filed Annual Return referred to in clause (a) of sub-rule (2) by the due date mentioned in clause (a) of that sub-rule, may submit a revised return within a period of one month from the date of submission of the said Annual Return.

Effective date - 1st April, 2016

Reasons & implications

- Like Other Laws, the facility of filing Revised Excise Return has been introduced for manufactures.

- **Amendment vide notification no. 8/2016- ce (n.t) refer point 6 of this notification**

Existing provisions

- No such provision existed in rule 17 of the Central EXCISE Rules, 2002.

Proposed amendment

- Amended rule 17, sub-rule (7) of the Central Excise Rules, 2002 has been inserted which is as follows-
"(7) An assessee, who has filed a return in the form referred to in sub-rule (3) within the date specified under that sub-rule, may submit a revised return by the end of the calendar month in which the original return is filed.
Explanation.- Where an assessee submits a revised return under this sub-rule, the "relevant date" for the purpose of recovery of Central Excise duty, if any, under section 11A of the Act shall be the date of submission of such revised return.

Effective date - 1st April, 2016

Reasons & implications

- For the purposes of recovery of Central Excise duty under section 11A of the Act, relevant date is submission of such revised returns.

- **Amendment vide notification no. 8/2016- ce (n.t) refer point 7 of this notification-**

Existing provisions

- No such provision existed in rule 26 of the Central EXCISE Rules, 2002.

Proposed amendment

- Amended rule 26, sub-rule (2) of the Central Excise Rules, 2002 has been inserted which is as follows-
"Provided that where any proceeding for the person liable to pay duty have been concluded under clause (a) or clause (d) of sub-section (1) of section 11AC of the Act in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.

Effective date - 1st April, 2016

Reasons & implications

- Any penalty proceedings pending against other persons shall be deemed to be concluded if the proceeding in respect of a person liable to pay duty concluded under section 11AC(1)(a) or (d) of the Central Excise Act.

- **Amendment vide notification no. 11/2016- ce (n.t)**

Existing provisions

- Notification No. 20/2001 as amended from time to time states that articles of apparel, not knitted or crocheted, all sorts, falling under sub-heading No. 6101 or 6201.0 in case of readymade garments is liable to pay the excise duty at the rate of 30% under tariff value.

Proposed amendment

- Amended Notification states articles of apparel, not knitted or crocheted, all sorts, falling under sub-heading No. 6201.0 in case of readymade garments is liable to pay the excise duty at the rate of 60% under tariff value.

Effective date - 1st March, 2016

Reasons & implications

- Duty will have to be calculated on 60% after abatement of 40%.

Effective date - 1st March, 2016

Reasons & implications

- Benefit has been extended to Accessories.

- **Amendment vide notification no. 15/2016- ce (n.t)-**

Existing provisions

- Section 11AA of the Central Excise Act, 1944 fixed the Interest rate at 18% p.a.

Proposed amendment

-Amended notification fixed the rate of Interest at 15% p.a.

Effective date - 1st March, 2016

Reasons & implications

- To rationalise with other tax laws rate of interest on delayed payment under Central Excise has been reduced to 15% pa.

- **Amendment vide notification no. 18/2016- ce (n.t)-**

Existing provisions

- Notification No. 19/2004-CE(N.T) dated 6th September, 2004 under the heading

"(2) Conditions and Limitations, in paragraph (e) states that

(e) that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;

Under the heading

(3) Procedures, in paragraph (b) in sub-paragraph (i),

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

Proposed amendment

- Amended Notification No. 18/2016 states as under-

"(2) Conditions and Limitations, in paragraph (e) states that

(e) that the *Indian* market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;

Under the heading

(3) Procedures, in paragraph (b) in sub-paragraph (i),

(i) Claim of the rebate of duty paid on all excisable goods *before the expiry of the period specified in section 11B of the Central Excise Act* shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

Effective date- 1st March, 2016

Reasons & implications

- Amendment provides that the Indian Market Price of the Excisable goods at the time of exportation shall not be less than the amount of rebate claimed in contrast to earlier provisions of market price**.**

Further now claim for rebate of duty paid on all excisable goods will be lodged with the Deputy/ Assistant Commissioner within the time prescribed under section 11AB of the Central Excise Act.

- **Amendment vide notification no. 19/2016- ce (n.t)-**

Existing provisions

- Notification no. 36/2001 dated 26th June, 2001 read with rule 9 of the CER, 2004 states that it is necessary and expedient in the public interest to do hereby exempts from the operation of rule 9 of the said rules- (3) hereby declares that if two or more premises of the same factory are separated by public road, railway line or canal, the Commissioner of Central Excise may, subject to proper iii of the movement of goods from one premise to other and such other conditions and limitations, allow single registration.

Proposed amendment-

Amended notification read with rule 9 of the CER, 2002, for condition (3) the following condition is substituted as follows-

(3) hereby declares that if two or more premises of the same factory are located within a close area in the jurisdiction of a Range Superintendent, the manufacturing process undertaken therein are interlinked, and the units are not operating under any of the area based exemption notifications, the Commissioner of Central Excise, may, subject to proper accountal of the movement of goods from one premise to other and such other conditions and limitations as he may impose, allow single registration

Effective date - 1st March, 2016

Reasons & implications

- Amendment is made under Rule 9 (2), which allows Single registration to the Assesse who declares two or more premises of the same factory within a close area in the jurisdiction of a Range Superintendent, subject to proper accountal of the movement of goods from one premise to the other and such other conditions and limitations as he may impose. Details of all the premises to be given other than that of job worker.

- **Amendment vide notification no. 20/2016- ce (n.t)-**

The Central Excise (Removal of Goods at Concessional Ratwe of Duty for Manufacture of Excisable Goods) Rules, 2001 have been revamped in order to simplify the procedures. As per the amended Rules, there is no need to procure specific approval of AC/DC. Removal of goods based on mere submission of information would be regarded as sufficient compliance.

Effective date- 1st March, 2016

Reasons & Implications

The substituted new rules makes it easier for a manufacturer intending to avail the benefit of removing goods at concessional rate of duty by doing away with the requirement of obtaining permission by making application to Deputy/Assistant Commissioner of Central Excise. Now self-declaration in Form I is required to be made in duplicate to avail the benefit of removing the goods at concessional rate of duty.

Proviso has been inserted in rule 3 of Rule 3 which provides that an unregistered manufacturer including manufacturer of exempted goods or non-excisable goods shall be eligible to avail the benefit of this provision after taking registration under rule 9 of the Central Excise Rules.

- **Amendment vide notification no. 21/2016- ce (n.t)-**

Existing provisions

- Notification No 21/2004, reads as follows-

Verification of Input–output ratio. – The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.

Proposed amendment

- Amended Notification No. 21/2016 states as under-

" Approval of declaration.- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise may grant permission to the applicant for manufacture or processing and export of finished goods before commencement of export of such goods on the basis of certificate issued by the Chartered Engineer and the declaration Explanation In case of doubt in respect of the correctness of such declaration, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, may visit the factory and verify correctness of such declaration filed. " ;

Effective date- 1st March, 2016

Reasons & implications -

On the basis of Chartered Engineer certificate permission may be granted to the applicant manufacturer before commencement of export of such goods. This will reduce interaction of the assesses with the Department for the purpose of getting verified correctness of the input-output ratio to claim rebate

2 Amendment to the Central Excise Act, 1944.

a Section 5a- power to grant exemption from duty of excise.

Section 5A of the Central Excise Act, 1944 empowers the Central Government to grant full or part exemption from levy of excise duty on any excisable goods where it is found necessary in the interest of general public with or without any condition by issuing notification in the Official Gazette.

Sub-sections (5) and (6) provide for requirement of publishing and offering for sale any such notification issued, by the Directorate of Publicity and Public Relations of CBEC. The existing provisions of the said sub-section are as under.

"(5) Every notification issued under sub-section (1) or sub-section 2(A) shall, -

(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).
(6) Notwithstanding anything contained in sub-section (5), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force."

The above sub-section (5) has been amended so as to omit the requirement of publishing and offering for sale of notifications issued. Consequently the provision of sub-section (6) has been omitted. The provision of sub section (5) has been substituted with the following amended provision.
"(5) Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette."

The above amendment shall be effective from the date of Enactment of the Finance Bill 2016.
In view of the fact that the Notifications are easily available on the website of CBEC the requirement of publishing and offering sale has been done away with to give effect to the Notifications.

b Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-

Section 11A of the Central Excise Act, 1944 provides for issue of Show Cause Notice by the Central Excise Officer for recovery of excise duty which has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. In such cases the Show Cause Notice shall be issued within a period of one year from the relevant date.

In order to give more time to the department to issue the Show Cause Notice, the said provision has been amended and the time limit to issue Show Cause Notice has been increased from one year to **two years** from the relevant date.

The above amendment shall be effective from the date of Enactment of the Finance Bill 2016.

Where recovery of excise duty arises on account of fraud or collusion or any willful misstatement or suppression of facts or contravention of provisions of the Act or Rules made there under with intent to evade payment of excise duty, the time limit to issue the Show Cause Notice is 5 years from the relevant date. In the absence of the above specified factors extended period to issue Show Cause Notice would not be available to the department. Even though the excise duty is found to be recoverable, the same cannot be recovered unless the Show Cause Notice is not issued within the specified time.

The increase in the time limit for issue of Show Cause Notice from one year to two years gives sufficient time to the Central Excise Officers to initiate the recovery action without resorting to extended period of 5 years where it is required to establish that the above specified factors were existed. Thus the chances of failure to recover the excise duty on account of failure to establish the specified factors to invoke the extended period would thus be reduced.

c Section 37b instructions to central excise officers.

Section 37B of the Central Excise Act, 1944 empowers CBEC to issue Instructions, Directions or Orders to be followed by the Officers of Central Excise in order to maintain the uniformity in the classification of the excisable goods or with respect to levy of excise duty on such goods.

With a view to widen the gamut of powers of CBEC to issue Instructions, Directions or Orders for the **implementation of any other provision** of the Central Excise Act, 1944, Section 37B has been amended suitably.

The above amendment shall be effective from the date of Enactment of the Finance Bill 2016.

On account of this amendment, the scope of CBEC for issuing Instructions, Directions or Orders would increase. CBEC may issue more and more Instructions, Directions or Orders wherever it is found necessary in order to implement the various provisions of the Act.

3 Third schedule to the Central Excise Act, 1944

The definition of the term 'manufacture' in Section 2(f)(ii) has a deeming provision which provides that certain processes which are specified in relation to any goods in Chapter Notes or Section Notes of First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture. The list of goods for which this deemed manufacture is applicable is given in Third Schedule to the Central Excise Act, 1944. In these Schedules, the excisable goods are classified based on the Harmonized System of Nomenclature (HSN). Consequent to changes in HSN, it is proposed to make some editorial changes in the Third Schedule.
The above amendment shall be effective from the date of Enactment of the Finance Bill 2016.

Further, the following goods are also included in the Third Schedule.

a. All goods falling under heading 3401 and 3402;
b. Aluminum foils of a thickness not exceeding 0.2mm;
c. Wrist wearable devices (commonly known as 'smart watches'); and
d. Accessories of motor vehicles.

The above amendment will come into effect from 01.03.2016.
By virtue of inclusion of the above excisable goods in Third Schedule to the Central Excise Act, 1944, certain process specified in relation to above goods in Chapter Notes or Sections Notes of the First Schedule to Central Excise Tariff Act, 1985 would amount to manufacture and therefore excise duty liability would arise.

4 Major changes in Central Excise Tariff Act, 1985

[The changes come in to effect from 1.3.2016 unless specifically mentioned otherwise.]

a Readymade Garments

Excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT Credit) is imposed on readymade garments and made up articles of textiles falling under Chapter 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff, except those falling under 6309 and 6310, of retail sale price (RSP) of ₹ 1000 and above when they bear or are sold under a brand name. This optional levy would apply to such readymade garments and made up articles of textiles regardless of the composition of the garment/article. However, 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 CENVAR credit)" in case of garments/articles of other composition, as the case may be, shall continue. 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 No. 20/2001-Central Excise (N.T.) dated 30.04.2001. The new levy is similar to the levy of mandatory excise duty of 10% on readymade garments and made up articles of textiles [goods falling under Chapters 61,62 and 63 (heading Nos. 63.01 to 63.08] when they bear or are sold under a brand name, which was introduced in the Budget 2011-12, except that

- The present levy is an optional levy, that is domestic manufacturers will have the option to pay excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit)".
- The levy is restricted to such articles which have RSP of ₹ 1000 and above, and
- The tariff value is being revised from 30% of RSP to 60% of the RSP.

The levy shall not apply to retail tailoring establishments that stitch garments in a customised 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.

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 name owner has the option to authorize his job-worker to pay the duty leviable on the goods. If such an authorization is given, then the job-worker would have to obtain registration.

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 labelling or re-labelling constitutes a process of "manufacturer", 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 ₹1000 or above and clears them for further sale.

The SSI exemption for the month of March 2016 will be ₹ 12.5 Lakh, subject to fulfilment of other conditions for the notification No. 8/2003-C.E. dated 01.03.2003.

b Articles of Jewellery

Excise duty of 1% (without CENVAT credit) or 12.5% (with CNVAT Credit) is imposed on articles of jewellery [excluding silver jewellery, other than studded with diamonds/other precious stones] with a higher threshold exemption up to ₹ 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 up to ₹ 6 crore during a financial year, if his aggregate domestic clearances during preceding financial year were less than ₹ 12 crore. In other words, jewellery manufacturer having aggregate value of clearances in a financial year exceeding ₹ 12 crore, will not be eligible for this threshold exemption in the subsequent financial year.

The SSI exemption for the month of March, 2016 for jewellery manufacturers will be ₹ 50 Lakh, subject to the condition that value of clearances for home consumption by a manufacturer from one or more factory or premises of production or from a factory or premises by one or more manufacturers, during the financial year 2014-15 should not be more than ₹ 12 crore.

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 if so desired. No stock declaration, however, is required to be filed with the jurisdictional central excise authorities.

c Other changes

- For all categories of footwear, abatement rate from RSP is being increased from 25% to 30%.
- Aluminum foils of a thickness not exceeding 0.2 mm [7607] are being notified under section 4A of the Central Excise act for the purpose of assessment of Central Excise duty with reference to the Retail Sale Price with an abatement of 25%.
- The excise duty structure on, disposable aluminum foil container, is being changed from 2% without CENVAT credit and 6% with CENVAT credit to 2% without CENVAT credit and 12.5% with CENVAT credit.
- Basic Excise duty on 5 specified parts required for the manufacture of centrifugal pump is being reduced from 12.5% to 6% subject to actual user condition.
- Basic Excise duty on all goods falling under 8607 (parts of railway or tramway locomotives or rolling stock) and 8608 (railway or tramway track fixtures and fittings etc.) is reduced to 6%.
- Basic Excise Duty on refrigerated containers [8609 00 00] is being reduced from 12.5% to 6%.
- An Infrastructure Cess, as a duty of excise, is being imposed on motor vehicles falling under heading 8703. This Cess will come into force with immediate effect.
- Excise Duty on Capital goods and spare thereof, raw materials, parts, material handling equipment and consumable for repairs of ocean – going vessels by a ship repair unit is being exempted subject to actual user condition.

- Solar lamp [tariff item 9405 50 40] is being exempted from excise duty.
- Excise duty on "waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured" falling under Chapter sub-heading 2202 10 is being increased from 18% to 21%.
- Basic Excise Duty on micronutrients falling under Chapter 28, 29 or 38, manufactured by the manufacturers registered under FCO, 1985, is being reduced from 12.5% to 6%.
- Ready Mix Concrete [3824 50 10] manufactured at the site of constriction for use in construction work at such site is being fully exempted from excise duty.
- Basic Excise duty on sacks and bags of polymers of any plastics being rationalised at 15%
- Basic Excise duty on rubber sheets & resin rubber sheets for soles and heels [4008 29 10] is being reduced from 12.5% to 6%.
- Basic excise duty on PSF /PFY manufactured from plastic scrap or plastic waste including waste PET bottles is being changed from 2% without Cenvat credit or 6% with CENVAT credit to, 2% without Cenvat credit

F Customs Act

➢ **Amendment vide notification no. 33/2016- ce (n.t)-**

Existing provisions
Section 28AA of Customs Act, 1962 provides for payment of interest in cases of delayed payment of duty. As per Not. 17/2011-Cus (NT), the rate of Interest prescribed is 18% p.a.

Proposed amendment
Not. 33/2016-Cus (NT) dated 01.03.2016 prescribes the rate of interest shall be reduced to 15% p.a.

Effective date 01.04.2016

Reasons and Implications
Lower outgo of interest

➢ **Customs (import of goods at concessional rate of duty for manufacture of excisable goods) rules, 2016-**

Existing provisions
These conditions were prescribed in the Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996

Proposed amendment
New Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2016 have been announced

Effective date 01.04.2016

Implications
The requirements to import goods at concessional rate of duty have been simplified. Now, the imports under these Rules can be made without having any approval from the Proper Officer.

➢ **Amendment in section 25 of customs act-**

Existing provisions
Sec. 25(4)(b) of Customs Act, 1962 prescribes that every notification has to be published & offered for sale on the date of issue by the Directorate of Publicity and Public Relations of the Board, New Delhi

Proposed amendment
It is proposed to dispense with the requirement of publication and offer for sale of new notification

Effective date

The date of Enactment of Finance Bill, 2016

Implications

Now-a-days, the notifications are mailed by the Department and the same are also available on the website. Therefore, the redundant provisions are dispensed with.

- **Amendment in section 28 of customs act-**

Existing provisions

Presently, the Show Cause Notice (SCN) for recovery of duty, which is not paid or short paid, can be issued within 1 year from the relevant date

Proposed amendment

Now, it is proposed that SCN can be issued within 2 years from the relevant date

Effective date

The date of Enactment of Finance Bill, 2016

Implications

Due to increase in time for issuance of SCN, departmental officers would have more time to recover the duties without invoking extended period of time on the grounds of *mala fides*. Assessees may face SCNs for time barred dues of more than 1 year but less than 2 years

- **Amendment in section 47 of customs act-**

Existing provisions

Sec. 47 of Customs Act, 1962 deals with the procedure of payment of duty for goods imported for home consumption. Presently, goods are allowed to be cleared for home consumption only if duty has been paid in full before such clearance

Proposed amendment

Now, Government to notify certain class of importers who can be permitted to make deferred payment of duty

Effective date

The date of Enactment of Finance Bill, 2016

Implications

The importers (yet to be notified) will enjoy the option of deferred duty payment without/reduced interest

- **Amendment in section 53 of customs act-**

Existing provisions
Sec. 53 of Customs Act, 1962 provides for transit of certain goods imported in a conveyance without payment of duty. This section provides that any goods imported in a conveyance & mentioned in import manifest as for transit in the same conveyance, to any place outside India may be allowed to be so transited without payment of duty unconditionally.

Proposed amendment
Now, the above Sec. is proposed to be substituted to prescribe conditions

Effective date
The date of Enactment of Finance Bill, 2016

Implications
Now, transit of goods without payment of duty will be subject to fulfilment of conditions to be prescribed in due course of time

- **Amendment in sections 57 & 58 of customs act-**

Existing provisions
Sec. 57 of Customs Act, 1962 deals with procedure for declaration of public warehouse. Sec. 58 of Customs Act deals with procedure for licensing of private warehouse. As per existing Sec., the AC/DC may appoint any warehousing station as a public /private warehouse for deposit of dutiable goods

Proposed amendment
The above Section is proposed to be substituted so as to authorize Principal Commissioner or Commissioner of Customs to license a public/private warehouse for deposit of dutiable goods subject to certain conditions as may be prescribed

Effective date
The date of Enactment of Finance Bill, 2016

Implications
Now, for setting up of public/private warehouse, the area is not required to be notified as warehousing station. Power to grant license has been shifted from AC/DC to Principal Commissioner or Commissioner of Customs

- **Introduction of new section 58A-**

Proposed amendment

Till now, only two types of warehouses are notified; public and private. Now, Sec. 58A is introduced which will allow the Principal Commissioner or Commissioner of Customs to license special warehouse wherein dutiable goods may be deposited and such warehouse will be under supervision of Customs Officer. The Board will specify the class of goods which will be allowed to be deposited in such warehouse

Effective date

The date of Enactment of Finance Bill, 2016

Implications

New warehouses for specified goods would be licensed in which there will be continued physical control of the Customs Department.

- **Amendment in section 59 of customs act-**

Existing provisions

Sec. 59 of Customs Act, 1962 deals with procedure for issuance of bond for warehousing. As per existing Sec., the importer of goods is required to execute bond equivalent to twice the duty assessed and needs to pay rent and other charges, penalty & fine if imposed for contravention

Proposed amendment

A new section is proposed to be enacted by virtue of which, importer is required to execute bond equivalent to thrice of the duty involvement and need to pay penalty & fine if imposed. Further, it is proposed that the importer is required to furnish such security as may be prescribed.

Effective date

The date of Enactment of Finance Bill, 2016

Implications

The amount of bond would be 50% more than the existing requirement. Additional requirement of furnishing Security has also been introduced

- **Amendment in section 61 of customs act-**

Existing provisions

Sec. 61 of Customs Act, 1962 deals with period for which goods may be warehoused. As per existing sub clause (1), the following goods can be warehoused

- Capital goods intended for use in any 100% EOU, till the expiry of 5 years
- Goods other than capital goods intended for use in any 100% EOQ, till the expiry of 3 years

after the date of order permitting deposit of goods in warehouse

Proposed amendment

As per sub-clause (1) proposed to be substituted, warehousing period in case of

- Capital goods intended for use in any 100% EOU/STP/EHTP/warehouse in which manufacturing is permitted, till their clearance from the warehouse
- Goods other than capital goods intended for use in any 100% EOU/STP/EHTP/warehouse in which manufacturing, till their consumption/clearance from the warehouse

after the date of order permitting deposit of goods in warehouse

Implications

The period for warehousing of various goods has been extended from 5/3 years to infinite period till their clearance from warehouse. This has also been made applicable to STP/EHTP/warehouse where manufacturing is permitted

- **Introduction of new section 73A**

Proposed amendment

Presently, the warehouse keeper is not responsible for any contraventions of any Act or Rules in respect of warehoused goods. New Sec. 73A of Customs Act, 1962 is proposed to be introduced which provides for following

- Warehoused goods to be in custody of Licensee
- The responsibilities of licensee will be prescribed
- On improper removal of warehoused goods, the licensee will be held liable for payment of duty, interest, fine and penalties without prejudice to any other action that may be taken against the licensee under the Customs Act

Effective date

The date of Enactment of Finance Bill, 2016

Implications

Responsibilities of warehouse-keeper have been increased

➢ **Omission of section 62 & 63 of customs act**

Existing provisions

Sec. 62 & 63 of Customs Act,1962 deals with exercise of control by officer and warehouse owner on goods which are warehoused. Existing Sec. 62 enables customs officer to exercise the control over the warehoused goods. Further, Sec. 63 permits the selling of warehoused goods by the warehouse keeper in cases of non-payment of rent by owner of goods within 10 days from its due date

Proposed amendment

Both these Sections are proposed to be deleted from the Statute book

Effective date

The date of Enactment of Finance Bill, 2016

Implications

The period for warehousing of various goods has been extended from 5/3 years to infinite period till their clearance from warehouse. This has also been made applicable to STP/EHTP/warehouse where manufacturing is permitted

➢ **Introduction of baggage rules 2016**

Proposed amendment

New set of rules have been prescribed in place of the Baggage Rules, 1998. Under new rule, it is prescribed that customs declaration henceforth are required to be filed only for those passengers who carry dutiable or prohibited goods.

Further, the limit for free baggage has been increased (*Noti. 30 /2016 & 31 /2016 –Cus.) which is as follows*

Notified Person returning from any country other than Nepal, Bhutan, Myanmar or China as personal effects	Proposed allowance
To Indian Resident or a Foreigner residing in India	Rs. 50,000
To tourist of Foreign Origin	Rs. 15,000

G Indirect Tax Dispute Resolution Scheme

Applicability

The scheme is applicable to appeals pending before Commissioner (Appeals) as on 01.03.2016. Declarations to be made till 31.12.2016.

Exclusions

- Order in respect of search and seizure
- Prosecution of any offence started before 01.06.2016
- Order in respect of narcotic drugs or other prohibited goods
- Order in respect of any offence punishable under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988
- Detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974

Immunity

- The appeals pending before Commissioner (Appeals)shall get disposed off and declarant shall get immunity from all proceedings under the Act
- The declaration made, in respect of matters of the order appealed against, shall be conclusive and will never be re-opened

Procedure

- The applicant shall pay tax along with interest at applicable rate and 25% of penalty imposed in the order within 15 days of acknowledgement of declaration. The amount so paid shall not be refunded under any circumstances
- The applicant to inform designated authority within 7 days of such payment
- Within 15 days of receipt of such proof, designated authority shall pass order of discharge of dues

Effective date 01.06.2016

Implications

In penalty cases, this Scheme will bring lot of relief to the assessees and will help in reducing pending litigations.