



Budget Special Edition

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2016 Budget Special

By

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Chartered Accountants



BUDGET MEET, 2016



Budget meet – Hospital Industry, Apollo hospitals, Jubilee hills, Hyderabad.



Budget Analysis on DT & IDT for CA students, ICAI Bhawan, Hyderabad.



Interactive session on Budget Proposals, Golkonda Hotel, Hyderabad.

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DIRECT TAX

ANALYSIS OF DIRECT TAX PROPOSALS

Contributed by CA Ramprasad & CA Mithilesh |

Rates of Income Tax

- No change in Maximum Exemption Limit not chargeable to tax;
- Surcharge increased to 15% from 12% in case of every individual or HUF or AOP or BOI, whether incorporated or not, or Every Artificial Judicial Person where total income exceeds Rs. One Crore;
- Surcharge on Co-Operative Society is 12% if the total income exceeds Rs. One Crore;
- No change in surcharge for domestic and Foreign Companies;
- Tax @ 29% on Total income in case of domestic company having its total turnover of gross receipts in previous year 2014-15 does not exceed Rs. 5 Crores;
- Tax @25% will be levied on a Domestic Company set up and registered on or after 01/03/2016 and engaged in business of manufacturing or production of any article or thing subject to conditions. (Section-115BA.) (Optional);
- Tax @ 10% be levied on dividends in excess of Rs. 10 Lakhs received by Individual, HUF, Firm who is resident in India from a domestic company (Gross Basis);
- Tax @ 10% on Royalty Income in respect of patent by a resident patentee (Section 115BBF);
- MAT @9% will be levied on Book Profits of International Financial Services Centre which derives its income solely in convertible foreign exchange;
- No MAT will be levied on Foreign Companies which does not have PE in India (WEF 01/04/2001);
- Rebate under section 87A is increased to Rs. 5000/-.

Residential Status of Foreign Company:

Defer the applicability of POEM based residence test by one year and the determination of residence based on POEM shall be applicable from 01/04/2017.

Business Connection and Offshore Funds:

Eligible Investment Fund for the purpose of Section 9A shall also mean a fund established or incorporated or registered outside India in a Country or Specified Territory notified by the Central Government in this behalf. The restriction of not carrying and managing any business in India or from India shall be restricted only in the context of activities in India.

Tax Treatment amount withdrawn from PF and NPS:

An employee participating in a recognized provident fund and superannuation fund, up to 40% of the accumulated balance attributable to such contributions on withdrawal shall be exempt from tax in respect of the contributions made on or after the 1st day of April, 2016.

Employee contributions made prior to 01-04-2016 will be dealt with under the present EEE system and 100% accumulated balance prior to 01-04-2016 can be withdrawn tax-free by an employee.

Any payment in commutation of an annuity purchased out of contributions made on or after the 1st day of April, 2016, which exceeds 40% of the annuity, shall be chargeable to tax.

If employee commutes annuity in respect of contributions made prior to 01-04-2016, the same will be fully tax-exempt under the extant section 10(13).

Employer's Contributions w.e.f. 01-04-2016 tax-free to the extent of 12% of employee's salary or Rs.1,50,000 whichever is less.

Income from House Property:

The deduction under the said proviso on account of interest paid on capital borrowed for acquisition or construction of a self-occupied house property shall be available if the acquisition or construction is completed within five years from the end of the financial year in which capital was borrowed. (w.e.f. AY 2017-18)

The amount of rent received in arrears or the amount of unrealised rent realised subsequently by an assessee shall be charged to income-tax in the financial year in which such rent is received or realised, whether the assessee is the owner of the property or not in that financial year. It is also proposed that thirty per cent of the arrears of rent or the unrealised rent realised subsequently by the assessee shall be allowed as deduction. (w.e.f. AY 2017-18)

Profits and Gains from Business or Profession:

- Non competing fee received or receivable (which are recurring in nature) in relation to not to carrying out any profession is chargeable within in the scope of section 28. (w.e.f. AY 2017-18);
- Any capital expenditure incurred and actually paid by an assessee on acquisition of any right to use spectrum for telecom services by paying spectrum fee will be allowed as deduction in equal instalments over the period for which the right to use spectrum remain in force. (Sec 35ABB) (w.e.f. AY 2017-18);
- Highest rate of depreciation under the provisions of Income Tax Act shall be restricted to 40% (w.e.f. AY 2018-19);
- Sum paid to Approved Scientific Research Association, approved University, College or any other institution if such sum is used for scientific research - 150% (PY 2017-18 to 2019-20) and 100% (PY 2020 onwards);
- Amount contributed to approved scientific research, approved research association, university or institution for social or statistical research- 100% (PY 2017-18);
- Contribution to National Laboratory, University for approved scientific research programme- 150% (PY 2017-18 to PY 2019-20) and 100% (PY 2020-21);
- In house research expenditure- 150% (PY 2017-18 to PY 2019-20) and 100% (PY 2020-21);
- Cold chain facility, warehousing facility for storage of agricultural produce, hospital, affordable housing project, production of fertilizer- 100% of capital expenditure (PY 2017-18);
- Notified Agricultural extension project- 100% (PY 2017-18);
- No deduction for expenditure incurred by way of payment to public sector company or local authority etc on eligible social development scheme - (w.e.f. PY 2017-18);
- Expenditure on Skill development project- 100% (w.e.f. PY 2020-21);
- Additional depreciation is available too assessee engaged in business of transmission of power (w.e.f. AY 2017-18);
- Income of assessee engaged in profession whose total gross receipts does not exceed Rs. 50,00,000/- taxable @ 50% of the total receipts. (w.e.f. AY 2017-18);

- Tax Audit for specified professionals threshold limit Rs.50,00,000/- (w.e.f. AY 2017- 18);
- Presumptive Taxation for Business increased to Rs. 2 Crores. Salary, remuneration etc to partner is not deductible as per Section 40(b). (w.e.f. AY 2017-18);
- Presumptive income has to offered for Five Successive Assessment Years. (w.e.f. AY 2017-18);
- Assessee opting for presumptive taxation pay advance tax by 15th March. (w.e.f. AY 2017-18);
- Deduction for Provision for Bad and Doubtful debts available to NBFC (w.e.f. AY 2017-18);
- Investment Allowance @15% U/S 32AC(1A) installation has to be made by 31/03/2017 (w.r.e.f. AY 2016-17);
- Any consideration paid or payable to non-resident for a specified service on which equalisation levy has not been deducted or after deduction not paid will be disallowed U/S 40(ib). (w.e.f. 01/06/2016);
- Any sum payable to Indian Railways for the use of railway assets is subject to the provisions of section 43B. (w.e.f. 01/04/2017).

Capital Gains:

- Conversion of a company in to LLP is not subject to tax if the value of the total assets in the books of accounts of the company in any of the three previous years preceding the previous year in which the conversion takes place, should not exceed five crore rupees. (w.e.f. AY 2017-18);
- Any redemption of Sovereign Gold Bond under the Scheme, by an individual shall not be treated as transfer and therefore shall be exempt from tax on capital gains. (w.e.f. AY 2017-18);
- Any transfer by a unit holder of capital assets, being unit or units held by him in consolidation plan of mutual fund for allotment of unit or units in consolidated plan of that scheme of mutual fund shall not considered to be transfer. (w.e.f. AY 2017- 18);
- Deposit Certificate issued under Gold Monetisation Scheme, 2015 notified by the Central Government is not a capital asset. (w.e.f. AY 2016-17);
- Assessee being a non-resident, any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company subscribed by him, shall be ignored for the purposes of computation of full value of consideration. (w.e.f. AY 2017-18);
- Where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property. (w.e.f. AY 2017-18);
- New Section 54EE provides for exemption from capital gains if the long term capital gain proceeds are invested in units of specified fund as may be notified by the Central Government. The investment is subject to lock in of three years. The amount of investment allowed up to Rs. 50 lakhs;

- Exemption under section 54GB is available if capital gains are invested in subscription of shares of a company which qualifies to be an eligible start up. The amount can be utilized for computers or computer software in case of technology driven start up certified by the Inter- Ministerial Board of Certification. (w.e.f. AY 2017-18);
- Cost of acquisition' and 'cost of improvement' for working out "Capital gains" on capital receipts arising out of transfer of right to carry on any profession shall also be taken as 'nil'. (w.e.f. AY 201718);
- Long-term capital gains arising from the transfer of a capital asset being shares of a company not being a company in which the public are substantially interested, shall be chargeable to tax at the rate of 10 per cent. (w.e.f. AY 2017-18).

Other Sources:

- Any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company shall not attract the provisions of clause (vii) of sub- section (2) of section 56. (w.e.f. AY 2017-18).

Set off of Losses:

- No set off of any loss shall be allowable in respect of income under the sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D. (w.e.f. AY 2017-18);
- Loss determined as per section 73A of the Act shall not be allowed to be carried forward and set off if such loss has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139. (w.e.f. AY 2016-17);

Chapter VIA:

- Increase the maximum limit of deduction U/s 80GG from existing Rs. 2000 per month to Rs. 5000 per month;
- Deduction for interest on loan for acquisition of residential property of Rs. 50,000/-. Loan should be sanctioned Financial Institutions during 01/04/2016 to 31/03/2017. Property value should not exceed Rs. 50 Lakhs and the amount of loan should not exceed Rs. 35 Lakhs. This is in addition to deduction available under section 24. (w.e.f. AY 2017-18);
- Income received by nominee on the death of assessee from NPS is not chargeable to tax;
- Deductions under section 80IA, 80IAB and 80IB not available if the specified activity commences on or after 01/04/2017 (w.e.f. PY 2017-18);
- Startups engaged in eligible business shall be allowed a deduction of an amount of 100% of the profits and gains derived from such business for the three consecutive assessment years within in 5 Years of commencing the operations. (w.e.f. AY 2017- 18);
- Deduction of 100% of profits and gains from the business of developing and building housing projects for the projects approved by the competent authority after 01/06/2016 but on or before 31/03/2019. (w.e.f. AY 2017-18);

- Cost incurred on any employee whose total emoluments are less than or equal to twenty-five thousand rupees per month – 30% of emoluments allowed as a deduction. Minimum days of employment in a Financial Year limited to 240 days. In case of existing business deduction will be available only if there is increase in the number of employees and emoluments are paid by account payee cheque or account payee draft or through electronic clearing system. No deduction in respect of employee where entire contribution to pension fund is paid by the government. (w.e.f. AY 201-18).

Procedural Aspects:

<i>Section</i>	<i>Proposal</i>
139(1)- Requirement to file ROI	Income has to computed before the giving effect to the amount exempt U/S 10(38)
139(4)- Belated Return – Time Limit	Belated return can be filed before the end of the relevant assessment year or completion of the assessment, whichever is earlier
139(5)- Revised Return- Time limit	Return filed U/S 139(4) can be revised. Such return can be filed before the end of one year from the end of the relevant assessment year or before completion of the assessment, whichever is earlier.
139(9)- Defective Return	Return shall not be considered defective merely for non-payment of self-assessment tax.

Time Limit for completion of Assessment: (Section 153)

<i>Section</i>	<i>Time Limit</i>
143/144	21 Months from the end of the relevant assessment year
147	9 Months from end of financial year in which notice U/S 148 was served
254/263/264- Fresh Assessment	9 Months from the end of the financial year in which the order U/S 254 is received by PCC or CC or PC or C or order U/S 263 or 264 passed by PC or C
153A- Search	21 Months from the end of financial year in which last authorisation U/S 132 or requisition U/S 132A was executed.
153C	21 Months from the end of the financial year in which the last U/S 132 or requisition U/S 132A was executed or 9Months from the end of the financial year in which the books of account or documents or assets seized or requisition are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

(w.e.f. 01/06/2016)

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

Processing of Return:

Before making an assessment under sub-section (3) of section 143, a return shall be processed under sub-section (1) of section 143.

TDS/TCS provisions: (w.e.f. 01/06/2016)Changes in Threshold Limits:

Section	Particulars	New Threshold
192A	Payment of accumulated balance of PF	Rs. 50,000/-
194BB	Winning from Horse Races	Rs. 10,000
194C	Payment to Contractors	Rs. 1,00,000/- (Aggregate amount)
194D	Insurance Commission	Rs. 15,000/-
194G	Commission on sale of Lottery Tickets	Rs. 15,000/-
194H	Commission or Brokerage	Rs. 15,000/-
194LA	Payment of Compensation on acquisition of Immovable Property	Rs. 2,50,000/-

Changes in Rates:

Section	Particulars	New Rate
194DA	Payment in respect of LIP	1%
194EE	Payment in respect of NSS Deposits	10%
194D	Insurance Commission	5%
194G	Commission on sale of lottery tickets	5%
194H	Commission or Brokerage	5%

Declaration in Form 15G/15H:

Section 194-I also eligible for filing self-declaration in Form no 15G/15H for non-deduction of tax at source in accordance with the provisions of section 197A.

Seller shall collect the tax at the rate of one per cent from the purchaser on sale of motor vehicle of the value exceeding ten lakh rupees and sale in cash of any goods (other than bullion and jewellery), or providing of any services (other than payments on which tax is deducted at source under Chapter XVII-B) exceeding two lakh rupees. (w.e.f. 01/06/2016)

Section 206AA shall not apply if a Non-Resident furnish alternative document instead of PAN

Section 115QA:

This section shall apply to any buy back of unlisted shares undertaken by the company in accordance with the provisions to the law relating to the companies and not necessarily restricted to Section 77A of the Companies Act 1956.

New Chapter for levy of additional Income Tax:

Accretion in income of the trust or institution shall be taxable on conversion of trust or institution in to a form not eligible for registration U/S 12AA or on merger into an entity not having similar objects or non-distribution of assets on dissolution to any charitable institution registered or approved institution under section 10(23C) within a period of twelve months from dissolution.

The accreted income shall be taxable at MMR. This levy shall be in addition to any income chargeable to tax in the hands of the entity. (w.e.f. 01/06/2016)

New Regime for Domestic Companies:

Newly setup domestic companies engaged solely in the business of manufacture or production of article or thing the income-tax payable in respect of the total income for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2017 shall be computed @ 25% at the option of the company.

Conditions:

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

Section 115BBDA: Tax on certain dividends received from domestic companies- (w.e.f. AY 2017-18)

Where the total income of an assessee, being an individual, Hindu undivided family or a firm, resident in India, includes any income exceeding ten lakh rupees, by way of dividends declared, distributed or paid by a domestic company income tax be calculated @ 10% on such dividends.

Section 115BBF: Tax on income from patent. (w.e.f. AY 2017-18)

Where the total income of an eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, the income-tax payable shall be at the rate of ten per cent.

“Eligible assessee” means a person resident in India and who is a patentee;

However, such income is subject to Section 115JB.

Changes in Section 115JB:

Where the assessee is a unit located in an International Financial Services Center and derives its income solely in convertible foreign exchange is chargeable to tax @9% on book profits. (w.e.f. AY 2017-18)

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 sub-section (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such Agreement; or

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

This amendment is proposed to be made effective retrospectively from the 1st day of April, 2001 and shall accordingly apply in relation to assessment year 2001-02 and subsequent years.

The Income Declaration Scheme, 2016

The scheme is proposed to be brought into effect from 1st June 2016 and will remain open up to the date to be notified by the Central Government in the official gazette. The scheme is proposed to be made applicable in respect of undisclosed income of any financial year upto 2015-16.

Tax is proposed to be charged at the rate of thirty per cent on the declared income as increased by surcharge at the rate of twenty-five per cent of tax payable (to be called the Krishi Kalyan cess). A penalty at the rate of twenty-five per cent of tax payable is also proposed to be levied on undisclosed income declared under the scheme.

It is proposed that following cases shall not be eligible for the scheme:

- Where notices have been issued under section 142(1) or 143(2) or 148 or 153A or 153C, or
- Where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired, or
- Where information is received under an agreement with foreign countries regarding such income,
- Cases covered under the Black Money Act, 2015, or
- Persons notified under Special Court Act, 1992, or
- Cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988.

It is proposed to provide that declarations made under the scheme shall be exempt from wealth-tax in respect of assets specified in declaration.

It is also proposed that no scrutiny and enquiry under the Income-tax Act and Wealth-tax Act be undertaken in respect of such declarations and immunity from prosecution under such Acts be provided. Immunity from the Benami Transactions (Prohibition) Act, 1988 is also proposed for such declarations subject to certain conditions.

In cases where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under the Scheme such income shall be deemed to have accrued, arisen or received, or the value of the asset acquired out of such income shall be deemed to have been acquired or made, in the year in which a notice under section 142, section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer and the provisions of the Income-tax Act shall apply accordingly.

The Direct Tax Dispute Resolution Scheme, 2016

In order to reduce the huge backlog of cases and to enable the Government to realise its dues expeditiously, it is proposed to bring the Direct Tax Dispute Resolution Scheme, 2016 in relation to tax arrear and specified tax.

The scheme be applicable to "tax arrear" which is defined as the amount of tax, interest or penalty determined under the Income-tax Act or the Wealth-tax Act, 1957 in respect of

which appeal is pending before the Commissioner of Income-tax (Appeals) or the Commissioner of Wealth-tax (Appeals) as on the 29th day of February, 2016.

The pending appeal could be against an assessment order or a penalty order. The declarant under the scheme be required to pay tax at the applicable rate plus interest upto the date of assessment.

However, in case of disputed tax exceeding rupees ten lakh, twenty-five percent of the minimum penalty leviable shall also be required to be paid.

In case of pending appeal against a penalty order, twenty-five percent of minimum penalty leviable shall be payable alongwith the tax and interest payable on account of assessment or reassessment.

Consequent to such declaration, appeal in respect of the disputed income and disputed wealth pending before the Commissioner (Appeals) shall be deemed to be withdrawn.

In addition to the above, the scheme proposes that person may also make a declaration in respect of 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 29.02.2016 (referred to as specified tax).

For availing the benefit of the Scheme, such declarant shall be required to withdraw any writ petition or any appeal filed against such specified tax before the Commissioner (Appeals) or the Tribunal or High Court or Supreme Court, before making the declaration and shall also be required to furnish a proof of such withdrawal.

Further if any proceeding for arbitration conciliation or mediation has been initiated by the declarant or he has given any notice under any law or agreement entered into by India, whether for protection of investment or otherwise, he shall be required to withdraw such notice or claim for availing benefit under this Scheme.

Section 270A:

Section 270A provides for levy of penalty in cases of under reporting and misreporting of income. The Assessing Officer, Commissioner (Appeals) or the Principal Commissioner or Commissioner may levy penalty if a person has under reported his income.

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

The provision also prescribes flat rate of tax at 30% on the under-reported income, which means the income added to the returned income and classified as under-reported income

will not be taxed at slab rate but would be taxed at the flat rate of 30% besides penalty at 50% of the tax. Thus the effective rate of tax would be 45%.

Immunity from Penalty for under reporting of income:

Section 270AA empowering the Assessing Officer to grant immunity from penalty under section 270A subject to conditions such as (i) the taxpayer pays the tax and interest payable as per the assessment order; (ii) such payment must be within the specified time; (iii) must not prefer an appeal against such assessment order; and (iv) make an application from the end of the month in which the order or assessment was received in the prescribed form.

The Assessing Officer on fulfillment of the above conditions and after the expiry of period meant for filing appeal, shall grant immunity from imposition of penalty and the consequent prosecution proceedings contained in section 276C of the Act.

This immunity however will not apply to misreporting of income and could be availed only in respect of under-reporting of income.

Equalisation Levy:

A new Chapter titled "Equalisation Levy" in the Finance Bill, to provide for an equalisation levy of 6 % of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.

No such levy shall be made if the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India or from a non- resident having a permanent establishment in India does not exceed one lakh rupees in any previous year.

No such levy shall be made where the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.

Every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India shall deduct the equalisation levy from the amount paid or payable to a non-resident in respect of the specified service.

The equalisation levy so deducted during any calendar month shall be paid by every assessee to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.

Any assessee who fails to deduct the levy be liable to pay the levy to the credit of the Central Government. Every assessee, who fails to credit the equalisation levy or any part thereof, shall pay simple interest at the rate of one per cent. of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

Changes in Transfer Pricing Regulations:

In line with the recommendations contained in OECD Action Plan 13, enhanced transfer pricing documentation requirements including 'Master file' and 'Country by Country Reporting' have been introduced with effect from Financial year 2016-17. The rules apply to international groups having consolidated annual turnover in excess of Euro 750mn (~Rs 5.4bn). While the master file needs to be maintained by every Group entity and filed locally with the tax authorities, the CBCR report generally needs to be filed by the parent entity of the group with the tax authority of its jurisdiction; however, in certain instances, the CBCR report may also need to be filed by the Indian subsidiary with the Indian tax authorities. Detailed documentation rules are yet to be notified.

Stringent penalties ranging from Rs 5,000 per day to Rs 50,000 per day introduced for failure to file the CBCR report or providing necessary supporting documents if called for by the tax authorities. Furnishing inaccurate particulars in the CBCR report may attract a penalty of Rs 500,000, unless such inaccuracies are rectified by the taxpayer within 15 days of their discovery. Further, failure to maintain / furnish the master file could also attract a penalty of Rs 500,000.

New Section 270A introduced to deal with penalty for concealment of income in place of Section 271(1)(c). As per this Section, it appears that no penalty for concealment of income can be levied on account of a transfer pricing adjustment made by the Assessing Officer so long as the Assessee has disclosed the transactions and has maintained and furnished the required particulars in respect of such transactions.

GAAR to be implemented

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SERVICE TAX

ANALYSIS OF SERVICE TAX PROPOSALS

Contributed by CA Sri Harsha |

I. Changes in the Negative List:

The activities specified in the Section 66D of the Finance Act, 1994 does not attract service tax. Such list of activities are referred to Negative List by the trade and profession. The Finance Bill, 2016 has proposed certain changes to such list of services to reduce the scope of the negative list and to accommodate certain more services to the tax base. The changes are summarised hereunder:

1. Educational Services:Existing:

Services by way of pre-school education and education up to higher secondary school or equivalent or education as a part of curriculum for obtaining a qualification recognised or education as a part of vocational education course were covered under the entry (I) of Section 66D.

Proposed:

The existing entry is proposed to be omitted vide Clause 146 of Finance Bill, 2016. Further, definition of 'educational institution' under the mega exemption notification 25/2012-ST dated 20.06.2012 is amended to incorporate the list of services covered under (I) of Section 66D of Finance Act, 1994.

Effect:

Earlier the educational services were out of service tax net by virtue of entry in the negative list. However, with this proposal, such entry is dropped from the negative list services and got incorporated in the mega exemption notification. Hence, there shall not be any change in taxation of such services. Educational services shall continue to be exempt from the service tax.

With effective from:

Enactment of Finance Bill, 2016.

2. Services of Transportation of Passengers by a Stage Carriage:Existing:

Services of transportation of passengers with or without accompanied belongings by stage carriage were covered under the negative list and hence were out of service tax.

Proposed:

The existing entry is proposed to be omitted vide Clause 146 of Finance Bill, 2016. Further, Entry No 23 of mega exemption notification 25/2012-ST dated 20.06.2012 has been amended to incorporate the above omitted entry with minor change.

Effect:

Services of transportation of passengers in non-air conditioned stage carriage continues to be exempted in light of changes to the exemption notification. However, the services provided by air-conditioned stage carriage shall attract service tax. An abatement of 60% with a condition that no credit of inputs, input services and capital goods shall be taken is provided by making changes to the abatement notification 26/2012-ST dated 20.06.2012.

With effective from:

01.06.2016.

3. Services by way of transportation of goods by an aircraft or vessel:Existing:

Services by way of transportation of goods by an aircraft or vessel from a place outside India to the customs station of clearance in India are covered under Entry (p) of Section 66D of Finance Act, 1994.

Proposed:

The existing entry is proposed to be omitted vide Clause 146 of Finance Bill, 2016. Further, a new entry vide 53 under mega exemption notification 25/2012-ST dated 20.06.2012 has been added to exempt services of transportation of goods by aircraft from a place outside India upto the customs clearance in India.

Effect:

While moving the services from negative list to the exemption notification, the phrase 'vessel' has been dropped. Hence, the services by way of transportation of goods by vessel from a place outside India to the customs clearance shall be subjected to service tax. An abatement of 70% with a condition that no credit of inputs and capital goods shall be taken is provided by making changes to the abatement notification 26/2012-ST dated 20.06.2012.

With effective from:

01.06.2016.

II. Changes in Declared Services:

The definition of 'service' includes certain list of services specified in Section 66E called as 'declared services'. Such list of services are declared as services and brought with an intention to clearly spell certain activities as services, in order to eliminate the litigation arising from such ambiguity, if not declared.

Proposal:

A new entry (j) is proposed to be inserted to clarify that assignment of government of the right to use the radio-frequency spectrum and subsequent transfers shall be a service and not a sale of intangible goods to fall in the ambit of VAT laws.

Effect:

- By virtue of the above entry, the spectrum allocation by Government of India shall be subjected to service tax. Since the said services are covered under the reverse charge mechanism, the person receiving such services shall be subjected to service tax in the hands of the service receivers.
- It is very important to note that Notification No 7/2016-ST dated 18.02.2016 provides exemption from service tax in cases of receipt of services from government only to business entities with turnover less than Rs ten lakhs.

With effective from:

- 01.04.2016

III. Changes to Section 67A – Date of Determination of Rate of Tax:

- The existing Section 67A is contradictory with the Point of Taxation Rules, 2011. As per Section 67A the date of determination of rate of tax is as per the time when the taxable service has been provided or agreed to be provided. However, the rate of tax as per Point of Taxation Rules, 2011 specifies otherwise. Hence, there existed a controversy as to whether 67A is to be applied or Point of Taxation Rules has to be applied.
- A detailed article on such subject matter has been written in our journal vide <http://www.sbsandco.com/wp-content/uploads/2015/01/Jun2015-e-Journal.pdf>
- In order to arrest such controversy, the Finance Bill, 2016 vide Clause 148 has inserted a sub-clause stating that the time or point in time with respect to rate of service tax shall be determined as per Point of Taxation Rules, 2011.

IV. Changes in Section 73 – Recovery of Service Tax:

- As per Section 73 of Finance Act, 1994, the central excise officer can serve notices within 1 months from the relevant date for the cases of short payment, non- payment, short levy, non – levy or erroneous refund.

- The said period of 18 months is replaced with 30 months vide Clause 149 of Finance Bill, 2016. Hence, now the central excise officer can go back for an additional period of one year when compared to the current situation. The proposed period of 30 months shall also be applicable for Section 73(3) instances.

V. Changes to Section 75 – Interest on Delayed Payment of Service Tax:

- A new proviso is added to levy interest on such instances where any amounts are collected as service tax but not paid by the due date. The interest rates notified vide Notification No 12/2014-ST dated 11.07.2014 is rescinded and new interest rates vide Notification No 13/2016-ST dated 01.03.2016 are notified;
- Vide above notification, the rate of interest is as follows:
 - o 24% - where service tax is collected and not paid;
 - o 15% - other than the above situation.
- Further, the reduction of 3% of interest rate for assesseees whose value of taxable services does not exceed 60 lakhs rupees still exists and accordingly interest rate shall be 12% for such assesseees if they are not falling under the 24% instance.

VI. Changes to Section 78A – Penalty for Offences by Director, etc of Company:

- An explanation is introduced to state that the proceedings initiated on any person under Section 78A shall be concluded once the proceedings on the company under Section 73(1) or first proviso to Section 76 or Section 78 gets concluded.
- That is to say in all cases where the penalty on the company is concluded based on the first proviso to Section 76 or 78 (penalty restriction to 50%), in all such cases, the proceedings on the directors shall also be deemed to be concluded.

VII. Changes to Section 89 – Offences and Penalties:

- The monetary limit for imprisonment for offences mentioned in Section 89 (knowingly evades payment of service tax, irregular availment and utilisation of Cenvat Credit, maintains false books of accounts or fails to supply information and collects amount as service tax and fails to pay such amount) has been increased from 50 lakhs rupees to 2 Crores rupees.
- Hence, cases cannot be booked for instances where the quantum of service tax involved is less than 2 Crores.

VIII. Changes to Section 90 & 91 – Cognizance of Offences & Power to Arrest:

- Further, Section 90 has been amended to restrict imprisonment only to situations where service tax is collected but not paid if the said amount is more than Rs 2 Crores.

Insertion of New Sections –a. Section 101 – Entry 12(d) of Notification No 25/2012-ST dated 20.06.2012:

- The definition of governmental authority was notified from 30.01.2014 and hence services of construction and related in respect of canal, dam or other irrigation works provided to governmental authority were exempted from such date;
- However, vide Clause 156 of Finance Bill, 2016, a retrospective exemption has been provided from 01.07.2012 to 29.01.2014 to exempt such services provided to governmental authorities;
- Service tax paid by the services providers can be claimed as refund within 6 months from the date of assent of the subject Finance Bill.

b. Section 102 – Entry 12(a), (c) and (f) of Notification No 25/2012-ST dated 20.06.2012:

- With effective from 01.04.2015, services provided to government, local authority or governmental authority (in respect of civil structure for other than business or profession, structure meant predominantly for educational, clinical or art or cultural establishment and residential complex for persons specified in Explanation 1 to 65B (44) of Finance Act, 1994) were made taxable;
- Such exemption is being restored vide Clause 156 of Finance Bill to exempt such services from 01.04.2015 to 29.02.2016 subject to a condition that such contracts being entered prior to 01.03.2015 and stamp duty being paid, where applicable before such date;
- Service tax paid by the services providers can be claimed as refund within 6 months from the date of assent of the subject Finance Bill.

c. Section 103 – Entry 14(a) of Notification No 25/2012-ST dated 20.06.2012:

- Construction services provided to airport or port were exempted till 01.04.2015. With effective from such date, the exemption has been withdrawn;
- Such exemption is being restored vide Clause 156 of Finance Bill to exempt such services from 01.04.2015 to 29.02.2016 subject to a condition that such contracts being entered prior to 01.03.2015 and stamp duty being paid, where applicable before such date and Ministry of Civil Aviation or Ministry of Shipping as the case may be certifies that the contract has been entered prior to 01.03.2015;
- Service tax paid by the services providers can be claimed as refund within 6 months from the date of assent of the subject Finance Bill.

X. Krishi Kalyan Cess:

- A new cess called Krishi Kalyan Cess is being introduced with effect from 01.06.2016 on all taxable services at a rate of 0.5% for the purposes of financing and promoting initiatives to improve agriculture or any other purposes relating thereto;

- The cess is being collected as service tax. Hence, the cess shall be applied on the taxable value and not on the service tax amount;
- Hence, with effect from 01.06.2016, the total service tax shall be 15% [14% - Service Tax, 0.5% - Swachh Bharath Cess, 0.5% - Krishi Kalyan Cess];
- Credit of Krishi Kalyan Cess paid on input services shall be allowed to use for payment of such cess on the services provided by the service provider.

XI. Changes in the Mega Exemption Notification:

The exemptions to certain activities are governed by the Notification No 25/2012-ST dated 20.06.2012 which is colloquially referred to Mega Exemption Notification. Certain changes to such exemption notification are proposed vide Notification No 9/2016-ST dated 01.03.2016. Some of the changes are covered under the above paragraphs at appropriate places. The balance changes are summarised hereunder:

1. Exemptions Withdrawn:

Entry 6 (c)

Services provided by a person represented on an arbitral tribunal to an arbitral tribunal are exempted from service tax. Now, the said exemption is being withdrawn and accordingly services provided by such person are subjected to service tax.

Entry 14(a):

- Services by way of construction, erection, commissioning, or installation of original works pertaining to monorail and metro are excluded from the said entry and accordingly such services shall be subjected to service tax.
- However, where contracts entered for provision of above services to monorail or metro prior to 01.03.2016 on which appropriate stamp duty was paid shall remain exempt.

Entry 23 (c)

Transportation of passengers with or without accompanied belongings by ropeway, cable car or aerial tramway are taxable since the exemption is withdrawn.

2. Exemptions Added:

Entry 9B:

- Following education programmes provided by IIM to its students are exempt from service tax:
 - o 2 year full time residential post graduate programme in management for the PGDM for which admissions are made on the basis of CAT;
 - o Fellow programme in management;
 - o 5 year integrated programme in management.

- However, services provided by IIM in respect of executive development programme are not covered under the above exemption and continue to be subjected to service tax.

Entry 9C:

Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under Skill Development Initiative Scheme.

Entry 9D:

Services provided by training providers (project implementation agencies) under Deen Dayal Upadhyaya Grameen Koushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by NCVT.

Entry 12A:

Services provided to government, local authority or governmental authority (in respect of civil structure for other than business or profession, structure meant predominantly for educational, clinical or art or cultural establishment and residential complex for persons specified in Explanation 1 to 65B (44) of Finance Act, 1994) are exempted till 31.03.2020.

Entry 13(ba):

Services by way of construction, erection etc. of a civil structure or any other original works pertaining to the "In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation" component of Housing for All (HFA) (Urban) Mission / Pradhan Mantri Awas Yojana (PMAY), except in respect of such dwelling units of the projects which are not constructed for existing slum dwellers, is being exempted from service tax.

Entry 13(bb):

Services by way of construction, erection etc., of a civil structure or any other original works pertaining to the "Beneficiary-led individual house construction/ enhancement" component of Housing for All (HFA) (Urban) Mission/ Pradhan Mantri Awas Yojana (PMAY) is being exempted from service tax.

Entry 14:

Services by way of 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 housing project approved by the competent authority under any housing scheme of a state government.

Entry 14A:

Services by way of construction, erection, commissioning or installation of original works pertaining to airports or ports are being exempted till 31.03.2020.

Entry 26(q):

Services of general insurance business provided to Niramaya Health Insurance Scheme implemented by trust contained under provisions of National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

Entry 26C:

Services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory Development Authority.

Entry 49:

Services provided by Employee Provident Fund Organisation to persons governed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

Entry 50:

Services provided by Insurance Regulatory and Development Authority of India to insurers under Insurance Regulatory and Development Authority of India Act, 1999.

Entry 51:

Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.

Entry 52:

Services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.

3. Exemptions Amended:

Entry 6 (b):

- Services provided by senior advocate are subjected to service tax. This is the first time a distinction is brought in among the advocates under the service tax law. The phrase 'senior advocate' has defined under the said notification to mean the as in Section 16 of Advocates Act, 1961.

- All advocates who are designated as Senior advocates by Supreme Court and High Court by virtue of Section 16 of Advocates Act, 1961 shall be senior advocates for the purposes of service tax laws.
- Services provided by such senior advocates to other advocate or legal firm of advocates and business entities are subjected to service tax. However, an exemption is provided if the senior advocate provides his/her services to a person other than the person ordinarily carrying an activity relating to commerce, industry or any other business or profession.

However, it is important to note that such services provided by senior advocate are not mentioned under the reverse charge mechanism. Hence, the senior advocates have to register under service tax and collect the service tax from the service receivers.

Entry 16:

Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre are exempted, if the consideration charged for such performance is not more than one lakh fifty thousand rupees. The limit has been increased from 1 lakh to 1.5 lakh.

XII. Exemption to Information Technology Software recorded on Media with RSP:

- Services in relation to ITS are exempted when such ITS is recorded on media and obliged to declare Retail Sale Price as per Legal Metrology Act, 2009 subject to a condition that excise duty and appropriate customs duty (in case of import) are paid.
- This exemption is introduced to address the issue of double taxation. However, services pertaining to customised software recorded on media where retail sale price is not required to be mentioned continues to be subjected to service tax.

XIII. Addition of Bio Incubators:

- Services provided by Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) are exempted from service tax by virtue of Notification No 32/2012-ST dated 20.06.2012.
- With effective from 01.04.2016, the said exemption notification has been made applicable to Bio-Incubators recognized by the Biotechnology Industry Research Assistance Council, under Department of Biotechnology, Government of India.

XIV. Changes in Notification No. 26/2012-ST dated 20.06.2012 – Abatements:

Notification No 26/2012-ST dated 20.06.2012 deals with abatement granted for certain specified services subject to certain conditions. The Finance Bill has proposed certain changes vide Notification No 08/2016-ST dated 01.03.2016. All the changes are effective from 01.04.2016:

- For Transportation of Goods by Rail by any other person than Indian Railway:

Earlier, transportation of goods by rail provided by Indian railway was only covered. Now, such

services provided by any other person than Indian railway is brought into tax net. The rate of abatement specified is 60%.

Hence, service tax shall be chargeable on 40% of the value of transportation services subject to a condition that cenvat credit of input, input services and capital goods cannot be availed.

➤ For Transportation of Passengers and Goods by Rail:

Earlier, the condition of non-availment of cenvat credit of input, input services and capital goods has been specified for availing the abatement. However, vide this Finance Bill, the condition was restricted to inputs and capital goods.

Hence, Indian railways can avail the credit of input services used for providing the above services.

➤ For services of GTA in relation to transportation of used household goods:

Earlier transportation services of GTA are only covered. Vide this Finance Bill, transportation services of GTA in relation to transportation of used household goods are brought into tax net.

The abatement specified is 60% and hence the taxable value shall be 40% subject to a condition of non-availment of cenvat credit on inputs, capital goods and input services.

➤ For services provided by Foreman of a chit fund in relation to chit:

The services provided by Foreman of a chit fund was subjected to an abatement of 30% and hence the taxable value shall be 70% subject to a condition of non-availment of cenvat credit on inputs, capital goods and input services.

➤ For Services provided by Tour Operator:

Tour, only for the purposes of arranging or booking accommodation for any person –

An abatement of 90% has been provided with a condition that credit of input services only can be availed and the invoice shall include the cost of accommodation.

Tours Other than above:

➤ An abatement of 70% has been provided with a condition that credit of input services only can be availed.

➤ For Construction Services provided in relation to building, complex or civil structure:

Earlier an abatement of 75% used to exist for residential apartments. And for residential apartments with a carpet area less than 2000 square feet or cost of Rs 1 crore, the abatement used to be 70%. Now, all the apartments are subjected to 70% and hence the taxable value shall be 30%.

➤ For Rent – A – Cab services:

An explanation is inserted to include the fair market value of all goods (including fuel) and services provided by service recipient in the gross amount charged.

XV. Changes in Point of Taxation Rules, 2011:

Rule 5 of Point of Taxation Rules, 2011 specify the point of taxation in case of new services. As per the said rule, no tax shall be required to be paid under the following scenarios:

1. Invoice has been issued and the payment received against such invoice before service become taxable;
2. If payment has been received before the service becomes taxable and invoice has been issued within 14 days from the day when the service is taxed for the first time.

Two explanations are inserted to Rule 5 to clarify that the:

1. Rule 5 shall be applicable mutatis mutandis in case of new levy on services
2. Such new levy or tax shall be payable on all cases other than specified in Rule 5

XVI. Changes in the Notification No 30/2012-ST dated 20.06.2012- RCM / PCM:

- The services provided by mutual fund agents/distributors to a mutual fund or asset management company were under reverse charge that is to say the asset management or mutual fund company is required to pay service tax on services received.
- Now, with effective from 01.04.2016, the reverse charge has been taken away and accordingly the service tax has to be paid by the mutual fund agents/distributors.

XVII. Changes in Service Tax Rules, 1994:

The Service Tax Rules, 1994 provides for various procedural matters relating to person responsible for payment of service tax, the point of time for payment of service tax, method of remittance and various other issues. The Finance Bill proposes to carry certain amendments vide Notification No. 19/2016-ST dated 01.03.2016 which are summarised as below. All the changes are with effective from 01.04.2016:

➤ Rule 6:

The service tax for one person company whose aggregate turnover from one or more premises is fifty lakhs or less in the previous financial year, such one person company can pay service tax on quarterly basis instead of monthly basis.

Further, one person company whose aggregate turnover from one or more premises is fifty lakhs or less in the previous year, such one person company can opt to pay service tax on receipt basis instead of adopting Point of Taxation Rules, 2011.

➤ Rule 6(7A):

An insurer carrying a life insurance business can pay service tax on 1.4% of the single premium charged from the policy holder in case of single premium annuity policies.

➤ Rule 7, 7B and 7C:

Every assessee in addition to ST-3 returns shall file an annual return for the financial year to which the return relates in such form and manner before 30th November of the succeeding financial year.

The central government subject to such conditions or limitations, specify such assessee or class of assesses who may not be required to file the annual return.

The person who has filed annual return can revise such return within one month from the date of submission of such return.

The person who has filed to file the return shall pay a penalty of 100/- per day during the period of delay in filing such return subject to a maximum of 20,000/-.

XVIII. Introduction of Indirect Tax Dispute Resolution Scheme:

➤ A new scheme called Indirect Tax Dispute Resolution Scheme, 2016 is introduced vide Chapter XI of the Finance Bill, 2016. The salient features of the scheme are hereunder:

➤ Who are eligible for the scheme:

1. The scheme shall come into force with effect from 01.06.2016;
2. It shall be applicable to the declarations made upto 31.12.2016;
3. Any assessee whose appeal is pending before Commissioner (Appeals) as on 01.03.2016 is eligible for filing of declaration under the said scheme;

➤ Who are not eligible under the scheme:

1. The impugned order is in respect of search and seizure;
2. Prosecution of any offence punishable has been instituted before 01.06.2016;
3. Impugned order is in respect of narcotic drugs or prohibited goods;
4. Impugned order is in respect of any offence punishable under IPC, Narcotic Drugs and Psychotropic Substance Act, 1985 or POCA, 1988;
5. Any detention order passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974

➤ Modus operandi of the scheme:

1. Any eligible person can make a declaration before the designated authority on or before 31.12.2016 in such form and manner;
2. The designated authority shall acknowledge the declaration in such form and manner;
3. The declarant shall pay an amount = service tax + interest + 25% of penalty imposed in the appealed order within 15 days from the date of acknowledgment issued by the designated authority;
4. The declarant shall intimate the payment to the designated authority within 7 days along with the proof thereof;
5. On receipt of such payment details, the designated authority shall pass an order of discharge of dues within 15 days from the receipt of the intimation from the declarant;

➤ Benefits from Declaration:

On passing of discharge of dues by the designated authority, the appeal pending before Commissioner (Appeals) shall stand disposed and the declarant shall get immunity from all proceedings under the act and no matter relating thereto shall be reopened thereafter in any proceedings under the Act before any court or authority.

➤ Consequences of Order made under the Scheme:

The amount paid under the scheme shall not be refunded and shall not be deemed to be an order of merits and has no binding effect.

XIX. Changes in Cenvat Credit Rules:

Rule 2 - Definitions:

➤ Capital Goods:

The definition is amended to include:

1. Wagons of sub-heading 860692 is included the definition of capital goods;
2. Capital goods used in the office of the manufacturer shall be allowed;
3. Capital goods used outside the factory of manufacture for pumping of water for captive consumption are now eligible.

➤ Exempt Services:

The definition of 'exempted service' has been amended to exclude the following:

1. Which is exported in terms of Rule 6A of Service Tax Rules, 1994;
2. By way of transportation of goods by a vessel from customs station in India to a place outside India – This will allow shipping companies to take credit on inputs and input services used in providing the service.

➤ Input:

The definition is amended to include:

1. Goods used for pumping of water for captive consumption;
2. All capital goods which have a value upto ten thousand per piece;

➤ Input Service Distributor:

The definition of ISD is amended to pass on the cenvat credit to the outsourced manufacturing unit along with manufacturer or provider of service or producer.

Rule 3 – Cenvat Credit:

The said rule is amended to state that cenvat credit shall not be utilised for payment of Infrastructure Cess leviable on manufactured goods.

Rule 4 – Conditions for allowing Cenvat Credit:

Jigs, Moulds and Dies or Tools:

The cenvat credit on jigs, fixtures, moulds and dies or tools falling under Chapter 82 of Central Excise Tariff Act can be availed even such goods are directly sent to another manufacturer or job worker without bringing to his own premises. This was aligned with inputs and capital goods which were amended last year.

Service Tax paid on Right to Use Natural Resources:

- Cenvat Credit of service tax paid on charges paid or payable for the services provided by way of assignment, by the government or any other person, of the right to use natural resources shall be spread over a period of time as the period for which such right to use has been assigned that is to say Eligible Cenvat Credit shall be arrived by using the formula – Service Tax paid on charges payable for the assignment of right to use/No. of Years for which rights have been assigned. However, the said formula does not apply to instances where annual or monthly user charges are paid to use such natural resources.
- If the manufacturer or service provider transfers such right to use natural resource to another person during a financial year against a consideration, he shall be eligible to take the balance of cenvat credit to the extent it does not exceed the service tax payable on the consideration charged by him.

Rule 6 – Obligation of Manufacturer or Provider of Output service:

Rule 6(1):

- The cenvat credit of input and input services used in manufacture of exempted goods or provision of exempted service is not allowed and such credit not allowed shall be calculated and paid by manufacturer or output service provider as detailed below.
- An explanation is introduced to clarify that exempted goods shall include non- excisable goods cleared for a consideration from the factory and value of the said goods shall be the invoice value, if available or else reasonable value has to be arrived using valuation methodology contained in Excise Act.
- Another explanation is introduced to clarify exempted services includes such services which are out the definition of service and value of said services shall be the value of invoice/agreement/contract, if available or else reasonable value has to be arrived using valuation methodology contained in Finance Act.

Rule 6(2):

- A manufacturer who is exclusively engaged in manufacture of exempted goods or a service provider who is exclusively engaged in provision of exempted service shall not be eligible for cenvat credit.

Rule 6(3):

- Manufacturer or OSP has two options to pay the common credit used for both taxable and exempted activities:
 - i. Pay an amount equal to 6% of value of exempted goods and 7% of the value of exempted services subject to a maximum of the total credit available at the end of the period to which the payment relates;
 - ii. Pay an amount as determined under sub-rule 3A – The manufacturer or output service provider shall intimate in writing to the jurisdictional uperintendent regarding the availment of this option and other details. The procedure for arriving the eligible credit as per below:

Provisional Basis

T	Total Credit	Total CC on inputs and input services used in a month
A	Ineligible Credit	CC of Inputs and Input Services used exclusively for manufacture of exempted goods/provision of exempted services
B	Eligible Credit	CC of Inputs and Input Services used for exclusively for manufacture of non-exempted goods/provision of non-exempted services
C	Common Credit	$T - (A+B)$
D	Ineligible Common Credit	$C * E/F$
E	Exempted Turnover	Value of Exempted Services + Value of Exempted Goods during the preceding FY
F	Total Turnover	Value of Non Exempted Services + Value of Non-exempted Goods + E
G	Eligible Common Credit	$C - D$

Note:

1. For E & F, if the turnovers are not available for preceding FY, then 50% of the common credit shall be treated as ineligible
2. Values at B & G can be retained by the manufacturer or OSP
3. Values at A & D shall be paid provisionally, else interest @ 15% shall be payable from due date to date of payment

Actual Basis:

T (Annual)	Total Annual Credit	Total CC on inputs and input services used in the year on actual basis
A (Annual)	Annual Ineligible Credit	CC of Inputs and Input Services used exclusively for manufacture of exempted goods/provision of exempted services on actual basis
B (Annual)	Annual Eligible Credit	CC of Inputs and input Services used for exclusively for manufacture of non-exempted goods/provision of non-exempted services on actual basis
C (Annual)	Annual Common Credit	$T(\text{Annual}) - [A(\text{Annual}) + B(\text{Annual})]$
D (Annual)	Annual Ineligible Common Credit	$C(\text{Annual}) * H/I$
H	Exempted Turnover	Value of Exempted Services + Value of Exempted Goods during the year
I	Total Turnover	Value of Non Exempted Services + Value of Non - exempted Goods + H

Note:

1. Manufacturer or OSP shall pay the difference amount = $\{[A(\text{Annual}) + D(\text{Annual})] - \{(A+D) \text{ aggregated for the whole year}\}\}$
2. The said payment is required only if the former of the two amounts is greater than the later
3. Manufacturer or OSP has to pay the above amount by 30th June of succeeding FY, else interest @ 15% shall be payable from 30th June till date of actual payment
4. If the aggregate values are more than the annual values, the manufacturer or OSP can take the credit
5. Manufacturer or OSP shall intimate the Superintendent regarding the payment or adjustment made thereof with certain details.

Rule 6(3AA):

Where manufacture or OSP fails to opt for any of the options provided above, then the Central Excise Officer has to allow such manufacturer or OSP to adopt the payment of cenvat credit as mentioned in (c) of sub-rule 3A, that is on annual basis with interest at 15% per annum from the due date for payment of each month till the date of payment thereof.

Rule 6(3AB):

Manufacturers or OSP who has opted for payment of cenvat credit vide existing option (ii) or (iii) can continue till 30th June, 2016.

Rule 6(3B):

Banking companies and Financial Institutions including NBFCs can also exercise the options above apart from their regular 50% reversal.

Rule 6(4):

- The credit of capital goods exclusively used for manufacture of exempted goods or provision of exempted services was not eligible. However, if such capital goods are subsequently used for manufacture of excisable goods or provision of taxable services, the credit stands eligible as of now.
- With the current amendment, the credit cannot be availed if such capital goods are used for 2 years from the date of commercial operations. If capital goods are received after commercial operations, 2 years has to be reckoned from the date of installation of such capital goods. However, the subject amendment shall not effect the SSI/SSP assesses.

Rule 7 – Manner of distribution of credit by ISD:

- The definition of ISD is amended to include the credit distribution to the outsourced manufacturing unit. 'outsourced manufacturing unit' means:
 - i. Job worker who is required to pay excise duty as per Rule 10A of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000; or
 - ii. Manufacturer who manufactures goods for ISD under a contract, bearing the brand name of such ISD and is liable to pay excise duty as per Section 4A of Excise Act.
- Credit of service tax attributable as input service to a particular unit shall be distributed to the said unit;
- Credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be pro rata on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period.

- the credit of service tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period;
- out sourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;
- Only credits post 01.03.2016 are eligible for distribution by ISD to outsourced manufacturing units.

Rule 7B:

- Rule 7B is being inserted in Cenvat Credit Rules, 2004 so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units.
- It is also provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply, mutatis mutandis, to such a warehouse of the manufacturer.

Rule 9A:

Rule 9A is substituted to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form as specified by a notification.

Rule 14:

- The existing sub- rule (2) of rule 14 prescribes a procedure based on FIFO method for determining whether a particular credit has been utilized. The said sub-rule is being omitted.
- Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

XX. Miscellaneous Changes: Lottery Services:

- The services provided by lottery distributor or agent on behalf of state government were extensively dealt in the judgment of Future Gaming Solutions India Private Limited vs Union of India & Othrs 2013-TIOL-904-HC- Sikkim-ST and held as under:

1. Lottery is an actionable claim and accordingly stand out of the definition of 'service' – In order to overcome this part of the judgment, the Finance Act, 2015 has amended the definition of 'service' to specifically include the transactions of promotion, marketing, organising, selling of lottery or facilitating in organising lottery as not transactions in money or actionable claim.
2. The relation between the lottery agent and State Government is of buyer and seller and the lottery agent cannot be called as agent of State Government – In order to overcome this part of judgment, the current amendment is carried out to state that transaction between the agent and State Government is of principal and agent and not principal to principal.

Rebate of Services used beyond Factory – 41/2012 read with 1/2016

- Notification No. 41/2012- ST, dated the 29th June, 2012 was amended vide notification No.1/2016-ST dated 3rd February, 2016 so as to, inter alia, allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods.
- The said amendment is being given retrospective effect from the date of application of the parent notification, i.e., from 01.07.2012. Time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected in absence of amendment carried out vide notification No.1/2016-ST dated 3rd February, 2016.

Incentives received by Air Travel Agents from Computer Reservation System Companies:

- High Level Committee (HLC) in their Second Half Yearly Report in December 2015 have stated that Air Travel Agents (ATA) reportedly have been representing to CBEC since 2012 for a clarification about levy of service tax on the incentives received by them from the Companies providing Computer Reservation System (CCRS) like Galileo, Amadeus, etc. The CCRS do not charge any amount for providing access to their internet system for booking of air tickets by the ATAs. Rather, the CCRS are providing certain incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system.
- It is clarified that incentives received by the Air Travel Agents (ATAs) from the Companies providing Computer Reservation System (CCRS) are for using the software and platform provided by the CCRS like Galileo, Amadeus, etc. The CCRS are providing these incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system.
- Thus, the service provided by CCRS is to the Airlines and Air Travel Agent is promoting the service provided by CCRS to Airlines. Thus, the service provided by the ATAs to CCRS is neither covered in the negative list (Section 66D of the Finance Act, 1994) nor exempt by a notification. Therefore, service tax is leviable on the same.

Refund of Cenvat Credit:

- Rule 5 provides for refund of cenvat credit of excise duty and service tax when the goods or services are exported subject to conditions mentioned in Notification No 27/2012-CE(NT) dated 18.06.2012.

- As per the said notification, the time limit to file refund claim is before the expiry of one year of period specified in Section 11B of Central Excise Act, 1944. However, Section 11B does not talk about the relevant date for export of service and hence the general time limit is being made applicable to such exports also.
- In order to put rest to the notification is amended and time limit for reckoning one year for export of services is specified. Now, the reckoning of one year for service provider is made clear vide Notification 14/2016-CE(NT) dated 01.03.2016. Accordingly, refund has to be filed before the expiry of one year from the date of:
 - i. Receipt of payment in convertible foreign exchange, where provision of service has been completed prior to receipt of such payment;
 - ii. Issue of invoice, where payment for the services had been received in advance prior to the date of issuance of invoice.

Table A: Changes – With effective from 01.03.2016

S. No	Changes	With effective from
1	Services provided by IIM – Exemption	01.03.2016
2	Entry 12A – Services provided to Govt, LA and GA	01.03.2016
3	Entry 13(ba) and 13(bb) – Exemption	01.03.2016
4	Entry 14(a) – Exclusion of Monorail & Metro – Exemption	01.03.2016
5	Entry 14(c) – 60 Sq Meter Houses Construction – Exemption	01.03.2016
6	Entry 14A – Airport and Port – Exemption	01.03.2016
7	Changes to Rule 5 of POT Rules, 2011	01.03.2016
8	Exemption to ITS in RSP cases	01.03.2016
9	Relevant Date for Export of Services – Refund under Rule 5 CCR	01.03.2016

Table B: Changes – With effective from 01.04.2016

S. No	Changes	With effective from
1	Changes to all exemptions – except specified in Table A & C	01.04.2016
2	Changes to abatement Rates – 26/2012	01.04.2016
3	Reverse Charge – Manpower Supply, Mutual Fund, Lottery Agent	01.04.2016
4	Amendment in availment of Cenvat in case of RCM	01.04.2016
5	Exemption to GTA services to Land Customs Station	01.04.2016
6	Changes to Abatement Rates	01.04.2016
7	Exemption to Bio-Incubators	01.04.2016
8	Changes to Service Tax Rules, 1994	01.04.2016
9	Changes to Cenvat Credit Rules, 2004	01.04.2016

Table C: Changes – With effective from 01.06.2016

S. No	Changes	With effective from
1	Omission of Stage Carriage services – 66D(o)(i)	01.06.2016
2	Exemption to Non – Air Conditioned Stage Carriage – Entry 23(bb)	01.06.2016
3	Abatement to Air – Conditioned Stage Carriage – S No 9A	01.06.2016
4	Omission of Transpiration of Goods by Aircraft or Vessel – 66D(p)	01.06.2016
5	Exemption to transportation of goods by aircraft – Entry 53	01.06.2016
6	Applicability of Krishi Kalyan Cess	01.06.2016

Table D: Changes – With effective from Enactment of Finance Bill, 2016

S. No	Changes	With effective from
1	Omission of Educational Services from Negative list – 66D (l)	From Enactment of FB
2	Definition of 'Educational Institution' – Notification 25/2012	From Enactment of FB
3	Interest Rates – Section 75	From Enactment of FB
4	Refund of Service Tax paid vide Entry 12 (d) – Notification 25/2012	From Enactment of FB
5	Refund of Service Tax paid vide Entry 12 (a), (c) and (f) - 25/2012	From Enactment of FB
6	Refund of Service Tax paid vide Entry 14(a) - Notification 25/2012	From Enactment of FB
7	Inclusion of Section 67A in POT Rules, 2011	From Enactment of FB
8	Lottery - Definition Amendment	From Enactment of FB
9	Amendment in Section 89, 90 and 91	From Enactment of FB
10	Section 73 – 18 months to 30 months	From Enactment of FB
11	Explanation to Section 78A	From Enactment of FB
12	Retrospective Amendment of 41/2012	From Enactment of FB

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EXCISE TAX

ANALYSIS OF EXCISE PROPOSALS

Contributed by CA Manindar |

I. Changes in Central Excise Act, 1944:

a. Relaxation of conditions for giving effect to a notification:

- A notification becomes effective from the date specified in the said notification. In case where no date is specified, a notification becomes effective on the date on which it is issued by Central Government for publication, published accordingly and offered for sale in terms of Section 5A of the Central Excise Act, 1944.
- It is proposed to amend this section to relax the conditions relating to publication and offering for sale. In view of this amendment, such notifications where no effective date is specified become effective from the date on which they are issued by Central Government.

b. Extension of normal period of limitation from one year to two years:

- In terms of section 11A of the Central Excise Act, 1944, the time limit specified in cases where fraud, collusion, wilful misstatement etc are not involved, to recover duties not levied or paid, short paid or erroneously refunded shall be one year from the date of filing return. It is proposed to increase this time limit from one year to two years.

c. Power of Board to issue orders, instructions or directions extended:

- In terms of Section 37B of the Central Excise Act, 1944, CBEC is empowered to issue orders, instructions or directions to central excise officers in matters relating to uniformity in classification of excisable goods, with respect to levy of duties on such goods.
- It is now proposed to amend this section in order empower CBEC to issue such orders, instructions or directions for implementation of any of the provisions of the Act.

The above proposed amendments shall be effective from the date of enactment of Finance Act, 2016

d. Amendments to Third Schedule to Central Excise Act, 1944:

- The third schedule to the Central Excise Act, 1944 contains a list of excisable goods. With respect to these goods, the activities of packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer amounts to deemed manufacture.
- This schedule is proposed to be amended by including the following items.
 - o All goods falling under heading 3401 and 3402
 - o Aluminium foils of a thickness not exceeding 0.2 mm;

- o Wrist wearable devices commonly known as smart watches
- o Accessories of motor vehicle.

This provision is effective immediately i.e. from 01.03.2016 owing to Provisional Collection of Taxes Act, 1931

II. Duty related changes pertaining to readymade garments and other textile articles:

a. Optional 2% rate:

- At present excise duty is payable at the rate of 12.5% with CENVAT Credit facility on readymade garments and other made up articles of textiles falling under chapter 61, 62 and 63. With effect from 01.03.2016, an optional duty payment at the rate of 2% without the benefit of claiming CENVAT Credit on inputs and input services is extended to these goods where such goods bear a brand name or sold under a brand name and the retail sale price declared on them is Rs. 1,000/- and above.

b. Increase in Tariff Value of articles of apparel and clothing accessories:

- In case of articles of apparel and clothing accessories whether or not knitted or crocheted, all sorts falling under chapter 61 or 62, excise duty is payable on the basis of tariff based valuation. The tariff valuation prescribed for these goods is 30% of the retail sales price declared. With effect from 01.03.2016, the tariff valuation of these goods is increased to 60% of the retail sale price declared.

III. Excise Duty on Articles of Jewellery:

- With effect from 01.03.2016, excise duty is payable on manufacture of articles of jewellery except silver jewellery not studded with diamonds and other precious stones at the rate of 1% without avilment of CENVAT Credit on inputs and capital goods or at the rate of 12.5% with CENVAT Credit.
- Higher Threshold Limit:
 - o A higher threshold limit has been prescribed for manufacturers of jewellery. They can claim SSI exemption for first clearances upto a value of Rs. 6 crores in the current financial year provided that there total value of clearances in the preceding financial year does not exceed Rs. 12 crores.
 - o For clearances in the month of March, 2016, SSI exemption benefit can be claimed for a turnover upto Rs. 50 lakhs provided the value of clearances in the FY2014-15 should not exceed Rs. 12 cr.
- Optional Centralised Registration System:
 - o The jewellery manufacturers having more than one factory or premises are given the option of centralised registration by registering at the factory/premises where centralised billing or accounting is undertaken.

IV. Increase in rate of clean energy cess:

- Clean energy cess is being levied on coal, lignite and peat. This cess is presently being levied at Rs.200 per tonne. With effect from 01.03.2016, this cess is being levied at Rs. 400 per tonne.

V. Infrastructural cess:

- A new cess called 'infrastructure cess' is levied with effect from 01.03.2016 for the purpose of financing infrastructure projects at the rate of 4% on motor cars and other vehicles designed for transport of passengers falling under heading 8703.
- However full exemption is given for ambulances, taxis, electric vehicles, three wheeled vehicles, cars for physically handicapped.
- A concessional cess rate of 1% (instead of 4%) is applicable in case of motor vehicles of length not exceeding 4000 mm, having engine capacity not exceeding 1200CC and are driven by using petrol or LPG or CNG.
- A concessional cess rate of 2.5% (instead of 4%) is applicable in case of motor vehicles of length not exceeding 4000 mm, having engine capacity not exceeding 1500CC and are driven by using diesel.

VI. Changes in RSP based valuation:

- At present, only specified products of soap and organic surface- active products falling under heading 3401 and 3402 are covered under RSP based valuation with an abatement of 30%. With effect from 01.03.2016, all goods falling under headings 3401 and 3402 are covered under RSP based valuation.
- Footwear products falling under chapter 64 are subject to RSP based valuation with abatement of 25%. With effect from 01.03.2016, the abatement percentage has been increased from 25% to 30%.
- With effect from 01.03.2016, Products of aluminium foil covered under heading 7607 are notified for RSP based valuation with an abatement of 25%.
- With effect from 01.03.2016, Smart watches covered under sub-heading 851762 are notified for RSP based valuation with an abatement of 35%.
- At present, RSP based valuation is applicable for parts, components and assemblies of motor vehicles falling under chapter 87 excluding vehicles falling under headings 8712, 8713, 8715 and 8716. With effect from 01.03.2016, RSP based valuation is made applicable even to accessories.
- At present, RSP based valuation is applicable for parts, components and assemblies falling under tariff item 84264100 (self-propelled machinery on tyres), heading 8427 (fork lifts), 8429(bulldozers, excavators etc), 8430(machinery for earthworks, minerals extraction). With effect from 01.03.2016, RSP based valuation is made applicable even to accessories.

VII. Amendments in Central Excise Rules, 2002

a. Clarification over due date for interest payable in case of Provisional Assessment:

- In terms of the wordings of sub-rule (4) of Rule 7 of Central Excise Rules, 2002 in cases where provisional assessment is opted, confusion prevailed as to whether interest for delayed payment of duty is payable from 06th of month following the month in which goods are cleared or from the 01st day of the month subsequent to the month in which provisional assessment is finalised. The judicial forums are divided on this issue. It is proposed to amend this sub-rule to give effect that interest is payable from 06th of the month following the month in which goods are cleared. This amendment is effective from 01.03.2016.

b. Facility of quarterly payment of excise duty:

- In terms of Rule 8 of Central Excise Rules, 2002, the facility of quarterly payment of excise duty is applicable to assesses whose turnover of excisable goods does not exceed four hundred lakhs in preceding financial year. Consequent to charging excise duty on articles of jewellery, this facility is extended to these manufacturers also in case where the value of these goods does not rupees twelve crores in the preceding financial year. This amendment is effective from 01.03.2016.

c. Relaxation of requirement to self-attest the transporter's copy of digitally signed invoice:

- In terms of proviso to sub-rule 8 of Rule 11 of Central Excise Rules, 2002 requires a manufacturer who issued digitally signed invoices to self attest the hard copy of transporter's invoice. It is now proposed to withdraw the condition relating to self-attestation. This amendment is effective from 01.03.2016.

d. Changes in Central Excise Returns:

- Rule 12 of Central Excise Rules, 2002 are amended to make the following changes in filing of excise returns;
 - o Annual financial statement is replaced with annual return. EOUs are also required to file this return.
 - o The requirement of filing annual installed capacity Statement under ER-7 has been taken away.
 - o Central Excise assesses are extended with the facility of revising the return by end of the calendar month in which original return is filed.
 - o The above changes covered under (i) and (ii) are effective from 01.04.2016 and the amendment relating to revised return facility under (iii) shall be effective from a date to be notified by Government.

VIII. Miscellaneous Amendments:

a. Reduction in interest rate for delayed payment of duty:

- At present, the interest is payable at the rate of 18% p.a. for delay in payment of duty. With effect from 01.04.2016, the rate of interest is reduced to 15% p.a.

b. Single Registration for two or more premises:

- Commissioner of Central Excise is empowered to allow single registration for a factory if two or more premises are located within a close area subject to satisfaction of the following conditions;
 - o All such premises should fall in the jurisdiction of a range superintendent.
 - o The manufacturing processes undertaken therein are interlinked.
 - o Units are not operating under any area based exemption
 - o Proper recording of goods movement from one premise to another shall be undertaken.
 - o Such other conditions or limitations as commissioner may impose.

c. Amendments in notification relating to export rebate claim:

- Notification 21/2004-CE lays down the procedure relating to claiming of rebate of goods used in exported. With effect from 01.03.2016, this notification is amended in the following manner;
 - o Manufacturer who intends to claim export rebate is required to file a declaration before AC or DC describing the nature of goods manufactured and the raw material required. It is now made mandatory to submit Chartered Engineer's certificate in support of this declaration. Permission for export under rebate claim can be granted by AC or DC on the basis of the said certificate.
 - o Time limit on year in terms of section 11B has been specified for claiming this rebate.
 - o An express condition was inserted to deny the CENVAT Credit of inputs on which rebate is claimed as per this notification. Previously this restriction as to availment of CENVAT Credit was in force by way of declaration in form ARE2 i.e. application for export of goods under rebate claim

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CUSTOMS

ANALYSIS OF CUSTOMS PROPOSALS

Contributed by CA Manindar |

I. Legislative Changes in Customs Act, 1962:

a. Duty demand and time limit:

- Section 28 of the Customs Act, 1962 provides for recovery of duties which have been not levied or short levied or erroneously refunded. Instances of duties not paid or short paid are not covered expressly. In order to expressly provide for recovery of duties which are not paid or short paid, it is proposed to amend this section to recover duties not paid or short paid.
- Further in cases other than those involving fraud, collusion, wilful misstatement etc., the time limit specified for recovery of duties is one year. It is proposed to increase the said time limit to two years.

b. Government empowered to defer collection of duty and other charges:

- Section 47 provides for payment of duty and other charges in case of imported goods within two working days from the date on which bill of entry is returned to importer for duty payment. This section is amended to empower Central Government to issue a notification permitting certain class of importers to make deferred payment of duty and charges as per the prescribed rules.
- Similar amendment is undertaken in section 51 to defer the payment of duties and charges payable upon export of goods.

c. Transit Goods:

- Section 53 provides that no duty is payable in case of goods imported in a conveyance and are moved to a place outside India or to another customs station. No conditions are specified to claim this benefit. This section is amended in such a way that duty is not payable only after satisfaction of certain specified conditions.

d. Power to grant licenses for warehouses is shifted:

- In terms of Section 57 and section 58, the AC or DC is empowered to grant license to establish public warehouses. It is proposed to amend these sections to vest this power to grant such licenses with Principal Commissioner or Commissioner of Customs.
- Further the power to grant permission for manufacture in warehouse under Section 65 is also taken away from AC or DC and the same is now vested with Principal Commissioner or Commissioner.

e. Withdrawal of Control over Warehoused Goods:

- At present, the goods deposited under warehouse are subject to the physical control of customs officer. Now section 62 and 63 are proposed to be omitted. With the omission of these sections, warehouses are controlled on the basis of records maintained by the licensees.
- A new section 73A is inserted to provide that warehoused goods shall remain in the custody of the person who has been granted a license to establish warehouse. In case of any contraventions in removal of these warehoused goods, the licensee is responsible to pay duty, fines and is subject to other actions under Customs Law or any other law for the time being in-force.

f. Special Warehouse:

- As physical control over the warehoused goods is taken away, the concept of licensing special warehouses is introduced through insertion of a new section 58A. Accordingly, Central Government is empowered to notify the class of the goods for which special warehousing license is to be obtained to warehouse these goods. These special warehouses are under the physical control of the customs officer.

g. Warehousing bond:

- Section 59 provides for execution of warehouse bond in case where importer removes goods to a warehouse. This section requires execution of bond for twice the amount of duty assessed. In view of the removal of physical control on warehouses, this section is replaced with new section which requires for execution of bond as well as furnishing of security. Bond is required to be executed for thrice the amount of duty assessed.

h. Warehousing period:

- The maximum permissible warehousing period in case of EOUs under section 61 is five years for capital goods and three years for others. This section is amended to relax this condition and as a result, the warehousing period for EOUs is unlimited. Further this facility is extended even to EHTPs and STPs.

i. Facility of drawing samples of warehoused goods without duty payment is withdrawn:

- Section 64 provides for facility of drawing samples from warehouse, without filing bill of entry and paying customs duty. This section is amended to withdraw this facility thereby requires the assessee to pay duty at the time drawing samples.

II. Legislative Changes in Customs Tariff Act, 1975:

- Section 8C of Customs Tariff Act, 1975 provides for levy of safeguard duty on goods imported from China in increased quantities thereby causing threat to domestic market. This levy is withdrawn by omitting the section.

III. Amendments in customs tariff effecting the rate of duty:

S.No	Description of goods	From	To
1	Natural latex rubber made balloons	10%	20%
2	Primary Aluminium	5%	7.5%
3	Zinc Alloys	5%	7.5%
4	Imitation Jeweller	10%	15%
5	Industrial Solar Water heater	7.5%	10%
6	Increase in the tariff rate of BCD for 211 specified tariff lines in Chapters 84, 85 and 90. Out of which:	7.5%	10%
	a) On 96 specified tariff lines, the effective rate is being increased from 7.5% to 10%.		
	b) On remaining 115 tariff lines the effective rate will remain unchanged at 7.5%.	7.5%	10%

Note: The said rate changes are effective from 01.03.2016 onwards.

IV. New Rules for Baggage:

The Baggage Rules, 2016 are notified to replace the earlier rules. These new rules would be effective from 01.04.2016. The duty free allowances extended under these rules are summarised as follows;

Passengers arriving from Countries other than Nepal, Bhutan and Myanmar:

S.No	Nature of Passenger	Duty free Allowance
1	Indian resident, tourist of Indian origin, foreigner residing in India	50000
2	Tourist of foreign origin	15000
3	Infant (child upto two years age) allowed free	Only used personal effects are allowed free

Passenger arriving from Nepal, Bhutan and Myanmar:

S.No	Nature of Passenger	Duty free Allowance
1	Indian resident, foreigner residing in India or a tourist	15000
2	In case, the passenger is arrived by land	Only used personal effects are allowed free
3	Infant (child upto two years age)	Only used personal effects are allowed free

- a. Jewellery: The jewellery allowance is in addition to the above mentioned duty free allowance and is allowed only for a passenger residing abroad for more than a year. The allowance is upto a specified weight limit and value cap as mentioned below;

S.No	Nature of Passenger	Value Cap	Weight
1	Gentleman	15000	20 grams
2	Lady	100000	40 grams

- b. Currency: It is clarified that import and export of currency shall be governed as per the provisions of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 and the notifications issued thereunder.

V. Amendments to Customs Baggage Declaration Regulations, 2013:

- At present all passengers coming to India are required to file baggage declaration form. It is amended to limit this requirement only to passengers carrying dutiable goods or prohibited goods. The amended provisions are effective from 01.04.2016.

VI. Reduction in Rate of interest:

- The rate of interest applicable in case of delayed payment of customs duties has been reduced to 15% from the existing rate of 18%. The revised rate is effective from 01.04.2016.

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FEMA

ANALYSIS OF FEMA PROPOSALS

Contributed by CA Murali Krishna |

Key Proposals – Foreign Exchange and Anti Money Laundering Laws:

As a departure from the traditional way of amending the laws, the Central Government has continued the approach of the amending the Foreign Exchange Laws and Anti Money Laundering Laws via Finance Act. The Central Government vide its Finance Bill, 2016 (Bill No. 18 of 2016), has proposed to amend the Foreign Exchange Management Act, 1999 (vide Part VI of Finance Bill), Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (vide Part IV of Finance Bill), Prevention of Money Laundering Act, 2002 (vide Part VII of Finance Bill) and Foreign Contribution (Regulation) Act, 2010 (vide Part XIII of Finance Bill). The proposed changes are intended to address the issues related to recovery of penalty, making common appellate tribunal for appeals under various Acts, amendment of definition of Foreign Source under FCRA etc.

There are some very important policy amendments which have been brought about by the amendments which are discussed below:

A. Foreign Exchange Management Act, 1999

- Adjudicating Authority can authorise the officers of Enforcement (not below the rank of AD) to recover any arrears of penalty from persons, against whom the penalty notice was issued and failed to pay such amount within 90 days of serving the notice;
- Such authorised officer has same powers as an authorised Income Tax officer and the provisions of Income Tax Act, shall apply mutatis mutandis.

B. Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

- Section 2A dealing with provisions of Chapter VA of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), shall be omitted;
- In Section 3(1) (a) the words “for Forfeited Property” shall be omitted;
- Section 12 (1) of the Act has been amended to delegate the powers to Appellate Tribunal to deal with the matter pertaining to (a) orders passed under section 7, sub- section (1) of section 9 or section 10 of the Act; (b) under section 68F, section 68-I, sub- section (1) of section 68K or section 68L of the Narcotic Drugs and Psychotropic Substances Act, 1985; (c) by the Adjudicating Authority or any other authority under the Prevention of Money laundering Act, 2002”;
- Section 12 (2), the words “or is qualified to be” shall be omitted;
- Section (6A), for the words “Bench of two members”, the words “Bench with one or two members” shall be substituted;
- A new Section 12 (6B) & (6C) be inserted to provide necessary enabling provision whereby the senior most member of the bench can pass orders in the event of the occurrence of any vacancy in the office of the Chairman due to death, resignation or

otherwise, or chairman is unable to discharge his functions due to absence, illness or any other cause.

C. Prevention of Money Laundering Act, 2002

- Section 2(1)(b) has been amended to substitute the words “referred to in” instead of words “established under”;
- Section 25 of the Act has been amended so as to obviate the setting up separate Appellate Tribunal under the Act and such powers are clubbed with the Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act;
- sections 27, 28, 30, 31, 32, 33 and 34 of the Act related to Appellate Tribunal shall be omitted.

D. Foreign Contribution (Regulation) Act, 2010

- In Section 2 (1)(j)(vi) the following provision shall be inserted w.r.e.f. 26th September, 2010;
- “Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source”;
- The above amendment has obviated the necessity of Non-Profit Organization seeking approval for FCRA in case of receiving donation (CSR or otherwise) from an Indian Subsidiary owned by a MNC.

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