

# INDIA UNION BUDGET 2015

Tax Proposals



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# FOREWORD

It has been about nine months since the Finance Minister took charge of the economy under the incumbent NDA Government. At that time the economy was passing through difficult times. Especially, the last few years were quite challenging for the global economies and the Indian economy could not remain insulated from the impact. Various external and internal factors were impeding the economic growth, which was witnessing a slowdown in several key sectors along with burgeoning fiscal deficit, declining tax collections and poor investor sentiment with high inflation (which was hovering in double digits).

During the last few months, the government has taken several steps to counter the above challenges, and given a philosophical thrust to the National Agenda which is translated in various initiatives such as **'Make in India', 'Swachh Bharat' and 'GST'**, which is perhaps the biggest and the boldest tax reform in the Indian history.

All these steps have created a buoyancy in the economic and political environment. The fact that the global economies have been showing signs of recovery from the economic slowdown and crude oil prices have hit an all time low, has contributed to the overall positive sentiment prevailing in the country.

In this backdrop, the Finance Minister presented the first full-year Budget of the NDA Government before the Parliament on Saturday. It was widely expected that through the proposals contained in the Union Budget, the government would usher in a fresh wave of economic reforms, address the fiscal situation and give a thrust to the weakening activity in the infrastructure sector.

In many ways this has been one of the better conceived and balanced Union Budget in the recent times, with increased emphasis on infrastructure and social sector spending along with tackling the menace of black money. The economic reforms agenda has been given a boost by reiterating the commitment to introduction of GST in April 2016 and facilitative measures have been taken for a smooth transition towards GST. 'Make in India' gets a push by way of the reduced taxes on the industrial inputs and raw materials. 'Swachh Bharat' seems to have become a priority for the government with special initiatives and creation of funds and reserves to this end.

Further, the proposals for reduction of Corporate taxes over the next four years, are likely to bring cheer to the Industry.

However, all is not sweet with this Budget!! There are some bitter pills to be swallowed in the form of increased rates of Excise duty and Service tax, which may be inflationary in the short run. Also, the middle class may be feeling short-changed due to no reduction in the Income tax rates.

In a nutshell, though this Budget may fall short on the populist expectations, it is clearly a forward looking budget with long-term agenda, the real impact of which may be witnessed in the years to come.

# 1. DIRECT TAX PROPOSALS



# INCOME TAX ACT

All amendments specified hereinafter shall be deemed to have come into force on the 1st day of April, 2015 unless specifically stated in the particular section.

## TAX RATES

There is no change in the rate of tax as compared to the preceding financial year. However, the Finance Minister has proposed a reduction in the Corporate Tax rate in a phased manner from 30% to 25% over the next four years.

## SURCHARGE RATES

### For Individual, Hindu Undivided Family ('HUF'), AOP, BOI, Co-operative Societies, Firm, and Local Authority

Where the total income exceeds Rs.1 crore, surcharge is leviable at the rate of 12% on the income tax as compared to the rate of 10% in the preceding financial year.

#### For Domestic Companies

Surcharge Slabs (Total Income)	Surcharge Rates A.Y. 2015-16	Surcharge Rates A.Y. 2016-17
Up to Rs.1 Crore	Nil	Nil
Exceeding Rs. 1 crore but < Rs.10 crores	5%	7%
Exceeding Rs. 10 crores	10%	12%

#### For Foreign Companies

There is no change in rate of surcharge as compared to the preceding financial year.

## EDUCATION CESS

There is no change in the rate of education cess as compared to the preceding financial year.

## CHARITABLE/RELIGIOUS TRUSTS

### Charitable Purpose - Section 2(15)

The activity of Yoga has been one of the focus areas in the present times and international recognition has also been granted to it by the United Nations. Therefore, 'Yoga' is to be included as a specific category in the definition of charitable purpose on the lines of education. The definition of charitable purpose is to be amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless -

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

### Section 11

If the income applied to charitable or religious purposes during the year falls short of 85% of the income of the charitable trust for the relevant year, the trust can exercise an option to spend the amount to the extent of shortfall in the following year as provided in Explanation to Section 11(1). The option was to be exercised in writing but no specific form was required to be furnished. The amendment provides that to exercise the option the trust has to furnish the same in the prescribed form and manner before the due date of filing the return of income.

Section 11(2) provides that the charitable trust can accumulate its income for a specific purpose. The income so accumulated shall be considered as deemed application for charitable purposes in the year in which such accumulation is made. The amendment provides that the trust has to furnish a statement in the prescribed form to the Assessing Officer before the due date of filing of the return of income of the year in which the accumulation is made.

As provided under Section 13, if such form is not filed before the due date specified u/s.139(1), the amount accumulated shall not be considered as income deemed to be applied for charitable purposes.

## INCOME FROM SALARY

### Increase in Transport Allowance Exemption - Section 10(14)(ii)

Section 10(14)(ii) has been amended to increase the exempt transportation allowance granted to an employee for the purpose of commuting between his place of residence and the place of his duty, from Rs. 800 per month to Rs.1,600 per month.

## PROFITS & GAINS OF BUSINESS OR PROFESSION

### Additional Depreciation at the rate of 35% - First Proviso to Section 32(1)(iia)

In order to enhance the acquisition and installation of plant and machinery for setting up of manufacturing units on or after 1st April 2015, in notified backward areas in the states of Andhra Pradesh and Telangana, additional depreciation at the rate of 35% is to be allowed in respect of the actual cost of new plant or machinery (other than a ship and aircraft) acquired during the period from 1st April, 2015 to 31st March, 2020.

### Allowance of balance Additional Depreciation - Section 32(1)

If the Plant and Machinery eligible for additional depreciation under Section 32(1)(iia) or first proviso to Section 32(1)(iia), is put to use for a period of less than 180 days during the year in which it is acquired, then fifty percent of the additional depreciation shall be allowed in the year of acquisition and the balance 50% shall be allowed in the following year.

### Investment in new plant or machinery in notified backward areas in certain states - Section 32AD

Section 32AD has been introduced by Finance Bill, 2015 to provide for a deduction to companies which set up manufacturing operations in notified backward areas in the States of Andhra Pradesh and Telangana after 1st April, 2015.

### The deduction is 15% of the actual cost of the "new asset" installed during the period 1st April 2015 to 31st March 2020.

If the above mentioned "new asset" is sold other than by way of amalgamation, demerger or reorganisation of business, within the period of five years from the date of installation, the amount of deduction allowed under this section, in respect of the new asset, shall be deemed to be the income of the assessee. Further, where the "new asset" is sold or transferred in connection with amalgamation, demerger or reorganisation of business, within the period of five years from the date of installation, the conditions applicable to the amalgamating, demerging or the successor company shall be applicable to the amalgamated company, resulting company or the successor.

### Amendments to Computation of Book Profit under Section 115JB

The following adjustments are to be made while computing the Book Profit under Section 115JB of the Act:

- a) Share of member of AOP in the income of AOP on which no tax is payable in accordance with Section 86, if such amount is credited to the Profit and Loss Account, shall be excluded while computing Book Profits and any expenditure relating to such income shall be added to the Book Profit.
- b) Income from transactions in securities (other than short term capital gains arising on transactions on which securities transaction tax is not chargeable) arising to a Foreign Institutional Investor, if such amount is credited to the Profit and Loss Account shall be excluded while computing Book Profits and any expenditure relating to such income shall be added to the Book Profit.

### **Mode of taking or accepting certain loans and deposits - Section 269SS and mode of repayment of certain loans or deposits - Section 269T**

In order to curb generation of unaccounted money in the Real Estate Sector, Section 269SS is to be amended to provide that no person shall accept any sum of money, whether as advance or otherwise, exceeding Rs. 20,000, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account.

Similarly, Section 269T is amended, restricting repayment of such sum of money in any mode otherwise than an account payee cheque or account payee bank draft or by electronic clearing system through a bank account.

## **DEDUCTIONS**

### **Deduction in respect of investments in government saving certificates - Section 80C**

Section 80C has been amended to benefit an individual assessee for investments made in the Sukanya Samriddhi Account Scheme notified by the government in the name of any girl child of the individual or any girl child for whom such individual is a legal guardian. The investment will be eligible for deduction in the overall limit under Section 80C. The interest on such deposits as also the withdrawals therefrom will be exempt from tax.

### **Increase in the limit - Section 80CCC**

The aggregate amount of deduction available under Section 80CCC for effecting or keeping in force a contract for any annuity plan of any insurer for receiving a pension under the pension scheme is increased from Rs.1 Lakh to Rs.1.5 Lakhs.

### **Deduction in respect of contribution to pension scheme - Section 80CCD**

An additional amount of Rs. 50,000 will be available as a deduction to the assessee for contribution to an approved pension scheme.

### **Increase in deduction allowable for health insurance premium/medical expenditure - Section 80D**

As per the existing provisions, an amount of Rs.15,000 was allowed as a deduction under Section 80D for the health insurance premium paid by the assessee for himself and his family. An additional amount of Rs.15,000/- was allowed as a deduction under the said Section for the insurance premia of his parents. The aforesaid limits of Rs.15,000 were raised to Rs. 20,000 in case any of the persons insured were above the age of 60 years. A similar deduction was available to the Hindu Undivided Family.

The aforesaid limits of Rs.15,000 have now been raised to Rs. 25,000 for the amounts paid towards any health insurance premium or any medical expenditure incurred during the year. Further thereto, the aforesaid limit of Rs. 25,000 has now been raised to Rs. 30,000 for persons in the age group of 60 to 80 years.

Since no insurance cover is available to assessee above the age of 80 years, they are in some cases, unable to avail the benefit of the deduction under Section 80D. In case of such individuals, a deduction



not exceeding Rs. 30,000 would be allowed under the said Section for the actual medical expenses incurred by them during the year.

### **Increase in deduction allowable for medical treatment of dependant with a disability - Section 80DD**

The amount of deduction available to an individual assessee or a HUF under Section 80DD for the medical treatment of a dependant family member suffering from a disability or for paying the insurance premium for the maintenance of the said family member was limited to Rs. 50,000 and in case of severe disability, the limit was set at Rs.1,00,000. The said limits have now been revised to Rs. 75,000/- and Rs.1,25,000 respectively.

### **Expenditure on medical treatment of specified disease or ailment - Section 80DDB**

In order to be eligible to claim the deduction under the said section, the eligible assessee will now have to obtain only a prescription from a specialist doctor in the format prescribed as against a medical certificate from a doctor working in a government hospital. Further, if the medical treatment is incurred for a person above the age of 80 years, a deduction to the extent of Rs. 80,000 will now be available as against Rs. 40,000 under the existing provisions.

### **Donations to Swachh Bharat Kosh or Clean Ganga Fund or National Fund for the Control of Drug Abuse - Section 80G**

Deduction under Section 80G would be permitted at the rate of 100% for the donations made to the Swachh Bharat Kosh or to the Clean Ganga Fund. The said amendment will be retrospectively applicable from April 1, 2015. Similarly, 100% deduction will be allowed in case of donations made to the National Fund for the Control of Drug Abuse with effect from April 1, 2016. For availing such deduction in case of a company, the amount so paid should be other than the sum spent by the company in pursuance of complying with the Corporate Social Responsibility Obligations under the Companies Act, 2013.

### **Deduction for employment of new workmen - Section 80JJAA**

The said deduction was earlier available only to an Indian Company, but is now available to any assessee fulfilling the prescribed conditions. Deduction under Section 80JJAA was available @30% of the wages paid to the new workmen employed for the manufacture of goods in a factory provided more than 100 new workmen were employed. The limit of 100 new regular workmen has been revised to 50 new regular workmen employed by the assessee in the previous year. Further, the Section has been amended to provide that no deduction will be available if an assessee acquires a running factory as a result of a business reorganisation.

### **Deduction in case of a person with disability - Section 80U**

A resident individual who has been certified by the prescribed medical authority as a person with disability will be allowed a deduction of Rs. 75,000 whereas a person diagnosed with severe disability will be allowed a deduction of Rs. 1,25,000 under Section 80U, as against the present limit of Rs. 50,000 and Rs. 1,00,000 respectively.

## DOMESTIC TRANSFER PRICING

### Increase in threshold limit for applicability of provisions of domestic transfer pricing - Section 92BA

The present threshold limit for applicability of the provisions of domestic transfer pricing is Rs. 5 crores. The said threshold limit has been increased to Rs. 20 crores. Thus, assessee having specified domestic transactions below Rs. 20 crores will no longer be required to report their specified domestic transactions in Form 3CEB and will no longer be required to benchmark the transactions using one of the six prescribed methods. However, such entities still need to prove that the expenditure is not excessive or unreasonable under Section 40A(2)(b). Also, in the case of transactions entered into by units claiming deduction under Sections 10AA, 80-IA, 80-IB, 80IC, etc. with other units/businesses of the assessee or with related parties i.e. related party transactions of eligible units, the assessee will still have to prove that the transactions have been entered at market value (Section 80A, Section 80IA(8)/ Section 80IA(10)).

## PROCEDURAL PROVISIONS

### Application of seized or requisitioned assets - Section 132B

Under the existing provision of section 132B of the Income-tax Act, assets seized under Section 132 or requisitioned under Section 132A may be adjusted against the amount of existing liability under the Income-tax Act, the Wealth-tax Act etc. and against the amount of liability determined on completion of assessment (including any penalty levied or interest payable in connection with such assessment).

This section is amended with effect from 1st June, 2015 to provide that the asset seized under Section 132 or requisitioned under section 132A may also be adjusted against the amount of liability arising on an application made before the Settlement Commission.

### Filing of Return of Income - Section 139

Section 139 has been amended to provide that educational institutions, hospitals, medical institution which are wholly financed by the government and claiming exemption under Section 10(23C)(iiiab) and (iiiac) are mandatorily required to file their Return of Income.

A new subsection (4F) has been inserted to provide that every investment fund referred to in Section 115UB is required to file a Return of Income.

## PROVISIONS RELATING TO SETTLEMENT COMMISSION

### Settlement Commission - Section 245A

- i) Hitherto, Explanation (i) to Section 245A provided that the proceeding for assessment or re-assessment under section 147 shall commence from the date of issue of notice under Section 148. Therefore, the assessee was eligible to approach the Settlement Commission only for the assessment year for which notice under Section 148 was issued.

The said explanation has now been amended to provide that the assessee can now approach the Settlement Commission for assessment years, other than the year for which the notice under Section 148 is issued, provided the return of income has been filed under section 139 or in response to notice under Section 142 of the Act.

- ii) Hitherto, Explanation (iv) to Section 245A provided that the proceedings of assessment or re-assessment shall be deemed to have commenced from the first day of the assessment year and concluded on the date on which the assessment order is passed.

The said explanation has now been amended to provide that the proceedings for any assessment year, other than the proceeding referred to in clause (i), (iii) or (iiia) of the said section shall be deemed to have commenced from the date of filing the return of income under Section 139 or in response to an notice under Section 142(1) and concluded on the date on which the assessment or re-assessment is made or on expiry of two years from the end of relevant assessment year, in case where no assessment is made.

#### **Procedure for rectification of order - Section 245D**

Hitherto, sub-section (6B) of Section 245D provided that an order passed by the Settlement Commission, may be rectified at any time within a period of six months from the date of order.

The said sub-section is now to be amended to provide that the order can be rectified within six months from the end of the month in which the order was passed or within the period of six months from the end of the month in which an application is made by the Applicant or the Principal Commissioner or Commissioner. It has been further provided that where the amendment has the effect of modifying the liability of the applicant, the Settlement Commission shall issue a notice and provide an opportunity of being heard to the Applicant and Principal Commissioner or Commissioner, as the case may be.

#### **Power of Settlement Commission to grant immunity from Prosecution and Penalty - Section 245H**

The Settlement Commission has the power to grant immunity from prosecution for any offence under this Act, if the Applicant has made a full and true disclosure of his income and the manner in which such income has been derived, subject to the conditions, as it may think fit to impose.

The section is now to be amended to provide that, the Settlement Commission while granting immunity from prosecution for any offence under this Act, shall record its reasons in writing, in the order passed.

#### **Abatement of Proceedings before Settlement Commission - Section 245HA**

The section is now to be amended to provide that the proceedings before the Settlement Commission shall abate if the order by the Settlement Commission does not mention the terms of the settlement.

#### **Bar on subsequent application for Settlement - Section 245K**

Section 245K provides that in certain situations an applicant shall not be entitled to apply for settlement. The said section is now to be amended to provide that any person related to the person who has already approached the Settlement Commission once, cannot approach the Settlement Commission subsequently.

## TAX DEDUCTION/COLLECTION AT SOURCE

### Salary Payments – Section 192

The employer responsible for paying salary and deducting tax at source is now required to obtain from the employees the evidence, proof or particulars of such claims in the form and manner to be prescribed. The employer making salary payments to its employees will be allowed to grant set off in respect of losses in the hands of employees while calculating their taxable income for the purposes of deduction of tax under Section 192 provided the employees furnish proof of such claims in the form and manner to be prescribed.

The said amendment is applicable from June 1, 2015.

### TDS on payment of accumulated taxable balance of Provident Fund - Section 192A

In certain cases, the accumulated balance becoming due to an employee participating in a recognised Provident Fund, is liable to income tax. The calculation of TDS on such payments was a cumbersome process. To simplify the process of TDS on such payments, Section 192A has been introduced to provide that tax at the rate of 10% shall be deducted at source from payment of such accumulated taxable balance of PF made by the Trustees of the Employees' Provident Fund to the employee. Tax would be deductible only if the payment exceeds Rs. 30,000. However, in cases where no PAN is furnished by the employee, the rate of tax deduction at source will be the maximum marginal rate.

The said amendment is applicable from June 1, 2015.

### TDS on Interest Income – Section 194A

No TDS was deducted under Section 194A on the interest income credited or paid by a banking company or a co-operative bank or a public company providing long-term housing finance in cases where the interest was paid by individual branches. No TDS was deducted by the branch at the time of crediting or paying interest to its members. The said provision has now been rationalised to specifically direct such entities to deduct tax at source on interest payments made by it, if such payments exceed Rs. 10,000 and the entity is availing of the core banking facility.

Further, the interest received by the assessee on time deposits is subject to tax deduction subject to the limits prescribed under the said section. The scope of the term "Time Deposits" has been expanded to include recurring deposits made by the assessee.

It is also clarified that the amount of interest credited to the assessee as interest on the compensation awarded by the Motor Vehicle Claims Tribunal shall not be liable to TDS under Section 194A whereas the amount paid to the assessee as interest on the compensation awarded by the Motor Vehicle Claims Tribunal will attract TDS under the said section provided the aggregate interest amount exceeds Rs. 50,000.

The said amendment is applicable from June 1, 2015.

### TDS on payments made to contractors - Section 194C

No tax was to be deducted on payments made to contractors for transporting the goods provided they furnish their PAN. The said benefit will now be available only to those contractors who own less than 10 goods carriages at any time during the year and the transporter furnishes a declaration to that effect.

The said amendment is applicable from June 1, 2015.

### **TDS on interest on Rupee denominated bonds and Government Securities payable to Foreign Institutional Investors (FIIs) or Qualified Foreign Investor (QFIs) – Section 194LD**

The interest received by FIIs and QFIs is subject to a lower rate of tax deduction at source of 5% under Section 194LD. Under the existing provisions, the lower TDS at 5% was applicable till May 31, 2015. The time limit for lower TDS on the interest paid to FIIs and QFIs has now been extended to June 30, 2017.

The said amendment is applicable from June 1, 2015.

Non-deduction of TDS on (a) payment of accumulated PF balance and (b) sum paid by life insurance companies under a life insurance policy (excluding amount exempt under section 10(10D)) in cases where Form 15G and 15H are furnished – Section 197A.

Section 192A has been inserted to provide for TDS on payment of accumulated taxable PF balance. The said section has been discussed above. Further, Section 194DA was inserted by Finance (No.2) Act, 2014 to provide for TDS on sum paid by a life insurance company under a life insurance policy in cases when such sum is not exempt under Section 10(10D). Section 197A has been amended to provide that no tax will be deducted under Sections 192A and 194DA in cases where the resident individual submits a declaration in Form 15G to the effect that his total income after including the accumulated taxable PF balance or the taxable sum received under the life insurance policy does not exceed the maximum amount not liable to tax. Similarly, if a senior citizen gives a declaration in Form 15H, TDS need not be deducted under Sections 192A and 194DA.

The said amendment is applicable from June 1, 2015.

## **PROVISIONS RELATING TO NON RESIDENTS**

### **Period of stay in India in the case of an Indian citizen who leaves India as a crew member of a foreign bound ship - Section 6**

Section 6 of the Act provides that an Indian citizen who leaves India as a crew member of a foreign bound ship will be resident in India if he remains in India for a period of 182 days or more during the relevant previous year. Explanation 2 is inserted below Section 6 to provide that the period of stay in India in the case of an Indian citizen who is a crew member of a foreign bound ship leaving India shall be determined in the manner and subject to such conditions as may be prescribed. The CBDT will prescribe the manner of computation of period of stay in India in due course of time in the Income-tax Rules.

### **Residential status in case of a company - Section 6**

Under the existing provisions of Section 6(3), a Company is said to be resident in India in any previous year if -

- i) It is an Indian Company, or
- ii) during that year, the control and management of its affairs is situated wholly in India.

Thus, under the existing Section 6(3)(ii), a foreign company can be resident in India and become liable to pay tax on its worldwide income only if the control and management of its affairs is based wholly in

India throughout the year. The wordings of section 6(3)(ii) made it practically inapplicable as it became difficult to prove that a foreign company was controlled and managed from India throughout the relevant previous year.

In order to remove this practical difficulty and bring the provisions in line with the internationally accepted concept of Place of Effective Management, Section 6(3) is being amended to provide that a company shall be resident in India if **“its place of effective management, at any time in that year, is in India”**.

An explanation has been added to define “Place of effective management” as a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. However, the issue which arises for consideration is that the place of effective management could be in India at any point in time during that year. This places onerous responsibility on the management of a foreign company.

The Memorandum to the Finance Bill, 2015 states that the guiding principles to be followed in determination of Place of Effective Management will be issued in due course.

#### Clarificatory Amendment in case of Indirect Transfers - Section 9, 47, 285A and 271GA

Post Vodafone, the Finance Act, 2012, had inserted a retrospective amendment with effect from 1st April 1962 to the effect that any share or interest in a company registered or incorporated outside India shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. Thus, indirect transfers of assets/business located in India were explicitly brought to tax by Finance Act, 2012. Explanation 6 is now inserted in Section 9 to define the scope of and to restrict the impact of indirect transfers. The present amendment seeks to clarify how to determine whether any share or interest in a foreign company derives its value substantially from the assets located in India, the manner in which the value shall be computed, specifies the date on which the value shall be determined, the manner in which the income shall be computed and the exemptions as to when such indirect transfers will not be liable to tax in India (transfer by virtue of amalgamation, demerger, transferor along with its AEs holding less than 5% of the foreign entity whose shares are being transferred, etc.).

Section 47 has been amended to provide that the following transactions shall not be regarded as transfer:

- a) Any transfer, in a scheme of amalgamation, of shares of a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company, if:
  - i) At least 25% of the shareholders of the amalgamating foreign company will continue to remain shareholders of the amalgamated foreign company and
  - ii) Such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated.
- b) Any transfer in a demerger of shares of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company, if:

- i) The shareholder holding at least 75% of the value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company and
- ii) Such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated.

Section 49 has been amended to provide that the cost of shares of a foreign company which derives, directly or indirectly, its value substantially from the share or shares of an India company, in the hands of the amalgamated foreign company or resulting foreign company shall be the same as it was in the hands of the amalgamating foreign company or the demerged foreign company as the case may be.

Section 285A is inserted to provide for a reporting obligation on the Indian concern through which Indian assets are held by the foreign company or entity. The Indian concern needs to report such offshore transfers to the prescribed authority within the prescribed period. A penalty under Section 271GA has been provided for in case the Indian company fails to report any such offshore transfer/business reorganization.

### **Interest paid by an Indian branch of a foreign bank to its Head Office or to another branch outside India chargeable to tax in India - Section 9**

The issue of chargeability of interest paid by the Indian branch of a foreign bank to its head office has been the subject matter of litigation between the Department and the assessee. CBDT Circular No.740 dated 17/4/1996 clarified that such interest will be chargeable to tax in India. However, recently Courts have taken a view that the said interest is not chargeable to tax being interest paid to self.

Section 9(1)(v) is amended to provide that interest payable by the Indian branch of a foreign bank to its Head Office or to another branch outside India is liable to tax in India and withholding tax provisions would apply to such interest.

### **Presence of Fund Managers in India would not constitute Business Connection / Permanent Establishment of Offshore Funds - Section 9 and Section 271FAB**

In order to facilitate the location of fund managers of offshore funds in India, Section 9A has been inserted to provide that in case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. The terms "eligible investment fund" and "eligible fund manager" have been defined in Section 9A. The offshore fund and the fund manager will be classified as an "eligible investment fund" and an "eligible fund manager" only if they fulfill certain conditions specified in Section 9A. This is a specific exemption from the general Rules applicable for determination of business connection and residential status.

An "eligible investment fund" is required to furnish within 90 days from the end of the financial year, a statement in a form to be prescribed containing information relating to the fulfillment of the conditions specified in Section 9A and also provide such other information/documents to be prescribed. Failure to furnish the prescribed statement/information/documents shall be visited with a penalty of Rs. 5,00,000.

### Deferment of General Anti Avoidance Rules ('GAAR') - Chapter X-A

The applicability of the GAAR provisions is deferred and the provisions shall be applicable from the Assessment Year 2018-2019. It has been clarified in the Finance Minister's Speech and in the Memorandum to Finance Bill, 2015 that GAAR shall apply prospectively i.e. GAAR will be applicable to investments made after 31st March, 2017.

### Taxability of Royalties & Fees for Technical Services in the case of non-residents - Section 115A

Presently, royalties and fees for technical services receivable by a non-resident or by a foreign company are taxable at the rate of 25% (plus education cess and if applicable, surcharge) under Section 115A of the Income-tax Act. The said rate has been reduced to 10% (plus education cess and if applicable, surcharge).

However, if the non-resident or foreign company does not furnish the PAN, they would be subject to tax at 20% under Section 206AA of the Act. The non-resident/foreign company may obtain a PAN and opt for the tax rate provided under the Income Tax Act in case of royalty/fees for technical services over the rate provided under the relevant Double Taxation Avoidance Agreement (DTAA), if the rate of tax under the relevant DTAA is higher. In such cases where the rate of tax under Section 115A is applied, the procedural requirements such as furnishing of tax residence certificate will not be required to be complied with.

### Provisions of Minimum Alternate Tax (MAT) made inapplicable to Foreign Institutional Investors (FIIs) - Section 115JB

Vide Finance (No.2) Act, 2014 it was provided that any security held by a FII which has invested in such securities in accordance with SEBI regulations would be capital asset. Consequently, the income arising to a FII from transactions in such securities would always be in the nature of Capital Gain. There was however an issue whether the provisions of MAT were applicable.

It is now provided that income from capital gains (other than short-term capital gains not liable to STT) in the case of FIIs will be deducted while computing book profit under Section 115JB. Consequently, the corresponding expenditure to earn such income will be added back while computing book profit under Section 115JB.

### Furnishing of information relating to payments to non-residents – Section 195 and Section 271-I

Existing provisions of Section 195(6) require a person making a payment to non-resident to furnish certain information in relation to the payment. Form 15CA (declaration by the payee) and Form 15CB (CA certificate) have been prescribed detailing the information required. The provision in its present form read as if the requisite information was required only in cases where the payment is subject to tax deduction at source. Section 195(6) is now amended to provide that a person making a payment to a non-resident shall furnish the prescribed information whether or not the tax is deductible at source from such payment.

Section 271-I has been inserted to provide that penalty of Rs. 1,00,000 will be levied in case of failure to furnish information prescribed under Section 195(6) and in case of furnishing inaccurate particulars.



### Procedure for grant of foreign tax credit - Section 295

Though Sections 90 (bilateral credit of tax paid in a country with which India has a tax treaty) and 91 (unilateral credit paid in a country with which India does not have a tax treaty) provide for granting of credit in respect of foreign taxes paid by a Resident/Domestic Company, the Income-tax Act does not provide the manner in which credit for foreign taxes will be granted. Therefore, assessee face substantial difficulty in getting credit for foreign taxes. Sub-section (2) of Section 295 of the Income-tax Act has been amended to provide that the CBDT may make rules to provide the procedure for granting foreign tax credit under Section 90 and section 91.

This amendment will take effect from 1st day of June, 2015.

# 2. INDIRECT TAX PROPOSALS



# CUSTOMS DUTY

## RATES OF CUSTOMS DUTY

- There is no change in the peak rate of Basic Customs Duty ('BCD'), which remains at 10%.
- However, the general rate of Countervailing duty ('CVD') on imports will change to 12.50% due to change in the Cenvat rate of excise duty with effect from March 1, 2015.
- Education cess on Customs duties to continue at 2%, whereas Secondary and Higher Education cess on Customs duties will continue at 1%.

## CHANGES IN THE CUSTOMS DUTY RATES

Following changes have been made in the Customs duty rates with effect from March 1, 2015.

Rate of BCD has been reduced or exempted on certain raw materials and items of industrial use for addressing the inverted duty structure, and reduce the costs for domestic manufacturers. Some of the key changes in this regard include:

- Full exemptions from BCD and / CVD granted for the following goods:
  - ▶ BCD exempted on evacuated tubes with three layers of solar selective coating for use in the manufacture of solar water heaters.
  - ▶ BCD and CVD exempted on parts, components and accessories for use in the manufacture of tablet computer, including sub-parts for use in the manufacture of parts, components and accessories of tablet computers.
  - ▶ BCD exempted on High Density Polyethylene ('HDPE') for manufacture of telecommunication grade optical fibres or optical fibre cables.
  - ▶ Full exemption from BCD granted on digital still image video cameras of specified description and parts and components for use in the manufacture of such digital cameras.
  - ▶ Full exemption from BCD provided on Organic LED ('OLED') TV panels.
  - ▶ BCD exempted on black light unit module for manufacture of LCD / LED TV panels.
  - ▶ BCD exempted on Ulexite ore.
  - ▶ BCD exempted on Magnetron (upto 1 KW) used for manufacture of domestic microwave oven.
  - ▶ Full exemption from CVD granted on specified raw materials for use in the manufacture of pacemakers.
  - ▶ BCD and CVD fully exempted on artificial hearts.

■ **Reduction in the rate of BCD**

Product	Old rate	New rate
Liquefied butane	5%	2.5%
Sulphuric acid for use in manufacture of fertilizers	7.5%	5%
Isoprene	5%	2.5%
Styrene, Ethylene dichloride (EDC) and Vinyl chloride monomer (VCM)	2.5%	2%
Anthraquinone	7.5%	2.5%
Butyl acrylate	7.5%	5%
Antimony metal, including antimony waste and scrap	5%	2.5%
C-Block compressor, Crank shaft and Over load Protector & Positive thermal co-efficient for use in the manufacture of Refrigerator compressors	7.5%	5%
Specified components of CNC Lathe machines and Machining Centres, namely Ball screws, Linear Motion Guides and CNC Systems	7.5%	2.5%
Ceria zirconia compounds, Cerium compounds and Zeolite for use in manufacture of washcoat used in catalytic converters	7.5%	5%
Water blocking tape, Ethylene-propylene-non-conjugated diene rubber (EPDM) and Mica glass tape for use in manufacture of insulated wires and cables (except for copper wires and cables)	10%	7.5%
Metal parts used in manufacture of electrical insulators	10%	7.5%
Specified inputs for use in the manufacture of flexible medical video endoscope	5%	2.5%

■ **Increase in the rate of BCD**

Product	Old rate	New rate
Metallurgical coke	2.5%	5%
Commercial motor vehicles (other than in Completely Knocked Down (CKD) condition)	10%	20%

■ **Special additional duty of Customs ('SAD') exempted/reduced on certain items to avoid Cenvat credit accumulation:**

- ▶ All goods (except populated printed circuit boards) for use in the manufacture of ITA bound goods exempted from SAD.
- ▶ All inputs for use in manufacture of LED driver and MCPCB for LED lights and fixtures & LED lamps exempted from SAD.
- ▶ SAD on Naphtha, ethylene dichloride (EDC), vinyl chloride monomer (VCM) and styrene monomer (SM) for manufacture of excisable goods from 4% to 2%.
- ▶ SAD on melting scrap of iron & steel, copper, brass and aluminum reduced from 4% to 2%.
- ▶ SAD fully exempted on specified raw materials for use in the manufacture of pacemakers.

### ■ Miscellaneous

- ▶ Validity period of exemption granted to specified goods for use in the manufacture of hybrid and electrically operated vehicles extended up to March 31, 2016.
- ▶ Additional Duty of Customs (Road Cess) levied on imported motor spirit (petrol) and high speed diesel oil increased from Rs. 2 per litre to Rs. 6 per litre.
- ▶ Export duty on beneficiated Ilmenite (including Ilmenite ground) reduced from 5% to 2.5%.
- ▶ Goods imported for setting up Mega Power Project ('MPP') with provisional status for such projects are eligible for exemption from BCD and CVD subject to the importer furnishing a Bank Guarantee ('BG') or Fixed Deposit Receipt ('FDR') valid for a period of 36 months.

The period of such BG or FDR, as the case may be has been extended to 66 months.

## CLARIFICATIONS ISSUED UNDER THE CUSTOMS LAWS

- In case of importation of bulk drugs used in the manufacture of specified drugs, it has been clarified that there is no need to obtain separate certifications from the Central Excise officer under the Central Excise (removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001, at the time of clearance of the final product from the factory, in case such certificate was obtained from the concerned Central Excise officer at the time of importation of the bulk drugs.
- It is clarified that the exemption from BCD shall be available to the parts and components of the cash dispenser and automatic bank note dispensers and suitable amendments have been carried out in the relevant exemption notification to include the classification of the parts and components of such goods in the relevant entry.

# EXCISE DUTY

## RATE OF EXCISE DUTY

Cenvat rate of Excise duty increased to 12.50% from 12.36%, after subsuming the Education cess of 2% and Secondary and Higher Education cess of 1%.

The new rate to apply with effect from 1 March, 2015.

## CHANGES IN THE EXCISE DUTY RATES

Following changes in Excise duty rates have been made with effect from March 1, 2015.

### ■ Increase in Excise duty

Product	Old rate*	New rate
Condensed milk put up in unit container**	Nil	2% (if Cenvat credit not availed) 6% (if Cenvat credit availed)
Peanut butter	Nil	2% (if Cenvat credit not availed) 6% (if Cenvat credit availed)
Packaged Portland cement manufactured and cleared:		
- From a mini cement plant	6% + Rs.120/MT	6% + Rs.125/MT
- Other than from a cement plant	12% + Rs.120/MT	12.5% + Rs.125/MT
Clean energy cess on coal, lignite and peat	Rs. 100 per tonne	Rs. 200 per tonne
Sacks and bags of ethylene polymers, other than for industrial use	12%	15%
Mobile handsets including cellular phones	1% (if Cenvat credit not availed) 6% (if Cenvat credit availed)	1% (if Cenvat credit not availed) 12.5% (if Cenvat credit availed)
Solar water heater systems	Nil	12.5% (if Cenvat credit availed) Nil (if Cenvat credit not availed)
Tablet Computer	10%	12.5% (if Cenvat credit availed) 2% (if Cenvat credit not availed)
Waters, including mineral and aerated waters, containing added sugar or other sweetening matter or flavored	17% (Including Additional duty of 5%)	18%

\* Old rates are subject to levy of Education cess and Secondary and Higher Education cess at 3%.

\*\* Subject to MRP abatement of 30%.

## ■ Reduction in excise duty

Product	Old Rate*	New Rate
Pig iron SG grade and ferro-silicon magnesium for manufacture of cast components of Wind Operated Electricity Generators.	12%	Nil
Round copper wire and tin alloys for use in manufacture of PV ribbon used in solar PV cells and modules	12%	Nil
Chassis for ambulances	24%	12.5%
Wafers of Integrated Circuit (IC) modules for use in manufacture of smart cards	12%	6%
LED Drivers and MCPCB for LED lights, fixtures and lamps	12%	6%**
Leather footwear (having uppers of leather) of Retail Sale Price exceeding 1,000 per pair	12%	6%***

\* Old rates are subject to levy of Education cess and Secondary and Higher Education cess at 3%.

\*\* Subject to MRP abatement of 35%.

\*\*\* MRP abatement on all footwear decreased from 35% to 25%.

## ■ Other changes in excise duty

- ▶ Excise duty on petrol and diesel has been restructured to reflect the increase in Cenvat rate of Excise duty and increase the availability of more funds for development of roads by increasing the additional duties (road cess).

However, there is no change in the effective aggregate rate of duties.

- ▶ Concessional rate of duty of 6% extended till March 31, 2016, on specified goods for use in manufacture of electrically operated vehicles and hybrid vehicles.
- ▶ Parts, components and accessories for use in manufacture of tablet computers including the sub-parts there of fully exempted from excise duty.
- ▶ Extracts, essence and concentrates of tea or mate and preparations including iced tea subjected to Excise duty based on MRP, with an abatement of 30%.
- ▶ Excise duty exempted on specified raw materials for use in manufacture of pacemakers.
- ▶ Excise duty increased on cigarettes by 25% (for length not exceeding 65 mm), and by 15% (for other cigarettes).
- ▶ Excise duty increased on cigars, cheroots and cigarillos.
- ▶ Excise duty increased on cut tobacco from Rs. 60 per kg to Rs. 70 per kg.
- ▶ Compounded Levy Scheme under Section 3A of Central Excise Act, 1944 applicable for Pan Masala, Gutkha and chewing tobacco has been amended to specify the maximum speed of packing machines for packages of notified goods as a relevant factor for computation of duty.

Accordingly, deemed production and duty payable per machine per month have been prescribed for levy of Excise duty.

## MISCELLANEOUS

- Goods manufactured domestically for supply against International Competitive Bidding ('ICB') are subject to exemption from Excise duty if the same attract nil rate of Customs duty.

It is prescribed that the exemption from Excise duty shall be available only if the conditions prescribed in the Customs Notification are fulfilled.

- Goods supplied to Ultra Mega Power Project ('UMPP') and MPP with provisional status for such projects are eligible for exemption from Excise duty subject to the CEO of the project furnishing a BG or FDR.

The validity period for such BG or FDR is increased from 36 months to 42 months for UMPP and 66 months for MPP, respectively.

- The term 'export' has been specifically defined under the Cenvat Credit Rules, as well as Central Excise Rules to generally mean, 'taking goods out of India to a place outside India', for the purpose of granting rebate of duty and refund of Cenvat credits.

## CLARIFICATIONS ISSUED UNDER THE EXCISE LAWS

- It has been clarified that in case of issuance of garnishee notices, where that assessee shows sufficient intent for payment of revenue arrears, the garnishment notices may be rescinded or suitably amended.

Further, it is provided that the facility for payment of arrears of taxes, interest and penalty in 24 to 36 installments may be considered in deserving cases.

- It is also clarified that in cases where prosecution proceedings have been initiated against the assessee and exoneration has taken place in an identical matter (which has reached finality), the prosecution proceedings shall be withdrawn by following the appropriate procedure of the law.

- It is clarified that the 'place of removal' for determining the eligibility for Cenvat credit shall be determined in the following manner:

- ▶ In case of exports by the manufacturer-exporter, where the Shipping bill is filed by such exporter, the place of removal shall be the port/ICD/CFS.
- ▶ In case of exports by the merchant-exporter, the place of removal shall be the place where the property in goods passes from the manufacturer to the merchant exporter.



# SERVICE TAX

## RATE OF SERVICE TAX

Rate of Service tax increased to 14% from 12.36%, after subsuming the education cess of 2% and secondary and higher education cess of 1%.

The new rate to apply from a date to be notified after the enactment of the Finance Bill.

## INTRODUCTION OF SWACHH BHARAT CESS

Provisions created in the Finance Bill to empower the central government to impose 'Swachh Bharat Cess' which may be recovered as Service tax at the rate of 2% on the value of specified taxable services.

Swachh Bharat Cess shall be levied from a date which may be notified by the government.

## NEW SERVICES BROUGHT UNDER THE SERVICE TAX NET

Suitable amendments are proposed in the Finance Act, 1994 to bring the following new services under the tax net from a date which may be notified by the central government after the enactment of the Finance Bill:

- **Services provided by way of access to amusement facilities** such as amusement parks, water parks, theme parks, rides, gaming devices and bowling alleys etc.

Service tax also to be levied on services by way of admission to entertainment event of concerts, non-recognized sporting events, pageants, music concerts, award functions, if the amount charged for such events is more than Rs. 500 per person for right to admission.

However, the exemption from Service tax to services by way of admission to entertainment events, such as, exhibition of cinematographic film, circus, recognized sporting events, dance, theatrical performances including drama and ballets shall continue.

- **Contract manufacturing or job work for alcoholic liquor for human consumption** shall be subject to Service tax.

In this regard, the entry in the negative list with regard to any process amounting to manufacture or production of goods has been suitably amended to exclude from its ambit, services by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption.

- **All services provided by Government or local authorities to business entities** shall be subject to Service tax.

Presently, Service tax applies on the support services provided by the government or a local authority to the business entities by way of an exclusion from the negative list.

Suitable amendments are proposed to the above entry to exclude all the services provided by the government or a local authority from the negative list. Consequently, services provided by the government or a local authority to the business entities shall be subject to Service tax.

In this regard to avoid ambiguities, the term 'government' has been specifically defined to mean, the departments of the central government, state government and union territories and their departments, but excluding an entity created by a statute or otherwise, the accounts of which are not required to be kept in accordance with Article 150 of the Constitution of India or the rules made thereunder.

- Services provided by e-commerce portals (aggregators), owning and managing web-based software applications enabling a potential customer to connect with a service provider under the brand name or trade name of the aggregator have been specifically brought under the Service tax net by suitable amendment in the Rules.

It is also provided that in case the aggregator does not have a presence in India, then whole of the Service tax shall be paid by the agent appointed by the aggregator under the reverse charge mechanism.

The above services provided by the aggregators shall be subject to Service tax with effect from March 1, 2015.

## SERVICE TAX EXEMPTIONS WITHDRAWN

The following exemptions from the Service tax have been withdrawn with effect from April 1, 2015, thereby making such services liable to Service tax:

- Services provided to government or a local authority by way of construction, repair, commissioning, installation, completion, fitting out, maintenance, renovation or alteration for:
  - ▶ Civil structure or original works for commercial or other use.
  - ▶ Structure for pre-dominant use as an educational, clinical or art and cultural establishment.
  - ▶ Residential complex predominantly for self-use or the use of the employees of the government or the local authority, or the MPs, MLAs, and other specified persons.
- Construction, erection, commissioning or installation services for original works pertaining to Ports and Airports.
- Services provided by a performing artist in folk or classical art form of music, dance or theatre, where the amount charged for such performance is more than Rs. 100,000.
- Services provided by a goods transport agency for transportation of foodstuff, namely, tea, coffee, jiggery, sugar and edible oil.

However, the exemption shall be available for transportation of foodgrains including rice, flour and pulses, milk, salt and agricultural produce.

- Services provided by a mutual fund agent and distributor to mutual funds or the asset management companies ('AMC's) and services provided by a selling or marketing agent of lottery tickets to a distributor or a selling agent.

It is further provided, that such services shall be subject to Service tax under the reverse charge mechanism, whereby the recipient of service shall be liable to pay whole of the Service tax.

## NEW SERVICES EXEMPTED

Following new services exempted from the levy of Service tax with effect from April 1, 2015:

- Services provided for transportation of a patient by an ambulance.
- Services provided by a common effluent treatment plant operator for treatment of effluent.
- Services provided by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables which do not change or alter the essential character of such fruits and vegetables.
- Services provided by way of admission to museums, national parks, wild-life sanctuaries, tiger reserves or zoos.
- Services provided by way of exhibition of movies by an exhibitor (theatre owner) to the distributor or an association of persons consisting of such exhibitor.
- Transport of export goods by road from the place of removal to a land customs station.

## OTHER CHANGES IN THE SERVICE TAX PROVISIONS

- Section 67 of the Finance Act is proposed to be amended to specifically provide that all the reimbursable expenditure or costs incurred and charged by the service provider during the course of provision of taxable services, shall be included in the gross value for the payment of Service tax.
- Law clarified for imposition of Service tax on chit fund and lottery by insertion of a suitable explanation to the definition of the term 'Service' to clearly prescribe the intention of the legislature in relation to the levy of service tax on the following services:
  - ▶ Activities undertaken by chit fund foremen for conducting the activities of a chit fund.
  - ▶ Distributors or selling agents of lottery in relation to organizing or conducting of lotteries.
- Following changes prescribed in the provisions relating to payment of Service tax on the abated values with effect from April 1, 2015:
  - ▶ Service tax to be paid at uniform abated value of 30% for transport by rail, road and vessel subject to non-availment of Cenvat credit.
  - ▶ Service tax to be paid at higher abated value of 60% for air travel by other than economy class.  
Air travel by economy class would continue to be taxed at an abated value of 40%.
  - ▶ Abatement prescribed in relation to services provided by a foreman of a chit fund has been withdrawn.

- The alternate composition rates provided to the specified service providers have been amended as follows from a date to be notified after the enactment of the Finance Bill:

Category of Service provider	Existing rate	Proposed rate
<b>Air travel agent</b>		
- Domestic bookings	0.6% of the basic fare	0.7% of the basic fare
- International bookings	1.2% of the basic fare	1.4% of the basic fare
<b>Insurer carrying on life insurance business</b>		
- In the first year	3% of the premium	3.5% of the premium
- In the subsequent year	1.5% of the premium	1.75% of the premium
<b>Money changing services</b>		
- For an amount up to Rs. 100,000 subject to minimum tax of Rs. 35 (earlier Rs. 30)	0.12% of the gross value of currency exchanged	0.14% of the gross value of currency exchanged
- For amount between Rs. 100,000 up to Rs. 10,00,000	Rs. 120 and 0.06% of the gross value of currency exchanged	Rs. 140 and 0.07% of the gross value of currency exchanged
- For amounts exceeding Rs. 10,00,000 subject to maximum tax of Rs. 7,000 (earlier Rs. 6,000)	Rs. 660 and 0.012% of the gross value of currency exchanged	Rs. 770 and 0.014% of the gross value of currency exchanged
<b>Lottery distributor and selling agent services</b>		
- If guaranteed payout is more than 80%	Rs. 7,000 on every Rs. 10,00,000 of aggregate value of tickets	Rs. 8,200 on every Rs. 10,00,000 of aggregate value of tickets
- If the guaranteed payout is less than 80%	Rs. 11,000 on every Rs. 10,00,000 of aggregate value of tickets	Rs. 12,800 on every Rs. 10,00,000 of aggregate value of tickets

- **Following services to be taxed fully under the reverse charge mechanism, with effect from April 1, 2015:**
  - ▶ Manpower supply and security services provided by an individual, HUF or a Partnership Firm to a body corporate.
  - ▶ Services provided by a mutual fund agent, distributor and agent of lottery distributors to the AMC or the distributor of lottery, as the case may be.

## AMENDMENTS IN THE CENVAT CREDIT RULES ('CREDIT RULES')

Following amendments have been carried out in the Credit Rules to simplify the process for availment and utilization of Cenvat credits and remove ambiguities:

- Time limit for taking Cenvat Credit on inputs and input services has been increased to one year from six months from the date of issuance of the document on the basis of which such credit is being availed.
- Suitable amendments have been made in the Credit Rules to provide that the Cenvat credit in respect of any inputs or capital goods shall be allowed even if such goods are despatched directly to the premises of a job worker without being first brought to the premises of the manufacturer or the provider of output service.

Further, the time limit for receiving such goods back in the factory shall be increased to two years in case of capital goods. The time limit for receiving the inputs back in the factory remains unchanged at 180 days.

It is further provided that the period of 180 days/2 years respectively, for receiving such inputs or the capital goods back in the factory shall be counted from the date of receipt of such inputs or the capital goods in the premises of the job worker.

- In case of services where Service tax is required to be paid under the reverse charge, the recipient of the services can avail the Cenvat credit of Service tax after such Service tax is paid without linking the same to discharge of payment obligation in respect of value of the services to the service provider.
- Explanation inserted in the Rule 6 of the Credit Rules to include non-excisable goods cleared for a consideration from the factory and treat them at par with the exempted goods and services for the purpose of these Rules.

It has been further provided that the value of such non-excisable goods shall be invoice value. In case the invoice value is not available, then the value shall be consistent with the principles of valuation contained in the Central Excise Act and Rules.

- Provisions relating to maintenance of records by a first stage or second stage dealer with regard to payment of duty on inputs or capital goods supplied by him from a duty-paid stock, has been made applicable to the importers issuing invoices on which Cenvat credit can be taken.
- Suitable amendments have been made in Rule 14 to provide for recovery of credits wrongly availed but not utilized. It has been further prescribed that for the purpose of initiating recoveries of wrongly availed Cenvat credit, it shall be presumed that all the availment of Cenvat credit have taken place on the last day of the month, whereas the opening balance of the month has been utilized first followed by the utilization of admissible credits earned during the month and thereafter inadmissible credits earned during the month have been utilized.
- Penal provisions contained in Rule 15 of the Credit Rules in relation improper availment of Cenvat credits have been rationalized and aligned with the provisions contained in the Central Excise Act.

## PROCEDURAL CHANGES IN CUSTOMS, CENTRAL EXCISE AND SERVICE TAX

### ■ Rationalisation of penal provisions

Penal provisions under the Customs, Excise and Service tax laws have been relaxed to encourage voluntary compliances and reduce the litigation.

Accordingly, suitable changes have been made under the respective Acts to provide as follows:

Case	Quantum of Penalty		Maximum Penalty
	In case duty and interest is paid within 30 days of receipt of notice	In case duty and interest is paid within 30 days of receipt of order	
In cases not involving fraud / suppression of facts	Nil	25% of the penalty imposed*.	10% of the duty evaded (Minimum penalty of Rs. 5,000 except for Service tax cases).
In cases involving fraud / suppression of facts	15% of the duty / Service tax demanded*.	25% of the duty / Service tax evaded*.	An amount equal to the duty or tax determined / evaded. 50% of the Excise duty and Service tax, in case of disputes for the period April 8, 2011, till the assent of the Finance Bill 2015.

\* Reduced penalty has to be paid within 30 days of communication of Notice / Order, as the case may be.

If the duty/Service tax amount is modified by any appellate authority/tribunal/court, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalties (25% of the penalty imposed) shall be admissible if duty, interest and reduced penalty is paid within 30 days of such Appellate order.

Provision in the Finance Act, 1994 providing for waiver of penalty in case of a failure where the assessee proves reasonable cause for such failure to comply with the Service tax laws, has been omitted.

### ■ Recovery of Excise duty and Service tax declared in the return but not paid

It is provided that in case of Excise duty or Service tax self-assessed and declared in the Return but not paid to the credit of central government, the same may be recovered without issuance of show cause notice thru the recovery mechanism provided under the respective Acts.

### ■ Penalty for delay in submission of any prescribed returns or statements

It is prescribed that a penalty of Rs. 100 per day subject to maximum of Rs. 20,000, may be levied for delay in submission of any prescribed return or annual financial information statement or annual installed capacity statement under the Central Excise Act.

■ **Amendment to provisions in relation to Settlement Commission**

The provisions relating to Settlement Commission have been amended to provide that when any proceeding is remanded for de-novo adjudication, whether in appeal or revision or otherwise, by any court, appellate tribunal or any other authority to the adjudicating authority, then such case shall not be entitled to be filed before the Settlement Commission for settlement.

■ **Facility of obtaining advance rulings extended to all resident firms**

The facility of advance ruling has been extended to all resident firms, specifically including partnership firms, Limited liability Partnerships ('LLP') as defined in LLP Act, 2008, sole proprietorships and one person company.

■ **Simplification of registration process under Central Excise and Service tax**

Application for registration or amendment of the registration applications in Central Excise and Service tax is simplified and shall be filed online only.

Registration application shall be approved by the concerned officer within two working days. Further, verification of documents and premises, as the case may be, shall be carried out after the grant of registration certificate.

■ **Issue of digitally signed documents and maintenance of e-records**

Provisions have been created in the Central Excise and Service tax Rules for authentication of documents by digital signature and preservation of records in electronic forms by the assessee.



# Notes

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# ABOUT MAZARS

Mazars is an international, integrated and independent organisation specializing in audit, consulting, accounting, tax and legal services. Directly present in 72 countries, Mazars unites the skills of 14,000 professionals. Through correspondence and the offices of representation agreements, Mazars also serves clients in 21 additional countries, with teams of professionals who are at the forefront of technical and ethical standards.

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