

# INDIA

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# BUDGET 2015

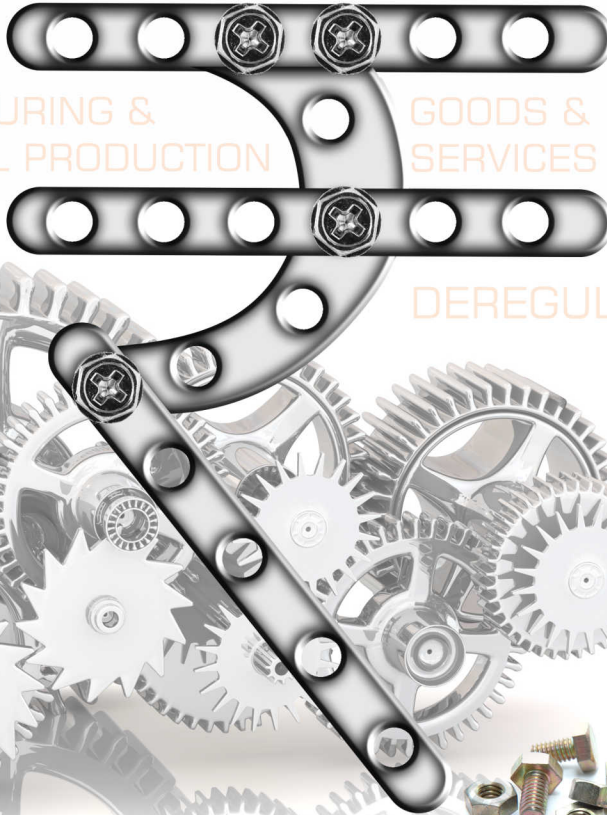
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FOREIGN DIRECT INVESTMENT

MANUFACTURING &  
INDUSTRIAL PRODUCTION

GOODS &  
SERVICES TAX

DEREGULATION



*Compiled by:*

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# UNION BUDGET ANALYSIS 2015-2016



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S B Gabhawalla & Co. is a professional services firm practicing in the entire field of taxation with a specialization in Indirect Taxes. The firm has a distinct research orientation towards Service Tax & VAT related matters.



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The firm is headed by Sunil Gabhawalla who is a chartered accountant in practice with 3rd rank at the All-India Level. He is also a cost accountant. He also obtained the 9th position at All India Level in CA Intermediate and the 7th position at All India Level at ICWA Intermediate Examinations.



Sunil is a visiting faculty at various forums and regularly trains industry, Department Officers, student and fellow professionals. He has authored books on topics relating to service tax, NRI Taxation & computers. His treatise on service tax is a popular book containing detailed commentary on the provisions of service tax law and runs in its' eighteenth edition.

Sunil is the Hon. Secretary of the Bombay Chartered Accountants Society. He is also a member of the Regional Advisory Committee of the Mumbai Commissionerate for Central Excise and Service Tax. He has been nominated by the Maharashtra State Government on the advisory panel for implementation of GST.



The firm is assisted by a team of 18 young and energetic human resources. Prakash, being the senior-most in the team, brings to the organization more than 30 years of experience in sales tax at the field level. He ably guides the entire organization towards increasing service levels. CA Keval, a guest lecturer at the Indo German Chamber of Commerce, leaves no stone unturned to provide

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# SERVICE TAX

## 1. Rate of Tax

### 1.1. Increase in the Rate of Tax

1.1.1. As a move towards Goods and Services Tax (GST), the current rate of service tax @ 12.36% (including cess) is proposed to be increased to 14%.

1.1.2. The new rate will be effective from a date to be notified after the enactment of the Finance Bill, 2015

### 1.2. Impact of New Rate on Existing Transactions

1.2.1. The increase in the rate of tax brings to light issues in case of transactions where different trigger points of taxation arise in different periods. The new rate of tax will apply based on the provisions laid down in Rule 4 of Point of Taxation Rules, 2011. A summary of Rule 4 of Point of Taxation Rules, 2011 is provided below for ready reference:

<i>Provision of Service</i>	<i>Raising of Invoice</i>	<i>Receipt of Money</i>	<i>Effective Rate</i>	<i>Reference to the Rules</i>	<i>Point of Taxation</i>
Prior to the Rate Change	Prior to the Rate Change	Prior to the Rate Change	Old Rate	No Need to refer to the Rules	Invoicing or Receipt whichever is earlier
Prior to the Rate Change	Prior to the Rate Change	After the Rate Change	Old Rate	Rule 4(a)(ii)	Invoicing
Prior to the Rate Change	After the Rate Change	Prior to the Rate Change	Old Rate	Rule 4(a)(iii)	Receipt
Prior to the Rate Change	After the Rate Change	After the Rate Change	New Rate	Rule 4(a)(i)	Invoicing or Receipt whichever is earlier
After the Rate Change	Prior to the Rate Change	Prior to the Rate Change	Old Rate	Rule 4(b)(ii)	Invoicing or Receipt whichever is earlier
After the Rate Change	Prior to the Rate Change	After the Rate Change	New Rate	Rule 4(b)(i)	Receipt (even though it is subsequent to invoicing)

After the Rate Change	After the Rate Change	Prior to the Rate Change	New Rate	Rule 4(b)(iii)	Invoicing (even though it is subsequent to receipt)
After the Rate Change	After the Rate Change	After the Rate Change	New Rate	No Need to refer to the Rules	Invoicing or Receipt whichever is earlier

**1.2.2.** In cases where service tax has to be paid by the service receiver under reverse charge mechanism, the point of taxation as per Rule 7 of the Point of Taxation Rule, 2011 is the date of payment. In case the payment is not made within 3 months from the date of invoice, the day after the end of 3 months from the date of invoice is to be considered as the point of taxation. Therefore in cases, where service tax is payable under reverse charge mechanism, the rate of tax as prevalent on the date of point of taxation shall be applicable

**1.2.3.** It may be important to note that certain assessee whose taxable turnover in previous year is less than Rs. 50 lakhs, the service provider is required to discharge the service tax upon receipt of money. The change in rate will not have an impact on discharge of service tax in cases where monies are received after the change in rate since the point of taxation was already triggered during the earlier period.

### **1.3. Impact on Other Notifications**

**1.3.1.** Since the rate of tax is proposed to be amended from 12.36% to 14%, corresponding changes on rate of taxes on various composition rates are also being proposed. The following table summarizes the change in rate:

<i>Description</i>	<i>Old Rate</i>	<i>Proposed New Rate</i>
Air Travel Agents <sup>1</sup>		
– Domestic Bookings	0.60%	0.70%
– International Bookings	1.20%	1.40%
Life Insurance <sup>2</sup>		
First Year Premiums	3%	3.5%
– Subsequent Premiums	1.5%	1.75%

1 Rule 6(7) of the Service Tax Rules, 1994

2 Rule 6(7A) of the Service Tax Rules, 1994

Money Changing <sup>3</sup>		
– Upto ₹ 100000	0.12% (Min of ₹ 30)	0.14% (Min of ₹ 35)
– Between ₹ 100000 and ₹ 1000000	Rs. 120 + 0.06% of excess over 100000	₹ 140 + 0.07% of excess over 100000
Above ₹ 1000000	₹ 660 + 0.012% of excess over 1000000 (Max of ₹ 6000)	₹ 770 + 0.014% of excess over 1000000 (Max of ₹ 7000)
Distribution of Lottery Tickets <sup>4</sup>		
– Guaranteed Prize Payout more than 80%	₹ 7000 for every ₹ 10 lakhs	₹ 8200 for every ₹ 10 lakhs
– Guaranteed Prize Payout more than 80%	₹ 11000 for every ₹ 10 lakhs	₹ 12800 for every ₹ 10 lakhs

**1.3.2.** The change in the rate of tax will also impact cases where abatement is provided or partial reverse charge mechanism is prescribed.

#### **1.4. Additional Swachh Bharat Cess to be notified**

**1.4.1.** An enabling provision is being made to empower the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% of the value of such taxable services with the objective of financing and promoting Swachh Bharat initiatives. This Cess shall be levied from a date to be notified by the Central Government in this regard and will not have immediate effect

#### **1.5. Impact on CENVAT Credit**

**1.5.1.** The change in rate of tax, specifically with the intention to remove the cess would have an impact on the CENVAT Credit balance lying as on the date of transitions specifically in view of proviso to Rule 3(7) of CENVAT Credit Rules, 2004. The balance of cess is not allowed to be adjusted against the duties of excise or service

<sup>3</sup> Rule 6(7B) of the Service Tax Rules, 1994

<sup>4</sup> Rule 6(7C) of the Service Tax Rules, 1994

tax. Therefore, there is a need to provide for a transition provision in respect of the balance of cess available as on the date of transition

**1.5.2.** Similar impact will be there in case of Re-credit of CENVAT Credit arising on account of various subsequent events taking place. For e.g. Payment to vendors after 3 months (reversal of credit is required in case payment is not made within 3 months from the date of invoice. The re-credit of CENVAT so reversed is allowed upon payment to vendors). Similar transition provision also needs to be incorporated in order to avoid credit leakages.

**1.5.3.** The dissimilar rates of Excise Duty and Service Tax may result in inverted rate structure and accumulation of credit in certain cases. It may also result in interpretation issues between manufacture and service becoming more important

## **1.6. Move towards GST?**

**1.6.1.** It may really important to give a thought on the above proposed amendments, whether the above amendments are meant for a better roadmap towards GST or not, specifically on the followings points:

1. Denial of CENVAT Credit on various abated services inspite of increase in rate
2. Possible leakages of CENVAT Credit on account of cess being deleted

## **2. Exemptions and Negative List**

### **2.1. Entertainment Sector**

**2.1.1.** Currently services by way of admission to entertainment events and amusements facilities are covered under the negative list and therefore not liable for payment of service tax. The said entry is proposed to be deleted with effect from a date to be notified after the enactment of the Finance Bill, 2015. Consequently the definitions of “entertainment event” and “amusement facility” under section 65B are also proposed to be deleted.

**2.1.2.** The said deletion is compensated by providing an exemption under Mega Exemption Notification 25/2012 dated 20.06.2012 for certain services like exhibition of Cinematographic films, Circus, Dance, Theatrical performance. However, the said entry in the exemption list does not fully compensate for all the exclusions provided earlier. The following table provides for detailed differences between the current exclusion entry and the proposed exemption entry:

<b>Current Exclusion</b>	<b>Proposed Exemption</b>
Amusement facilities means facilities meant for fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks	Admission to museum, national park, wildlife sanctuary, tiger reserve or zoo <sup>5</sup> is sought to be exempted  All other activities would be liable for payment of service tax.
Award Function/Concerts/Pageants/ Musical Performance	In these cases, exemption is provided if the amount charged is not more than ₹ 500 per person. If the amount charged is more than ₹ 500/-, then service tax is payable on the full value
Sporting Events	Services by way of admission to recognized sporting events is fully exempted  Services by way of admission to Other than Recognized sporting events are exempted if the amount charged is not more than ₹ 500 per person. If the amount charged is more than ₹ 500/-, then service tax is payable on the full value

**2.1.3.** The term Recognized Sporting Event is elaborated as under:

Recognized Sporting Event	Any event organized by a recognized sports body such as: <ul style="list-style-type: none"> <li>(i) The Indian Olympic Association,</li> <li>(ii) Sports Authority of India,</li> <li>(iii) A national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations,</li> <li>(iv) National sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government,</li> <li>(v) The International Olympic Association or a federation recognised by the International Olympic Association or</li> <li>(vi) A federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India</li> </ul>
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<sup>5</sup> This entry is effective from 1st April 2015



Covered by Entry 11 (other than covered above)	<ul style="list-style-type: none"> <li>(i) By Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India, Special Olympics Bharat;</li> <li>(ii) By Central Civil Services Cultural and Sports Board;</li> <li>(iii) As part of national games, by Indian Olympic Association; or</li> <li>(iv) Under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme</li> </ul>
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- 2.1.4.** Though the above amendment proposes a tax on amusement facilities and admission to various entertainment events, the same will not be free from Constitutional Challenge. The State Government is duly empowered to collect Entertainment Duty on such transactions. This would result in double taxation and the transgression by the Centre into the domain of State Taxation
- 2.1.5.** The swapping of Negative List entry with the exemption entry is effective from a date to be notified after the enactment of Finance Bill, 2015.
- 2.1.6.** It may be important to note that the services which are proposed to be taxed above would be considered as new services and the Point of Taxation shall be determined based on Rule 5 of Point of Taxation Rules, 2011. The said rule envisages that in case advances are received prior to the date of levy and an invoice is raised prior to levy or within 14 days of such levy of tax, no service tax would be payable. It may be advisable to ensure due compliance with the said Rule wherever feasible.
- 2.1.7.** The value of services on which service tax shall be payable on the above mentioned services would also lead to a debate as to whether the value of Entertainment Duty has to be included for the purpose of calculating Service Tax. It may be noted that the definition of term “consideration” as defined under section 67 of the Finance Act, 1994 is also amended to provide that the consideration includes any amount that is payable for the taxable services. The said definition also includes any reimbursable expenditure or cost incurred for providing such services. However, Entertainment Duty may neither be considered as expenditure nor cost for the taxable services and accordingly need not be included in the value for the purpose of service tax.

## **2.2. Performing Artist**

- 2.2.1.** The earlier exemption for services by an artist by way of performance in folk or classical arts forms of music, dance or theatre has been retained only in cases where the consideration charged for such performance shall be less than One Lakh Rupees
- 2.2.2.** In many cases, the performances are carried out by a group of Individuals. In case where 5 artists perform together and are paid ₹ 1 lakh each, the issue is whether the exemption can be denied. In this context, similar issue had arisen in the case of coowners of properties jointly letting out the properties. The Tribunals have consistently held that each coowner is independent service provider and therefore the exemption is available qua each co-owner
- 2.2.3.** In view of the amended definition of consideration under section 67 of the Finance Act, 1994, value of taxable services includes various reimbursed amounts incurred and charged. This may impact cases where costs incurred for travelling of these artists is claimed as reimbursement.

## **2.3. Job Work in Manufacture of Alcoholic liquor for human consumption**

- 2.3.1.** Any process amounting to manufacture is governed by the provisions of the Central Excise Act, 1944. In order to respect the dividing line between the two enactments, there is an entry under the Finance Act, 1994 to exclude any process amounting to manufacture from the scope of service tax liability. The benefit of the said entry is sought to be restricted to manufacturing processes excluding those related to alcoholic liquors for human consumption. Consequently, Service Tax shall be levied on contract manufacturing/job work for production of potable liquor for a consideration.
- 2.3.2.** In this context, the definition of the term “process amounting to manufacture or production of goods” section 65B (40) is being amended with a consequential amendment in Sr. No. 30 of Mega Exemption Notification No. 25/12-ST, to exclude intermediate production of alcoholic liquor for human consumption from its ambit
- 2.3.3.** It may be noted that the intention is to levy service tax on such activities of contract manufacturing/job work for production of potable liquor. Similar dispute had arisen under the old law wherein the Mumbai Tribunal in the case of *Makjai Laboratories*

*vs. CCE, Kolhapur 2011(21) S.T.R. 398 (Tri-Mumbai)* held that in view of the constitutional scheme for levy of duty, the impugned goods containing alcohol are not chargeable to duty under the Central Excise Act, 1944 but are charged to duty under the MTPA and accordingly there cannot be a levy of service tax. The impact of the above decision on the new amendment will unfold in times to come.

## **2.4. Support Services from Government**

**2.4.1.** Currently the services provided by the Government are excluded from the purview of service tax except for certain services enumerated under the clause (a) of Section 66D of the Finance Act, 1994. One such entry under clause (a) included “support services” provided by Government. The said entry is amended to replace the term “support services” with “services”

**2.4.2.** Therefore, all services provided by Government to business entities shall be liable for service tax with effect from a date to be notified after the enactment of the Finance Bill, 2015.

**2.4.3.** The phrase ‘Government’ was not been defined till date. This gave rise to interpretational issues, and to address such issues, the term is sought to be defined under Section 65B(26A) as under:

“Government” means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder

**2.4.4.** Article 150 of the Constitution of India provides that the accounts of the Union and the States shall be kept in such form as the President may prescribe on the advice of the Comptroller and Auditor General of India. It may be noted that the Education guide released at the time of introduction of Negative list based taxation of services referred to definition of Government from the General Clauses Act, 1897, which is not similarly worded.

**2.4.5.** It may not be out of place to mention that under Notification 30/2012-ST dated 20.06.2012, support services (other than renting) rendered by Government to business entities are liable for payment of service tax under reverse charge mechanism. This amendment therefore increases the liability under reverse charge mechanism drastically

**2.4.6.** This amendment brings to prominence the importance of the concept of “service” in contradistinction to the performance of

a statutory function. Any function which is a statutory function required to be performed by the Government cannot be considered as a rendition of service. In fact, it is the necessary requirement of the Government to perform that function and the requirement of the citizen to obtain that function

- 2.4.7.** Therefore the liability of service tax on transactions with Government can be tabulated as under:

<b><i>Transaction</i></b>	<b><i>Implication of Service Tax</i></b>
Statutory function carried out the Government	Not liable for service tax as it does not constitute a service
Specified Services mentioned in sub-clauses (i), (ii) & (iii) of clause (a) of Section 66D of the Finance Act, 1994	Liable for service tax under Forward Charge i.e. the Government Department will register, collect and pay the service tax.
Other Services to business entities as listed in clause (a) of Section 66D of the Finance Act, 1994	Liable for service tax under Reverse Charge Mechanism except for Renting of Immovable property where the tax has to be discharged by the Government
Other Services to non-business entities	Excluded from payment of service tax in terms of Negative List entry

- 2.4.8.** From the above table, it is also evident that the applicability of service tax for other services provided by Government depends on whether the person receiving such services is a business entity or otherwise. As per section 65B(17) “business entity” is defined to mean any person ordinarily carrying out any activity relating to industry, commerce or any other business’. If person receiving services is not a business entity, there shall be no liability to pay service tax. Further, it must be noted that the business entities would even include individual, proprietary concern; partnership firms etc., if they carry out any kind of activity in the nature of business. Further, the size of the business entity is of no relevance

## **2.5. Chit Funds, Betting Gambling or Lottery**

- 2.5.1.** The definition of service excludes any transaction in money. This exclusion was interpreted by the judiciary to exclude activities carried out by chit funds. Similarly, transactions in lotteries were interpreted to be transactions in actionable claims which are also excluded from the purview of service tax. Since the intent was to tax such activities, through an amendment to the Explanation, it is clarified that the said exclusion shall not cover any transaction

in relation to or for facilitation of a transaction in money or actionable claim, including the activities carried out by-

- (a) chit fund foremen by way of conducting a chit.
- (b) distributor or selling agents of lottery, as appointed or authorized by the organizing state for promoting, marketing, distributing, selling, or assisting the state in any other way for organizing and conducting a lottery

**2.5.2.** For the said purpose, the terms “foreman of chit fund” and “lottery distributor or selling agents” have been defined under section 65B(23A) and 65B(26A) respectively. Corresponding exemption for sub-distributors of lottery tickets has also been deleted.

**2.5.3.** The term consideration as defined under section 67 of Finance Act, 1994 provides that consideration shall include any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket

**2.5.4.** Further Rule 6(7C) provides for an alternate method of discharging service tax on a composite rates as under:

<i>Distribution of Lottery Tickets<sup>6</sup></i>	<i>Current Rate</i>	<i>Rate effective from date to be notified</i>
– Guaranteed Prize Payout more than 80%	₹ 7000 for every ₹ 10 lakhs	₹ 8200 for every ₹ 10 lakhs
– Guaranteed Prize Payout more than 80%	₹ 11000 for every ₹ 10 lakhs	₹ 12800 for every ₹ 10 lakhs

## **2.6. Construction Services**

**2.6.1.** The exemption for services provided to Government in relation to construction of certain structures mentioned below has been withdrawn w.e.f. 1st April 2015

- a) a civil structure or any other original works meant predominantly for a non-industrial or non-commercial use;
- b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Finance Act;

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<sup>6</sup> Rule 6(7C) of the Service Tax Rules, 1994

- 2.6.2.** Further, the services of construction, erection, commissioning or installation of Original Works pertaining to Port and Airports have been made taxable w.e.f. 1st April 2015
- 2.6.3.** The proposed amendments for removing the exemptions would reduce various litigations at a second level of contracting. If the main contract was exempted from purview of service tax, there was a debate whether the services used for providing such output service would also enjoy such exemption. For e.g. prior to the amendment construction services provided to Government for construction of a structure meant for use as an educational establishment was exempted. For constructing the said structure, the services of a subcontractor are being used. The issue under consideration is whether the subcontractor would enjoy the exemption as provided above. Since the services are not in the nature of construction, the claim of exemption is a matter of debate. With this amendment, several litigations may be put to rest
- 2.6.4.** In case of ongoing contracts, since the services were specified under exemption notification, the removal of exemption shall be considered as a change in rate. The rate of tax as per Rule 4 of Point of Taxation Rules, 2011 shall apply
- 2.6.5.** There could be various interpretational issues since most of the government contracts are inclusive of taxes. Since at the time of entering the contract, the exemption for construction existed and therefore the service tax element may not have been factored in. Therefore, the service providers will need to bear the brunt of service tax on such contracts

## **2.7. Transportation**

- 2.7.1.** Different modes of transportation have traditionally received differing service tax treatments. In a bid to provide a level playing field, an attempt is made to converge the tax treatments. In this attempt, certain exemptions are also realigned
- 2.7.2.** The following table provides a comparison of the exemptions prior to amendment and after amendment. The said exemptions are applicable for all modes of transportation i.e. Road, Rail and Vessel

<b><i>Old Entry</i></b>	<b><i>New Entry</i></b>
Foodstuffs including flavours, tea, coffee, jiggery, sugar, milk products, salt and edible oil excluding alcoholic beverages	Milk, salt and food grains including flour, pulses and rice.

**2.7.3.** The changes in abatement rates are provided below. The same are effective from 1-4-2015. The below table tabulates the old taxable portions vis-à-vis new taxable portions:

<b>Sl. No.</b>	<b>Description of taxable service</b>	<b>Old Taxable Portion</b>	<b>Old CENVAT Condition</b>	<b>New Taxable Portion</b>	<b>New CENVAT Condition</b>
2	Transport of goods by rail	30	No Restrictions on CENVAT Credit	30	No CENVAT Credit allowed
3	Transport of passengers, with or without accompanied belongings by rail	30	No Restrictions on CENVAT Credit	30	No CENVAT Credit allowed
7	Transport of goods by road by Goods Transport Agency	25	No CENVAT Credit allowed	30	No CENVAT Credit allowed
10	Transport of goods in a vessel from one port in India to another	40	No CENVAT Credit allowed	30	No CENVAT Credit allowed

**2.7.4.** It may be also be noted that though the above amendments are effective from 1-4-2015, immediately thereafter, another amendment in the form of change in the service tax rate is likely to be notified. Therefore, the effective rate of service tax in these sectors is likely to differ significantly in short periods of time. The following table summarises the same:

<b>Nature of transport</b>	<b>Rate till 31-3-2015</b>	<b>1-4.2015 till notified date</b>	<b>From Notified Date</b>
Transport of Goods by Road	3.09%	3.708%	4.20%
Transport of Goods by Rail	3.708%	3.708%	4.20%
Transport of Goods by Waterways	4.944%	3.708%	4.20%

**2.7.5.** Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from service tax vide notification No. 31/12-ST dated 20-6-2012. Scope

of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS)

## **2.8. Exemption to Financial Intermediaries**

**2.8.1.** Notification 25/2012 dated 20-6-2012 is amended to withdraw the exemptions provided to various financial intermediaries such as mutual fund agents or a distributor providing services to a mutual fund or an asset management company.

**2.8.2.** These services are liable for service tax with effect from 1-4-2015, however, the said services are also notified under reverse charge mechanism. Therefore by virtue of Rule 2(1)(d) of Service Tax Rules, 1994 read with Notification 30/2012 dated 20-6-2012 (amended vide Notification 07/2015 dated 1-3-2015), the mutual fund or the asset management company shall be liable to pay service tax.

## **2.9. Insurance**

**2.9.1.** Services of Life Insurance provided under Varishta Pension Bima Yojana have been exempted under Mega Exemption Notification No 25/2012 vide entry No 26A(d)

## **2.10. Commission Agent outside India**

**2.10.1.** The definition of Intermediary services was amended with effect from 1-10-2014 to consider the services of agents located in India as being provided in India and accordingly taxable. Consequently the services provided by agent located outside India became beyond the jurisdictional legislature of service tax law. Notification 42/2012 dated 20-6-2012 provided for an exemption on services provided by agents located outside India.

**2.10.2.** The said Notification was redundant after 1-10-2014 and accordingly was rescinded vide Notification 03/2015 dated 1-3-2015

## **2.11. Health Services**

**2.11.1.** Services provided by way of transportation of a patient in an ambulance by clinical establishments is already exempted from payment of service tax. The exemption has been extended to such services provided by any other person. The said amendment is effective from 1st April 2015.

## **2.12. Others**

**2.12.1.** Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted



- 2.12.2.** Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables is being exempted
- 2.12.3.** Service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or an association of persons consisting of such exhibitor as one of its members is being exempted
- 2.12.4.** Exemption is being withdrawn on the following service,-
- (a) Departmentally run public telephone;
  - (b) Guaranteed public telephone operating only local calls;
  - (c) Service by way of making telephone calls from free telephone at airport and hospital where no bill is issued

### **3. Bundling of Services**

- 3.1.** Section 66F (1) prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such service. An illustration is being incorporated in this section to exemplify the scope of this proviso. The same is reproduced for ready reference:

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax

### **4. Valuation**

- 4.1.** Section 67 of the Finance Act, 1994 provides that in cases where the provision of service is for a consideration in money, the value of such services shall be the gross amount charged. The term consideration is defined in an Explanation to section 67 and the said explanation is amended to include the following:
- (i) any amount that is payable for the taxable services provided or to be provided;
  - (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such

circumstances, and subject to such conditions, as may be prescribed;

- (iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket

**4.2.** The amended definition includes any reimbursement or cost which is incurred in the course of providing service by the service provider and charged to the service receiver. Therefore, the following aspects are important for adding the cost or reimbursements to the value of services:

1. The cost should be incurred
2. In the course of providing service
3. It should be charged to the service receiver

**4.3.** It may be important to understand the scope of the amended definition in view of the interplay of the above essentials

**4.4.** The Delhi High Court in the case of *Intercontinental Consultants & Technocrats Pvt. Ltd v. Union of India 2013 (29) S.T.R. 9 (Del.)* has held that Rule 5 of Service Tax Determination of Value Rules, 2006 is unconstitutional. In order to negate the decision mentioned above, the definition of the term “consideration” is amended by the Finance Bill, 2015. However there is no amendment in the definition of “gross amount charged”. As per section 67, the value of service tax shall be the gross amount charged by the service provider to the service receiver and accordingly, the amended provision do not really help the intention of the revenue.

**4.5.** Therefore from the above it appears that the decision of Delhi High Court still holds good even after the amendment. Further, one may also consider whether the amendment is prospective or retrospective in nature

**4.6.** The abated values having a change in abatement rate are tabulated below along with the implications on CENVAT Credit

<b>Sl. No</b>	<b>Description of taxable service</b>	<b>Old Taxable Portion</b>	<b>Old CENVAT Condition</b>	<b>New Taxable Portion</b>	<b>New CENVAT Condition</b>
2	Transport of goods by rail	30	No Restrictions on CENVAT Credit	30	No CENVAT Credit allowed
3	Transport of passengers, with or without accompanied belongings by rail	30	No Restrictions on CENVAT Credit	30	No CENVAT Credit allowed
5	Transport of passengers by air, with or without accompanied belongings		Only CENVAT on Input Services allowed		Only CENVAT on Input Services allowed
	(i) Economy Class	40		40	
	(ii) Other than Economy class	40		60	
7	Transport of goods by road by Goods Transport Agency	25	No CENVAT Credit allowed	30	No CENVAT Credit allowed
8	Services provided in relation to chit	70	No CENVAT Credit allowed	100	No Restrictions on CENVAT Credit
10	Transport of goods in a vessel from one port in India to another	40	No CENVAT Credit allowed	30	No CENVAT Credit allowed

## **5. Recovery**

- 5.1.** Section 73(1B) has been introduced to provide that the any admitted demand can be recovered in terms of section 87 of the Finance Act, 1994 without any notice. It may be noted that

the said provisions already existed under Rule 6(6A) of Service Tax Rules, 1994, which has now been shifted to the statutory provision

- 5.2. In view of the Point of Taxation Rules, 2011, many service providers are required to pay service tax even though the amount is not realised. In such cases, a provision of this nature acts as a deterrent in voluntarily filing a correct timely return and therefore, should be reconsidered.

## 6. Penalties

- 6.1. The penalty provisions have been drastically modified. Section 80 of the Finance Act, 1994 provides for a waiver of penalty in cases where there is a reasonable cause for non-payment of service tax. The said section is proposed to be deleted as the necessary implications have already been made to section 76 & section 78 of the Finance Act, 1994. The above table summarizes the impact of these changes

<i>Situation</i>	<i>No Fraud (Sec 76)</i>	<i>Fraud (Sec 78)</i>
Tax and Interest Paid before SCN	Nil – S. 73(3)	
Tax and Interest Paid within 30 days of the SCN	NIL – Proviso (i) to S. 76(1)	Proviso (i) 15%
Adjudication Order	Not exceeding 10% - S. 76(1)	100% 78(1)
Paid within 30 days of the Order	25% of the penalty imposed – Proviso (ii) to S. 76(1)	25% of service tax demanded Proviso (ii) to 78(1)

- 6.2. Further a new section 78B of the Finance Act, 1994 has been introduced which provides for penalty provisions for transition periods as under:
- 6.2.1. The amended provisions of section 76 and 78 shall apply to cases where either no notice is served, or notice is served no order has been issued, before the date of enactment of the Finance Bill, 2015; and
- 6.2.2. In respect of cases covered by sub-section (4A) of section 73, if no notice is served, or notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the service tax amount

- 6.2.3.** Section 73(4A) which provides for payment of service tax, interest and 25% has been proposed to be deleted as the proposed penalty under section 78 provides for a maximum penalty of 15% in case the tax is paid within 30 days of issue of show cause notice.
- 6.2.4.** The proposed penalty provisions provide for a huge relief in case of follow up show cause notices where there is no element of suppression. Further, in cases where the matter is before the Appellate Authorities and the matters are remanded back for fresh adjudication, the newly introduced provisions shall apply and accordingly can provide major relief to assessee.
- 6.2.5.** Further, Section 76 or Section 78 does not provide for any penalties on amounts collected in excess as provided in section 73A. However, specific prosecution provisions are in place.

## **7. Appeals to CESTAT**

- 7.1.** Section 86 is being amended to prescribe that matters involving rebate of service tax shall be dealt with in terms of Section 35EE of the Central Excise Act, 1944. Therefore all matters involving rebate shall be filed for revision for Central Government.
- 7.2.** It is also proposed that all the pending matters should be transferred to the Central Government.

## **8. Reverse Charge Mechanism**

- 8.1.** The Supply of manpower services and security services are shifted from partial reverse charge mechanism to full reverse charge mechanism.
- 8.2.** Full reverse charge mechanism shall apply only in cases where the service provider is an individual, HUF, or partnership firm and the service receiver is a body corporate registered as business entity. Therefore, in cases where the services are not provided to Body corporate, the services continue to be taxable under forward charge mechanism.
- 8.3.** It may be important to note that in case where the liability is shifted under reverse charge mechanism, the services are not considered as an output service and the CENVAT Credit used for providing such services shall not be eligible.
- 8.4.** The issue with respect to classification of services as whether the services are in the nature of supply of manpower or otherwise is still an issue which remains unaddressed.

- 8.5.** In respect of any service provided under aggregator model, the aggregator, or any of his representative office located in India, is being made liable to pay Service Tax if the service is so provided using the brand name of the aggregator in any manner. If an aggregator does not have any presence, including that by way of a representative, in such a case any agent appointed by the aggregator shall pay the tax on behalf of the aggregator.
- 8.6.** An aggregator means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator. E.g. of such types could be Meru Cabs, Tab cabs etc.

## **9. Registration**

**9.1.** The process of registration is simplified and the procedure is provided as under:

### **9.1.1.** General procedure

- (i) Applicants seeking registration for a single premises in service tax shall file the application online in the Automation of Central Excise and Service Tax (ACES) website [www.aces.gov.in](http://www.aces.gov.in) in Form ST-1.
- (ii) Registration shall mandatorily require that the Permanent Account Number (PAN) of the proprietor or the legal entity being registered be quoted in the application with the exception of Government Departments for whom this requirement shall be non-mandatory. Applicants, who are not Government Departments shall not be granted registration in the absence of PAN. Existing registrants, except Government departments not having PAN shall obtain PAN and apply online for conversion of temporary registration to PAN based registration within three months of this order coming into effect, failing which the temporary registration shall be cancelled after giving the assessee an opportunity to represent against the proposed cancellation and taking into consideration the reply received, if any.
- (iii) E-mail and mobile number mandatory: The applicant shall quote the email address and mobile number in the requisite column of the application form for communication with the department. Existing registrants who have not submitted this information are required to file an amendment application by 30-4-2015.

- (iv) Once the completed application form is filed in ACES, registration would be granted online within 2 days, thus initiating trust-based registration. On grant of registration, the applicant would also be enabled to electronically pay service tax.
- (v) Further, the applicant would not need a signed copy of the Registration Certificate as proof of registration. Registration Certificate downloaded from the ACES web site would be accepted as proof of registration dispensing with the need for a signed copy.

#### **9.1.2. Documentation required**

The applicant is required to submit a self attested copy of the following documents by registered post/ Speed Post to the concerned Division, within 7 days of filing the Form ST-1 online, for the purposes of verification:-

- (i) Copy of the PAN Card of the proprietor or the legal entity registered.
- (ii) Photograph and proof of identity of the person filing the application namely PAN card, Passport, Voter Identity card, Aadhar Card, Driving license, or any other Photo-identity card issued by the Central Government, State Government or Public Sector Undertaking.
- (iii) Document to establish possession of the premises to be registered such as proof of ownership, lease or rent agreement, allotment letter from Government, No Objection Certificate from the legal owner.
- (iv) Details of the main Bank Account.
- (v) Memorandum/Articles of Association/List of Directors.
- (vi) Authorisation by the Board of Directors/Partners/Proprietor for the person filing the application.
- (vii) Business transaction numbers obtained from other Government departments or agencies such as Customs Registration No. (BIN No), Import Export Code (IEC) number, State Sales Tax Number (VAT), Central Sales Tax Number, Company Index Number (CIN) which have been issued prior to the filing of the service tax registration application.

**9.1.3.** Where the need for the verification of premises arises, the same will have to be authorised by an officer not below the rank of Additional /Joint Commissioner.

- 9.1.4.** The registration certificate may be revoked by the Deputy/ Assistant Commissioner in any of the following situations, after giving the assessee an opportunity to represent against the proposed revocation and taking into consideration the reply received, if any:
- (i) the premises are found to be non-existent or not in possession of the assessee.
  - (ii) no documents are received within 15 days of the date of filing the registration application.
  - (iii) the documents are found to be incomplete or incorrect in any respect.
- 9.1.5.** The provisions of sub-rules (5A) and (6) of rule 4 of the Service Tax Rules, 1994 may be referred to regarding change in any information or details furnished by an assessee and transfer of business to another person, respectively. Similarly, sub-rule (7) of the Service Tax Rules, 1994 may be referred to in case a registered person ceases to provide the service for which he has been granted registration.

## **9.2. Procedures**

- 9.2.1.** Rule 4A of Service Tax Rules, 1994 has been amended to consider the invoices as valid if they are digitally signed
- 9.2.2.** Rule 5 has also been amended to allow maintenance of records in electronic form
- 9.2.3.** The facility of advance ruling has been extended to all “resident firm” as class of persons. Further an explanation has been inserted to define the said term very comprehensively

## **10. CENVAT Credit Rules**

- 10.1.** The provisions of CENVAT Credit Rules, 2004 have been amended to allow the CENVAT Credit in case of Inputs and Capital Goods which are directly sent to the premises of the Job worker on the direction of the manufacturer or the provider of output service
- 10.2.** The provisions of Rule 4(5)(a) are also amended to also allow the Inputs to be subsequently sent to another job worker. The provisions of Rule 4(5)(a) as applicable to inputs as well as Capital Goods are tabulated below:



<b>Inputs</b>	<b>Capital Goods</b>
CENVAT Credit on inputs shall be allowed in cases where Inputs as such or after partial process are sent to a job worker for further process	CENVAT Credit on Capital Goods are allowed even if capital goods as such are sent to a Job worker
CENVAT Credit is also allowed if Inputs are subsequently sent to another job worker and likewise for further processing	No such provision for Capital Goods
CENVAT Credit is allowed even if the Inputs are sent to the premises of job worker directly	CENVAT Credit is allowed even if the Capital Goods are sent to the premises of job worker directly
The intermediate goods or the final products are received by manufacturer within 180 days from they being sent from the factory of manufacturer	The intermediate goods or the final products are received by manufacturer within 2 years from they being sent from the factory of manufacturer
In case Inputs are directly sent to Job worker, the period of 180 days shall be counted from date of receipt of inputs by the job worker	In case Capital Goods are directly sent to Job worker, the period of 2 years shall be counted from date of receipt of inputs by the job worker
In case Inputs are not received back within the prescribed time limit, CENVAT Credit so availed has to be reversed and credit can be reclaimed once the goods are received back in the factory	In case Capital Goods are not received back within the prescribed time limit, CENVAT Credit so availed has to be reversed and credit can be reclaimed once the goods are received back in the factory

- 10.3.** The outer time limit within which CENVAT Credit of Inputs and Input Services have to be claimed has been increased from 6 months to 1 year. It may be noted that the applicability of the relevant proviso shall be applicable as on the date on which credit is availed.
- 10.4.** Since the time is extended for 6 months to 1 year, there is a possibility of various instances where CENVAT Credit which was lapsed due to 6 month time limit, could now be unlocked within 1 year time limit.
- 10.5.** The earlier amendment had resulted in a debate as to whether the outer time limit for availing CENVAT Credit is applicable for re-credits availed upon subsequent fulfilment of conditions. For instances Rule 4(7) envisages that in case where payment to

vendor is not made within 3 months from the date of invoice, CENVAT Credit is required to be reversed. Further, upon payment to vendors, the CENVAT Credit so reversed was eligible as credit. The issue under consideration is whether the time limit for availing credit would apply for re-credit claimed while making payment to vendor.

- 10.6.** The CBEC vide its Circular No.: 990/14/2014-CX-8 dated 19.11.2014 has clarified that the limitation period would apply when the credit is taken for the first time on an eligible document. It would not apply for taking re-credit of amount reversed, after meeting the conditions prescribed in these rules
- 10.7.** CENVAT Credit on Input service are eligible for availment broadly as per the following situations:
  - 10.7.1.** For service receivers share (where part or full) – In situations where a person pays services tax as a receiver of service, the CENVAT Credit in respect of the tax so paid shall be eligible immediately upon the payment of service tax irrespective of the fact whether payment to service provider is made or not
  - 10.7.2.** For service providers share (where part or full) – the CENVAT Credit is available immediately upon receipt on invoice with a condition that payment has to be made within 3 months from the date of Invoice. In case where the payment is not made within 3 months, the CENVAT Credit so availed is required to be reversed and the same can be claimed as credit once the payment is made to service provider.
- 10.8.** An Explanation to Rule 5 of CENVAT Credit Rules, 2004 is inserted to provide for definition of “export goods” to mean any goods which are to be taken out of India to a place outside India.
- 10.9.** Rule 6(1) of CENVAT Credit Rules, 2004 prohibits availment of CENVAT Credit on inputs or input services used in relation to manufacture of exempted goods. For the purpose of this rule, the term exempted goods shall include non-excisable goods as well. Further the value of non-excisable goods for the purpose of this rule shall be the invoice value.
- 10.10.** Rule 9 is amended to include the invoices issued by an importer for claim of CENVAT Credit in respect of inputs and capital goods. The said credit is allowed subject to the conditions that the goods were supplied from the stock where duty was paid
- 10.11.** Recovery of CENVAT Credit wrongly taken

- 10.11.1.** Rule 14 of CENVAT Credit Rules, 2004 has been amended to provide that in cases where the CENVAT Credit has been wrongly taken but not utilized, the same shall recovered without interest. Further in cases, where CENVAT Credit is wrongly taken and utilized or erroneously refunded, the same shall be recovered along with Interest.
- 10.11.2.** The Rule further provides for a mechanism to calculate whether the credit is utilized or not as under:  
utilisation thereof shall be deemed to have occurred in the following manner, namely: -
- (i) the opening balance of the month has been utilised first;
  - (ii) credit admissible in terms of these rules taken during the month has been utilised next;
  - (iii) credit inadmissible in terms of these rules taken during the month has been utilised thereafter.
- 10.12.** Rule 15 has been amended to bring penalty provisions in line with the provisions of service tax and central excise laws.



# INCOME TAX

## 1. Rates of Tax

### 1.1. Personal Taxation

- 1.1.1.** The tax slabs and the rates for basic tax and cess continues to be same. However, surcharge has been increased by 2% in certain cases. The following table summarizes the rates of Income Tax in respect of income liable to tax for the assessment year 2016-17:

Income Levels (Rs.)	Tax Rate (in %)					
	Individual /HUF/ AOP /BOI/AJP		Senior Citizen (Age 60 years but below 80 years)		Very Senior Citizen (Age 80 years & above)	
	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16
AY						
0-250000		-	-	-	-	-
250001-300000	10.30	10.30	-	-	-	-
300001-500000	10.30	10.30	10.30	10.30	-	-
500001-1000000	20.60	20.60	20.60	20.60	20.60	20.60
1000001-10000000	30.90	30.90	30.90	30.90	30.90	30.90
Above 10000000 <sup>7</sup>	34.608	33.99	34.608	33.99	34.608	33.99

- 1.1.2.** The above amounts are inclusive of Surcharge, Education Cess and SHE Cess. In all the cases, marginal relief is provided.

### 1.2. Corporate Taxation

- 1.2.1.** In case of Domestic Companies and Firms, the surcharge if applicable has been increased by 2%. But there is no increase in the surcharge for Foreign Companies.

Income Levels (Rs)	Tax Rate (in %)					
	Domestic Companies		Foreign Companies		Firms	
	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16
AY						
0-10000000	30.90	30.90	41.20	41.20	30.90	30.90
10000001-100000000	33.063	32.445	42.024	42.024	34.608	33.99
Above 100000000	34.608	33.99	43.26	43.26	34.608	33.99

- 1.2.2.** The above amounts are inclusive of Surcharge, Education Cess and SHE Cess. But in all the cases marginal relief is provided.

<sup>7</sup> It may be noted that the surcharge of 12% is applicable on the entire tax liability.

**1.2.3.** There will be phased reduction of Corporate Tax from 30% to 25% sans excessive exemptions from the next financial year.

### **1.3. Surcharge**

**1.3.1.** The rates for surcharge are proposed to be increased as under:

<b>Particulars</b>	<b>Surcharge</b>
Individual-HUF-AOP-BOI-AJP-Firm-Cooperative Society-Local Authority	12% if the Income exceeds ₹ 1 crore
Domestic Company	7% if the Income exceeds ₹ 1 crores 12% if the Income exceeds ₹ 10 crores
Foreign Company	5% if the Income exceeds ₹ 1 crores 10% if the Income exceeds ₹ 10 crores

**1.3.2.** This increase in surcharge from 10% to 12% is also applicable for section 115-O (Dividend Distribution Tax), 115QA (Tax on Buy Back of Unlisted Shares), 115-R (MF Income Distribution Tax) and 115TA (Securitization Trust Income Distribution Tax).

## **2. Personal Taxation**

### **2.1. Certain Incomes not to be included in total income**

**2.1.1.** The Government has introduced a special small tax saving instrument for the welfare of the girl child has been introduced under the Sukanya Samridhi Account Rules, 2014. The following tax benefits have been envisaged in it:

- (i) Investment to be eligible for deduction u/s. 80C.
- (ii) Interest income to be exempt
- (iii) Withdrawals shall be exempt subject to rules framed therein.

**2.1.2.** The Government has initiated cleanliness project such as Swachh Bharat Abhyan and Clean Ganga Fund to rejuvenate river Ganga. Apart from allowing 100% deduction u/s. 80G to the assessee contributing for the projects, the amount received by organisations for undertaking this projects are also been exempted from tax u/s. 10(23C)

### **2.2. Tax neutrality on merger of similar schemes of Mutual Funds**

**2.2.1.** It is proposed to provide tax neutrality to unit holders upon consolidation or merger of mutual fund schemes provided that

the consolidation is of two or more schemes of an equity oriented fund or two or more schemes of a fund other than equity oriented fund.

- 2.2.2.** It is further proposed that the cost of acquisition of the units of consolidated scheme shall be the cost of units in the consolidating scheme and period of holding of the units of the consolidated scheme shall include the period for which the units in consolidating schemes were held by the assessee. It is also proposed to define consolidating scheme as the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 and consolidated scheme as the scheme with which the consolidating scheme merges or which is formed as a result of such merger.
- 2.2.3.** These amendments will take effect from 1st April, 2016 and will accordingly apply, in relation to the assessment year 2016-17 and subsequent assessment years.
- 2.3. Cost of acquisition of a capital asset in the hands of resulting company to be the cost for which the demerged company acquired the capital asset**
- 2.3.1.** Under clause (vib) of section 47 of the Income-tax Act any capital asset transferred by the demerged company to the resulting company in the scheme of demerger is not regarded as transfer if the resulting company is an Indian company. In such cases the cost of such asset in the hands of resulting company should be cost of such asset in the hands of demerged company as increased by the cost of improvement, if any, incurred by the demerged company.
- 2.3.2.** Further, the period of holding of such asset in the hands of resulting company should include the period for which the asset was held by the demerged company. Under the existing provisions of the Income-tax Act, there is no express provision to this effect.
- 2.3.3.** Accordingly, it is proposed to amend sub-clause (e) of clause (iii) of sub-section (1) of section 49 of the Income-tax Act to include transfer under clause (vib) of section 47 and to provide that the cost of acquisition of an asset acquired by resulting company shall be the cost for which the demerged company acquired the capital asset as increased by the cost of improvement incurred by the demerged company.
- 2.3.4.** This amendment will take effect from 1st April, 2016 and will accordingly apply, in relation to the assessment year 2016-17 and subsequent assessment years.

## 2.4. Relief given to lower income group for non-deduction of TDS on Maturity of Life Insurance Policies (Clause 49)

2.4.1. Section 197A is amended to provide a relief to the persons who's TDS has to be deducted u/s 194DA. Such persons are now entitled to submit declaration through Form 15G/15H for non-deduction of TDS.

## 2.5. Deductions at a Glance

Section	Nature	Condition	AY 2016-17	AY 2015-16
80C-80CCC-80CCD	Deduction in respect of Life Insurance premium, etc. / Deduction in respect of contribution to certain pension funds / Deduction in respect of contribution to pension scheme of Central Government (See Note 1)	Any person	1,50,000	1,50,000 (Not more than 100000 in 80CCC or 80CCD)
80D	Medical Insurance (See Note 2)	Age below 60	25,000	15,000
		Age above 60	30,000	20,000
80DD	Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability	Disability	75,000	50,000
		Severe Disability	1,25,000	1,00,000
80U	Deduction in case of a person with disability	Disability	75,000	50,000
		Severe Disability	1,25,000	1,00,000
80DDB	Deduction in respect of medical treatment, etc. (See Note 3)	Age below 60	40,000	40,000
		Age 60-80 (Senior citizen)	60,000	60,000
		Age 80+ (Very Senior Citizen)	80,000	60,000

**Note 1:** With a view to allow the deduction under section 80C to the parent or legal guardian of the girl child, amendment of section

80C of the Act is proposed to be made so as to provide that a sum paid or deposited during the year in Sukanya Samriddhi Account Scheme in the name of any girl child of the individual or in the name of any girl child for whom such individual is the legal guardian, would be eligible for deduction under section 80C of the Act. These amendments will take effect retrospectively from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

**Note 2:** Very senior citizens are often unable to get health insurance coverage and are therefore unable to take tax benefit under section 80D. Accordingly, as a welfare measure towards very senior citizens, it is also proposed to provide that any payment made on account of medical expenditure in respect of a very senior citizen, if no payment has been made to keep in force an insurance on the health of such person, as does not exceed thirty thousand rupees shall be allowed as deduction under section 80D. The aggregate deduction available to any individual in respect of health insurance premium and the medical expenditure incurred would however be limited to thirty thousand rupees. Similarly aggregate deduction for health insurance premium and medical expenditure incurred in respect of parents would be limited to thirty thousand rupees.

**Note 3:** It is also proposed to amend section 80DDB so as to provide that the assessee will be required to obtain a prescription from a specialist doctor for the purpose of availing this deduction.

## **2.6. Introduction of new schemes for deduction under section 80G**

**2.6.1.** 100% deduction will be allowed if donations are made in the following 3 schemes:

1. National Fund for Control of Drug Abuse constituted under section 7A of the Narcotic Drugs and Psychotropic Substances Act, 1985
2. Swachh Bharat Kosh except for the sum spent in pursuance of CSR under the Companies Act, 2013
3. Clean Ganga Fund except for the sum spent in pursuance of CSR under the Companies Act, 2013

## **2.7. Insertion of a new section 192A for TDS deduction in case of premature withdrawal of money from Employees Provident Fund Scheme**

**2.7.1.** If the employee makes premature withdrawal before continuous service of five years (other than specified reason) and does not



opt for transfer of accumulated balance to new employer, Rule 9 & 10 of the Schedule IV-A of the Act became applicable. It provided for treating the amount as contribution to unrecognized provident fund and thereby deducting tax u/s 192 which was done by re-computing the tax liability of the years for which the contribution to RPF was made.

- 2.7.2.** Therefore a new section 192A is proposed to be inserted w.e.f 01.06.2015 which provides for TDS @ 10% over these premature withdrawals. But no deduction is to be made if the total amount withdrawn in a year does not exceed 30,000/-. However, if the PAN is not furnished at the time of deduction, tax will be deducted at maximum marginal rate i.e. 34.308%. Further, the deductee can furnish Form 15G/15H for non-deduction of TDS.

### **2.8. Abolition of levy of wealth-tax under Wealth-tax Act, 1957**

- 2.8.1.** It is proposed to abolish the levy of wealth tax under the Wealth-tax Act, 1957 with effect from the 1st April, 2016.

- 2.8.2.** It is also proposed that the objective of taxing high net worth persons shall be achieved by levying a surcharge on tax payer earning higher income as levy of surcharge is easy to collect & monitor and also does not result into any compliance burden on the assessee and administrative burden on the department

## **3. Corporate Taxation**

### **3.1. More relief in Additional Depreciation**

- 3.1.1.** When an eligible assessee acquires and installs a new plant and machinery, additional depreciation is allowed @ 20% u/s 32(1)(ia) in that previous year. The additional depreciation is also subjected to the second proviso to section 32(ii) which reduces additional depreciation to 10% if the asset is put to use for a period of less than 180 days.

- 3.1.2.** A proviso has been inserted to Section 32(1)(ii) w.e.f 01.04.2016 to provide for 50% of additional depreciation in the previous year not allowed in the preceding previous year on account of asset being used for less than 180 days.

### **3.2. Incentives for assessee opting to set up undertaking in any notified backward area in Andhra Pradesh or Telangana**

- 3.2.1.** A new Section 32AD is proposed to be inserted in lines to section 32AC, to provide incentives to assessee setting up an undertaking for manufacture or production of any article or thing,

after 31.03.2015 in notified backward areas of Andhra Pradesh or Telangana.

**3.2.2.** Such an assessee acquiring & installing of any new asset between 01.04.2015 to 31.03.2020 will be allowed a deduction @ 15% of the value of assets so acquired and installed. This deduction will not reduce the value of block and will be over and above the existing allowable depreciation.

**3.2.3.** Further, the rate for additional depreciation is increased from 20% to 35% for the above assets.

**3.3. Change in requirements regarding audit of accounts of In-House Research & Development Facility**

**3.3.1.** The assessee has to maintain separate books of accounts for in-house research and development facility to obtain weighted deduction. He is also required to get them audited. It is now proposed to prescribe conditions in this regard.

**3.3.2.** The section is further proposed to be amended to provide that the prescribed authority can also submit its report to Principal CIT or CIT which was earlier required to be submitted only to Principal DGIT or DGIT. This specific amendment is also proposed to be made for Section 35(2AA) where the assessee pays sum to a National Laboratory or other specified institutions.

**3.4. Transactions not regarded as Transfers**

**3.4.1.** Exemption shall be available in respect of any transfer, subject to certain conditions in a scheme of amalgamation, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company.

**3.4.2.** Exemption shall be available in respect of any transfer, subject to certain conditions, in a demerger, of a capital asset, being a share of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company.

**3.5. Deduction u/s. 80JJAA for employment of new workman**

**3.5.1.** The existing provisions contained in section 80JJAA of the Act provides for deduction to an Indian Company only, however, with a view to encourage generation of employment, it is proposed to amend the section so as to extend the benefit to all assessee

having manufacturing units rather than restricting it to corporate assessee only.

- 3.5.2. Further, in order to enable the smaller units to claim this incentive, it is proposed to extend the benefit under the section to units employing under 50 instead of 100 regular workman.
- 3.5.3. Accordingly, it is proposed to amend sub-section (1) of the aforesaid section. It is also proposed to amend clause (i) of the Explanation so as to provide “additional wages” to mean the wages paid to the new regular workmen in excess of fifty workmen employed during the previous year.
- 3.5.4. These amendments will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

### **3.6. Minimum Alternate Tax**

3.6.1. Section 115JB provides for the imposition of Minimum Alternate Tax (MAT) on the book profit of a company. Also, section 86 provides that the share of income received by an assessee from an AOP / BOI (being a member) shall not be liable to income tax provided that the AOP / BOI is chargeable to tax on its total income. However, section 115JB did not provide the said provisions for exclusions, in case of a company being a member of AOP / BOI. Similarly, no exclusion was provided for long term capital gains arising from certain transactions in securities. These resulted in indirect taxation of exempted incomes.

3.6.2. The Finance Bill, 2015 proposes to insert new clause (iib) and (iic) in Explanation 1 of section 115JB from A.Y. 2016-17 to provide the following:

1. the amount of income, being the share of income of an assessee on which no income-tax is payable in accordance with the provisions of section 86, if any such amount is credited to the profit and loss account, shall be reduced from the book profit for the purposes of calculation of income-tax payable under the section
2. the book profit shall be increased by the amount or amounts of expenditure relatable to the above income (new clause (fa) in Explanation 1)
3. the amount of income from transactions in securities, (other than short term capital gains arising on transactions on which STT is not chargeable), accruing or arising to an assessee being a FII which has invested in such securities

in accordance with the regulations made under the SEBI, if any such amount is credited to the profit and loss account, shall be reduced from the book profit for the purposes of calculation of income-tax payable under the said section

4. the book profit shall be increased by the amount or amounts of expenditure relatable to the above income (new clause (fb) in Explanation 1)

**3.6.3.** The above amendments are applicable w.e.f 01.04.2016

**3.7. Mode of taking or accepting certain loans, deposits and specified sums and mode of repayment of loans or deposits and specified advances**

**3.7.1.** In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.

**3.7.2.** It is also proposed to amend section 269T of the Income-tax Act so as to provide that no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more. The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

**3.7.3.** It is further proposed to make consequential amendments in section 271D and section 271E to provide penalty for failure to comply with the amended provisions of section 269SS and 269T, respectively.

**3.7.4.** The above amendments will be effective w.e.f 01.06.2015

**4. International Taxation**

**4.1. “Place of Effective Management” a criteria to determine the residential status of companies incorporated outside India:**

- 4.1.1.** Section 6(3) of the Income Tax Act, 1961 provides that a company shall be resident in India if it is an Indian Company or the control and management of its affairs is situated wholly in India.
- 4.1.2.** To deal with cases of creation of shell companies and to align the provisions of the Income Tax Act with the DTAAs entered into by India with various countries, the provisions for determining the residential status of companies has been amended w.e.f 01.04.2016 to include Indian companies as well as those companies whose place of effective management is located in India at any time of the year.
- 4.1.3.** Place of effective management has been explained as a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are made.

## **4.2. Tax Clarity on Indirect Transfers**

- 4.2.1.** After the landmark decision in the case of Vodafone, a retrospective amendment was carried out to deem indirect transfers of shares/interest in foreign companies as taxable in India if the share/interest derives its substantial value from underlying assets located in India. However, what construes “substantial value” was not clarified.
- 4.2.2.** Therefore, a new Explanation 6 to Section 9(1) has been inserted which provides a mechanism for determination of substantial value derived from share/interest. The same provides that the share/interest shall derive its value substantially from assets located in India if its value is more than Rs. 10 crores and represents at least 50% of the value of all the assets owned by the company or entity on the specified date.
- 4.2.3.** Further, Explanation 7 has also been inserted which provides that no income shall be deemed to be accrued or arise in India if the entity transferring the shares/interest at any time during the 12 months preceding the date of transfer held
- i. the right of management or control in relation to such company, entity, or
  - ii. voting power or share capital or interest exceeding 5% of the total voting power/ share capital/ total interest, as the case may be of such company/ entity.
- 4.2.4.** Further, a new Section 285A has been inserted w.e.f 01.04.2016 to provide that if the foreign company derives its value substantially from the assets located in India held through the

Indian company, than the Indian Company shall be under an obligation to furnish the information or documents to the Income Tax Authority for the purposes of determination of any income accruing or arising in India as Section 9(1)(i). Consequential penal provisions are also prescribed.

#### **4.3. Fund Manager not to constitute a PE for eligible Investment Fund**

**4.3.1.** Section 9A has been inserted which provides that an eligible investment fund, established or incorporated or registered outside India shall not be a resident in India merely because the eligible fund manager, undertaking fund management activities on its behalf, is situated in India. Accordingly, the income of such an eligible investment fund shall not be deemed to be accrued/ arise in India.

#### **4.4. Threshold Limit for Specified Domestic Transactions raised**

**4.4.1.** Section 92BA has been amended to increase the aggregate value of specified domestic transactions from Rs. 5 crores to Rs. 20 crores for the applicability of domestic transfer pricing audit w.e.f 01.04.2016.

#### **4.5. Deferral of applicability of provisions relating to General Anti Avoidance Rule (GAAR)**

**4.5.1.** The substantive and procedural provisions of GAAR have been deferred to 01.04.2018. Further, it is also provided that the same would apply only prospectively.

**4.5.2.** Though it is not specifically provided in the Finance Bill, 2015, the memorandum also states that the investments made upto 31.03.2017 would also be protected from the provisions of GAAR

#### **4.6. Tax on Royalties and Fees for Technical Services**

**4.6.1.** Section 115A of the Income Tax Act, 1961 provides for taxability of income of non-residents by way of royalty and fees for technical services received under an agreement entered after 31.03.1976 and which are not effectively connected with permanent establishment of the non-resident in India. Tax is payable on the gross amount of income at the rate of 25%. The rate of tax on such income is proposed to be reduced to 10% w.e.f. 01.04.2016.

**4.6.2.** It may be noted that in case of treaties, a lower rate may also be applicable. Further, in view of Section 206AA, if the payee does not possess a Permanent Account Number, the higher rate of 20% would be applicable. Further, in cases where the tax is borne

by the deductor and not by the payee, the same may be required to be 'grossed up'.

#### **4.7. Definition of Global Depository Receipts amended for the purpose of Section 115ACA**

**4.7.1.** The newly notified Depository Receipts Scheme, 2014 allows the issue of Depository Receipts against the security of listed, unlisted or private or public companies against underlying securities which can be debt instruments, shares or units etc. while the erstwhile Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through depository receipt mechanism) Scheme, 1993 limited the issue of DRs based on the underlying shares of the company issued for this purpose (i.e., sponsored GDR) or FCCB of the issuing company and where the company was either a listed company or was to list simultaneously.

**4.8.** However, with the new scheme being notified, the benefit got extended to unsponsored GDRs also. Therefore, the definition of GDR for the purpose of Section 115ACA has been amended to cover only those DRs which are issued to investors against the issue of ordinary shares of the issuing company, being a company listed on a recognized stock exchange or foreign currency convertible bonds of issuing company. Accordingly, in other case, tax would be payable at normal rates. The same is effective w.e.f 01.04.2016

#### **4.9. Furnishing of information in respect of foreign remittances made mandatory**

**4.9.1.** Section 195(6) requires any person responsible for paying to a non-resident any sum chargeable to tax to furnish the details in the prescribed manner. Accordingly, Rule 37BB of the Income Tax Rules, 1961 requires the person making payment of any sum to a non-resident which is chargeable to tax in Form No. 15CA.

**4.9.2.** Now, Section 195(6) is being amended to impose a liability on the person making the payment to furnish the particulars irrespective of whether the same is chargeable to tax or not. The same is effective w.e.f. 01.06.2015.

### **5. TDS**

#### **5.1. Compulsory Requirement to obtain 'Other' Income and Deduction Details from the employees in the prescribed form (Clause 40)**

**5.1.1.** Section 192 requires the employer to deduct tax of their employees on the basis of details of salary and other details

which may be provided by the employee. There was no prescribed format for obtaining and maintaining the said details.

- 5.1.2. A new sub-section 192(2D) has been proposed to be inserted making it mandatory for the employers to obtain evidence or proof of any claim or deductions in the prescribed format from employees. The employer should not take into account the claim for deduction at the time of computing TDS u/s 192 unless the documents are submitted.

## **5.2. Scope of TDS on interest widened**

- 5.2.1. For banking companies and cooperative society and public companies who have adopted core banking solutions, threshold limit for TDS on interest on time deposits has to be considered on a consolidated basis and not branch wise.
- 5.2.2. Cooperative bank will have to deduct TDS on interest on term deposits exceeding the threshold limit of Rs. 10,000/- even if the interest is paid to the members.
- 5.2.3. Another amendment to this section is for Interest awarded by Motor Accidents Claims Tribunal. Earlier the TDS was required to be deducted when the interest above 50,000/- was credited or paid whichever was earlier. Now, it is proposed that TDS u/s 194A will be deducted only in the year in which the compensation is paid and not in the year it is credited. This amendment has sought to bring tax deduction at par with its charging section.
- 5.2.4. Recurring Deposits have been brought within the ambit of Time Deposits and hence the interest paid on them will be subjected to TDS.
- 5.2.5. The above amendments are effective from 01.06.2015.

## **5.3. Limiting the exemption to Small Transporters for non-deduction of TDS u/s 194C**

- 5.3.1. Payments made to contractor engaged in the business of plying, hiring or leasing goods carriages was exempted from deduction of tax at source provided the contractors furnished their PAN.
- 5.3.2. Section 194C is now being proposed to be amended w.e.f 01.06.2015 to provide the exemption for only those contractors who owned ten or less carriages at any time during the previous year will be eligible to claim exemption from deduction of TDS u/s 194C. Such a contractor will be required to furnish a declaration to this effect to the deductor along with his PAN to claim the exemption.



- 5.4. Non-Deduction of TDS u/s 194-I where immovable property is directly owned by the REIT**
- 5.4.1.** Section 194-I has been proposed to be amended w.e.f 01.06.2015 to provide that if the immovable property is directly owned by REIT, then the lessees are not required to deduct TDS u/s 194-I while crediting or paying rent to such trusts.
- 5.5. TDS provisions relating to unitholders of REIT and Investment Trusts**
- 5.5.1.** Where income of REIT is distributed as per section 115UA to a resident, then TDS @ 10% is proposed to be deducted [Section 194LBA (1)]. But where such income is distributed to a NR, then TDS has been proposed to be deducted at the rates in force [Section 194LBA(3)]
- 5.5.2.** Similarly, if any income [of nature other than that proportion of income which is of the same nature as income referred to in 10(23FBB)] is payable to the unit holder by the Infrastructure Investment Trusts, then TDS has to be deducted @ 10% [Section 194LBB]
- 5.5.3.** The above amendments are effective from 01.06.2015
- 5.6. Extension of Time Limit specified u/s Section 194LD**
- 5.6.1.** The benefit of concessional TDS rate of 5% for interest paid to FI/ QFI against rupee denominated bonds issued by Indian Company or Government was restricted to 31.05.2015
- 5.6.2.** The said benefit is proposed to be extended till 30.06.2017 vide amendment in Section 194LD.
- 5.7. Exemption to certain deductors from obtaining TAN**
- 5.7.1.** Section 203A has been amended to provide for non-requirement to obtain TAN for resident Individuals/HUF purchasing immovable property from non-residents, where TDS is required to be deducted u/s 195.
- 5.8. Time Limit specified for Form 24G**
- 5.8.1.** In case of Government Offices, where TDS is paid through book entries, the person responsible to credit the sum to Central Government is required to submit Form 24G to denote payment of tax. But Form 24G was governed by Rule 30 and 37CA. Any delay in furnishing Form 24G resulted in delay in furnishing of TDS returns.
- 5.8.2.** Therefore a new sub-section 200(2A) is proposed to be inserted to provide that the person responsible to credit the sum to Central

Government will submit Form 24G with the prescribed time. Penalty u/s 272A of Rs 100/day for failure to submit return till due date also extended to Form 24G

## **5.9. Amendment in section 200A**

**5.9.1.** Though TRACES already levies late filing fee under section 234E in the returns processed by it, earlier there was nothing empowering TRACES to do so. Therefore the amendment provides for insertion of statutory provision for the levy of Fees u/s 234E at the time of processing of TDS returns.

## **5.10. New Provisions for TCS**

**5.10.1.** Though TDS and TCS returns are virtually same, yet earlier there was no statutory provision for processing of TCS returns. Therefore Section 206CB has been inserted which provides for the same. (The new section has the exact same provisions of section 200A - which deals with processing of TDS returns)

**5.10.2.** Also a new subsection 220(2C) has been introduced which provides for non-levy of interest u/s 220(2) for the period when interest is charged u/s 206(7) (Again this section is copied from section 110(2B) which deals with non-levy in case of TDS returns).

## **6. Special Schemes**

### **6.1. Exemption to income of Core Settlement Guarantee Fund (SGF) of the Clearing Corporations**

**6.1.1.** Under the existing provisions, income by way of contributions to the Investor Protection Fund set up by recognised stock exchanges in India, or by commodity exchanges in India or by a depository shall be exempt from taxation.

**6.1.2.** On similar lines, it is proposed to exempt the income of the Core SGF arising from contribution received and investment made by the fund and from the penalties imposed by the Clearing Corporation subject to similar conditions as provided in case of Investor Protection Fund set up by a recognised stock exchange or a commodity exchange or a depository.

**6.1.3.** This amendment will take effect from 01.04.2016

### **6.2. Alternative Investment Funds**

**6.2.1.** Through a series of amendments, the Finance Bill, 2015 seeks to provide for a pass through status to alternative investment funds whereby the income is not chargeable in the hands of

the investment funds but is instead chargeable in the hands of the unit holders. However, in respect of business income, the fund would be required to pay the income tax. The same is summarised in the table below:

Nature of Income	Treatment in the hands of the Fund	Treatment in the hands of the unitholder
Business Income	Liable for Tax	Exempt from Tax under Section 10(23FBB)
Other than Business Income	Exempt from Tax under Section 10(23FFA)	Proportionately Taxable under Section 115UB

**6.2.2.** The salient features of the special regime are as under:

1. Income in the nature of business or profession shall be taxable in the hands of investment fund and income other than business or profession shall be taxable in the hands of the unit holders in the same proportion as that of the other income.
2. The fund shall deduct income tax @ 10% on the income distributed to the unit holders which is liable to tax in the hands of the unit holders.
3. Loss of the fund shall not be allowed to be passed through to the investors and shall be carried forward and set-off against the income of the fund in the next year
4. Dividend distribution tax shall not apply to the income distributed to the unit holders
5. The provisions of TDS shall not apply to the income received by the investment fund
6. Mandatory, for the fund, to file income tax return and other details as required for the purposes of the scheme.

**6.2.3.** Similar proposition is made even for a real estate investment trust, earning income by way of renting or leasing or letting out any real estate asset owned directly by such business trust.

## **7. Charitable Trusts**

### **7.1. Amendment of Definition of Charitable Purpose**

**7.1.1.** It is proposed to include 'yoga' as a specific category in the definition of charitable purpose on the lines of education.

**7.1.2.** It is further proposed to amend the definition of charitable purpose to provide that the advancement of any other object of general

public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless,

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- (ii) the aggregate receipts from such activity or activities, during the previous year, do not exceed twenty percent of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year.

## **7.2. Rationalisation of provisions of section 11 relating to accumulation of Income by charitable trusts and institutions**

**7.2.1.** In order to remove the ambiguity regarding the period within which the assessee is required to file Form 10, and to ensure due compliance of the above conditions within time, it is proposed to amend the Act to provide that the said Form shall be filed before the due date of filing return of income specified under section 139 of the Act for the fund or institution. In case the Form 10 is not submitted before this date, then the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished before the due date of filing return of income.

**7.2.2.** These amendments will take effect from 01.04.2016.

## **8. Procedures**

### **8.1. Determination of residential status of a citizen of India and a member of the crew of a foreign bound ship leaving India**

**8.1.1.** Section 6 currently provides that an assessee, who is a citizen of India and leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purposes of employment outside India shall be resident in India for the purposes of Income Tax, if:

- i. He is in India in that year for a period or periods amounting in all to 60 days or more, or
- ii. He is in India in that year for a period or periods amounting in all to 60 days or more and for 182 days in the immediately preceding 4 years.

- 8.1.2.** However, there was no mechanism specified for determining the number of days in India. Therefore, Explanation 2 has been inserted to Section 6(1) which provides for prescription of conditions for determining the period of stay in India.
- 8.2. Section 139: Provisions for filing income tax return**
- 8.2.1.** It will now be mandatory for universities, other educational institutions, hospitals and investment funds to mandatorily file the income tax return u/s. 139(4C), if the total income assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income tax. The said amendment will have effect from 01.04.2016.
- 8.3. Section 132B: Application of seized or requisitioned assets**
- 8.3.1.** The Finance Bill, 2015 proposes to provide that the liability arising on an application made before the Settlement Commission u/s. 245C(1) can now be recovered out of the assets seized during the course of search and seizure u/s. 132. The said amendment will have effect from 01.06.2015
- 8.4. Sanction for issue of notice u/s 151**
- 8.4.1.** Section 151 is being amended to realign the authority sanctioning the issue of a notice for reassessment of income. This amendment will be with effect from 01.06.2015.
- 8.5. Assessment of income of any other person u/s 153C**
- 8.5.1.** The Finance Bill, 2015 seeks to provide that 'any information' contained in the books of account or documents seized or requisitioned, which belongs to person other than the person referred to in section 153A, shall be handed over to the AO having jurisdiction over such other person. This amendment will be with effect from 01.06.2015
- 8.6. Procedure for Clubbing of Appeals**
- 8.6.1.** A new section 158AA is proposed to be inserted which provides for the procedure when in an appeal by revenue an identical question of law is pending before Supreme Court. This amendment will be with effect from 01.06.2015
- 8.7. Interest for defaults in payment of taxes**
- 8.7.1.** The Finance Bill, 2015 proposes to amend section 234B(3) to provide that the period for which the interest is to be computed will begin from the 1st day of April next following the F.Y. and end on the date of determination of total income u/s. 147 (Income

escaping assessment) and 153A (Assessment in case of search or requisition).

**8.7.2.** Further, it is also proposed to levy interest on the additional amount of income tax calculated in the cases of orders of settlement commission u/s. 245C from the 1st day of April of such AY till the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed to the settlement commission.

**8.7.3.** This amendment will be with effect from 01.06.2015.

## **8.8. Settlement Commission**

### **8.8.1. Section 245A: Settlement of Cases**

**8.8.2.** Previously, an assessee was allowed to approach the Settlement Commission only with respect to those assessments against which proceedings u/s. 148 had been initiated. Since, the issue relating to escapement of income is often involved in more than one assessment year, the assessee could not apply for the other assessment years.

**8.8.3.** In order to obviate the need for issue of notice in all the AYs, the Finance Bill, 2015 proposes that the assessee can now approach the Settlement Commission, for more than one year, even if the proceedings have not been initiated provided, the assessee has filed the return of income u/s 139 or in response to a notice u/s 142.

**8.8.4.** Further, in case an application is made in light of the above amendments, then for the year in which the assessment/reassessment proceedings u/s 148 have not been initiated and an application has been made before the settlement commission, assessment proceedings shall be deemed to be commenced from the date on which return of income is filed, either u/s 139 or 142 and shall be deemed to be concluded on the date on which the assessment is made or expiry of 2 years from the end of relevant assessment year in case of no assessment.

**8.8.5.** The above amendment shall be w.e.f 01.06.2015

### **8.9. Section 245D (6B): Power to Settlement Commission to rectify order**

**8.9.1.** The Settlement Commission shall be allowed to rectify any mistake in its order within a period of 6 months from the end of the month in which the order was passed.

- 8.9.2.** The said order can also be rectified on an application made by the Principal Commissioner or Commissioner before the end of six months from the end of month in which the order was passed.
- 8.9.3.** Further, the Settlement Commission should rectify its order on receipt of an application within a period of 6 months from the end of the month in which an application for rectification was made by the Principal Commissioner or the Commissioner.
- 8.9.4.** The above amendment shall be w.e.f 01.06.2015
- 8.10. Section 245H: Power to grant immunity from prosecution and penalty**
- 8.10.1.** The Finance Bill, 2015 proposes to provide w.e.f. 01.06.2015 that the settlement commission should record the reasons in writing while granting immunity from prosecution and penalty.
- 8.11. Section 245HA: Abatement of proceedings before Settlement Commission**
- 8.11.1.** A new clause has been inserted w.e.f 01.06.2015 which provides for abatement of proceedings, in case where the Settlement Commission passes an order without providing for the terms of settlement, on the date of passing of the order itself.
- 8.12. Section 245K: Bar on subsequent application for settlement**
- 8.12.1.** The Finance Bill, 2015 proposes to amend section 245K w.e.f. 01.06.2015 to provide that any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The related person is also defined under the said provision
- 8.13. Appeals to the Appellate Tribunal**
- 8.13.1.** The orders passed under section 10(23C) (vi) and (via) in the case of 'any university or other educational institution' and 'any hospital or other institution for reception and treatment of persons suffering from illness or mental defectiveness, etc' can be appealed before the Hon'ble ITAT. This amendment will be with effect from 01.06.2015.
- 8.14. Jurisdiction of Single Member Bench**
- 8.14.1.** With effect from 01.06.2015; single member ITAT Bench can dispose off case of an assessee whose total income as computed by the AO does not exceed Rs. 15 Lakhs.

## **8.15. Revision of orders prejudicial to revenue**

**8.15.1.** The existing section 263 provided the powers to the Principal Commissioner or the Commissioner to modify the assessment made by the AO or cancelling the assessment and directing fresh assessment, after giving the assessee an opportunity of being heard and after making or causing to be made an enquiry. However, the Finance Bill, 2015 proposes to amend and provide that an order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of revenue in certain cases

## **8.16. Penalty provisions**

**8.16.1.** For the purpose of levying penalty, the meaning of the expression 'the amount of tax sought to be evaded' is defined through a formula mentioned therein

**8.16.2.** In effect, the Bill proposes to provide that the amount of tax sought to be evaded shall be the summation of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of section 115JB or 115JC. However, if an amount of concealment of income on any issue is considered both under the general provisions and provisions of section 115JB or 115JC then such amount shall not be considered in computing tax sought to be evaded under provisions of section 115JB or 115JC. Further, in a case where the provisions of section 115JB or 115JC are not applicable, the computation of tax sought to be evaded under the provisions of section 115JB or 115JC shall be ignored.

**8.16.3.** Similar penalty provisions have been proposed u/s. 271D & 271E for failure to comply with the provisions of section 269SS & 269T with respect to 'specified sum' and 'specified advance' in relation to transfer of immovable property. The said amendment shall be w.e.f. 01.06.2015.

**8.16.4.** A new section 271FAB has been proposed to be inserted to levy penalty of ₹ 5,00,000/- for failure to furnish statement or information or document by an eligible investment fund. The said amendment shall be w.e.f. 01.06.2015.

**8.16.5.** A new section 271GA has been proposed to be inserted w.e.f. 01.04.2016 for levying penalty @ 2% or ₹ 5,00,000/- for failure to furnish information or document under section 285A by an Indian concern in certain cases.

**8.16.6.** A new section 271I has been proposed to be inserted w.e.f. 01.06.2015 for levying penalty of ₹ 1,00,000/- for failure to furnish



information or furnishing inaccurate information under section 195 in respect of remittance to non-resident.

- 8.16.7.** Section 272A has also been proposed to be amended to incorporate the levy of penalty w.e.f. 01.06.2015 for failure to deliver the statement of tax deduction and collection at source as prescribed u/s. 200(2A) and 206C(3A)
- 8.16.8.** The provisions of section 273B granting for relief from penalty is extended to section 271FAB (penalty to investment fund), section 271FB (penalty to employer for failure to furnish fringe benefit return), section 271G (penalty for failure to furnish information regarding international transaction) and section 271GA (penalty for failure to furnish information u/s. 285A) provided reasonable cause is shown. The said amendment will be w.e.f. AY 2016-17.
- 8.16.9.** Relief u/s. 273B from penalty u/s. 271I is also proposed to be granted w.e.f. 01.06.2015 if reasonable cause is shown
- 8.17. Restrictions imposed on certification by authorized representative**
- 8.17.1.** Section 288 allows the assessee to appoint authorized representatives to appear on his behalf before the Income Tax Authorities. Such authorized representatives are also permitted to certify various reports (like tax audit report, etc.).
- 8.17.2.** However, to ensure the independence of the auditors, section 288 of the Act is amended to provide that an auditor who is not eligible to be appointed as auditor of a company as per the provisions of sub-section (3) of section 141 of the Companies Act, 2013 shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of that company. On similar lines, ineligibility for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of non-company is also proposed to be provided. The above restrictions shall not be applicable when the accountant acts as an authorized representative on behalf of the assessee.
- 8.17.3.** It is further proposed to provide that the person convicted by a court of an offence involving fraud shall not be eligible to act as authorized representative for a period of 10 years from the date of such conviction.



# CENTRAL EXCISE DUTY

## 1. Substantive Changes

- 1.1. Section 3A which grants powers to the Central Government to charges Excise Duty on the basis of capacity of production in respect of notified goods is proposed to be amended so as to insert an Explanation to provided that factor relevant to production includes factors relevant to production. This amendment will enable the Central Government to specify more than one factor relevant to production of goods. The factors relevant to production is prescribed under Notification 4/2015-CE (NT) and 5/2015-CE (NT).
- 1.2. Sections 11A(5), (6) and (7) are omitted since the same are redundant due to insertion of new section 11AC.
- 1.3. Relevant date in cases where return is filed is defined to be the date of filing of return. In cases where only interest is to be recovered, the relevant date will be the date of payment of duty to which such interest relates.
- 1.4. Section 11A shall not apply to cases where the non-payment or short payment of duty is reflected in the periodic returns filed and that in such cases recovery of duty shall be made in such manner as may be prescribed.
- 1.5. The Finance Bill proposes to substitute a new section for Section 11AC so as to rationalise the penalty as follows:

<i>Situation</i>	<i>No Fraud</i>	<i>Fraud</i>
Tax and Interest Paid before SCN	Nil	
Tax and Interest Paid within 30 days of the SCN	NIL	15% of the duty demanded
Adjudication Order	Not exceeding 10% of duty or five thousand whichever is higher	100%. However, in respect of cases where the details relating to transactions are recorded in specified record, penalty shall be 25% of the duty so determined.
Paid within 30 days of the Order	25% of the penalty imposed	25% of duty demanded

- 1.6.** As a transition provision, it is further provided that the proceedings in the pending show causes can be closed in the following cases:
- 1.6.1.** On payment of duty and interest in case not involving fraud, collusion, wilful mis-statement etc. within 30 days of the assent of the Finance Bill.
- 1.6.2.** On payment of duty, interest and penalty @15% of the duty in case involving fraud, collusion, wilful mis-statement etc.
- 1.6.3.** In case where show cause is adjudicated after Finance Bill, 2015 receives the assent, penalty @ 25% of the duty in cases involving fraud, collusion, wilful mis-statement etc. can be paid within 30 days of the communication of the adjudication order.
- 1.6.4.** In case where show cause is adjudicated after Finance Bill, 2015 receives the assent, penalty @ 25% of the penalty in cases not involving fraud, collusion, wilful mis-statement etc. can be paid within 30 days of the communication of the adjudication order.

## **2. Changes in Rates of Duty:**

- 2.1.1.** The general effective rate of excise duty has been increased to 12.5% inclusive of education cess and secondary and higher education cess. Accordingly, no education cess and secondary and higher education cess is payable separately.

<b>Item</b>	<b>Old Rate</b>	<b>New Rate</b>	<b>Conditions</b>
Medical and Toilet Preparations	12%	12.5%	
Leather footwear of RSP exceeding Rs.1000/= per pair	12%	6%	Not apply to footwear with leather sole and textile uppers
Pig iron SG grade	12%	NIL	For manufacture of cast components of wind operated electricity generators subject to0 certification by MNRE
Tablet Computer		2% without CENVAT credit/12.5% with CENVAT credit	
Parts, components and accessories for use in manufacture of tablet computer		Exempted	Subject to actual user

Mobile handsets including cellular phone	1% without CENVAT or 6% with CENVAT	1% without CENVAT credit or 12.5% with CENVAT credit	
Wafers for use in the manufacture of IC modules for smart cards	12%	6%	Subject to actual user
Inputs for use in manufacture of LED driver and MCPCB for LED lights , lamps and fixtures	12%	6%	Subject to actual user
Sacks and bags of polymers of ethylene	12%	15%	Other than for industrial use
Chassis for ambulance	24%	12.5%	Actual user condition
Waters, including mineral Waters and aerated waters, containing added sugars or other sweetening matter or flavored	12%	18%	
Sacks and bags (including cones) of plastics	12%	18%	



# CUSTOMS DUTY

## 1. Substantive Changes

- 1.1.** In line with the trust being put on the assessees, substantial reduction in penalties have been proposed. Accordingly, Sections 28, 112 and 114 have been amended to reduce penalties. The summary of the amended provisions in relation to penalties are follows:

<i>Situation</i>	<i>No Fraud</i>	<i>Fraud</i>
Tax and Interest Paid before SCN	Nil - Section 28(2)	
Tax and Interest Paid within 30 days of the SCN	NIL- proviso to Section 28(2)	15% of the duty demanded – Section 28(5)
Adjudication Order	Not exceeding 10% of duty or five thousand whichever is higher- Section 112/114	100%- Section 114A
Paid within 30 days of the Order	25% of the penalty imposed – Proviso to Section 112/114	25% of duty demanded – Proviso to Section 114A

## 1.2. Rates of Duty

<i>Item</i>	<i>Old Rate</i>	<i>New Rate</i>	<i>Conditions</i>
BCD on Sulphuric Acid	7.5%	5%	
BCD on Isoprene and liquefied butane	5%	2.5%	
BCD on Styrene/EDC/VCN	4%	2%	
BCD on Anthraquinone	7.5%	2.5%	
BCD on Butyl Acrylate	7.5%	5%	
BCD on Iron and Steel and articles	10%	15%	
BCD on Antimony Metal	5%	2.5%	
BCD on Digital Still Image Video Cameras	10%	NIL	Minimum resolution of 800 by 600 pixels, at minimum 23 frames per second, for at least 30 minutes
BCD on OLED TV Panels	10%	NIL	
BCD on Commercial imported vehicles	10%	40%	
BCD on Antimony metal/scrap/and waste	5%	2.5%	
C-Block Compressor/Crank Shaft/OLP & Positive thermal co-efficient for use in manufacture of Refrigerator Compressors	7.5%	5%	
BCD on Metal Parts for use in the manufacture of electrical insulators	10%	7.5%	Subject to actual user condition

## TDS Chart for FY 2015-16 (AY 2016-17)

Sr. No.	Section	Nature of Payment in brief		Cut off limit	Rate
1	192	Salary		Taxable income	Avg Rate
2	192A	Premature Withdrawal from EPF A/c		30,000	10
3	193	Interest on Securities		5,000(Ind &HUF)	10
4	194	Deemed Dividend		2,500(Ind)	10
5	194A	Interest other than Interest on Securities by	Bank	10,000	10
6			Others	5,000	10
7	194B	Lottery/Crossword Puzzle/Card Game/Any other Game		10,000	30
8	194BB	Winnings from Horse Race		5,000	30
9	194C	Contracts (Including Sub-Contract & Advertisements)		30,000-Single 75,000-Aggregate	1(Ind&HUF) 2(Others)
10	194D	Insurance Commission		20,000	10
11	194DA	Payment of Life Insurance Maturity not exempt u/s 10(10D)		1,00,000	2
12	194E	Payment to NR Sportsmen/Sports Asso./Entertainer		NIL	20
13	194EE	Payments out of deposits under NSS		2,500	20
14	194F	Repurchase of units by MF/UTI		NIL	20
15	194G	Commission on sale of lottery tickets		1,000	10
16	194H	Commission or Brokerage		5,000	10
17	194I	Rent	Land & Building	1,80,000	10
18			Machinery, Plant And Furniture		2
19	194IA	Purchase of Immovable Property		50,00,000	1

20	194J	Fees for Professional & Technical Services (+Royalty)	30,000	10
21	194J(1)(ba)	Remuneration to Directors (Other than Salary)	NIL	10
22	194LA	Compulsory Acquisition of Immovable Property	2,00,000	10
23	194LB	Interest Payment to NR for Infrastructure Debt Fund	NIL	5
24	194LBA(1)	Income from units of a Business Trust /REIT to Resident	NIL	10
25	194LBA(2)	Income from units of a Business Trust to NR	NIL	5
26	194LBA(3)	Income from units of a REIT to NR	NIL	Rates in Force
27	194LBB	Income from units of Investment Fund [other than 10(23FBB)]	NIL	10
28	194LC	Interest Payment by Indian companies to NR	NIL	5
29	194LD	Interest on Rupee Denominated Bonds to NR	NIL	5

**TCS Chart for FY 2015-16 (AY 2016-17)**

<b>Sr. No.</b>	<b>Section</b>	<b>Nature of Goods</b>	<b>Cut off limit</b>	<b>Rate</b>
1	206C(1)(i)	Alcoholic Liquor for human consumption and Tendu Leaves		1
2	206C(1)(ii)	Tendu Leaves		5
3	206C(1)(iii)	Timber obtained under Forest Lease		2.5
4	206C(1)(iv)	Timber obtained by any mode other than under a forest Lease		2.5
5	206C(1)(v)	Any other forest produce not being Timber or Tendu Leaves		2.5
6	206C(1)(vi)	Scrap		1
7	206C(1)(vii)	Minerals being coal or lignite or iron ore		1
8	206C(1C)(i)	Parking Lot		2
9	206C(1C)(ii)	Toll Plaza		2
10	206C(1C)(iii)	Mining and quarrying		2
11	206C(1D)	Sale of Bullion*	2,00,000	1
12	206C(1D)	Sale of Jewelry*	5,00,000	1

\* TCS is applicable only if seller receives payment in cash



## Consolidated Due Date Chart

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Obligations under Central Excise Act												
Electronic Payments	06/05	06/06	06/07	06/08	06/09	06/10	06/11	06/12	06/01	06/02	06/03	31/03
Filing of ER-1, ER-2 and ER-6	10/05	10/06	10/07	10/08	10/09	10/10	10/11	10/12	10/01	10/02	10/03	10/04
Filing of ER-3, ER-8	20/10		20/10			20/01			20/04			
Filing of ER-4	30/11 (for preceding F.Y.)											
Filing of ER-5, ER-7(yearly)	30/04 (for preceding F.Y.)											
Obligations under Service Tax Law												
Payments (Companies)	06/05	06/06	06/07	06/08	06/09	06/10	06/11	06/12	06/01	06/02	06/03	31/03
Payment for 'other than companies'	06/07			06/10			06/01			31/03		
Returns (ST-3)	25/10						25/04					
Obligations under MVAT Law												
Tax liability between 0-100000 *	30/10						30/04					
Tax Liability between 100001-10 Lakhs*	21/07			21/10			21/01			21/04		
Tax liability above 10 Lakhs*	21/05	21/06	21/07	21/08	21/09	21/10	21/11	21/12	21/01	21/02	21/03	21/04
Works Contract TDS Payment **	21/05	21/06	21/07	21/08	21/09	21/10	21/11	21/12	21/01	21/02	21/03	21/04
Filing of Annexures J1 & J2	To be filed along with the returns as per the periodicity mentioned above											
MVAT Audit	15/01											
Obligations under Labour Laws												
Profession Tax Payment	31/05	30/06	31/07	31/08	31/09	31/10	30/11	31/12	31/01	28/02	31/03	30/04
ESIC Payment	21/05	21/06	21/07	21/08	21/09	21/10	21/11	21/12	21/01	21/02	21/03	21/04
Provident Fund Payment	15/05	15/06	15/07	15/08	15/09	15/10	15/11	15/12	15/01	15/02	15/03	15/04
ESIC Returns(Monthly)	21/05	21/06	21/07	21/08	21/09	21/10	21/11	21/12	21/01	21/02	21/03	21/04
ESIC Returns(Half-Yearly)	11/11						12/05					
Provident Fund Returns(Monthly)	25/05	25/06	25/07	25/08	25/09	25/10	25/11	25/12	25/01	25/02	25/03	25/04
Provident Fund Returns (Yearly)	30/04											
TDS Payment	07/05	07/06	07/07	07/08	07/09	07/10	07/11	07/12	07/01	07/02	07/03	30/04
TDS Returns	15/07	15/10	15/01	15/05								
Advance tax payment (Companies)			15/06			15/09			15/12			15/03
Advance tax payment (Other than Companies)						15/09			15/12			15/03
Income Tax Returns	Non Audit 31/07, Audit 30/09, Transfer Pricing 30/11											

\* If Payment of MVAT made as per time prescribed, additional 10 days are given for uploading return

\*\* The Due Date for Works Contract TDS Return is 30th June



## EXECUTIVE SUMMARY

Name	Designation	Mobile No.	E-Mail ID
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Vimal Katapra	Support Staff	9167738007	