Bombay Chartered Accountants' Society

THE UNION BUDGET 2016-17

-An Analysis

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About the Cover

It was in 2001 that Goldman Sachs, in its report, coined the term BRICS and the world recognised India as a fast growing economy along with a few others. The report predicted that China, USA & India would be the top three economies in 2050 with India probably at the top.

Cut to 2016 and according to the IMF, India will be the fastest growing economy in the world this year, overtaking China! Though this is just the rate of growth, and we are way behind in the size of GDP, India is on track. Per Capita Income is quite another challenge altogether.

This feat cannot be achieved without a strong vision, meticulous execution, bold measures, innovative approach, collective effort and inclusive sharing. The Budget is where one gets to see if all these are factored. On that count the intent is transparent.

Modinomics seems to be working. He is using 3D well - Demography, Democracy & Demand. Growth is intended to be inclusive. Farmers and Rural India have been kept in mind. For a long time no scam has come to light. Many measures with long term benefit have been taken. So we are now seeing a concrete road map for Make in India, Startup India and many other ideas.

Governance, Accountability and Compliance seem to be the running theme.

Looking forward to moving from 'Ease of Paying Tax' to 'Pride of Paying Tax'.

Cover Concept : Naushad Panjwani

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The Union Budget
– An Analysis 2016-17

Analysis of Important Amendments

DIRECT TAXES		
Arvind Dalal	Pinakin Desai	Rajan Vora
Kishor Karia	Shariq Contractor	Gautam Nayak
Sanjeev Pandit	Ameet Patel	Kirit Kamdar
Anil Doshi	Nina Kapasi	Sonalee Godbole
Jagdish Punjabi	Ganesh Rajgopalan	Bhadresh Doshi
Rajesh Kothari	Rutvik Sanghvi	Saroj Maniar
	Rajesh Athavale	
INDIRECT TAXES		
Govind Goyal	Pranay Marfatia	Hasmukh Kamdar
Puloma Dalal	Samir Kapadia	Bakul Mody
Rajkamal Shah	Bharat Shemlani	Naresh Sheth
Suhas Paranjpe	Mandar Telang	Jayesh Gogri

DIRECT TAXES

- All amendments proposed in The Finance Bill, 2016 would be effective from Assessment Year 2017-18 unless specifically mentioned otherwise.
- In this booklet all proposals of The Finance Bill, 2016 are referred to as if the amendments have been actually made accept in few cases.
- Unless otherwise specified, the reference to the words 'the Act' used is to the Income-tax Act, 1961.

Tax Rates

1. Tax Rates for Individuals, HUFs, AOP etc. and Firms and Companies etc.

There are no changes in the tax slabs, rates of income-tax or rates of Education Cess and Secondary and Higher Education Cess for any category of tax payers other than companies. In line with

the announcement made earlier, the Finance Minister has begun the process of reducing the corporate tax rate in a phased manner. The surcharge has been increased for individuals, HUFs, AOP & BOI earning more than ₹ 1 crore of total income. For such taxpayers, the surcharge has been increased from 12% to 15%. There is no change in surcharge in other cases.

Thus, the effective maximum marginal tax rates (including surcharge and cess) will be as under:

Person	**Total Income**		
	Upto ₹ 1 crore	**Above ₹ 1 crore upto ₹ 10 crore**	**Above ₹ 10 crore**
Individuals, HUF etc	30.9%	35.535%	35.535%
Firm	30.9%	34.608%	34.608%
Domestic Companies with total turnover / gross receipts in F.Y. 2014-15 not exceeding ₹ 5 crore	29.87%	31.9609%	33.454% [See Note 2 below]
Other Domestic Companies	30.9%	33.063%	34.608%
Foreign Company	41.2%	42.024%	43.26%

Notes:

1. In case of a Domestic Company newly set up on or after 1st March, 2016 engaged in Manufacturing or Production, the tax rate will be 25% plus applicable surcharge and education cess subject to conditions provided in section 115BA.

2. In case of a company, even though turnover / gross receipts does not exceed ₹ 5 crore, total income in some exceptional cases may exceed ₹ 10 crore on account of Capital Gains etc.

3. Changes have also been made in the rates of TDS which are separately given in para 58 below.

2. Subsidy or grant by the Central Government – Section 2(24)(xviii)

Presently any subsidy or grant received from the Central or State Government is included as income, except where such grant or subsidy is taken into account for determination of the actual cost of the asset as provided in explanation 10 of section 43(1). As a result, subsidy or grant by the Central Government for budgetary support of a trust or any other entity formed specially for operationalising certain Government schemes would also have been taxed in the hands of

such entities. The section is now amended to provide that subsidy or grant by the Central Government for the purpose of the corpus of the trust or institution established by the Central or State Government shall be excluded from the definition of income.

3. Place of Effective Management (POEM) – Section 6

The concept of treating a foreign company as resident in India if its place of effective management is in India was introduced by the Finance Act, 2015 and was to become effective from Assessment Year 2016-17. Under this concept, foreign companies would be considered as resident in India if its POEM is in India.

The Finance Minister has now recognised that before introducing this concept, its ramifications need to be analysed in detail. Accordingly, the implementation of POEM has been deferred by one year and the same will now be applicable from Assessment Year 2017-18. A new section 115JH is introduced to empower the Government to issue notification to provide detailed transition mechanism for companies incorporated outside India, which due to implementation of POEM, would be assessed for the first time as resident in India. The notification will be issued to bring clarity on issues relating to computation of income, treatment of unabsorbed depreciation, set off or carry forward of losses, applicability of transfer pricing provisions, etc. applicable to such foreign companies considered to be resident in India. Every notification issued under this section shall be laid before each House of Parliament.

In view of the above, the amendment made in section 6(3) by the Finance Act, 2015 has been omitted with effect from Assessment Year 2016-17 through clause 235 of the this Finance Bill, 2016.

4. Income deemed to accrue or arise in India – Section 9(1)(i)

A new clause has been inserted in Explanation 1, providing that no income shall be deemed to accrue or arise in India to a foreign company engaged in mining of diamonds, through or from activities confined to display of uncut and unassorted diamonds in any notified special zone. This amendment is effective from Assessment Year 2016-17.

5. Fund manager's activities not constituting business connection – Section 9A

This section lays down the conditions under which a fund manager based in India does not constitute a business connection of the foreign investment fund. One of the conditions was that the fund

is a resident of a country or a specified territory with which India has entered into a double taxation avoidance agreement. This condition is now modified, by extending it to funds established, incorporated or registered in a notified specified territory.

Another condition was that the fund should not carry on or control and manage, directly or indirectly, any business in India or from India. This condition is now modified to apply only to a fund carrying on, or controlling and managing, any business in India, by deleting the requirement of not carrying on or controlling and managing any business from India.

6. Withdrawal of accumulated balance in recognised provident fund – Section 10(12)

Presently, section 10(12) provides that withdrawal of accumulated balance in a recognised provident fund due to an employee is exempt from tax to the extent provided in rule 8 of Part A of the Fourth Schedule of the Act. It has now been provided that such exemption in respect of employees' contribution would be restricted only to 40% of the accumulated balance* attributable to employee's contributions made on or after 1st day of April, 2016 in respect of an employee other than an excluded employee. For this purpose, "excluded employee" is defined to mean an employee whose monthly salary does not exceed the prescribed amount (as per para 2.1 of Annexure to Part B of the Finance Minister's speech, the prescribed amount will be ₹ 15,000 per month). Accordingly, such excluded employees would continue to get full exemption. Accumulated balance up to 31st March, 2016 will continue to be governed by the existing provisions.

It may be noted that there is no change in provisions related to withdrawal from Public Provident Fund and the current exemption in respect of withdrawal from the PPF accounts continues.

7. Contribution to pension scheme – Sections 10(12A) and 80CCD

Presently, deduction is available for contribution made to National Pension Scheme (NPS) u/s 80CCD. Withdrawal of the contribution along with the accumulated income from the NPS on account of closure or opting out of the pension scheme is taxable in the year of withdrawal provided deduction is claimed in earlier years.

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* It appears that the finance ministry has clarified that a call will be taken by the Finance Minister with regard to taxability of the remaining 60% balance representing corpus.

It is now provided that out of any sum received by an employee from the National Pension System Trust, 40% of the total amount payable on closure or opting out of the scheme shall be exempt. However, the whole amount received by the nominee on death of the assessee under the circumstances refered to in section 80CCD (3) (a) shall be exempt from tax.

8. Withdrawal from approved superannuation fund – Section 10(13)

Under the existing provisions, any payment from an approved superannuation fund made to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement is exempt from tax. It is now provided that any payment in lieu of commutation of an annuity purchased out of contributions made on or after the 1st day of April, 2016 in excess of forty per cent of the annuity shall be chargeable to tax.

A new sub clause (v) has been introduced to exempt transfer of an amount from an approved superannuation fund to the account of the employee under the National Pension Scheme referred to in section 80CCD.

9. Interest and capital gains on deposit certificates under Gold Monetization Scheme, 2015 – Sections 10(15)(vi) and 2(14)

Presently, interest on Gold Deposit Bonds issued under Gold Deposit Scheme, 1999 is exempt. It is now provided that interest on deposit certificates issued under the Gold Monetization Scheme, 2015 will also be exempt from tax u/s 10(15).

An amendment has been made to section 2(14) to exclude such deposit certificates from the definition of capital asset. Thus, capital gain on transfer of such deposit certificates would not be taxable.

10. Long-term capital gains – Section 10(38)

Section 10(38) provides for exemption in respect of long term capital gains from transfer of equity shares where the STT is chargeable on such transaction. A third proviso is now inserted in this section to provide that the condition of chargeability to STT would not apply to a long term capital gain arising from a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.

11. Special provision in respect of newly established units in Special Economic Zones (SEZ) – Section 10AA

Under the existing provisions, deduction is available when the manufacture or production of articles or things or provision of any services commences during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006. It is now provided that the deduction would be available in respect of the eligible business which is commenced before 1st April, 2021.

12. Taxability of contribution to superannuation fund – Section 17

U/s 17, perquisite includes the amount of contribution exceeding ₹ 1 lakh to an approved superannuation fund by an employer. The limit of ₹ 1 lakh is now increased to ₹ 1.50 lakh.

13. Deduction of interest from income from self-occupied property – Section 24

Interest paid on loans taken on or after 1st April, 1999 for acquiring or constructing a self-occupied residential house property is allowed as deduction under the second proviso to section 24(b) subject to an upper limit of ₹ 2 lakh. This deduction is available provided the acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed. It is now provided that the time limit of three years is extended to five years.

14. Simplification and rationalisation of provisions relating to taxation of unrealised rent and arrears of rent – Sections 25A, 25AA and 25B

Sections 25A, 25AA and 25B relating to taxation of unrealised rent are now substituted by a new section 25A. It provides that the amount of rent received in arrears or the amount of unrealised rent realised subsequently by an assessee shall be charged to income-tax in the financial year in which such rent is received or realised, whether the assessee is the owner of the property or not in that financial year. A deduction of thirty per cent of such arrears of rent or the unrealised rent realised by the assessee shall be allowed from such income.

15. Non-Compete fees in case of profession – Sections 28 and 55

Presently, any sum, received or receivable, in cash or kind, under an agreement for not carrying out any activity in relation to any business, is chargeable to tax as business income. The section is amended to similarly tax any sum received or receivable, in cash or kind, under an agreement, for not carrying out any activity in relation

to any profession. Similarly amendment is also made in section 55 to treat cost of improvement and cost of appreciation as 'Nil', in case of right to carry on any profession. As such any sum received or receivable on account of transfer of right to carry on any profession, is also effectively made chargeable to tax as 'Capital Gains'.

16. Additional depreciation – Section 32(1)(iia)

An assessee engaged in the business of manufacture or production of any article or thing is presently entitled to additional depreciation of 20% of the actual cost of new plant and machinery. This benefit was also available to an assessee engaged in generation or generation and distribution of power. This benefit is extended to an assessee engaged in the business of transmission of power.

17. Investment allowance – Section 32AC

Section 32AC(1A) provides that any company engaged in the business of manufacture or production of any article or thing, which acquires ***and*** installs new plant and machinery during the year, whose actual cost exceeds ₹ 25 crore, is allowed a deduction of 15% of the actual cost of such new assets.

To put to rest the controversy as to whether the acquisition and installation must necessarily be in the same year, the sub-section is amended to permit installation of new assets at any time before 31st March, 2017, irrespective of the year of acquisition. The deduction will be available in the year in which the new assets are installed.

18. Phasing out incentives in form of weighted deduction and profit linked incentives – Sections 35, 35AC, 35AD, 35CCC, 35CCD, Section 80-IA, 80-IAB and 80-IB

Simultaneous with phased reduction of corporate tax rates weighted deductions and profit linked incentives are being phased out.

The present position and the deductions available as per the amended sections are as under:

Section	Nature of expenditure / deduction	Present deduction	Deduction from A.Y. 2018-19
35(1)(ii)	Amount paid to research association which has as its object the undertaking of scientific research or to a university, college, or other institution to be used for scientific research	175% of amount paid	150% of amount paid (100% of amount paid from A.Y. 2021-22)

Section	Nature of expenditure / deduction	Present deduction	Deduction from A.Y. 2018-19
35(1)(iia)	Amount paid to a company to be used for scientific research	125% of amount paid	100% of amount paid
35(1)(iii)	Amount paid to research association which has as its object the undertaking of research in social science or statistical research or to a university, college or other institution to be used for research in social science or statistical research.	125% of amount paid	100% of amount paid
35(2AA)	Amount paid to a National Laboratory, university, Indian Institute of Technology or a specified person to be used in scientific research programme approved by the prescribed authority	200% of amount paid	150% of amount paid (100% of amount paid from A.Y. 2021-22)
35(2AB)	Expenditure incurred by a company engaged in the business of bio-technology, manufacture or production of any article or thing for in-house scientific research	200% of expenditure incurred	150% of expenditure incurred (100% of expenditure incurred from A.Y. 2021-22)
35AC	Expenditure incurred on eligible projects or schemes	100% of expenditure incurred	Nil
35AD	Capital expenditure incurred for the purpose of specified business	100% or 150% of capital expenditure incurred	100% of capital expenditure incurred
35CCC	Expenditure incurred on notified agricultural extension project	150% of expenditure incurred	100% of expenditure incurred
35CCD	Expenditure incurred on notified skill development Programme	150% of expenditure incurred	150% of expenditure incurred (100% of expenditure incurred from A. Y. 2021-22)

Section	Nature of expenditure / deduction	Present deduction	Deduction from A.Y. 2018-19
80-IA, 80-IAB and 80-IB	Deduction in respect of profits derived from a) Development, operation and maintenance of an infrastructure facility. (80-IA) b) Development of Special Economic Zone. (80-IAB) c) Production of mineral oil and natural gas. [80-IB(9)]	100% profit linked deductions for specified period on eligible business carried on by industrial undertakings or enterprises referred in section 80-IA, 80-IAB and 80-IB.	No deduction shall be available if the specified activity commences on or after 1st day of April 2017 (i.e. from previous year 2017-18 and subsequent years).

19. Deduction for expenditure incurred for obtaining right to use spectrum for telecommunication services – Section 35ABA

A new section is inserted to allow deduction to an assessee for the capital expenditure incurred for acquiring any right to use spectrum for telecommunication services. The actual amount paid is allowed as a deduction over the period of right to use the license. The deduction is allowable starting from the previous year in which spectrum fee is actually paid. If the spectrum fee is actually paid before the commencement of the business to operate telecommunication services, the deduction is allowed starting from the previous year in which business commences.

The provisions relating to transfer of licence, amalgamation and demerger as contained in sub-sections (2) to (8) of section 35ABB have also been made applicable to spectrum.

20. Deduction in respect of expenditure incurred on specified businesses – Section 35AD

Presently, under this section deduction of certain capital expenditure incurred for specified business is allowable.

The list of specified business has been expanded. Deduction under this section will now also be available for capital expenditure incurred for the business of developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility, which commences its operation on or after 1st April, 2017, where such business is:

(1) Owned by a company registered in India or by a consortium of such companies or by an authority or a board or corporation or any other body established or constituted under any Central or State Act;

(2) The entity referred to above has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining, a new infrastructure facility.

"Infrastructure facility" is defined in the same manner as in section 80IA(4).

This amendment is effective from A.Y. 2018-19.

21. Deduction to Non-Banking Financial Company (NBFC) in respect of provision made for bad and doubtful debts – Section 36(1)(viiia)

Presently, deduction is available to Scheduled Banks, Foreign Banks, Public Financial Institutions etc., for provision made for bad and doubtful debts. This benefit is now extended to NBFCs and accordingly, an NBFC will also be allowed a deduction of provision made for bad and doubtful debts. The amount of deduction cannot exceed 5% of the total income computed before making any deduction under this section and under Chapter VI-A. For this purpose, NBFC shall have the meaning assigned to it in section 45-I(f) of the Reserve Bank of India Act, 1934.

22. Deduction available on actual payment – Section 43B

Section 43B is amended to provide that deduction for any amount payable to Indian Railways for use of railway assets shall be allowed as deduction only in the year in which the amount is actually paid. This restriction will, however, not apply if the amount is paid by the assessee on or before the due date of furnishing of the return of income in respect of previous year in which the liability to pay was incurred.

23. Maintenance of accounts by certain persons carrying on business or profession and their audit – Sections 44AA and 44AB

Presently any person carrying on profession is required to get his accounts audited if his gross professional receipts exceed ₹ 25 lakh in a financial year. This limit is now increased to ₹ 50 lakh.

In cases where the profits are not declared in accordance with provisions of sections 44AD or 44ADA, wherever applicable, the accounts will mandatorily be required to be audited u/s 44AB irrespective of turnover or gross receipts.

24. Profits and gains of business computed on presumptive basis – Sections 44AD and 44AA

Presently a partnership firm declaring profits on presumptive basis u/s 44AD is allowed to claim deduction for salary and interest paid by the firm to its partners from the presumptive profits. This deduction will no longer be available.

Under substituted provisions of sections 44AD(4), any person who carries on eligible business and declares profit of 8% of total turnover or more for any previous year in accordance with this section, but does not declare profit for any of the five subsequent assessment years in accordance with provisions of this section, shall not be eligible to claim the benefit of this section for five assessment years, subsequent to the assessment year in which the minimum profit of 8% of turnover has not been declared. In such cases, it is mandatory for the assessee to maintain books of account as provided in section 44AA and get them audited u/s 44AB if, his income exceeds the basic threshhold of non-chargeable income.

Presently this section is applicable to business having turnover or gross receipts of less than ₹ 1 crore. This limit is increased to ₹ 2 crore. Similar amendment to increase the threshold limit is not made u/s 44AB.

25. Profits and gains from profession on presumptive basis – Section 44ADA

New section 44ADA is introduced to extend the scope of computation of profit on presumptive basis for professionals having gross receipts of ₹ 50 lakh or less. The salient features are:

(1) The section is applicable to every resident assessee who is engaged in any profession covered by section 44AA(1) i.e. legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette. The Explanatory Memorandum states that this section is applicable only to individuals, HUF and partnership firms (excluding LLPs). However the section does not make any such distinction.

(2) Presumptive profit shall be 50% of the total gross receipts or sum claimed to have been earned from such profession, whichever is higher.

(3) Deductions u/ss 30 to 38 shall be deemed to have been allowed and no further deduction under these sections will be allowed.

(4) The written down value of any asset used for the purpose of profession shall be deemed to have been calculated as if the depreciation is claimed and allowed as a deduction.

(5) The assessee is required to maintain books of account and also get them audited if he declares profit below 50% of the gross receipts and if his total income exceeds the basic threshold of non-chargeable income.

26. Transactions not regarded as transfer – Section 47

(1) Gain arising on transfer by way of redemption, by an individual, of a Sovereign Gold Bond issued by Reserve Bank of India shall not be chargeable as capital gains.

(2) For a conversion of a private company or an unlisted public company into an LLP to be tax neutral the conditions mentioned in section 47(xiiib) of the Act are to be satisfied. The Finance Bill has added one more condition viz., that the total value of the assets, as appearing in the books of account of the company, in any of the three previous years preceding the previous year in which the conversion takes place does not exceed ₹ 5 crore.

(3) Capital gain arising on transfer of a capital asset being unit or units in a consolidating plan of a mutual fund scheme in consideration of allotment of unit or units in the consolidated plan of that scheme of the mutual fund will not be chargeable to tax. For this purpose, the terms `consolidating plan', `consolidated plan' and `mutual fund' are defined in Explanation to section 47(xiiib) of the Act.

27. Mode of computation of capital gains – Section 48

Provisions of section 48 dealing with mode of computation of Capital Gains have been amended to provide that –

(i) For computing long term capital gain arising on transfer of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015, the cost of acquisition shall be indexed;

(ii) While computing capital gains arising to a non-resident assessee on redemption of rupee denominated bond of an Indian company subscribed by him, the gain arising on account of appreciation of rupee against a foreign currency shall be ignored for the purpose of computation of full value of consideration.

28. Special provision for full value of consideration – Section 50C

Section 50C deals with full value of consideration for computation of capital gain arising on transfer of land or building or both. It

provides that in a case where consideration received or accruing as a result of transfer of capital asset being land or building or both is less than the stamp duty value of the asset transferred then the stamp duty value of the asset transferred is deemed to be full value of consideration of the asset transferred.

Presently, it is the stamp duty value as on the date of transfer which is compared with consideration accruing or received as a result of the transfer. Section 50C has been amended to provide that the stamp duty value as on the date of agreement will be taken for the purposes of computing full value of consideration for such transfer if the following conditions are satisfied -

(i) The date of agreement fixing the amount of consideration and date of registration for the transfer of capital asset are not the same; and

(ii) The amount of consideration or a part thereof has been received by way of an account payee cheque or draft, or by use of electronic clearing system through a bank account on or before the date of the agreement for transfer.

29. Capital gains not to be charged on investment in units of a specified fund – Section 54EE

New section 54EE has been inserted to exempt capital gain arising to an assessee from transfer of a long term capital asset ("original asset") if the assessee within a period of six months after the date of such transfer invests the whole or any part of the capital gain in the long term specified asset.

Long term specified asset has been defined to mean a unit or units issued before 1st April, 2019 of such fund as may be notified by the Central Government in this behalf. The Explanatory Memorandum states that it is proposed to establish a Fund of Funds to finance the start-ups. It is this fund which could be notified.

Amount of exemption:

If the cost of long term specified asset is:	**Amount of capital gain exempt**
Equal to or more than the capital gain arising from the transfer of the original asset	The whole of capital gain
Less than the capital gain arising from the transfer of the original asset	Cost of investment in long term specified asset

Conditions:

1) Investment in long term specified asset should not exceed ₹ 50 lakh during a financial year.

2) In cases where the investment is made in two financial years, for the capital gains of the same year, the aggregate investment which qualifies for exemption from capital gain will not exceed ₹ 50 lakh.

3) The long term specified asset is not transferred by the assessee for a period of three years from the date of its acquisition.

4) The assessee does not take any loan or advance against the security of such long term specified asset. In a case where the assessee takes a loan or an advance against security of long term specified asset, it shall be deemed that the assessee has transferred the long term specified asset on the date of taking the loan or an advance.

Consequences of transfer of long term specified asset within three years – If the assessee, within a period of three years from the date of its acquisition, transfers the long term specified asset or takes a loan or an advance against security of such long term specified asset, the amount of capital gain which was allowed as exempt u/s 54EE will be charged to tax under the head "Capital Gains" as gain relating to long term capital asset of the previous year in which the long term capital asset was transferred.

30. Capital gains on transfer of residential property – Section 54GB

Section 54GB grants exemption in respect of capital gains arising on transfer of a long term capital asset being a residential property (a house or a plot of land) if the net consideration is utilised for subscription in equity shares of an eligible company and the company has within a period of one year from the date of subscription in equity shares by the assessee, utilised the amount for purchase of 'new asset'. Sub-section (5) provides that the provisions of this section shall not apply to any transfer of residential property made after 31st March, 2017. The time period has been extended from 31st March, 2017 to 31st March, 2019 in case the investment is made in an `eligible start-up'. The term `eligible start-up' has been assigned the same meaning as is assigned to it in Explanation below section 80-IAC(4).

It is also provided that in case the eligible start-up is certified by Inter Ministerial Board of Certification to be a technology driven start up, the new asset shall include computers or computer software.

31. Receipt by an individual or HUF of sum of money or property without consideration or for inadequate consideration – Section 56(2)(vii)

Section 56(2)(vii) charges to tax receipt by an individual or an HUF of any sum of money or property without consideration or for inadequate consideration. Receipt of shares without consideration or for inadequate consideration is covered by section 56(2)(vii). Second Proviso to section 56(2)(vii) states that the clause does not apply to receipt of property from persons mentioned therein or in circumstances mentioned therein.

Second proviso is amended to expand the scope of non-applicability of the section and accordingly, this section will also not apply to the receipt of shares of –

(i) A resulting company pursuant to a scheme of demerger; or

(ii) An amalgamated Indian company pursuant to a scheme of amalgamation;

(iii) A successor co-operative bank, in a business reorganisation, in lieu of shares of a predecessor co-operative bank.

32. Carry forward and set-off of losses of specified business covered u/s 35AD – Sections 80 and 139(3)

Presently, section 73A provides for set-off of loss incurred in respect of any specified business as referred to in section 35AD(8)(c) only against the profits and gains of any other specified business. It is now provided that unabsorbed loss can be carried forward and set off against the profits of subsequent years only if the return of income for the assessment year in which the loss is incurred is furnished before the due date of filing the return of income as provided in section 139(1). Appropriate amendment is made in section 80 also.

These amendments will apply from the assessment year 2016-17.

33. Deduction of interest on loan taken for residential house – Section 80EE

An individual can now avail deduction up to ₹ 50,000 in respect of interest on housing loan taken from the financial institution or Housing Finance Company on fulfilling the following conditions:

i. Loan is sanctioned during the period from 1st April 2016 to 31st March 2017.

ii. The amount of loan sanctioned does not exceed ₹ 35 lakh.

iii. The value of residential house property does not exceed ₹ 50 lakh.

iv. The assessee does not own any residential house on the date of sanction of loan.

This deduction is available in addition to deduction u/s 24 of interest up to ₹ 2 lakh incurred on loan borrowed for acquiring or constructing the self-occupied house property. The present section 80EE providing for similar deduction was effectively operative up to A.Y. 2015-16. This has now been substituted by the above provision.

34. Deduction allowable in respect of rents – Section 80GG

Presently, an assessee is entitled for a deduction of expenditure incurred on rent in respect of accommodation occupied for his own residence provided he is not in receipt of house rent allowance from the employer and subject to other specified conditions. The amount of deduction is ₹ 2,000 per month or 25% of total income or rent paid in excess of 10% of total income, whichever is less. It is now proposed to increase the upper ceiling of ₹ 2,000 to ₹ 5,000 per month.

35. Tax incentives for start-ups – Section 80-IAC

New section is inserted to provide a deduction of 100% of the profits and gains derived by an eligible start-up from a business involving innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property. Deduction is available for any three consecutive assessment years out of five years starting from the year of its incorporation.

Eligible start-up means a company incorporated between 1st April, 2016 to 31st March, 2019 whose total turnover of the business does not exceed ₹ 25 Crores in any of the previous years commencing from 1st April, 2016 and ending on 31st March, 2021. Further, such company should hold a certificate of eligible business from the Inter-Ministerial Board of certification.

Further, the start-up should not be formed by splitting up or reconstruction of a business already in existence or by transfer of machinery or plant previously used for any purpose subject to certain exceptions.

36. Deduction of profits from housing projects of affordable residential units – Section 80-IBA

A new section 80-IBA is inserted to provide for hundred per cent deduction of the profits of an assessee engaged in developing and building housing projects approved by the Competent Authority after

1st June, 2016 but on or before 31st March, 2019 subject to following conditions:

i. The project is completed within a period of three years from the date of its first approval and it shall be deemed to have been completed only if certificate of completion of project is obtained from the Competent Authority.

ii. The built-up area of the shops and commercial establishments does not exceed 3% of the aggregate built up area.

iii. If the project is located in Delhi, Mumbai, Chennai or Kolkata or within 25 km from the municipal limits of these cities:

- It is on a plot of land measuring not less than 1000 sq. metres
- The residential unit does not exceed 30 square metres and
- The project utilises not less than 90% of the floor area ratio permissible in respect of the plot of land.

iv. If the project is located in any other area:

- It is on a plot of land measuring not less than 2,000 sq. metres
- The residential unit does not exceed 60 square metres and
- The project utilises not less than 80% of the floor area ratio permissible in respect of the plot of land

v. The assessee maintains separate books of account.

If the housing project is not completed within the specified period of three years, deduction availed in the earlier years would be taxed in the year in which the period of completion expires. The definition of certain terms such as 'housing project', 'built-up area' etc. are also provided in section 80-IBA(6).

37. Tax incentive for employment generation – Section 80JJAA

Presently, an assessee engaged in manufacture of goods in a factory can get a deduction of 30% of additional wages paid to new regular workman for three assessment years. The section applies in respect of additional wages paid to a workman employed for not less than 300 days during the previous year. Further, there should also be

an increase of at least 10% of existing number of workmen employed on the last day of the preceding year.

The above section is now substituted to provide that any assessee whose income includes profits and gains from business and whose accounts are subjected to audit u/s 44AB will get deduction of 30% of additional employee cost for a period of three assessment years from the year in which such additional employment is provided.

Additional employee cost means total emoluments paid to additional employees employed during the year. However, in the first year of a new business, emoluments paid or payable to employees employed during the previous year shall be deemed to be the additional employee cost. Accordingly, deduction will be allowed on that basis in such cases.

No deduction will be available in case of existing business, if there is no increase in number of employees during the year as compared to number of employees employed on the last day of the preceding year or the emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system. The condition in the present section with regard to 10% increase in number of employees every year is not retained.

Additional employee would not include employee whose total emoluments are more than ₹ 25,000 per month or an employee whose entire contribution under Employees' Pension Scheme notified in accordance with Employees' Provident Fund and Miscellaneous Provisions Act, 1952, is paid by the Government or if an employee has been employed for less than 240 days in a year or the employee does not participate in recognised provident fund. The assessee is also required to furnish accountant's report along with the return of income.

38. Rebate of Income-tax – Section 87A

Presently, a resident individual having total income up to ₹ 5 lakh is eligible for a rebate of ₹ 2,000 or amount of tax payable, whichever is lower. Maximum amount of rebate available is increased from ₹ 2,000 to ₹ 5,000.

39. Transfer Pricing – Sections 92CA, 92D, 271AA

Where a reference has been made by an Assessing Officer (AO) to a Transfer Pricing Officer (TPO), the TPO has to pass the order at least 60 days prior to the date of limitation u/s 153/153B for passing of the assessment or reassessment order. This period of limitation is now being extended in cases where the period of limitation available

to the TPO for passing the order is less than 60 days, to a period of 60 days, if the assessment proceedings were stayed by an order or injunction of any court, or a reference was made for exchange of information by the Competent Authority under a double taxation avoidance agreement. This amendment is effective from 1st June, 2016.

Section 92D requires every person who has entered into an international transaction to keep and maintain such information and document in respect thereof as may be prescribed. A requirement is introduced for a constituent entity of an international group to keep and maintain such information and documents in respect of an international group as may be prescribed, and to furnish such information and documents in such a manner, on or before the date, as may be prescribed. Failure to furnish such information and documents would attract a penalty of ₹ 5,00,000 u/s 271AA subject to not proving reasonable cause as provided in section 273B.

40. Tax on long-term capital gains – Section 112

Presently, the tax on any income to a non-resident in the nature of long-term capital gains arising from transfer of unlisted securities is calculated at the rate of ten per cent on the capital gains without the benefit of first and second proviso to section 48. The expression "securities" has the meaning assigned to it in the Securities Contracts (Regulation) Act, 1956.

There was a doubt whether shares of an unlisted company could be considered as "securities" for the purpose of applying this beneficial provision.

Clarificatory amendment has been made in section 112(1)(c)(iii) to provide that long-term capital gains arising from the transfer of a capital asset being shares of a company not being a company in which the public are substantially interested, shall also be chargeable to tax at the rate of 10 per cent.

41. Tax on income of certain domestic companies – Section 115BA

A new section has been inserted to provide for a concessional rate of tax in case of a newly setup domestic company.

An eligible domestic company has an option to be taxed at 25% on its net income. Such option has to be exercised by the eligible company in the manner to be prescribed on or before the due date for filing of return of income u/s 139(1) of the Act.

To be eligible for the concessional rate of tax of 25%, such company should have been set up or registered on or after 1st March, 2016 and the company should be engaged in the business of manufacture or production of article or thing and should not be engaged in any other business.

Additionally, such company (i) shall not claim any benefit u/s 10AA, benefit of accelerated depreciation, benefit of additional depreciation, investment allowance, expenditure on scientific research and any deduction in respect of certain income under Part-C of Chapter-VI-A other than the provisions of section 80JJAA and (ii) shall not be eligible for set-off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in (i). Such loss shall be deemed to have been given full effect to and no further deduction for such loss shall be allowed for in any subsequent year.

42. Tax on certain dividends received from domestic companies – Sections 115BBDA and 10(34)

A new section has been introduced to provide for a tax on dividends received by Individuals, Hindu Undivided Families and Firms apart from the Dividend Distribution Tax paid by companies on dividends distributed by them.

Presently, section 10(34) exempts dividend received by an assessee from being included in the total income if dividend distribution tax u/s 115-O has been paid thereon.

Section 10(34) is amended to provide that in case of individuals, HUF and firms, where dividend income exceeds ₹ 10 lakh in any year, such dividend is to be included in the total income. Section 115BBDA provides that such dividend shall be subject to a tax of ten per cent without any deduction in respect of any expenditure or allowance or set off of loss. Dividends shall be as defined in section 2(22) of the Act but shall not include 'deemed dividend u/s 2(22)(e).

43. Tax on income referred to in section 68, etc. - Section 115BBE

Section 115 BBE of the Act, provides that the income relating to section 68 or section 69 or section 69A or section 69B or section 69C or section 69D is taxable at the rate of thirty per cent. Further, no deduction in respect of any expenditure or allowances in relation to income referred to in the said sections shall be allowable while computing the said income.

Section 115BBE(2) has been amended to provide that no set off of any loss shall be allowable from income under the sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

44. Taxation of income from patents – Sections 115BBF and 115JB

With an aim to encourage indigenous research & development activities and to make India a global R&D hub, a new concessional tax regime for income from patents developed and registered in India is being introduced through section 115BBF.

For this purpose, the term "developed" is defined to mean expenditure incurred by the assessee for any invention in respect of which patent is granted under the Patents Act, 1970 (the 'Patents Act').

An eligible assessee entitled to the concessional rate of tax under this section means a person resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970 and includes a joint-patentee.

Under this section, where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of ten per cent (plus applicable surcharge and cess) on the gross amount of royalty without allowing any deduction for any expenditure or allowance in respect of such royalty income.

Royalty is defined as any consideration (including any lump sum consideration) for (i) transfer of all or any rights (including the granting of a licence) in respect of a patent; or (ii) imparting of any information concerning the working of, or the use of, a patent; or (iii) use of any patent; or (iv) rendering of any services in connection therewith. However, royalty excludes any consideration chargeable as "Capital Gains" or consideration for sale of product manufactured with the use of patented process or the patented article for commercial use.

Royalty which is subject to the concessional tax shall not be includible for computing 'book profit' for the purposes of Minimum Alternate tax (MAT) u/s 115JB. Similarly, expenditure relatable to income by way of royalty in respect of patent chargeable to tax u/s 115BBF will be added back.

45. Provisions relating to Minimum Alternate Tax (MAT) – Section 115JB

(a) Applicability to foreign companies

Applicability of MAT to foreign companies has been a burning issue. In line with the recommendations of the A.P. Shah Committee, section 115JB is amended to provide that the provisions of section 115JB shall not be applicable to a foreign company if

(i) The assessee is a resident of a country or a specified territory with which India has an agreement referred to in section 90(1) or any agreement u/s 90A(1) and the assesse does not have a permanent establishment in India in accordance with the provisions of the relevant Agreement; or

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

This amendment is to be made effective retrospectively from the 1st day of April, 2001.

(b) Concessional MAT rate to International Financial Services Centre

Section 115JB is amended to provide that in case of a company, being a unit located in International Financial Services Centre and deriving its income solely in convertible foreign exchange, the Minimum Alternate Tax shall be chargeable at the rate of nine per cent instead of eighteen and one half per cent.

46. Dividend Distribution Tax on distribution made by a special purpose vehicle to business trust or by a company being a unit of an international financial services centre – Sections 115-O, 10(23FC) and 10(23FD)

At present, under the specific taxation regime for business trusts, a tax pass through status is given to Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (INVITS). However, a Special Purpose Vehicle being a company, which is held by these business trusts, pays normal corporate tax and also suffers dividend distribution tax (DDT) while distributing the income to the business trusts being a shareholder.

It is now provided in section 115-O(7) that no DDT would be levied in respect of distribution of dividend by an SPV to the business trust. The exemption from levy of DDT would only be in the cases

where the business trust holds 100% of the share capital of the SPV excluding the share capital other than that which is required to be held by any other person as part of any direction of the Government or any regulatory authority or specific requirement of any law to this effect or which is held by Government or Government bodies. The exemption from the levy of DDT would only be in respect of dividends paid out of current income after the date when the business trust acquires the shareholding in the SPV as referred above. Such dividend received by the business trust and its investor would not be taxable in the hands of trust or investors as provided in the amended sections 10(23FC) & 10(23FD). The dividends paid out of accumulated and current profits upto this date would be liable for levy of DDT as and when any dividend out of these profits is distributed by the company either to the business trust or any other shareholder.

This amendment in section 115-O(7) is effective from 1 June, 2016.

It is further provided in section 115-O(8) that no DDT would be levied on a company being a unit located in an International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount of dividend declared, distributed or paid by such company on or after 1 April, 2017 out of its current income, either in the hands of the company or the person receiving such dividend.

This amendment is effective from 1 June, 2016.

47. Tax on distribution of income by domestic company on buy-back of shares – Section 115QA

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

It is now provided that section 115QA would apply to any buy-back of unlisted shares undertaken by the company in accordance with the law in force relating to companies. Accordingly, it will also cover buy-back of shares under any of the provisions of the Companies Act, 1956 and the Companies Act, 2013. It is further provided that for the purpose of computing distributed income, the amount received by a company in respect of the shares being bought back

shall be determined in the manner to be prescribed. Rules would be framed to provide for manner of determination of the amount in various circumstances including shares being issued under tax neutral reorganisations and in different tranches as indicated in the Explanatory Memorandum.

This amendment is effective from 1 June, 2016.

48. New taxation regime for securitisation trust and its investors – Sections 115TA, 115TC, 115TCA, 10(23DA), 10(35A), 194LBC and 197

Under Chapter-XII-EA, income distributed by a Securitisation Trust to its investors is subject to a levy of additional tax (25% in the case of individual/HUF and 30% in other cases) which is to be paid by the Securitisation Trust within 14 days of distribution of the income. Further, no distribution tax is to be levied if the distribution is made to an entity whose income is not changeable to tax irrespective of its nature and source. Consequent to the levy of distribution tax, the income of the investor received from the Securitisation Trust, is exempt u/s 10(35A) of the Act and the income of Securitisation Trust itself is exempt u/s 10(23DA) of the Act.

It is now provided that the current tax regime for Securitisation Trust and its investors, would be discontinued for the distribution made by Securitisation Trust with effect from 1 June, 2016, and would be substituted by a new regime with effective from A.Y. 2017-18. This effectively grants pass through status to the Securitisation Trust. The new regime would apply to a Securitisation Trust being an SPV defined under SEBI (Public Offer and Listing of Securitised Debt Instrument) Regulations, 2008 or SPV as defined in the guidelines on securitisation of standard assets issued by RBI or a trust setup by a securitisation company or a reconstruction company in accordance with the under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or guidelines or directions issued by the RBI (SARFAESI Act). The income of Securitisation Trust would continue to be exempt section under 10(23DA) which is also amended to effectively define the term securitisation. The income accrued or received from the Securitisation Trust would be taxable in the hands of investor in the same manner and to the same extent as it would have happened had the investor made investment directly in the underlying assets and not through the trust. Consequential amendment is made in section 10(35A). The payment made by Securitisation Trust would be subject to tax deduction at source u/s 194LBC at the rate of 25% in case of payment to resident investors who are individual or HUF and @ 30% in case of others. In case of payments to non-resident investors,

the deduction of tax would be at rates in force. The facility for the investors to obtain low or nil deduction of tax certificate would be available. The trust would also provide breakup regarding nature and proportion of its income to the investors and also to the prescribed income-tax authority.

49. Levy of tax where the charitable institution ceases to exist or converts into a non-charitable organisation – Sections 115TD, 115TE and 115TF

A new Chapter XII-EB has been introduced to provide for levy of additional income-tax in case of conversion of a registered charitable organisation into, or merger with, any non-charitable organisation/ entity or on failure to transfer upon dissolution all its assets to a charitable organisation registered u/s 12AA, 10(23C)(iv) etc. within the period of 12 months from the end of the month in which the dissolution take place.

A trust or an institution shall be deemed to have been converted into any form not eligible for registration u/s 12AA in a previous year, if,

(i) the registration granted to it u/s 12AA has been cancelled; or

(ii) it has been adopted or undertaken modification of its objects which do not conform to the conditions of registration and it, (a) has not applied for fresh registration u/s 12AA in the said previous year; or (b) has filed application for fresh registration u/s 12AA but the said application has been rejected.

Presently, there is no provision in the Act to deal with the cases of transfer of assets by a charitable organisation registered u/s 12AA upon its conversion into or merger with any non-charitable entity or failure of such charitable organisation to transfer its assets to another charitable organisation when it ceases to exist.

Under the new chapter, it has been provided that the accretion in income (accreted income) of the trust or institution would be taxable on conversion of trust or institution into a form not eligible for registration u/s 12 AA, or on merger into an entity not having similar objects and registered u/s 12AA, or on non-distribution of assets on dissolution to any charitable institution registered u/s 12AA or approved u/s 10(23C) within a period of twelve months from end of month of dissolution. The accreted income would be the amount of aggregate of total assets as reduced by the liability as on the specified date. The method of valuation would be prescribed in the rules. The asset and the liability of the charitable organisation which have been transferred to another charitable organisation within specified time would be

excluded while calculating accreted income. The accreted income would be taxable at the maximum marginal rate, in addition to any income chargeable to tax in the hands of the entity. This tax would be the final tax for which no credit can be taken by the trust or institution or any other person, and like any other additional tax, it would be leviable even if the trust or institution does not have any other income chargeable to tax in the relevant previous year. Provisions for levy of interest, recovery of tax etc. have also been made.

These amendments are effective from 1 June, 2016.

50. Assumption of jurisdiction of Assessing Officer – Section 124

The existing section 124(3) provides that no person shall be entitled to call in question the jurisdiction of an Assessing Officer in a case where return is filed u/s 139, after the expiry of one month from the date on which he was served with a notice issued u/s 142(1) or section 143(2) or after the completion of the assessment, whichever is earlier. Currently, this provision does not specifically refer to notices issued u/ss 153A or 153C which relate to assessment in cases where a search and seizure action has been taken or cases connected to such cases.

It is now provided that the provisions of section 124(3) would be extended to cases where search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A whereby no person would be entitled to call into question the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with a notice u/s 153A(1) or section 153C(2) or after the completion of the assessment, whichever is earlier.

This amendment is effective from 1 June, 2016.

51. Legislative framework to enable and expand the scope of electronic processing of information – Section 133C

Section 133C empowers the prescribed income-tax authority to issue notice calling for information and documents for the purpose of verification of information in its possession.

It has now been provided that adequate legislative backing for processing of information and documents so obtained would be provided and the outcome thereof would be made available to the Assessing Officer for necessary action, if any.

This amendment is effective from 1st June, 2016.

52. Filing of return of income – Section 139

Presently, individual, HUF, AOP & BOI are required to file their return of income before the due date if the total income, without considering deductions under Chapter VI-A, exceeds the maximum amount which is not chargeable to tax. It is now provided in the sixth proviso to section 139(1) that income from long term capital gains exempt u/s 10(38) shall also be added to the total income for determining the threshold limit for determining whether the assesse is required to file the return of income.

Section 139(4) presently provides that a person who has not furnished a return within the time allowed to him u/s 139(1), or within the time allowed under a notice issued u/s 142(1), may do so before the expiry of one year from the end of the relevant assessment year or before completion of the assessment, whichever is earlier. The above sub-section (4) is now substituted to provide that such belated return may be furnished at any time before the end of the relevant assessment year or completion of assessment, whichever is earlier. Therefore, the time limit for filing a belated return has now been reduced substantially. For example, the belated return for Assessment Year 2017-18 must be filed on or before 31st March, 2018 or before completion of assessment, whichever is earlier. In case of notice issued u/s 142(1), the return must be filed within the time allowed in the said notice.

A revised return can presently be filed u/s 139(5), in respect of a return originally filed u/s 139(1), if the assessee discovers any omission or wrong statement therein. Such a revised return can be filed before the expiry of one year from the end of the relevant assessment year or completion of assessment, whichever is earlier. It is now provided that a belated return filed pursuant to section 139(4), can also be similarly revised within the time limit given above.

Presently a return of income would be treated as defective if self-assessment tax and interest payable u/s 140A is not paid before the date of furnishing the return. Now clause (aa) of the Explanation to section 139(9) has been deleted and hence a return will now not be treated as defective merely because self-assessment tax and interest thereon is not paid before the date of furnishing the return.

53. Adjustments to returned income – Section 143(1)

The scope of adjustments that can be made at the time of processing the return u/s 143(1) has been expanded to cover the following:

1. Disallowance of loss claimed, if return for the year for which loss has been claimed was furnished beyond the due date specified in section 139(1).

2. Disallowance of expenditure indicated in tax audit report but not considered in the Return of Income.

3. Disallowance of deduction claimed u/ss 10AA, 80-IA80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if the return has been filed beyond the due due date specified in section 139(1).

4. Addition of income due to mismatch in income as reflected in the return of income and as appearing in Form 26AS or Form 16A or Form 16.

The above adjustments would be made based on information available on the record of the tax department either physically or electronically. However, no adjustment will be made without intimating the assessee about such adjustment in writing or in electronic mode and giving him a time of 30 days to respond. The adjustment will be made only after considering the response received or after the lapse of 30 days in case no response is received.

54. Processing of return – Section 143(1D)

Currently, section 143(1D) provide that return of income need not be processed u/s 143(1), if notice has been issued u/s 143(2). It is now provided that before issuing an assessment u/s 143(3), the return shall be processed u/s 143(1).

55. Income escaping assessment – Section 147

This section empowers the Assessing Officer to reopen the assessment if he has reason to believe that any income chargeable to tax has escaped assessment. New clause (ca) has been inserted in Explanation 2 to section 147 to provide that income chargeable to tax shall be deemed to have escaped assessment either where the return of income has not been furnished or where based on information received u/s 133C(2), it is noticed by the Assessing Officer that the income exceeds the maximum amount not chargeable to tax or where the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.

56. Time limit for completing assessment and reassessment – Section 153

1. New section 153 has replaced the old section. In order to expedite the assessment proceedings, the time limit

for completion of assessment has now been reduced as under:

i. For order u/s 143 and section 144 - from the existing two years to twenty one months from the end of the assessment year in which the income was first assessable.

ii. For order u/s 147 - from the existing one year to nine months from the end of the financial year in which the notice u/s 148 was served.

iii. For giving effect to order passed u/ss 254, 263, 264, setting aside or cancelling an assessment - from the existing one year to nine months from the end of the financial year in which the order is received or passed by the designated Commissioner.

The period for completing the assessment shall be extended by one year where reference has been made to the Transfer Pricing Officer u/s 92CA.

2. Presently there is no time limit for giving effect to an order passed u/s 250 or 254 or 260 or 262 or 263 or 264. Now it is provided that action under the above sections shall be completed within three months from the end of the month in which order is received or passed by the designated Commissioner. Additional time of six months may be granted to the Assessing Officer by the Principal Commissioner or the Commissioner, based on reasons submitted in writing, if the Commissioner is satisfied that the delay is for reasons beyond the control of the Assessing Officer.

3. Also presently there is no time limit for completion of assessment, reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order under the above mentioned sections or in an order of any court in a proceeding otherwise than by way of appeal or reference under the Act. Now such order giving effect shall be passed on or before the expiry of twelve months from the end of the month in which such order is received by the designated Commissioner.

4. Similarly, in case of assessment made on a partner of a firm in consequence of an assessment made on the firm u/s 147, the time limit is now introduced. Accordingly, the assessment of the partner shall be completed within twelve months from the end of the month in which the assessment order in case of the firm is passed.

In calculating the above time limit, the time or the period referred to in Explanation 1 of section 153(9) shall be excluded.

For cases pending on 1st June, 2016, the time limit for taking requisite action (in case of 2, 3 and 4 above) will be 31st March, 2017 or twelve months from the end of the month in which such order is received, whichever is later.

This amendment will be effective from 1st June, 2016 and the old provisions of section 153 shall apply to any order of assessment, reassessment or recomputation made before 1st day of June, 2016.

57. Time Limit for completion of assessment in case of search cases – Section 153B

The new section 153B has replaced the old section and the time limit for completion of assessment in case of search cases u/s 153A or 153C has also been reduced as under:

1. In each assessment year falling within the six years referred to in section 153A(1)(b) or assessment year in which search is conducted u/s 132 or requisition is made u/s 132A - from two years to twenty one months from the end of the financial year in which the last of the authorization for search or requisition was executed;

2. In case of other persons referred to in section 153C, to twenty one months (from the existing two years) from the end of the financial year in which the last of the authorisation for search or requisition was executed or nine months (from the existing one year) from the end of the financial year in which the books of account or documents or assets seized or requisitioned are handed over u/s 153C to the Assessing Office having jurisdiction over such person, whichever is later.

In case where reference is made to the Transfer Pricing Officer u/s 92CA, the period of limitation as given above will be extended by a period of twelve months.

In calculating the above time limit, the time or the period referred to in Explanation 1 of section 153B(3) shall be excluded.

The amendment will be effective from 1st day of June, 2016. The old section 153B shall apply in relation to any order of assessment, reassessment, or recomputation made before 1st day of June, 2016.

58. Rationalisation of Tax Deduction at Source (TDS) provisions – Sections 192A, 194BB, 194C, etc.

Existing threshold limits for TDS and rates of TDS are revised as under with effect from 1-6-2016:

Section	Nature of payment	Existing Limit (INR)	Existing Rate (%)	Revised Limit (INR)	Revised Rate (%)
192A	Payment of accumulated balance due to an employee	30,000	10%	50,000	10%
194BB	Winnings from horse race	5,000	30%	10,000	30%
194C	Payments to contractors	30,000 per transaction 75,000 for aggregate transactions during the year	2% for Co/Firm/ co-op housing society 1% Individual / HUF	30,000 per transaction 100,000 for aggregate transactions during the year	2% for Co/ Firm/ co-op housing society 1% Individual / HUF
194D	Insurance commission	20,000	10%	15,000	5%
194DA	Payment in respect of life insurance policy	100,000	2%	100,000	1%
194EE	Payments in respect of deposits under National Savings Scheme	2,500	20%	2,500	10%
194G	Commission on the sale of lottery tickets	1,000	10%	15,000	5%
194H	Commission or brokerage	5,000	10%	15,000	5%
194K and 194L	Income in respect of Units and Payment of Compensation on acquisition of Capital Asset			To be omitted w.e.f 01-06-2016 since these provisions are not operational	

Section	Nature of payment	Existing Limit (INR)	Existing Rate (%)	Revised Limit (INR)	Revised Rate (%)
194LA	Payment of compensation on acquisition of certain immovable property	200,000	10%	250,000	10%
194LBB	Income in respect of units of alternate investment fund	-	10% for all assessees.		10% for residents. As per rates in force for Non residents.
194LBC	Income in respect of units of securitisation trust	NA	NA		For Residents- 25% for Individual and HUF 30% for others For non residents- As per rates in force

59. Tax Deduction at Source – Sections 197, 197A and 206AA

The provisions for issue of certificates for lower or non-deduction of tax at source by an assessing officer u/s 197 have been extended with effect from 1st June, 2016, to cover income payable to a unit holder in respect of units of investment funds (AIFs Category I or II), which is subject to TDS u/s 194LBB, and income payable to a resident investor in respect of investment in a securitisation trust, which is subject to TDS u/s 194LBC.

The provision for non-deduction of TDS on issue of a declaration u/s 197A, has been extended to cover payments of rent, on which tax is deductible u/s 194-I, with effect from 1st June, 2016.

Section 206AA provides for a higher rate of TDS at either the rate specified in the relevant provision of the Act, at the rate in force, or at the rate of 20%, whichever is the highest, if the payee does not furnish his Permanent Account Number to the payer. There has been litigation as to whether this provision applies to foreign companies and non-residents. With effect from 1st June, 2016, the provisions of this section would not apply to a foreign company or to a non-resident in respect of payment of interest on long-term bonds referred to in

section 194LC, or any other payment subject to prescribed conditions. Therefore, all payments to non-residents would not attract the higher rate of TDS u/s 206AA, on furnishing of alternative documents which will be prescribed.

60. Tax Collection at Source on sale of vehicles, goods or services in cash – Section 206C

Tax Collection at Source (TCS) provisions mandate the seller to collect tax at source on sale of specified goods. Presently, goods such as alcoholic liquor, tendu leaves, etc. are covered u/s 206C(1). To enable the Government to bring high value transactions in the tax net, section 206C(1) has been amended to provide for collection of tax at source at 1% on sale of motor vehicle where the value of motor vehicle exceeds ₹ 10 lakh.

Section 206(1D) covers cash transactions for sale of bullion and jewellery. To discourage cash transactions, the section is now amended to cover also sale in cash of any goods (in addition to bullion or jewellery) and rendering of services where consideration exceeds ₹ 2 lakh. Tax is to be collected at the rate of 1%. However, tax is not required to be collected at source in these transactions where tax is deducted at source by the payer under Chapter XVII-B. Further, TCS provisions will not apply to such class of buyers who fulfil prescribed conditions.

These provisions will come in to effect from 1st June 2016.

61. Advance tax instalments and interest on deferment of advance tax – Sections 211 and 234C

The provisions of section 211 have been amended to provide that the advance tax instalments for all assessees will now be as was hitherto applicable to company assessees.

Due date of Instalment	Current Provisions (Other than companies) Cumulative Advance tax	New provisions (All assesses) Cumulative Advance tax
15th June	Nil	15%
15th September	30%	45%
15th December	60%	75%
15th March	100%	100%

However, eligible assessees referred to in section 44AD opting for computation of profits and gains of business on presumptive basis are required to pay the entire advance tax in one instalment on or before 15th March of the financial year.No similar exception has been given for eligible professionals covered under presumptive taxation u/s 44ADA.

Simultaneously, the provisions of section 234C in respect of interest payable for deferment of advance tax have been amended to align them with the provisions of section 211 of the Act. Interest u/s 234C will be levied on shortfall of advance tax paid as compared with the amount payable as per the above instalments in case of all assessees (except the eligible assessees u/s 44AD). However, no interest will be levied if the advance tax paid is more than 12% and 36% for instalments due on 15th June and 15th September, respectively, as was provided hitherto.

A new exception is now provided that interest u/s 234C will not be levied in case of assessees having income chargeable under the head 'Profits and Gains of business and Profession' for the first time. These assessees would be required to pay the whole amount of tax payable in the remaining instalments of advance tax which are due after they commence business or by 31st March of the financial year if no instalments are due.

The aforesaid amendments will take effect from 1st June, 2016.

62. Interest on refunds – Section 244A

Section 244A granting interest on refunds to assessees has been amended to provide that in case where the return of income is filed after the due date as per section 139(1), then interest on refund out of TDS, TCS and advance-tax will be granted only from the date of filing the return and not from 1st April of the assessment year.

It is further provided that an assessee will be entitled to interest on refund of self-assessment tax paid u/s 140A of the Act from the date of payment of tax or date of filing the return, whichever is later, upto the date on which the refund is granted.

A new sub-section (1A) provides that an assessee will be entitled to additional interest on refund arising on giving effect to an appellate/revisionary order which has been passed beyond a time limit of 3 months from the end of the month of receipt of the appellate/ revisionary order by the Commissioner. It is further clarified that if an extension is granted by the Principal Commissioner / Commissioner for giving effect to the appellate/revisionary order, then the additional interest will be granted from the expiry of the extended period. The Principal Commissioner / Commissioner may extend the period for

giving effect to the appellate/ revisionary order up to 6 months. The additional interest on such refunds will be calculated at the rate of 3% p.a. from the date following the date of expiry of the specified time limit upto the date of granting the refund. Effectively, the assessee will be entitled to interest at the rate of 9% p.a. against the normal rate of 6% p.a. for delay in giving effect to an appellate order beyond the specified time limit.

The aforesaid amendment will take effect from 1st June 2016.

63. Power of the department to file appeal against the directions of dispute resolution panel – Section 253(2A)

Sub-section (2A) of section 253 which enables the Department to file an appeal with the Income-tax Appellate Tribunal against an order passed pursuant to the directions of the Dispute Resolution Panel is deleted. Thus, it will no longer be possible for the Department to challenge the order of the DRP.

The amendment is effective from 1st June, 2016.

64. Time limit for rectification of any mistake apparent from the record by the Income-Tax Appellate Tribunal – Section 254(2)

Section 254(2) empowers the Income-tax Appellate Tribunal to amend any order passed by it to rectify any mistake apparent from the record within a period of 4 years from the date of the order.

It is now provided that the time limit for amending the order to rectify any mistake apparent from the record shall be 6 months from the end of the month in which the order was passed.

The amendment is effective from 1st June, 2016.

65. Cases heard by single member of the Appellate Tribunal – Section 255(3)

Section 255(3) provides that a Single Member Bench of the Tribunal may dispose of any case which pertains to an assessee whose assessed income does not exceed ₹ 15 lakh.

The limit of ₹ 15 lakh has now been increased to ₹ 50 lakh. Accordingly, a Single Member Bench may now dispose of any case where the assessed income does not exceed ₹ 50 lakh.

The amendment is effective from 1st June, 2016.

66. Penalty in case of concealment – Sections 270A and 271

The existing provisions for levy of penalty u/s 271 have been substituted by introducing a new section 270A. This has completely revamped the existing provisions in relation to concealment penalty.

The penalty u/s 270A may be levied in case of under-reporting of income by any person.

In the following cases, a person shall be considered to have under-reported his income:

(a) Assessed income is greater than the income determined in the return processed u/s 143(1)(a); or the maximum amount not chargeable to tax, where no return has been filed;

(b) In case of reassessment, the reassessed income is greater than the income already assessed or reassessed immediately before such re-assessment;

(c) Deemed total income assessed or reassessed as per the provisions of section 115JB or 115JC, as the case may be, is greater than the deemed total income determined in the return processed u/s 143(1)(a); or the maximum amount not chargeable to tax, where no return has been filed;

(d) The income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

However, such under-reported income shall not include the following:

(a) Income in respect of which the assessee offers an explanation and the income-tax authority is satisfied that the explanation is bona fide and all the material facts have been disclosed;

(b) Under-reported income which is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deduced;

(c) Under-reported income which is determined on the basis of an estimate and the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue and has included such amount in the computation of his income and disclosed all relevant material facts;

(d) Transfer pricing adjustments due to determination of arm's length price by the Transfer Pricing Officer where the assessee had maintained information and documents as prescribed

u/s 92D, declared the international transaction under Chapter X and disclosed all the relevant material facts;

(e) The undisclosed income referred to in section 271AAB (search cases).

The amount of under-reported income shall be determined in the following manner:

Type of case	**Amount of under-reported income**
(A) Where income has been assessed for the first time –	
Return has been filed	Assessed income reduced by income determined u/s 143(1)(a)
Return has not been filed	
In case of a company, firm or local authority	Assessed income
In case of others	Assessed income reduced by maximum amount not chargeable to tax
(B) Where income has been re-assessed	Income reassessed reduced by income which was assessed or reassessed in an immediately preceding order

If the under-reported income arises out of determination of deemed total income as per the provisions of section 115JB or 115JC then the amount of under-reported income shall be determined in accordance with the formula which effectively is same as the existing provisions of Explanation 4 to section 271(1).

Where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

In a case where the source of any receipt, deposit or investment is claimed to be the additions made in the earlier years, the amount of under-reported income shall include such additions as are sufficient to cover such receipt, deposit or investment. This provision is in line with the Explanation 2 to section 271(1) as existing.

The rate of penalty is 50% of the amount of tax payable on under-reported income. In case of company, firm or local authority, the tax payable on under reported income shall be calculated as if the under-reported income is the total income. In any other case the tax payable shall be 30% of the under-reported income.

However, in a case where under-reporting of income results from misreporting of income, the person shall be liable for penalty at the rate of 200% of the tax payable on such misreported income. The cases of misreporting of income have been specified as under:

(i) Misrepresentation or suppression of facts;

(ii) Non-recording of investments in books of account;

(iii) Claiming of expenditure not substantiated by evidence;

(iv) Recording of false entry in books of account;

(v) Failure to record any receipt in books of account having a bearing on total income;

(vi) Failure to report any international transaction or deemed international transaction or specified domestic transaction.

It is also provided that no addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

67. Immunity from penalty & prosecution – Section 270AA & 249

A new section has been inserted providing for immunity from imposition of penalty u/s 270A and initiation of proceeding for prosecution u/s 276C.

The assessee may make an application to the Assessing Officer for grant of such immunity if the following conditions are satisfied:

1. The tax and interest payable as per the assessment or reassessment order u/s 143(3) or 147 has been paid within the period specified in the notice of demand;

2. The assessee has not filed any appeal against such assessment or reassessment order.

The assessee is required to make an application in prescribed form within one month from the end of the month in which order of the assessment or reassessment is received.

In a case where the proceedings for penalty u/s 270A have been initiated but are not on account of misreporting of income, the Assessing Officer shall grant such immunity. Such immunity can be granted only after the expiry of the period for filing appeal as mentioned u/s 249(2)(b).

The Assessing Officer shall pass an order accepting or rejecting such application within a period of one month from the end of the month in which such application is received. However, before passing an order rejecting the application, an opportunity of being heard must be given to the assessee. Further, such order passed by the Assessing Officer shall be final.

If the Assessing Officer has passed an order accepting the application for grant of immunity then no appeal u/s 246A or an application for revision u/s 264 shall be admissible against the relevant order of assessment or reassessment.

The period beginning from the date of application for immunity till the date of receipt of order of rejection of application shall be excluded from the time period of thirty days for filing an appeal against the relevant order of assessment or reassessment.

68. Penalty for non-compliance with notices / directions u/s 142 and 143 – Sections 272A and 271

The existing provisions of section 271 for levy of penalty in case of failure to comply with a notice u/s 142(1) or 143(2) or failure to comply with a direction of special audit u/s 142(2A) have been shifted to section 272A. This is consequential to the omission of section 271.

69. Time limit for disposing applications made by assessee for reduction or waiver of interest or penalty – Sections 273A, 273AA and 220(2A)

The assessee can apply for waiver of penalty u/s 273A and 273AA or for waiver of interest u/s 220(2A). However, presently no time limit had been provided for disposal of such petitions.

Now it is provided that the Commissioner shall pass an order accepting or rejecting the application, in full or in part, made by the assessee for wavier of penalty or interest as the case may within a period of twelve months from the end of the month in which such application is received.

In addition, it is provided that no order rejecting the application of the assessee shall be passed without giving the assessee an opportunity of being heard.

Where such an application is pending as on 1st June, 2016, the order shall be passed on or before 31st May, 2017.

These amendments are effective from 1st June, 2016.

70. Provision of bank guarantee instead of provisional attachment of property – Section 281B

Presently, the AO may provisionally attach an assessee's property if he considers it necessary for protecting revenue's interest during the pendency of assessment or reassessment proceedings.

Based on Easwar Committee's recommendation, it has been provided that the assessee may provide bank guarantee of sufficient amount, in which case the AO has to revoke the provisional attachment if the guarantee is more than the fair market value of the property attached or it is sufficient to meet the revenue's interest. The AO may refer to the Valuation Officer for valuing the property. The AO should pass an order revoking provisional attachment within 15 days from the date of receipt of the guarantee or within 45 days if reference is made to Valuation Officer. The AO may invoke guarantee if the assessee fails to pay tax demand or if he fails to renew or furnish new guarantee at least 15 days prior to the expiry of the guarantee.

This amendment is effective from 1st June 2016.

71. Authentication of notice – Section 282A

To facilitate e-assessment, it has been provided that the notice and other documents issued by the department can be either in paper form or in electronic form. The detailed procedures for this purpose will be prescribed.

This amendment is effective from 1st June, 2016.

72. Transfer Pricing – country-by-country report and master file – Section 286

The OECD in Action Plan 13 of the BEPS Project has recommended a standardised approach to transfer pricing documentation to be adopted by countries. Pursuant to the same, section 286 has been inserted to provide for a specific reporting regime in respect of Country-by Country (CbC) reporting. This regime

is a three-tier structure with (i) a master file containing standardised information relevant for all members of an international group; (ii) a local file referring specifically to material transactions of the local taxpayer; and (iii) a CbC report containing certain information relating to the global allocation of the international group's income and taxes paid together with certain indicators of the location of economic activity within the group.

As explained in the Memorandum to the Finance Bill, the newly inserted section provides for a specific reporting regime in respect of CbC reporting and also the master file. Following provisions are made in this respect:

(i) The reporting requirement under this section shall apply in respect of an international group having consolidated revenue above a threshold to be prescribed;

(ii) The parent entity of an international group, if it is resident in India, shall be required to furnish a report in respect of the group to the prescribed authority on or before the due date of furnishing of return of income for the Assessment Year;

(iii) Every constituent entity in India of an international group where the parent entity is not resident in India, shall provide information regarding the country or territory of residence of the parent of the international group to which it belongs to the prescribed authority on or before the prescribed date;

(iv) Report shall be furnished in prescribed manner and in the prescribed form and would contain aggregate information in respect of revenue, profit & loss before income-tax, amount of income-tax paid and accrued, details of capital, accumulated earnings, number of employees, tangible assets other than cash or cash equivalent in respect of each country or territory along with details of each constituent's residential status, nature and detail of main business activity and any other information as may be prescribed;

(v) An entity in India belonging to an international group shall be required to furnish the information specified in (iv) above CbC report to the prescribed authority if the parent entity of the group is resident:

    (a) in a country with which India does not have an arrangement for exchange of the CbC report; or

(b) such country is not exchanging information with India even though there is an agreement; and

(c) this fact has been intimated to the entity by the prescribed authority;

(vi) If there is more than one entity of the group in India, then the group can nominate the entity that shall furnish the report on behalf of the group;

(vii) The prescribed authority may call for such document and information from the entity furnishing the report for the purpose of verifying the accuracy as it may specify in notice. The entity shall be required to make submission within thirty days of receipt of notice or further period if extended by the prescribed authority, but extension shall not be beyond 30 days.

Penalties are prescribed for non-furnishing of the report by an entity which is obligated to furnish as also for knowingly providing inaccurate information in the report.

73. Exclusion from total income of accumulated balance – Fourth Schedule Part A – Rule 6 & Rule 8

Presently, contribution by the employer in excess of 12% of the employee's salary is chargeable to tax.

Fourth Schedule of the Act has been amended to effectively provide that only lower of ₹ 150,000 or 12% of salary shall be exempt in the hands of employee in respect of employer's contribution to recognised provident fund.

There will also be exemption for one-time portability of funds from recognised provident fund or from approved superannuation fund to NPS referred to in section 80CCD.

74. Equalisation Levy – Chapter VIII of the Finance Bill

In order to overcome the challenges of typical direct tax issues relating to e-commerce i.e. characterisation of nature of payments, establishing a nexus between a taxable transaction, activity and a taxing jurisdiction and keeping in view the recommendations of OECD in respect of Action 1 – Addressing the Tax Challenges of Digital Economy, of the BEPS Project, a new chapter is inserted in the Finance Bill, 2016 which deals with the equalisation levy, its collection and recovery.

The Equalisation Levy is @ 6% of the amount of consideration for specified services received or receivable by a non-resident (not having a PE in India) from a resident carrying on a business or profession or from a non-resident having a PE in India [Payer].

The specified services are as follows:

(a) Online advertisement;

(b) Any provision for digital advertising space;

(c) Any other facility or service for the purpose of online advertisement; and

(d) Any other services as may be notified.

Simultaneously with the introduction of this chapter for Equalisation levy, section 10(50) has been inserted to provide exemption for income arising from the above-mentioned specified services chargeable to Equalisation Levy.

The payer is obligated to deduct the Equalisation Levy from the amount paid or payable to a non-resident in respect of such specified services @ 6% if the aggregate amount of consideration for the same in a previous year exceeds ₹ 1 lakh.

In addition, section 40(a)(ib) is inserted to provide that the expenses incurred by a payer towards specified services chargeable to Equalisation Levy shall not be allowed as deduction in case of failure to deduct and deposit the same to the credit of Central Government.

The Chapter also contains necessary provisions regarding collection and recovery of levy, furnishing and processing of prescribed statement of all specified services, issuing intimation and rectification of mistakes therein, interest on delayed payments, penalties and prosecution for failures and appellate mechanism.

This Chapter extends to the whole of India except the State of Jammu and Kashmir.

This Chapter shall come in to force from a date to be notified by the Central Government.

75. The Income Declaration Scheme, 2016 - Chapter IX of the Finance Bill

Finance Bill, 2016 has introduced a New scheme to be known as 'The Income Declaration Scheme, 2016 ('Declaration Scheme'). The Declaration Scheme provides one time opportunity to declare

undisclosed income and pay tax, surcharge and penalty aggregating to 45% of income declared.

Salient features of the Declaration Scheme are as under:

1. Period of the Declaration Scheme – From 1st June, 2016 to a date to be notified by the Central Government. The Finance Minister, in his Budget Speech (para 160), has indicated that the Declaration Scheme will close on 30th September, 2016.

2. A person may make declaration of income which was chargeable to tax under the Act for any assessment year prior to assessment year 2017-18 if,

   i) The person has failed to file his return of income, or

   ii) The person has failed to include the income in his return of income filed before the commencement of the Declaration Scheme, or

   iii) The income has escaped assessment on account of not filing the income tax return or on account of failure to make full and true disclosure of material facts necessary for the assessment or otherwise.

3. Where a declaration of income representing investment in any asset is made under the Declaration Scheme, fair market value of such asset on the date of the commencement of the Declaration Scheme shall be the amount of undisclosed income. Fair value of the asset is to be determined as per rules to be prescribed.

4. No deduction of any expenditure or allowance will be made in respect of the income declared.

5. Tax, surcharge and penalty - Income declared under the Declaration Scheme will be taxed as under:

   Tax – 30% of the income.

   Surcharge – Krishi Kalyan Cess - 25% of the tax

   Penalty – 25% of the tax

   Total of tax, cess and penalty – 45% of the income declared.

6. Only one declaration under the Declaration Scheme can be made by a person.

7. Tax, surcharge and penalty is to be paid on or before the date to be notified by the Central Government (`due date') and proof

of such payment to be filed before the Commissioner before the due date. The Finance Minister, in his Budget Speech (para 160), has indicated that the declarant will be given two months to pay the tax, surcharge and the penalty.

8. If the declarant fails to pay the tax, surcharge and penalty on or before the due date or if the declaration is made by misrepresentation or suppression of facts, the declaration shall be void and deemed never not to have been made.

9. If declaration is made, but tax, surcharge and penalty are not paid on or before the due date, the undisclosed income shall be chargeable to tax under the Act in the previous year in which the declaration is made.

10. Effects of a valid declaration:

    i) The income declared will not be included in the total income for any assessment years under the Act.

    ii) The declarant shall not be entitled to reopen any assessment or reassessment made under the Act or claim set-off or relief in any appeal, reference or other proceedings of such assessment or reassessment.

    iii) Where the asset representing undisclosed income is held in the name of 'benami', provisions of the Benami Transactions (Prohibition) Act, 1988 shall not apply if the asset is transferred from the 'benami' to the declarant or his legal representative within the period to be notified by the Central Government.

    iv) Declaration shall not be admissible as evidence against the declarant for levy of penalty (except under the Declaration Scheme) or for prosecution under the Act or the Wealth Tax Act, 1957.

    v) If the undisclosed income is represented by an asset including cash and bank deposit and if the declarant has:

        a) Not filed wealth tax return, or

        b) Not included the asset in the wealth tax return, or

        c) Understated the value of the asset in the wealth tax return,

    then in case of (a) and (b), such asset will not be included in the net wealth and in case of (c) the amount

by which the value of the asset had been understated shall not be included in the net wealth so long as such amount does not exceed the amount declared under the act Declaration Scheme to have been utilised for acquiring such asset.

11. Provision has been made to accord benefit of the Declaration Scheme to the partner of partnership firm in determining his net wealth or value of his interest in the firm, where declaration under the Declaration Scheme is made by the firm disclosing an asset.

12. The provisions of the Declaration Scheme shall not apply in the following cases:

i) With certain exceptions, to a person in respect of whom detention order has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1957 (COFEPOSA).

ii) In relation to prosecution for any offense punishable under Chapter IX (offences by or relating public servants) or Chapter XVII (offences against property) of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the unlawful Activities (Prevention) Act, 1967 and the Prevention of Corruption Act, 1988.

iii) To any person notified u/s 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

iv) Undisclosed foreign income and asset chargeable under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

v) In relation to any undisclosed income chargeable to tax under the Act for any assessment year up to and including assessment year 2016-17 where:

a) A notice u/s 142 or section 143(2) or section 148 of the Act has been issued and proceedings are pending before the Assessing Officer, or

b) Search has been conducted u/s 132 or requisition has been made u/s 132A or survey has been conducted u/s 133A of the Act in a previous year and a notice u/s 143(2) for the assessment year

relevant to such previous year or a notice u/s 153A or u/s 153C of the Act for any assessment year relevant to any previous year prior to such previous year has not been issued and time for issue of such notice has not elapsed, or

c) Where the Competent Authority has received information under an agreement entered into by the Central Government u/s 90 or 90A of the Act in respect of undisclosed asset.

13. Provision has been made regarding:

i) Who should sign the declaration,

ii) Framing of rules and prescribing forms by the CBDT, and

iii) Making of order by the Central Government for removing difficulty in giving effect to the Declaration Scheme.

14. Benefit, concession or immunity provided by the Declaration Scheme shall be available only to the person making the declaration except where specifically provided otherwise.

15. Tax, surcharge and penalty paid under the Declaration Scheme shall not be refunded.

16. If a person has undisclosed income or asset acquired out of such undisclosed income and the same is not declared under the Declaration Scheme, such income shall be deemed to have accrued, arisen or received or (value of) such asset shall be deemed to have been acquired in the year in which a notice u/s 142 or 143(2) or 153A or 153C of the Act is issued by the Assessing Officer and the provisions of the Act shall apply.

76. The Direct Tax Dispute Resolution Scheme, 2016 - Chapter X of the Finance Bill

With the objectives (a) of reducing huge backlog of appeals pending before the 1st Appellate Authority i.e. CIT (Appeals) in respect of 'tax arrears' and (b) to settle the past cases in respect of 'specified tax', i.e. tax in respect of ongoing disputes due to the retrospective amendments, a onetime scheme of dispute resolution has been proposed.

The said Scheme shall come in force from 1st June, 2016 and shall be open for making declaration up to a date to be notified by the Central Government.

The Scheme is not applicable in certain cases and under certain circumstances as provided in Clause 205 of the Bill. These cases of non-applicability broadly include: (a) Cases where prosecution has been initiated before 29th February, 2016; (b) Search or survey cases where the declaration is in respect of tax arrears; (c) Cases relating to undisclosed foreign income and assets; (d) Cases based on information received under Double Taxation Avoidance Agreements (DTAAs) where the declaration is in respect of 'tax arrears'; (e) Person notified under Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992; and (f) Cases covered under Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code, Prevention of Corruption Act or Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

The Scheme is applicable in respect of the following:

a. 'Tax arrears' i.e. amount of tax, interest or penalty in respect of which appeal before CIT(A) under Income-tax Act and CWT(A) under Wealth-tax Act is pending as on 29th February 2016;

b. 'Specified tax' i.e. any tax determined in consequence of or is validated by an amendment made with retrospective effect in the Income-tax Act or Wealth-tax Act, as the case may be, for a period prior to the date of enactment of such amendment and a dispute in respect of which is pending as on 29th February, 2016.

Amounts payable by a declarant making a declaration under the Scheme are as follows:

(I) In case of pending appeal related to 'tax arrears' being –

(a) Tax and interest, where the appeal relates to disputed income / wealth —

(i) In a case where the disputed tax does not exceed 10 lakh, the whole of the disputed tax and the interest on the disputed tax till the date of assessment or reassessment;

(ii) In any other case, the whole of disputed tax, the interest on the disputed tax till the date of assessment or reassessment and 25% of the minimum penalty leviable;

(b) Penalty i.e. where the appeal relates to penalty - 25% of the minimum penalty leviable and the tax and interest payable on the total income finally determined.

(II) In case of 'specified tax', the amount of such tax determined.

Immunities and Waiver-

The declarant under the Scheme shall get immunity from institution of any proceeding for prosecution for any offence.

Appropriate provisions are made in Clause 202 of the Finance Bill for granting immunity/waiver of penalty/interest other than what is payable under the Scheme.

The Scheme contains necessary provisions regarding particulars to be furnished in the declaration, time and manner of payment of amount payable under the Scheme, power to make rules, issue directions and remove difficulties etc.

INDIRECT TAXES

SERVICE TAX

All amendments proposed in the Finance Bill, 2016 of Chapter V of the Finance Act, 1994 (the Act), Chapter VI of the Finance Bill, 2016 containing Krishi Kalyan Cess and Chapter XI containing the Indirect Tax Dispute Resolution Scheme, 2016, Notifications issued and the following Rules framed thereunder are discussed below:

- Service Tax Rules, 1994 (STR)
- Point of Taxation Rules, 2011 (POTR)
- CENVAT Credit Rules, 2004 (CCR)

The amendments come into effect on the enactment of the Finance Bill except specifically mentioned otherwise.

1. Rate of Tax and Cess

The rate of service tax and Swachh Bharat Cess remain unchanged at 14% and at 0.5% respectively, on the value of services.

The optional effective tax rate in respect of single premium annuity policies is reduced from 3.5% to 1.4% of premium with effect from 01/04/2016.

With the objective of promoting improvement of agriculture, the Krishi Kalyan Cess (KKC) is levied at the rate of 0.5% on the value of all or any of the taxable services with effect from 01/06/2016.

Consequently, effective rate on taxable services will be 15% with effect from 01/06/2016 and effective alternate tax rates for the following specified services will also be enhanced by KKC with effect from 01/06/2016.

- Air travel agents
- Life insurance services
- Purchase or sale of foreign currency including money changing
- Distribution of lottery tickets

2. Threshold Exemption

The basic exemption limit of ₹ 10 lakh is maintained.

3. Legislative Changes

i. Definition of service

Any activity of a lottery distributor or selling agent in relation to promotion, marketing, organising, selling or facilitating in organising lottery of any kind was covered in the definition of service by excluding the same from the expression 'transaction in money or actionable claim' with effect from May 14, 2015.

Now it is further clarified that the explanation is applicable with respect to aforesaid activities undertaken on behalf of State Government in accordance with the provisions of the Lotteries (Regulation) Act, 1998 [Section 65B(44) of the Act].

ii. Negative list of services

- Services by way of pre-school education, education up to higher secondary school recognised as a part of curriculum for obtaining a qualification recognised by law for the time being in force and approved vocational education course are shifted from the Negative List along with the definition of 'approved vocational education course' under section 65B(11) to the exemption notification. [Section 66D(l) read with Sr. No. 9 of Exemption Notification No. 25/2012-ST]

- Transportation of passengers with or without accompanied belongings by a non-air-conditioned stage carrier is shifted to the exemption notification. However, transportation of passengers by an air-conditioned stage carrier is taxable at an abated value of 60% subject to a condition of non-availment of CENVAT credit. These changes are effective from 01/06/2016. [Section 66D(O)(i) read with Sr. No. 23(bb) of Notification No. 25/2012-ST]

- Services by way of transportation of goods by an aircraft or a vessel from outside India up to customs station of clearance in India are omitted from the Negative List. Whereas transportation of goods by an aircraft is granted an exemption under the exemption notification; transportation of goods by a vessel is now taxable with effect from 01/06/2016. [Section 66D(p)(ii) read with Sr. No. 53 of Notification No. 25/2012-ST].

iii. Declared Service

Assignment of right to use radio-frequency spectrum by the Government and any subsequent transfer is now a declared service. [Section 66E(j)].

iv. Penalties

If penalty proceedings under sections 76 and 78 against company are concluded by paying the prescribed demand and/or penalty within the specified time limit, then penalty proceedings under Section 78A against director, manager, secretary or other officer of such company are also simultaneously concluded. [Explanation to Section 78A]

v. Other Amendments in the Act

- Normal period of limitation for recovery of service tax for cases not involving fraud, collusion, suppression etc. is enhanced from eighteen months to thirty months. [Section 73].
- Monetary limit for prosecutable offences is enhanced to ₹ 2 crore from ₹ 50 lakh [Section 89].
- The power to arrest is restricted only to the cases where the amount of service tax collected and not paid is more than ₹ 2 crore. [Section 90 and section 91].
- Enabling provision is made for allowing rebate by way of notification as well as by rules. [Section 93A]

vi. Change in the rate of interest

Section 75 of the Act provides for separate rate of interest in normal case and in case of failure to pay the amount before the due date after being collected. The amended rates of interest under section 75 or as the case may be under section 73B are as under:

Situation	Interest rate for other than small assessee*	Interest rate for small assessee*
Collection of any amount as service tax but failing to pay the same on or before due date of payment	24% per annum	21% per annum

Situation	Interest rate for other than small assessee*	Interest rate for small assessee*
Delay in payment of service tax due but not collected by service provider	15% per annum	12% per annum
Delay in payment of amount collected in excess of the tax assessed or determined and payable under section 73A of the Act.	15% per annum	12% per annum

*Small assessee means an assessee whose value of taxable services in the last preceding financial year does not exceed ₹ 60 lakh.

[Notification No. 13 and 14/2016-ST]

vii. Rebate of input/input services used for export of goods/ services

Notification 41/2012-ST was amended recently by Notification No. 1/2016-ST dated 03/02/2016 whereby a rebate is allowed for service tax on services used beyond factory or any other place or premises of production or manufacture of the said goods for export of the said goods. This is given effect retrospectively from 01/07/2012. If such rebate was earlier denied, it will now be allowed provided such claim is made within one month from the enactment of the Finance Bill, 2016. [Clause 157 of the Finance Bill, 2016]

4. Exemptions

i. New Exemptions

The following entries are inserted in Exemption Notification No. 25/2012-ST *vide* Notification No. 09/2016-ST **with effect from 01/03/2016:**

- Services in respect of specified courses except "Executive Development Programme" provided by the Indian Institutes of Management (IIM) to its students. [Entry 9B]

- Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration services provided to the Government, a local authority or a governmental authority in respect of—

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

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities, person who holds in any post in pursuance of the provisions of constitution, chairperson or a member or a director in a body established by the Central Government or State Government or Local Authority;

(The above exemption is available in respect of contracts entered prior to 01/03/2015 where applicable stamp duty has been paid prior to such date. This exemption shall cease to apply with effect from 01/04/2020.) [Entry 12A]

- Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration services in respect of a civil structure or any other original works pertaining to:

  (a) 'In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation' under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers.

  (b) 'Beneficiary-led individual house construction/ enhancement' under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana.

  [Entries 13(ba) and (bb)]

- Construction, erection, commissioning or installation of original works pertaining to low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:

  (a) "Affordable housing in partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana.

  (b) Any housing scheme of a State Government.

  [Entry 14(ca)]

- Construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract entered prior to 01/03/2015 as certified by Ministry of Civil Aviation or the Ministry of Shipping in the Government of India and where applicable stamp duty has been paid prior to such date. (This exemption shall cease to apply with effect from 01/04/2020). [Entry 14A]

The following exemption is granted *vide* Notification No. 11/2016-ST with effect from 01/03/2016:

- Packaged software recorded on a media (whether domestically produced or imported) where retail sale price is required to be affixed on the package of such media under Legal Metrology Act, 2009 when on such software, appropriate excise duty or customs duty as the case may be is paid in accordance with the law and when a service provider declares on the invoice as to non-recovery of any amount in excess of retail sale price, such software is exempted from service tax.

Customised Software recorded on media not required to bear retail sales price is exempted from service tax to the extent of value of medium along with freight and insurance. (Notification No. 11/2016-CE & 11/2016-Customs).

The following entries are inserted in Exemption Notification No. 25/2012-ST *vide* Notification No. 09/2016-ST **with effect from 01/04/2016:**

- Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship under Skill Development Initiative (SDI) Scheme [Entry 9C].

- Skill or vocational training provided by project implementation partners under Deen Dayal Upadhyay Grameen Kaushalya Yojana. [Entry 9D].

- General insurance services provided under "Niramaya Health Insurance" scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability. [Entry 26(q)]

- Life insurance service provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India. [Entry 26C]

- Services provided by Employees Provident Fund Organisation (EPFO) to employees. [Entry 49]
- Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers. [Entry 50]
- Services provided by Securities and Exchange Board of India (SEBI) for protecting interests of investors in securities, promoting development and regulation of the securities market. [Entry 51]
- Cold chain knowledge dissemination services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Co-operation and Farmers' Welfare. [Entry 52]

The following entries are inserted in Exemption Notification No. 25/2012-ST *vide* Notification No. 09/2016-ST **with effect from 01/06/2016:**

- Passenger transportation services with or without accompanied belongings in non-airconditioned stage carriage. [Entry 23(bb)]
- Transportation of goods by an aircraft (air freight on imports) from a place outside India up to the customs station of clearance in India. [Entry 53].

ii. Modification in existing exemptions with effect from 01/04/2016

- Exemption limit for services by a performing artist in folk or classical art forms of music, dance or theatre is enhanced from ₹ 1 lakh to ₹ 1.5 lakh per performance.

  Entry 16 of Notification No. 25/2012-ST *vide* Notification No. 09/2016-ST].

- Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees subject to fulfilment of prescribed conditions.

  (Notification No. 32/2012-ST read with Notification No. 12/2016-ST).

iii. Exemptions Withdrawn

The following exemption is withdrawn *vide* Notification No. 09/2016-ST by amending Notification No. 25/2012-ST **with effect from 01/03/2016:**

- Construction, erection, commissioning or installation of original works pertaining to monorail and metro in respect of contracts entered on or after 01/03/2016.

  The exemption in respect of above work for which contracts were entered into before 01/03/2016 (on which appropriate stamp duty is paid) shall continue.

  [Entry 14(a)]

The following exemptions are withdrawn *vide* Notification No. 09/2016-ST by amending Notification No. 25/2012-ST **with effect from 01/04/2016:**

- Legal services provided by a 'senior advocate' to a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession. Therefore, senior advocates will be liable to discharge service tax on the said services. However, legal services provided by a senior advocate to a person stated other than the above continue to remain exempt. The term "Senior Advocate"has the meaning assigned to it under Section 16 of The Advocates Act, 1961 *vide* Clause (zdd) in Notification No. 25/2012-ST.

  Further, service provided by a person represented on an arbitral tribunal to an arbitral tribunal will also be liable for service tax.

  [Entry 6(b) and 6(c)]

- Passenger transportation with or without accompanied belongings by ropeway, cable car or aerial tramway. [Entry 23(c)]

iv. Exemptions restored or granted with retrospective effect

- Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration services provided in respect of canal, dam or other irrigation works to entities set up by an Act of Parliament or a State Legislature or established by the Government with 90% or more participation by way equity or control to carry out any function entrusted to a Municipality under Article 243W of the Constitution during the period **01/07/2012 to 29/01/2014 (both inclusive).**

  Service provider is entitled to refund of service tax paid on the above services provided during **01/07/2012 to 29/01/2014**. An application for such refund is to be made within 6 months

from the date of enactment of the Finance Bill, 2016. [Section 101 of the Act]

- Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration services provided during the period **01/04/2015 to 29/02/2016** to the Government, a local authority or a governmental authority in respect of—

  (a) A civil structure or any otheroriginal works meant predominantly for use other than for commerce, industry, or any other business or profession;

  (b) A structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

  (c) A residential complex predominantly meant for self-use or the use of their employees or Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities, Person who holds in any post in pursuance of the provisions of Constitution, Chairperson or a member or a Director in a body established by the Central Government or State Government or local authority (This exemption is available in respect of contracts entered prior to 01/03/2015 and applicable stamp duty has been paid prior to such date).

  Service provider is entitled to refund of service tax paid on the above services provided during 01/04/2015 to 29/02/2016 (both inclusive). An application for such refund is to be made within 6 months from the date of enactment of Finance Bill, 2016. [Section 102 of the Act]

- Construction, erection, commissioning, or installation of original works pertaining to an airport or port provided during the period **01/04/2015 to 29/02/2016** (both inclusive). (This exemption is available in respect of contracts entered prior to 01/03/2015 and applicable stamp duty has been paid prior to such date where such fact is certified by Ministry of Civil Aviation or the Ministry of Shipping in the Government of India.)

  Service provider is entitled to refund of service tax paid on the above services provided during 01/04/2015 to 29/02/2016.An application for such refund is to be made within 6 months from the date of enactment of the Finance Bill, 2016. [Section 103 of the Act]

5. Abatement (Notification No. 26/2012-ST)

i. Transport of goods by rail

Presently, an abatement of 70% is available in respect of service of transport of goods by rail without CENVAT credit on inputs, input services and capital goods. The said abatement is now available with CENVAT credit of input services for transport of goods by rail (other than "Transport of goods in containers by rail by any person other than Indian Railway"). A reduced abatement of 60% with CENVAT credit of input services is separately prescribed for transport of goods in containers by rail by any person other than Indian Railway.

ii. Transport of passengers by rail

Presently, an abatement of 70% is available in respect of service of transport of passengers by rail, without CENVAT credit of inputs, input services and capital goods. Now CENVAT credit of input services is allowed.

iii. Transport of used household goods by goods transport agency

The abatement of 70% available to transportation of any goods by a goods transport agency (GTA) is reduced to 60% in case of transportation of used household goods without availment of CENVAT credit.

iv. Services provided by foreman of Chit fund

The abatement of 70% provided for services by foreman in relation to chit without availment of CENVAT credit, is reintroduced.

v. Transport of goods by vessel

Presently, abatement of 70% is available in respect of service of transport of goods by vessel without CENVAT credit on inputs, input services and capital goods. Now CENVAT credit of input services is allowed.

vi. Tour operator services

The abatement rates in respect of services by a tour operator in relation to a tour other than a tour operator providing services solely of arranging or booking accommodation for any person in relation to a tour are rationalised from 75% and 60% to a uniform rate of 70%. Consequently, the definition of "package tour" is omitted.

vii. Construction of complex service

Presently, two rates of abatement are prescribed for services of construction of complex, building, civil structure, or a part thereof namely, (a) 75% of the amount charged in case of a residential unit having carpet area of less than 2000 square feet and costing less than ₹ 1 crore, and (b) 70% of the amount charged in case of other than (a) above. A uniform abatement of 70% is now prescribed for services of construction of complex, building, civil structure, or a part thereof, subject to fulfilment of the existing conditions.

viii. Renting of motor-cab service

In case of renting of motor-cab services, it is clarified by way of inserting an explanation that fair market value of all goods including fuel should be included in the consideration charged for providing renting of motor-cab services for availing the abatement.

The above changes mentioned in (i) to (viii) are effective from 01/04/2016. [Notification No. 08/2016-ST]

ix. Transport of passenger by air conditioned stage carriage

The service of transportation of passengers by air-conditioned stage carriage is taxed at the same level of abatement of 60% as applicable to the transportation of passengers by a contract carriage, with the condition of non-availment of CENVAT credit. [Notification No. 8/2016-ST with effect from 01/06/2016]

6. Reverse Charge Mechanism: [Notification No. 30/2012-ST]

i. The service provided by mutual fund agents/distributors to a mutual fund or an asset management company is withdrawn from taxability under reverse charge mechanism. Hence, the service provider i.e. the mutual fund agents or distributors to a mutual fund are liable to pay service tax. Corresponding amendment is made in the definition of 'person liable for paying service tax' as contained in STR.

ii. The service provided by a selling or a marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government is covered under reverse charge mechanism, consequent to inclusion of said activity in the definition of "service".

iii. Presently, taxable legal services provided by 'senior advocate', as defined under Section 16 of The Advocates Act, 1961,

are covered under reverse charge mechanism. Now, senior advocates are liable to pay service tax as service provider. Legal services provided by a firm of advocates or an advocate other than senior advocate are continued to be taxable under reverse charge mechanism.

Corresponding amendment is made in the definition of "person liable for paying service tax" in STR.

The above changes mentioned in (i) to (iii) are effective from 01/04/2016. [Notification No. 18/2016-ST]

iv. Presently, only support services provided by Government or local authorities to business entities are taxable under reverse charge mechanism. With effect from 01/04/2016, the liability to pay service tax on any service (excluding renting of immovable property and services by department of post, life insurance and agency service, service in relation to aircraft or vessel and transport of goods or passengers) provided by Government or local authorities to business entities having turnover exceeding rupees 10 lakh in the previous financial year shall be on the service recipient under reverse charge basis. [Notification Nos. 16/2016-ST and 17/2016-ST]

Corresponding amendment is made in the definition of "person liable for paying service tax" in STR.

7. Rules

i. Service Tax Rules, 1994

- Option of payment of service tax on receipt basis where aggregate value of taxable services is fifty lakh rupees or less in a previous year is extended to One Person Company (OPC).
- The facility of quarterly payment of service tax is extended to OPC (whose aggregate value of taxable services is 50 lakh rupees or less in a previous year) and an HUF.
- Every assessee is now required to submit an annual return for the financial year by 30th November of the succeeding year. The form and the manner of such return shall be notified separately. The Central Government is empowered to exempt such assessee or class of assessees from this requirement and also to extend the date of submission as may be deemed necessary. The assessee filing the annual return by the due date may revise the annual return within a period of one month from the date of submission of such return. In case of delay, an

amount of ₹ 100/- per day for the period of delay subject to a maximum of ₹ 20,000/- is liable to be paid.

(with effect from 01/04/2016) [Notification No. 19/2016]

ii. Point of Taxation Rules and Section 67A of the Act

- Section 67A of the Act provides that the time or point in time with respect to the rate of service tax shall be determined with reference to POTR.
- Under POTR, in respect of payment of tax in case of new services, it is provided that the same shall apply in case of new levy on services also. Further, the new levy or tax shall be payable in all cases other than,

  (a) to the extent an invoice is issued and payment received against such service before it becomes taxable;

  (b) if the payment is received before the service becomes taxable and the invoice is issued within fourteen days of the date when service is taxed first time.

8. Indirect Tax Dispute Resolution Scheme, 2016

i. Indirect Tax Dispute Resolution Scheme, 2016 is introduced in respect of appeals pending before Commissioner (Appeals) as on 01/03/2016.

ii. A person may file a declaration of disputed tax on or before 31/12/2016 to designated authority for resolution of dispute.

iii. The declarant has to pay duty/tax, interest and 25% of penalty imposed within 15 days of the receipt of acknowledgement from the designated authority and intimate the details along with proof of such payment within 7 days of making such payment. The designated authority within 15 days of the receipt of such proof shall pass an order of discharge of dues. Thereafter, the proceedings against the declarant will be disposed of and he will also get immunity from prosecution.

iv. The said order of discharge cannot be reopened thereafter in any proceeding before any authority or court. The said order shall not be deemed to be an order on merits and have no binding effect. No refund of the amounts paid in pursuance of the declaration will be allowed.

v. However, the above scheme shall not apply to pending appeals in respect of the following cases:

- Search and seizure proceedings;
- Prosecution of any offence under the Act which has been instituted before 01/06/2016;
- Narcotic drugs or other prohibited goods;
- Any offence punishable under Indian Penal Code or Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or
- Detention order passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

vi The Central Government is empowered to prescribe Rules in this regard.

9. CENVAT Credit Rules, 2004 (CCR)

i. Definitions

- Wagons of sub-heading 8606 92 of the Central Excise Tariff and equipment and appliance used in an office located within a factory are included in the definition of "capital goods" so as to be eligible to CENVAT Credit on the same.
- CENVAT Credit on inputs and capital goods used for pumping of water for captive use in the factory is allowed even where such capital goods are installed outside the factory.
- All capital goods having value up to ₹ 10,000 per piece are included in the definition of inputs. This would allow manufacturers/service providers to avail full credit on such capital goods in the same year in which they are received.
- Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is excluded from the definition of 'exempted service'.
- An outsourced manufacturing unit is included in the definition of 'Input service distributor' so that credit can be distributed to such unit.

[Rule 2]

ii. CENVAT Credit shall not be utilised for payment of Infrastructure Cess. [Rule 3]

iii. Conditions for allowing CENVAT Credit

- A manufacturer is allowed to take CENVAT credit on tools covered under Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer who manufactures the goods as per specification of manufacturer of final products. It is also provided that a manufacturer can send these goods directly to such other manufacturer or job-worker without bringing the same to itsown premises.
- Presently, the permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer for sending inputs or partially processed inputs outside his factory to a job-worker and clearance therefrom on payment of duty is valid for a financial year. Now the said permission is valid for 3 financial years.
- CENVAT Credit of service tax paid on amount charged for assignment by government or any other person of a natural resource such as radio-frequency spectrum, mines etc. shall be spread over the period of time for which the rights have been assigned. Where the manufacturer or service provider further assigns such right to use assigned to it in any financial year to another person against a consideration, balance CENVAT Credit not exceeding the service tax payable on the consideration charged by him for such further assignment, is allowed in the same financial year. CENVAT Credit of annual or monthly user charges payable in respect of such assignment is allowed in the same financial year.

[Rule 4]

iv. Obligation of a manufacturer or producer of final products or a provider of output service under Rule 6 of CCR

- Sub-rule (1) provides that CENVAT Credit is not allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The method for calculation of credit not allowed is provided in sub-rules (2) and (3) for two different situations described below.

- Sub-rule (2) provides that a manufacturer who exclusively manufactures exempted goods or a service provider who exclusively provides exempted services shall pay/reverse the entire credit and effectively not be eligible for credit of any inputs and input services used.
- Sub-rule (3) provides that when a manufacturer manufactures exempted goods and final products (excluding exempted goods) or when a service provider provides exempted services and output services (excluding exempted services), then the manufacturer or the service provider shall exercise one of the two options, namely,

  (i) Pay an amount equal to 6% of the value of the exempted goods and 7% of value of the exempted services, subject to a maximum of the total credit taken; or

  (ii) Pay an amount as determined under sub-rule (3A).

  The maximum limit prescribed in option (i) above would ensure that the amount to be paid does not exceed the total credit taken.
- Sub-rule (3A) prescribes the procedure and conditions for calculation of credit allowed and credit not allowed and provides that such credit not allowed shall be paid provisionally for each month. The six key steps for calculating the credit required to be paid are:—

  (a) No credit of inputs or input services used exclusively in manufacture of exempted goods or for provision of exempted services shall be available;

  (b) Full credit of input or input services used exclusively in final products (excluding exempted goods) or output services (excluding exempted services) shall be available;

  (c) Credit left thereafter is common credit and shall be attributed towards exempted goods and exempted services by multiplying the common credit with the ratio of value of exempted goods manufactured or exempted services provided to the total turnover of exempted and non-exempted goods and exempted and non-exempted services in the previous financial year;

  (d) When a manufacturer or service provider fails to reverse the credit attributable to manufacture of exempted goods or for provision of exempted services and also common credit attributable to manufacture of exempted goods or for provision of exempted services, shall be liable for

interest @15% from the due date of payment till the date of payment.

(e) Where no final products were manufactured or no output service was provided in the preceeding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be 50% of the common credit.

(f) Final reconciliation and adjustments are provided for after close of financial year by 30th June of the succeeding financial year as provided in the existing rule. In case of failure to reverse the credit by 30th June of the succeeding financial year, interest @15% instead of present rate of twenty four per cent is payable.

- A new sub-rule (3AA) provides that a manufacturer or a service provider who has failed to follow the procedure of giving prior intimation may be allowed by a Central Excise officer to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of fifteen per cent per annum
- A new sub-rule (3AB) is a transitional provision providing that the existing Rule 6 of CCR would continue to be in operation up to 30/06/2016 for the units which are required to discharge the obligation in respect of financial year 2015-16.
- Sub-rule (3B) of rule 6 allows banks and other financial institutions to reverse CENVAT Credit in respect of exempted services as provided in sub-rules (1), (2) and (3), in addition to the option of 50% reversal.
- For the purpose of the above calculations, it is clarified that an activity which is not a "service" under the Act shall be treated as exempt service.
- Sub-rule (4) provides that where the capital goods are used exclusively for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT Credit shall be allowed on such capital goods. Similar provision is made for capital goods installed after the date of commencement of commercial production or provision of service.
- Sub-rule (7) provides that credit taken on inputs and input services used in providing a service by way of "transportation of goods by a vessel from customs station of clearance in India to a place outside India" shall not be required to be reversed by the shipping lines with effect from 01/03/2016.

v. Manner of Distribution of Credit by Input Service Distributor (ISD)

- ISD is now allowed to distribute the input service credit to an outsourced manufacturing unit in addition to its own manufacturing units subject to conditions prescribed.

  "Outsourced manufacturing unit" is defined to mean either a job-worker who is required to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, on the goods manufactured for the ISD or a manufacturer who manufactures goods for the ISD under a contract, bearing the brand name of the ISD and is required to pay duty on value determined under Section 4A of the Central Excise Act, 1944.

- An outsourced manufacturing unit shall maintain separate account of credit received from each of the ISD and shall use it for payment of duty on goods manufactured for the ISD concerned.

- The credit of service tax paid on input services available with the ISD as on 31st of March, 2016 shall not be distributed to an outsourced manufacturing unit.

- Provisions of Rule 6 of CCR relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services shall apply to the units availing the CENVAT credit distributed by ISD and not to the ISD.

[Rule 7]

vi. Distribution of Credit on Inputs by Warehouse of Manufacturer

Manufacturers with multiple manufacturing units can now maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. Further, manufacturers having one or more factories are now allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer which receives inputs under cover of an invoice towards the purchase of such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer. [Rule 7B]

vii. Documents and Accounts

Presently, an invoice issued by a manufacturer for clearance of inputs or capital goods is a valid document for availing CENVAT credit. Now, an invoice issued by a service provider for clearance of inputs or capital goods shall also be a valid document for availing CENVAT credit. [Rule 9]

viii. Annual return

A manufacturer or services provider is now required to file an annual return for each financial year by the 30th day of November of the succeeding year in the form as may be notified. [Rule 9A]

ix. Recovery of CENVAT Credit wrongly taken or refunded

The existing sub-rule (2) prescribes a procedure based on FIFO method for determining whether a particular credit has been utilised. The said sub-rule has been omitted. [Rule 14]

The above changes (i) to (ix) come into effect from 01/04/2016 except specifically mentioned otherwise. [Notification No. 13/2016-CE (NT)]

x. Refund of CENVAT Credit [Notification No. 27/2012-CE (NT)]

The time limit for filing an application for refund under Rule 5 for service provider shall be 1 year from the following:

(a) The date of receipt of payment in convertible foreign exchange where provision of service has been completed prior to receipt of such payment or

(b) The date of issue of invoice, where payment for the service has been received in advance prior to the date of issue of an invoice

In case of a manufacturer, the refund application shall be filed before the expiry of the period specified in Section 11B of Central Excise Act, 1944.

This amendment is effective from 01/03/2016.

[Notification No 14/2016-CE (NT)]

CENTRAL EXCISE

[The Amendments in the Central Excise Act, 1944 (the Act) come into effect from the date of enactment of the Finance Bill, 2016 unless specifically mentioned otherwise.]

1. Legislative Changes

i. Publication of Notifications

The Central Government is authorised to grant exemption from duty by way of issue of a Notification. Further, every such Notification is required to be published in the *Official Gazette* and offered for sale on the date of issue or before the date on which such Notification comes into force. It is now provided that every such notification, unless otherwise provided comes into force on the date of its issue by the Central Government for publication in the *Official Gazette*. Thus requirement of publishing and offering for sale any notification issued is now omitted. This is in line with the new practice of displaying all Notifications issued by the Central Government on its official website "*Official Gazettes*". (Section 5A)

ii. Period of Limitation

The normal period of limitation for issue of show cause notices in cases where there is no allegation of suppression of facts etc., is enhanced from one year to two years from the relevant date (Section 11A).

iii. Instructions by CBEC Board

CBEC is authorised to issue orders, instructions, and directions to Central Excise officers for the purpose of uniformity of the classification of the excisable goods or with respect to levy of duties of excise on such goods. The Board is further empowered to issue orders, directions and instructions also for implementation of any other provision of the Act, in addition to classification of any goods and levy of excise duty on such goods (Section 37B).

iv. Change in Rate of Interest

Rate of interest under section 11AA on delayed payment of duty is reduced from 18% to 15%. (Notification No. 15/2016-CE(NT) with effect from 01/04/2016).

v. Amendment to Third Schedule to the Act. [effective from 01-03-2016]

In respect of goods specified in Third Schedule to the Act, the process of packing, repacking of such goods in a unit container or labelling or relabelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to make the product marketable to the consumer amounts to 'manufacture'. The following goods are added to the Third Schedule.

- Soaps and organic surface active products or agents falling under chapter heading 3401 and 3402
- Aluminium foils of thickness not exceeding 0.2 mm falling under chapter heading 7607
- Wrist wearable devices (commonly known as smart watches) falling under chapter heading 8517 62
- Accessories, falling under any chapter, of specified vehicles.
- Glazed tiles falling under chapter heading 6907 (w.e.f. 01/01/2017)

2. Central Excise Rules, 2002

[The changes come in to effect from 01/03/2016 unless specifically mentioned otherwise.]

- At present an assessee is liable to pay interest on the finalisation of provisional assessment from the 1st day of the month succeeding the month for which such amount is determined till the date of payment. It is now provided that interest shall be payable for the period starting with the 1st day after the due date on which duty was required to be paid till the date of payment.
- A manufacturer of specified jewellery falling under chapter heading 7113 shall be eligible for exemption under a Notification based on value of clearances in a financial year if the aggregate value of clearances of all excisable goods for home consumption in the preceding financial year did not exceed rupees 12 crore (effective from 01/04/2016). (Rule 8)
- Presently, an Annual Financial Information Statement and Annual Installed Capacity Statement is to be filed. Now, in its place, e-filing of Annual Return is required to be filed within the due date. Such Annual Return filed can be revised within a

period of one month from the date of submission of the Return. The Annual Return is also required to be filed by a 100% Export Oriented Unit (effective from 01/04/2016) (Rule 12).

- At present there is no provision for filing of revised ER-1 monthly Return. Now, provision is made for submitting of revised ER-1 Return by the end of the calendar month in which the Original Return is filed. In case the revised return is filed, the relevant date for the purpose of recovery of Central Excise duty if any under Section 11(A) of the Act shall be the date of submission of such revised return (effective from 01/04/2016) [Rule 11(8)(a)].

- If any proceedings against a person liable to pay duty have been concluded in respect of duty, interest and penalty, all proceedings in respect of penalty against other persons if any in the said proceedings shall also be deemed to be concluded (effective from 01/04/2016) (Rule 26).

- In cases where the invoices are digitally signed, the manual attestation of the copy of the invoice meant for the transporters is not required (effective from 01/04/2016) (Rule 11).

- The existing Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2001 are being substituted by Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016, so as to simplify the rules, including allowing duty exemptions to importer/manufacturer based on self-declaration instead of obtaining permissions from the Central Excise authorities (effective from 01-04-2016).

- Manufacturer of specified jewellery manufactured or produced by different factories or premises now can opt for registering only the factory or premises or office from where centralised billing or accounting is done and where the accounts /records showing receipts of raw material and finished excisable goods manufactured or received back from job workers are kept (effective from 01/04/2016).

- For the purpose of registration under the Rules, if two or more premises of the same factory are located within a closed area in the jurisdiction of a Range Superintendent, the manufacturing processes undertaken therein are inter-linked and if the units are not operating under any of the area based exemption notification, the Commissioner of Central Excise may subject to proper accounting of movement of goods from one premise to

other and such other conditions and limitations, grant a single registration for such two or more premises.

3. Major Changes in Central Excise Tariff Act, 1985

[The changes come in to effect from 01/03/2016 unless specifically mentioned otherwise.]

i. Readymade Garments - Excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT Credit) is imposed on readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff, except those falling under 6309 and 6310, of retail sale price (RSP) of ₹ 1,000 and above when they bear or are sold under a brand name. This optional levy would apply to such readymade garments and made up articles of textiles regardless of the composition of the garment/article. However, in respect of readymade garments and made up articles of textiles other than mentioned above, the optional levy of Nil (without CENVAT credit) or 6% (with CENVAT Credit) in case of garments/articles of cotton, not containing any other textile material and, Nil (without CENVAT credit) or 12.5% (with CENVAT credit) in case of garments/articles of other composition, as the case may be, continues. The tariff value for readymade garments and made up articles of textiles is also being increased from 30% to 60% which shall apply to all goods mentioned in Notification No. 20/2001-Central Excise (N.T.) dated 30/04/2001. The new levy is similar to the levy of mandatory excise duty of 10% on readymade garments and made up articles of textiles [goods falling under Chapters 61, 62 and 63 (heading Nos. 63.01 to 63.08] when they bear or are sold under a brand name, which was introduced in the Budget 2011-12, except that:

- The present levy is an optional levy, that is domestic manufacturers will have the option to pay excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit).
- The levy is restricted to such articles which have RSP of rupees 1000 and above, and
- The tariff value is being revised from 30% of RSP to 60% of the RSP.

The levy does not apply to retail tailoring establishments that stitch garments in a customised manner whether out of fabric

purchased by the customer from the same establishment or fabric supplied by the customer.

The brand name owner, who gets the goods manufactured on his own account on job work, shall pay the duty leviable on such goods as if the goods were manufactured by him. The brand name owner (and not the job-worker) shall be required to register and comply with all the provisions of Central Excise law. However, the brand name owner has the option to authorise his job-worker to pay the duty leviable on the goods. If such an authorisation is given, then the job-worker would have to obtain registration.

In cases where the brand name owner gets goods bearing its brand name manufactured from other manufacturers (normally small units) without providing raw materials or inputs, and if the RSP is not affixed or marked on such goods when they are cleared in the course of sale from the factory of a manufacturer to the brand owner, then no excise duty would be payable by such manufacturers since the RSP of such goods is not disclosed to them by the brand owner. However, since the process of labelling or re-labelling constitutes a process of "manufacture", duty on the tariff value (based on the RSP) would be payable as and when the brand owner labels the goods with the RSP of ₹ 1,000 or above and clears them for further sale.

The SSI exemption for the month of March 2016 will be ₹ 12.5 lakh, subject to fulfilment of other conditions for notification No. 8/2003-C.E. dated 01/03/2003.

ii **Articles of Jewellery —** Excise duty of 1% (without CENVAT credit) or 12.5% (with CENVAT credit) is applicable on articles of jewellery [excluding silver jewellery, other than studded with diamonds/other precious stones] with a higher threshold exemption up to rupees 6 crore in a year and eligibility limit of ₹ 12 crore. Thus, a jewellery manufacturer will be eligible for exemption from excise duty on first clearances up to rupees 6 crore during a financial year, if his aggregate domestic clearances during the preceding financial year were less than rupees 12 crore. Thus, when a jewellery manufacturer exceeds aggregate value of clearances in a financial year of rupees 12 crore, he will not be eligible for the threshold exemption in the subsequent financial year.

The SSI exemption for the month of March, 2016 for jewellery manufacturers will be ₹ 50 lakh, subject to the condition that value of clearances for home consumption by a manufacturer

from one or more factory or premises of production or from a factory or premises by one or more manufacturers, during the financial year 2014-15 is not more than ₹ 12 crore.

Excisable goods which were produced on or before 29/02/2016 but lying in stock as on 29/02/2016 shall attract excise duty upon clearance. Jewellery manufacturer shall keep a stock declaration of finished goods, goods-in-process and inputs as on 29/02/2016 in their records duly certified by a Chartered Accountant so as to enable the manufacturers to claim CENVAT credit on inputs or inputs contained in goods lying in stock if so desired. No stock declaration however, is required to be filed with the Jurisdictional Central Excise authorities.

iii Readers may refer to BCAS website for changes in the rates of excise duty on individual products.

CUSTOMS

[The Amendments in the Customs Act, 1962 (the Act) come into effect from the date of enactment of the Finance Bill, 2016 unless specifically mentioned otherwise.]

1. Change in Rate of Interest

Rate of Interest under section 28AA on delayed payment of duty is reduced to 15% from 18%. [Notification No. 33/2016-Cus (NT) dated 29/02/2016, effective from 01/04/2016]

2. Amendments in Rules

(i) A new set of Rules namely Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 substitute the earlier 'Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 1996' prescribing conditions to be fulfilled by the importer for availing complete/partial exemption from customs duty under section 25(1) of the Customs Act (CA). The goods can now be imported at concessional rate of duty merely on the basis of information to be submitted by the importer. There is no requirement of taking approval or signature of officers [Effective from 01/04/2016].

(ii) New set of rules have been prescribed in place of the Baggage Rules 1998. Under the new rules, it is prescribed that customs declaration henceforth is required to be filed only for those passengers who carry dutiable or prohibited goods. Further, the limit for free baggage has been increased as follows:

Notified Person *returning from any country other than* Nepal, Bhutan, Myanmar or China as personal effects:

(a)	Indian Resident or a Foreigner residing in India	₹ 50,000/-
(b)	Tourist of Foreign Origin	₹ 10,000/-

[(Notification Nos. 30/2016 & 31/2016-Cus), Effective from 01/04/2016]

3. Legislative Changes

(i) Definitions

- Section 2(43) of CA defines the term 'warehouse' in which goods are permitted to be stored before payment of import duty. Accordingly, a warehouse means a public warehouse or private warehouse appointed/licenced under sections 57 & 58 by AC/DC of Customs. Now, special warehouse licensed u/s. 58A of Customs Act is included in the definition. Such special warehouse will be licensed by Principal Commissioner/ Commissioner of Customs for storing the dutiable imported goods. Such warehouse would be operated under the supervision of notified officers [from the date of enactment of Finance Bill, 2016].

- The definition of the term 'warehousing station' is omitted. Earlier the places at which the public or private warehouses may be licensed was required to be notified. Now the warehouses can be set up even without first notifying the place as a 'warehousing station' [from the date of enactment of Finance Bill, 2016].

(ii) Conditions for issuance of exemption notification

Section 25 prescribes the procedure for issuance of exemption notification. As per clause (b) of section 25(4) it was prescribed that an exemption notification is to be published & offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. This requirement of publication and offer for sale on its issuance is now dispensed with as the notifications are mailed by the Department online and the same are also available on the website [from the date of enactment of Finance Bill, 2016].

(iii) Increase in time limit for issuance of notice

(a) Section 28(1)(a) provides for the time limit in which a notice can be issued for recovery of duty. Presently, the notice for recovery of duty can be issued within 1 year from the relevant date.

(b) Further, as per Section 28(3) & (6) a notice can be issued within 1 year if the officer is of the opinion that the amount paid is less than the amount actually payable.

In both these cases, the time limit is now enhanced to 2 years [from the date of enactment of Finance Bill, 2016].

(iv) Deferred payment of duty

Section 47 of CA deals with the procedure of payment of duty for goods imported for home consumption. As per Section 47(1), an order for clearance of goods for home consumption is made by the officer where the goods imported are not prohibited goods and duty has been paid by the importer. Now, a proviso has been added in section 47(1) so as to enable the Government to notify certain class of importers who can be permitted to make deferred payment of duty instead of per clearance [from the date of enactment of Finance Bill, 2016].

(v) Transit of goods without payment of duty

Section 53 provides that any goods imported in a conveyance & mentioned in import manifest as for transit in the same conveyance to any place outside India may be allowed to be so transited without payment of duty unconditionally. Now transit of goods without payment of duty will be subject to fulfilment of certain conditions which may be prescribed in due course of time [from the date of enactment of Finance Bill, 2016].

(vi) Appointment of public warehouse, private warehouse and special ware house

Sections 57 and 58 now provide that the Principal Commissioner or Commissioner of Customs may grant a licence to a public warehouse and private warehouse respectively for deposit of dutiable goods subject to certain conditions as may be prescribed.

Similarly newly inserted section 58A empowers the Principal Commissioner and Commissioner of Customs, who may grant licence to a special warehouse wherein dutiable goods may be deposited. Such warehouse will be under supervision of Custom's Officer. The Board will specify the class of goods which will be allowed to be deposited in such warehouse. It is further provided that Principal Commissioner/Commissioner may cancel the licence of the licensee in case of breach of any conditions of licence after providing an opportunity of hearing [from the date of enactment of Finance Bill, 2016].

(vii) Warehousing bond

According to a newly inserted section 59, an importer is required to execute a bond equivalent to **thrice** the duty involvement and pay penalty & fine, if imposed. Further, the importer is required to furnish such security as may be prescribed. Earlier the requirement was twice the duty assessed and also to pay rent and other

charges. As the requirement of rent and other charges is omitted, the warehousing bond would not cover such rent. [from the date of enactment of Finance Bill, 2016]

(viii) Period of warehousing

Sub-clause (1) of section 61 is substituted whereby extension of period for storage of goods is made applicable to STP and EHTP also. It now provides that the warehousing period in case of:

- Capital goods intended for use in any 100% EOU/STP/EHTP/ warehouse in which manufacturing is permitted till their clearance from the warehouse,
- In the case of goods other than capital goods intended for use in any 100% EOU/STP/EHTP/warehouse in which manufacturing is permitted till their consumption/clearance from the warehouse,
- In the case of any other goods, till the expiry of one year, after the date of order permitting deposit of goods in warehouse and the Principal Commissioner/Commissioner on sufficient cause may extend the warehousing period but not more than one year at a time.

(ix) Control over warehoused goods

In view of insertion of section 58A regarding setting up of 'Special Warehouse', and control thereof, the earlier sections 62 and 63, dealing with exercise of control by officer and warehouse owner on goods are omitted.

(x) Duties & Responsibilities of licensee/warehouse-keeper

The newly introduced section 73A provides as follows:

- Warehoused goods to be in custody of licensee
- The responsibilities of licensee will be prescribed
- On improper removal of warehoused goods, the licensee will be held liable for payment of duty, interest, fine and penalties without prejudice to any other action that may be taken against the licensee under the Customs Act.

4. Amendments in Tariff

Readers may refer to BCAS website for changes in Tariff rates.

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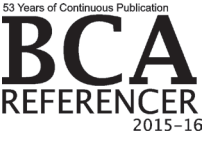

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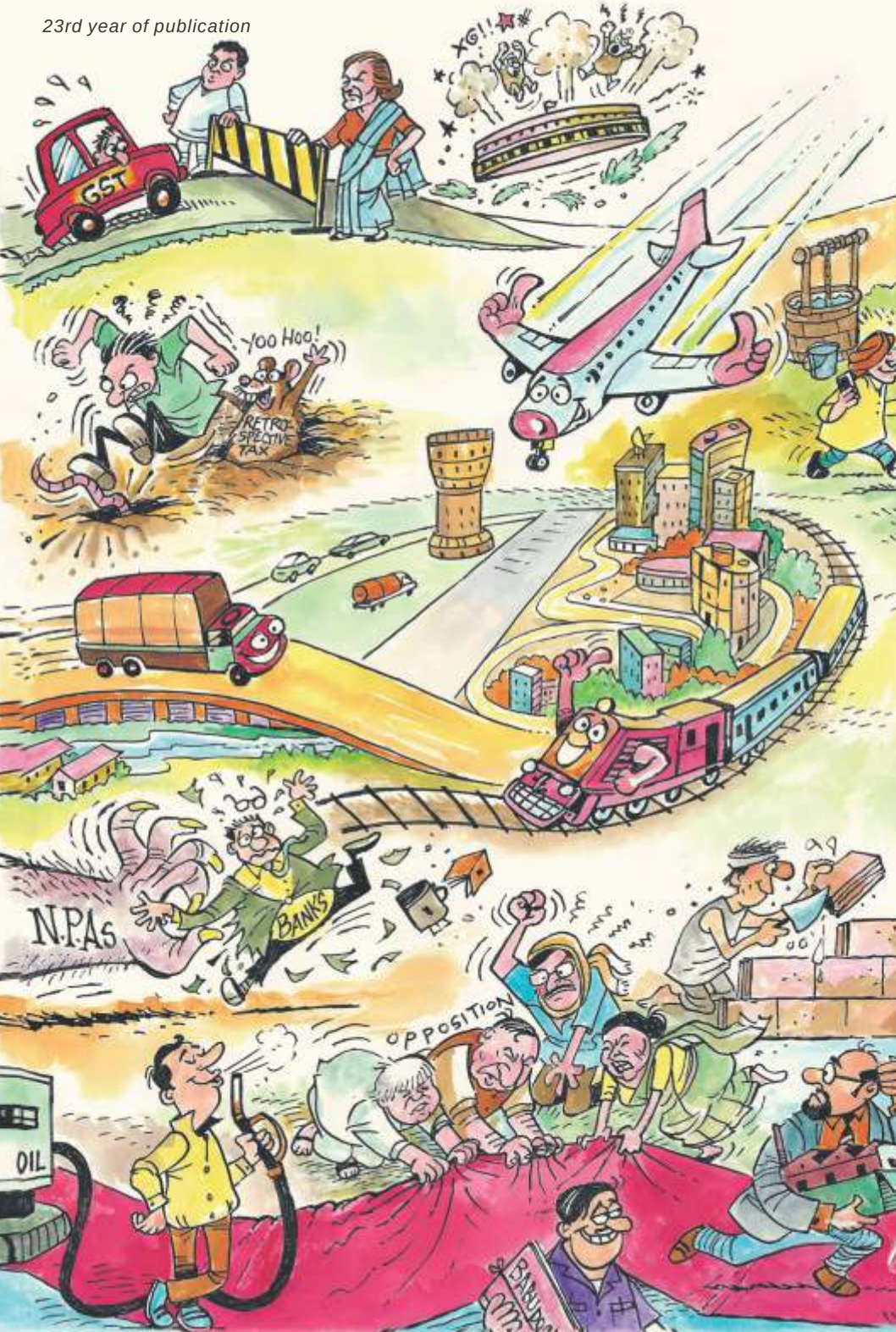
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