INDIA

Shanker & Kapani
CHARTERED ACCOUNTANTS

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This booklet summarises the important proposals included in the budget speech made by the Honourable Finance Minister on 01st February, 2017. Whilst every care has been taken in the preparation of this document it may contain inadvertent errors for which we shall not be held responsible. It must be stressed that the Finance Bill may contain proposals which have not been referred to in the budget speech and additionally, the detailed proposals are liable to amendment during the passage of the Finance Bill through Parliament. The information given in this document provides a bird's-eye view on the changes proposed and should not be relied for the purpose of economic or financial decision. Each such decision would call for specific reference of the relevant statutes and consultation of an expert.

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FOREWORD….

India's Union Budget 2017-18 is historic in many ways. Departing from the colonial-era tradition of presenting the Union Budget on the last working day of February, the Honourable Finance Minister (FM), Mr. Arun Jaitley presented it on a much earlier date of 1st February. For the first time, in 92 years the Railway Budget is not a separate event but merged with the Union Budget and the Plan and Non-Plan expenditure have been abolished.

The Budget 2017 is also unique in view of few unprecedented events. The decision of the government to implement demonetisation and embark on digitalisation at rapid pace coupled with implementation of Goods and Services Tax (GST) during the ensuing fiscal year would be close on the heels of the shake-up because of uncertain and politically charged environment. The recent events, both at India as well as in major trading partners globally, the expectations from various stake holders from the government to present opportune Budget policies were also rising high. The Budget makes a serious effort to soothe nerves coming as it does in the aftermath of demonetisation, Brexit & Donald Trump's surprise election as U.S President. Prime Minister Mr. Narendra Modi stated that the pro-poor Budget presented by Honourable Finance Minister, is an 'Uttam' Budget, devoted to strengthening the hands of the poor and has focussed on all sectors and classes.

Amidst huge expectations and following the theme for good governance and clean political system, the FM tried to stimulate the economy by boosting a key demand driver: real estate, lowered the rate at entry-level income-tax to 5 per cent from 10 per cent and taxed the rich with a 10% surcharge on incomes between ₹ 50 lakh and ₹ 1 crore and maintaining the super-rich tax at the existing level, energizing youth to reap benefits of growth and many reforms for the farmers, youth, poor and unprivileged. He has also made huge allocations to credit to farmers, construction of roads, improvisation of railways, etc. The total budgeted expenditure is 25.40 % higher as compared to immediately preceding year. Belying market speculations, the Finance Minister left the long-term capital gains tax on equity investment, STT and other taxes untouched, relieved the domestic transfer pricing rules and also exempted some FPIs from indirect transfer provision.

Boosting investor confidence, the FM also proposed to abolish the FIPB, while FDI is getting a big makeover and the FPI category 1 and 2 investors have been exempted from indirect transfer provisions. Budget will help small businesses to become competitive in the global market with reduced corporate tax rate for MSME's. Transparency in political funding, reduced customs duty to 2.5% for LNG, limit of cash donation for charitable trusts, MAT to carry forward and restriction on cash transactions are few of the tax administration proposals of the Budget. The Government's commitment to eliminate corruption and black money is reflected in the Budget. With the imminent arrival of GST, the Finance Minister preferred not to make many changes in current regime of Excise & Service Tax as the same are to be replaced by GST soon. Additionally, the government also received recommendations from the panel [appointed to review and implement government's fiscal plans under Fiscal Responsibility and Budget Management Act (FRBM)] against following an 'aggressive fiscal consolidation path' and meet the productive spending needs, particularly on infrastructure, housing and social sectors. Govt pegs fiscal deficit target at 3.2 per cent for 2017-18 and 3 per cent for next year considering the recommendations of the panel.

Great art is always a balancing act. But all art has both – an emotional content and an intellectual content. The Finance Minister pulled off a good balancing act in the Union Budget for 2017-18 and the first impression of it seems to have left people euphoric. The Budget attempts to pave a path for the transformative shift towards growth following the overarching agenda of 'Transform, Energise and Clean India'.

Wednesday, February 01, 2017

Mumbai

INDIA

EXECUTIVE SUMMARY

DIRECT TAX PROPOSALS

- Any expenditure (revenue or capital) exceeding RS. 10,000 incurred in cash will not be eligible for deduction or depreciation.
- Cash donations to charitable funds, institutions, etc. are restricted to RS. 2,000 (from existing limit of RS. 10,000).
- The rate of income will be reduced to 6% with respect to turnover received digitally (as Against 8%) for small enterprises under presumptive taxation regime
- A simplified one-pager tax return form is to be introduced for individuals with taxable income (other than business income) of up to RS. 5 lakhs.
- The time limit to file revised returns for FY2017-18 onwards is reduced to one year from the end of financial year
- Rationalisation of time limit for completion of assessment/ reassessment.
- Limitation on the power of tax officer to grant refunds when a tax return selected for assessment is removed for a tax return filed for AY 2017-18 ONWARDS, except where it may adversely affect the interests of revenue.
- Individual or HUF is to deduct tax at the rate of 5% on rent paid in excess of RS. 50,000 per month in the last month of the previous year or tenancy, as the case may be.
- The TCS rate is to be increased to higher of 5% or twice the prescribed rate on failure to furnish PAN
- A fee has been introduced for delay in filing return after due date instead of penalty. The delayed fee will be RS. 1,000, 5,000 or 10,000, depending on the nature of the default.
- A penalty of RS. 10,000 will be levied on professionals for providing incorrect information in reports or certificate for each such defaults
- Exemption on LTCG on transfer of share acquired on or after October 1, 2004 will now be available only if acquisition of the share were subjected to Securities Transaction Tax (genuine case to be notified and excluded).
- The provision for taxability of money or property (including shares) received without or inadequate consideration in excess of Rs 50,000 has been extended to all taxpayers.
- For the purpose of capital gains tax, The fair market value(FMV) of unquoted equity shares is to be considered Where the FMV is higher than the actual consideration
- Non-deduction of tax on resident payments is to attract disallowance when computing Income from other sources.
- Income from transfer of carbon credits will be taxable at a concessional gross rate of 10% (Plus applicable surcharge and cess).

- Surcharge of 10% of tax payable on categories of individuals whose annual taxable income is between Rs 50 lakhs and Rs 1 crore
- Appeal to all citizens of India to contribute to Nation Building by making small payment of 5% tax if their income is falling in the lowest slab of 2.5 lakhs to 5 lakhs
- Existing rate of taxation for individual assesses between income ofRs.2.5 lakhs to 5 lakhs reduced to 5% from the present rate of 10%.
- Threshold limit for audit of business entities who opt for presumptive income scheme increased from Rs. 1 crore to Rs. 2 crores. Similarly, the threshold for maintenance of books for individuals and HUF increased from turnover of 10 lakhs to 25 lakhs or income from 1.2 lakhs to 2.5 lakhs
- Commission payable to individual insurance agents exempt from the requirement of TDS subject to their filing a self-declaration that their income is below taxable limit
- Under scheme for presumptive taxation for professionals with receipt upto Rs 50 lakhs p.a. advance tax can be paid in one instalment instead of four.
- Also the time for completion of scrutiny assessments is being compressed further from 21 months to 18 months for Assessment Year 2018-19 and further to 12 months for Assessment Year 2019-20 and thereafter.
- Political parties will be entitled to receive donations by cheque or digital mode from their donors.
- Every political party would have to file its return within the time prescribed in accordance with the provision of the Income-tax Act
- No transaction above Rs. 3 lakh would be permitted in cash subject to certain exceptions
- MAT credit is allowed to be carried forward up to a period of 15 years instead of 10 years at present
- In order to make MSME companies more viable, income tax for companies with annual turnover upto Rs. 50 crore is reduced to 25%
- Allowable provision for Non-Performing Asset of Banks increased from7.5% to 8.5%. Interest taxable on actual receipt instead of accrual basis in respect of NPA accounts of all non-scheduled cooperative banks also to be treated at par with scheduled banks
- Basic customs duty on LNG reduced from 5% to 2.5%

INTERNATIONAL TAXATION

- Foreign Investment Promotion Board to be abolished in 2017-18 and further liberalisation of FDI policy is under consideration
- Scope of domestic transfer pricing restricted to only if one of the entities involved in related party transaction enjoys specified profit-linked deduction
- Foreign Portfolio Investor (FPI) Category I & II exempted from indirect transfer provision. Indirect transfer provision shall not apply in case of redemption of shares or interests outside India as a result of or arising out of redemption or sale of investment in India which is chargeable to tax in India

- Concessional withholding rate of 5% charged on interest earned by foreign entities in external commercial borrowings or in bonds and Government securities is extended to 30.6.2020. This benefit is also extended to Rupee Denominated (Masala) Bonds.
- FRBM Committee has recommended 3% fiscal deficit for the next three years, keeping in mind the sustainable debt target and need for public investment, fiscal deficit for 2017-18 is targeted at 3.2% of GDP and Government remains committed to achieve 3% in the following year.
- Revenue Deficit of 2.3% in BE 2016-17 stands reduced to 2.1% in the Revised Estimates. The Revenue Deficit for next year is pegged at 1.9%, against 2% mandated by the FRBM Act.

INDIRECT TAX PROPOSALS

GST

- The GST Council has finalised its recommendations on almost all the issues based on consensus on the basis of 9 meetings held
- Preparation of IT system for GST is also on schedule.
- The extensive reach-out efforts to trade and industry for GST will start from 1st April, 2017 to make them aware of the new taxation system.

EXCISE DUTY

- Customs and Excise Duty rates have been reduced to Nil on various products such as Micro-ATMs, fingerprint reader and scanner, iris scanner, miniatures POS card readers, etc., including parts or components used in their manufacture.

SERVICE TAX

- IIM Services to even “Non Residential” students is exempted.
- Service Tax exempted retrospectively on Life Insurance services Army, Navy, Airforce.
- Development charges /Salami exempted retrospectively.
- Valuation Rule retrospectively amended to value the certain portion in execution of work contract involving transfer of goods & land or individual share of land.
- Manufacturing process loses its place from Negative List entry and finds its new place in Exemption Notification.
- Amendments in CENVAT Credit Rule, 2004.
- Research and Development Cess to be abolished.
- Certain Changes in Advance Ruling Provisions.
- Exemption given to grant provided to Airline operator under Regional Connectivity Scheme Airport.

BACKDROP TO THE BUDGET AND RECENT DEVELOPMENTS

INCOME TAX

Domestic Taxation

Circulars/ Notifications/Press Release

INCOME-TAX (FIFTH AMENDMENT) RULES, 2016 – INSERTION OF RULES 10V, 10VA, 10VB AND FORM NO. 3CEJ AND FORM NO. 3CEK

- ☐ As per section 9A of the Income-tax Act, the CBDT made the rules to amend the Income-tax Rules, 1962 which shall come into force from the date of their Publication in the Office Gazette.
- ☐ In the Income-tax Rules, 1962, after rule 10UC, rule 10V relating to the guidelines for applicability of section 9A, rule 10VA relating to the approval of fund and rule 10VB relating to the statement to be furnished by the fund have been inserted.
- ☐ Further, Income Tax Form 3CEJ for the submission of report from an accountant for purposes of section 9A relating to arm's length price in respect of the remuneration paid by an eligible investment fund to the fund manager and Form Income Tax 3CEK for the purpose of the Annual Statement under section 9A of the Income-tax Act, 1961 have been introduced.

(Notification No. SO 1101(E) [No. 14/2016 (F.No.142/15/2015-TPL)], dated 15-3-2016)

INCOME-TAX (SEVENTH AMENDMENT) RULES, 2016 – AMENDMENT IN RULE 114E FOR REPORTING OF FINANCIAL TRANSACTIONS; APPLICABLE FOR FY 2015-16 AND FORM NO. 61A

- ☐ As per section 285BA, of the Income-tax Act, 1961, the CBDT made the following rules further to amend the Income-tax Rules which shall deemed to come into force from the 1st day of April, 2015.
- ☐ In the Income-tax Rules, 1962, in rule 114E and the Appendix II to the Rules, in Form No.61A certain words have been inserted or substituted. Rule 114E of the Rules, as amended by this rule and shall be applicable for the specified financial transactions carried out during the period from 1st April, 2015 to 31st March, 2016.

(Notification No. SO 1155(E) [No.19/2016 (F.No.142/28/2012-(SO)TPL)], dated 18-3-2016)

Section 10(46) of the Income Tax,1961- Exemptions- Statutory Body/Authority/Board/Commission-Notified Body or Authority

- ☐ In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies for the purposes of the said clause, the West Bengal Pollution Control Board, a body constituted by the Government of West Bengal, in respect of the following specified income arising to the Board, namely:-
    - consent fees or no objection certificate fees;
    - analysis fees on air quality and water quality or noise level survey fees;
    - authorisation fees;
    - cess re-imbursement and cess appeal fees;

- reimbursement of the expenses received from the Central Pollution Control Board towards National Air Monitoring Program, the Monitoring of Indian National Aquatic resources and like schemes;
- sale of books relating to environmental law, regulations, important judicial orders and environmental issues where no profit element is involved and the activity is not commercial in nature;
- interest on deposits;
- public hearing fees;
- vehicle emission monitoring test fees;
- fees received for processing by State Environmental Impact Assessment Authority;
- fees collected for training conducted by the environmental Training Institute of the Board where no profit element is involved and the activity is not commercial in nature;
- fees received under the Right to Information Act, 2005 (22 of 2005) and appeal fees;
- interest on loans and advances given to staff of the Board;
- pollution cost or forfeiture of bank guarantee due to non-compliance; and
- miscellaneous income including sale of old or scrap items, tender fees and other matters relating thereto, where no profit element is involved.

(Notification No. SO 1250 (E) both dated 29-3-2016,No. SO1262 (E) dated 30-3-2016) and No(s) SO1309 (E) and SO 1308(E) both dated 4-4-2016)

Section 35(1)(ii) of the Income-tax Act, 1961 – Scientific Research Expenditure – Approved scientific associations / Institutions

The organization ONGC Energy Centre Trust, Indra Chowk New Delhi (PAN:- AAAT02299M) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 from Assessment year 2015-16 onwards in the category of 'Scientific Research Association', subject to the conditions stipulated therein.

[Notification No. 28/2016 (F.No.203/14/2015-Ita-II), Dated 26-4-2016]

Income-tax (Eleventh Amendment) Rules, 2016 - TDS related – Amendment in Rules 30, 31A, 37CA, Forms 24G, 24Q, 26Q & 27Q and insertion of Rule 26C & Form 12BA

The Central Board of Direct Taxes made the rules further to amend the Income-tax Rules, 1962, which may be called the Income-tax (11th Amendment) Rules, 2016 and shall come into force from the 1st day of June, 2016.

[Notification No. SO 1587(e) [No. 30/2016 (F.No.142/29/2015-TPL), Dated 29-4-2016]

Section 206C of the Income-tax Act, 1961 – Profits and Gains from the business of trading in alcoholic liquor, forest produce, scrap, etc. – Procedure for online submission of statement of deduction of tax under section 200(3) and statement of collection of tax under proviso to section 206C(3)

The Principal Director General of Income-tax (Systems) laid down the procedures of registration in the e-filling portal, the manner of the preparation of the statements and submission of the statements as detailed in the said instructions. The deductors /collectors will have the option of online filing of e-TDS/TCS returns through e-filing portal or submission at TIN Facilitation Centres. Procedure for filing e-TDS/TCS statement online through e-filling portal about Registration, Preparation and Submission.

[Notification No. 06/2016, Dated 4-5-2016]

Section 183, read with sections 187 and 190 of the Finance Act, 2016 – Undisclosed income – Declaration of – Notified date for specified sections of Finance Act, 2016

The Central Government appointed (i) the 30th day of September, 2016 as the date on or before which a person may make a declaration under sub-section (1) of section 183; (ii) the 30th day of November, 2016 as the date on or before which the tax and surcharge is payable under section 184, and the penalty is payable under section 185 in respect of the undisclosed income; and (iii) the 30th day of September, 2017 as the date on or before which the benamidar shall transfer to the declarant, being the person who provides the consideration for such asset, or his legal representative.

[Notification No. SO 1830(e) [No. 32/2016 (F.No.142/8/2016-TPL), Dated 19-5-2016]

Section 199 of the Finance Act, 2016 – Power to make rules – Income Declaration Scheme Rules, 2016

The Central Board of Direct Taxes, subject to the control of the Central Government hereby made the rules for carrying out the provisions of Chapter IX of the said Act relating to the Income Declaration Scheme, 2016 which may be called the Income Declaration Scheme Rules, 2016 and shall come into force on the 1st day of June, 2016.

The rules contain important definitions, rules for determination of Fair Market Value and declaration of income or income in the form of investment in any asset.

[Notification No. SO 1831(e) [No. 33/2016 (F.No.142/8/2016-TPL), Dated 19-5-2016]

Section 202 of the Finance Act, 2016 – Tax payable, declaration of – Notified date on which a person may make declaration to designated authority in respect of tax arrears or specified tax under Direct Tax Dispute Resolution Scheme, 2016

The Central Government appointed on 31st day of December, 2016 as the date on or before which a person may make a declaration to the designated authority in respect of tax arrears or specified tax under Direct Tax Dispute Resolution Scheme, 2016.

(Notification No. SO 1902(E) [No. 34/2016 dated 26-5-2016)

Section 48 of the Income-Tax Act, 1961- Capital Gains – Computation of – Notified Cost Inflation Index under Section 48, Explanation (v) – Financial Year 2016-17.

The Central Government notified after serial number 35 and the entries relating thereto, the following serial number and entries to be inserted by which the cost inflation index for the Financial Year 2016-17 to be 1125.

(Notification No. SO 1948(E) dated 2-6-2016)

Special Deposit Scheme – Notified rate of Interest w.e.f. 1-4-2016 to 30-6-2016 on deposits made under said scheme for non-government provident, superannuation and gratuity funds

It is notified that the deposits made under the Special Deposit Scheme for non-government Provident, Superannuation and Gratuity Funds, announced in the Ministry of Finance shall with effect from 1st April, 2016 to 30th June, 2016, bear interest at 8.1% (eight point one per cent).

(Notification No. 5(4)-B (PD)/2016, dated 3-6-2016)

Section 10(23EE) of the Income Tax Act, 1961 – Exemption – Core Settlement Guarantee Fund – Notified Fun

The Central Government notified the Core Settlement Guarantee Fund, set up by Indian Clearing Corporation Limited (ICCL), Mumbai, National Securities Clearing Corporation Limited (NSCCL), Mumbai, a recognized clearing corporation, for the purposes of the aforesaid clause, for the assessment year 2016-17 and subsequent assessment years

(Notification Nos. 50-51 / 2016 dated 23-6-2016)

Section 138 of the Income Tax Act, 1961 read with Income Declaration Scheme, 2016 – Income-tax Authorities – Information respecting assessee, disclosure of – No disclosure of Information by public servants in respect of a valid declaration made under Income Declaration Scheme, 2016.

As per sub-section (2) of section 138 of the Income Tax Act, the Central Government having regard to all the relevant factors, directed that no public servant shall produce before any person or authority any such document or record or any information or computerised data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under 'The Income Declaration Scheme, 2016', contained in Chapter IX of the Finance Act, 2016.

(Notification No. SO 2322(E) [F.No. 142/8/2016-TPL], dated 6-7-2016)

Clarifications on the Income Declaration Scheme, 2016

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has issued three sets of FAQs vide Circular Nos. 17, 24, 25 & 27 of 2016. In order to address further queries received from the public relating to the Scheme, following clarifications are issued.-

Question No.1: In certain cases, the undisclosed income might be reflected in creditors or other liability which may be fictitious. Whether in such cases, the assessee can disclose only such fictitious liability as it may not be possible to link it to any specific asset or investment?

Answer: In a situation where loans, creditors, advances received, share capital, payables etc. are disclosed in the audited balance sheet but are fictitious in nature, and such liabilities cannot be directly linked to acquisition of a particular asset in the balance sheet, then such fictitious liabilities can be disclosed under the Scheme as such without linking the same with the investment in any specific asset. However, in cases where there is a direct link between the fictitious liability and the asset acquired then the amount to be declared shall be the fair market value of the acquired asset as on 01.06.2016.

Question No.2: Whether the amount declared under the Scheme for an earlier assessment year can be taken into account to explain the transaction(s) in the assessment proceedings for subsequent assessment year(s)?

Answer: As per section 189 of the Finance Act, 2016, any declaration made under the Scheme shall not affect finality of completed assessments. However, in an assessment proceeding before the Assessing Officer for an assessment year subsequent to the year for which the income is declared under the Scheme, the income declared for an earlier assessment year can be taken into account to explain the transactions provided there is a nexus between the income declared and the transactions of the subsequent assessment year.

Question No.3: Whether the valuation report of assets declared under the Scheme shall be called for by the department for any enquiry at any time?

Answer: The valuation report from a registered valuer shall not be questioned by the department. However, the valuer is expected to furnish a true and correct valuation report in accordance with the accepted principles of valuation. In case of any misrepresentation, appropriate action as per law shall be taken against the registered valuer.

Question No.4: Whether the information of cash deposits made in bank as a consequent to declaration made under the Scheme shall be picked up by FIU or reported to the income-tax department?

Answer: It is clarified that no adverse action shall be taken against the declarant by FIU or the income-tax department solely on the basis of the information regarding cash deposit made consequent to the declaration under the Scheme.

Question No.5: In case a trust or institution registered under section 12A of the Income-tax Act files declaration under the Scheme, whether the registration under section 12A shall be cancelled on the basis of such declaration?

Answer: No, the registration under section 12A of the Income-tax Act shall not be cancelled solely on the basis of the information furnished in the declaration filed under the Scheme.

Question No.6: In a case where the return of income has not been filed for an assessment year but the time limit for filing the same has not expired under section 139 of the Income-tax Act, whether the declaration under the Scheme can be filed for such assessment year?

Answer: The declaration for the assessment year for which the return of income has not been filed can be made under the Scheme even though the time limit for filing the return under section 139 of the Income-tax Act has not expired.

(Circular No.29 of 2016 Dated 18th day of August, 2016)

Streamlining the process of No Objection Certificate (NOC), Port Clearance Certificate (PCC), voyage return and voyage assessment in the case of Foreign Shipping Companies (FSCs).

Representations have been received in the Board regarding the procedure difficulties faced by foreign shipping companies in issuance of Port Clearance Certificate (PCC) required as per provisions of Section 172 of the Income Tax Act, 1961 (the act). Board has earlier issued Circular No. 732 dated 20.12.1995 to do away with procedure of obtaining NOC for each voyage in cases covered by full DTAA (Double Taxation Avoidance Agreement) relief. However, it has been represented that

- FSCs (Foreign Shipping Companies) having treaty benefits are still required to approach Port Assessing Officer (at all ports of call) for issuance of No Objection Certificate (NOC) for every vessel at the port for onward submission to Customs department at the port

- No uniform practice is being followed by the Port Assessing officers in giving NOC to each voyage and also in making the assessment of voyage return.

Section 172 of the Act provides for a self contained code for assessment of shipping of non-residents. As per the scheme of taxation contained in the said section, income of a foreign shipping company carrying passengers, livestock, mail or goods and leaving from an indian port shall be deemed to be seven and a half percent of the amount paid or payable on account of such carriage to the owner or the character or to any person on his behalf. The said section further lays down that before the departure or such a ship from the port, the Master of such a foreign ship shall prepare and furnish a return of the voyage, to the Assessing

Officer (AO) or shall make sufficient and necessary arrangement that the return is files within 30days of the ship leaving the port.

Issue of Voyage NOC

The issue of voyage NOC, and its requirement, which is dependent upon the resultant taxability of the freight relating to the voyage shall be dealt with as below in different ways:

- In cases wherein entire cargo belongs to single foreign shipping company which belongs to country with full DTAA relief, the annual NOC issued by the jurisdictional AO will serve the purpose of voyage NOC.
- In cases wherein the cargo belongs to a number of foreign shipping companies, each belonging to a country with full DTAA relief and to each of which annual NOC has been issued by their respective jurisdictional AO, voyage NOC is not required.
- In any other case, the Master of the ship would be required to obtain a voyage NOC from the Officer having jurisdiction over the port. The Customs Authorities shall issue the PCC upon production of such NOC or an authenticated copy.

Filing of voyage return

For a voyage where cargo belongs to a number of foreign shipping companies, even if all of them belong to treaty countries with full DTAA relief, there shall be different AOs for each such foreign shipping company. Since the voyage return is in respect of the ship and its cargo etc, it will not be possible to file it with jurisdictional AOs of the various foreign shipping companies. Thus, in all such cases, the voyage return shall continue to filed with the AO having jurisdiction over the port. Since the voyage return has to be filed within one month of the departure of the ship, it does not, anyway affect the timely departure of the ship from the port.

Voyage Assessment

In cases where a foreign company eligible for full treaty prefers to be assessed on a voyage-wise basis i.e., on a ship basis, the Port Assessing Officer before whom such a voyage return has been filed shall give due credit to the annual NOC issued by the AO. Assessment in such cases must be expeditiously done and without conducting any further verification with respect to the eligibility of the foreign shipping company as regard to treaty benefits and the annual NOC issued by the jurisdictional AO must be honoured. In other cases, i.e., in a situation where the foreign shipping company files an intimation under section 172(7) expressing its willingness to be assessed on an annual basis instead of on a voyage basis, the voyage assessment before the port Assessing Officer should cease and the port Assessing Officer intimate the details of voyage and freight in respect of that foreign shipping company to the Assessing Officer issuing the annual NOC.

The authorities concerned are requested to take note of the above guidelines.

(Circular No.30/2016 dated 26th August,2016)

Enquiry or investigation in respect of document/evidence relating to Income Declaration Scheme (IDS), 2016 found during the course of Search under section 132 or Survey action under section 133A of the Income-tax Act,1961- regarding

The Income Declaration Scheme, 2016 (hereinafter referred to as 'the Scheme') came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has issued five sets of FAQs vide Circular Nos. 17, 24, 25,27 & 29 of2016. To allay apprehensions relating to the income/asset

declared under the Scheme vis-à-vis search and survey action by the Income-tax Department, the following clarification is issued.

It is clarified that wherever in the course of search under section 132 or survey operation under section 133A of Income-tax Act, 1961, any document is found as a proof for having already fileda declaration under the Scheme, including acknowledgement issued by the Income-tax Department for having filed a declaration, no enquiry would be made by the Income-tax Department in respect of sources of undisclosed income or investment in movable or immovable property declared in a valid declaration made in accordance with the provisions of the Scheme.

(Circular No. 32 of 2016 dated 1st November, 2016)

Clarifications on the Direct Tax Dispute Resolution Scheme, 2016

The Direct Tax Dispute Resolution Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter X of the Finance Act, 2016 (hereinafter referred to as 'the Act') provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme. The Direct Tax Dispute Resolution Scheme Rules, 2016 (hereinafter referred to as 'the Rules') have been notified. In regard to the scheme queries have been received from the stakeholders seeking further clarity on certain provisions of the Scheme. The Central Government has considered the queries and decided to clarify the same in the form of questions and answers as follows.-

Question No.1: In a case an appeal was pending before CIT(Appeals) as on 29.02.2016. However, before making declaration under the Scheme the appeal is disposed of by CIT(Appeals). Is the assessee eligible to avail the Scheme?

Answer: In such a case where the appeal was pending before CIT(Appeals) as on 29.02.2016 and the CIT(Appeals) has already disposed of the same before making the declaration, the declaration under the Scheme cannot be filed.

Question No.2: Section 203(2) reads that consequent to the declaration in respect of tax arrear, the appeal pending before Commissioner (Appeals) shall be deemed to be withdrawn. From what point of time does the provision become operative?

Answer: The appeal pending with Commissioner (Appeals) shall be deemed to be withdrawn from the date on which the certificate under section 204(1) is issued by the designated authority.

Question No.3: The addition made in assessment has the effect of reducing the loss but penalty has been initiated under section 271(1)(c) of the Income-tax Act. Is the assessee eligible to avail the Scheme?

Answer: The Scheme is applicable to cases where there is disputed tax. Since in the case of reduction of loss, there is no disputed tax the assessee shall not be eligible to avail the Scheme. However, if an appeal is pending before Commissioner (Appeals) in respect of penalty order framed as a result of variation in quantum loss, the declarant may file a declaration in respect of such penalty order.

Question No.4:A survey was conducted during F.Y. 2013-14. Incriminating documents relating to assessment year 2011-12 were found and assessment under section 147 of the Income-tax Act for the said year was made based on these documents and other enquiries conducted. Is the assessee's case for A.Y. 2011-12 which is pending with Commissioner (Appeals) eligible for the Scheme?

Answer: As per section 208 of the Act, the Scheme shall not be available for assessment or reassessment on which survey conducted under section 133A of the Income-tax Act has a bearing. Hence, in the present case, A.Y. 2011-12 is not eligible for the Scheme.

Applicability of TDS provisions of section 194-I of the Income-tax Act, 1961 of lump sum lease premium paid for acquisition of long term lease regarding

Section 194-I of the Income-tax Act,1961 (the Act) requires that tax be deducted at source at the prescribed rates from payment of any income by way of rent. For the purposes of this section, “rent” has been defined as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or machinery or plant or equipment or furniture or fittings.

The issue of whether or not TDS under section 194-I of the Act is applicable on ‘lump sum lease premium’ or ‘one-time upfront lease charges” paid by an assessee for acquiring long-term leasehold rights for land or any other property has been examined by CBDT in view of representations received in this regard.

The Board has taken note of the fact that in the case of The Indian Newspaper Society (ITA No. 918 & 920/2015), the Hon’ble Delhi High Court has ruled that lease premium paid by the assessee for acquiring a plot of land on an 80 years lease was in the nature of capital expense not falling within the ambit of Section 194-I of the Act. In this case, the court reasoned that since all the rights easements and appurtenances in respect of the said land were in effect transferred to the lessee for 80 years and since there was no provision in lease agreement for adjustment of premium amount paid against annual rent payable, the payment of lease premium was a capital expense not requiring deduction of tax at source under section 194-I of the Act.

Further, in the case Foxconn India Developer Limited (Tax Case Appeal No. 801/2013), the Hon'ble Chennai High Court held that the one-time non-refundable upfront charges paid by the assessee for the acquisition of leasehold rights over an immovable property for 99 years could not be taken to constitute rental income in the hands of the lessor, obliging the lessee to deduct tax at source under section 194-I of the Act and that in such a situation the lease assumes the character of "deemed sale". The Hon'ble Chennai High Court has also in the cases of Tril Infopark Limited (Tax Case Appeal No. 882/2015) ruled that TDS was not deductible on payments of lump sum lease premium by the company for acquiring a long-term lease of 99 years.

(Circular No. 35/2016 F.No. 275/29/2015-IT (B) dated 13th October, 2016)

Taxability of the compensation received by the land owners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 CRFCTLAAR Act')

Under the existing provisions of the Income-tax Act, 1961 (`the Act'), an agricultural land which is not situated in specified urban area, is not regarded as a capital asset. Hence, capital gains arising from the transfer (including compulsory acquisition) of such agricultural land is not taxable. Finance (No. 2) Act, 2004 inserted section 10(37) in the Act from 01.04.2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is not taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, inter alia provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.

As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.

(Circular No. 36/2016 dated 25th October, 2016)

Chapter VI-A deduction on enhanced profits

Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

(i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) of the Act would qualify for deduction under section 80-IB of the Act. This view was taken by the courts in the following cases:
   - Income-tax Officer - Ward 5(1) vs. Keval Construction, Tax Appeal No. 443 of 2012, December 10, 2012, Gujarat High Court.'
   - Commissioner of Income-tax-IV, Nagpur vs. Sunil Vishwambharnath Tiwari, IT Appeal No. 2 of 2011, September 11, 2015, Bombay High Court.

(ii) If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act. This view was taken by the court in the following case:
   - Principal CIT, Kanpur vs. Surya Merchants Ltd., I.T. Appeal No. 248 of 2015, May 03, 2016, Allahabad High Court.

The above views have attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department.
In view of the above, the Board has accepted the settled position that the disallowances made under section 32 40 (a)(ia), 40A(3), 43B, etc. of the act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowances.
Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts / Tribunals may be withdrawn / not pressed upon. The above may be brought to the notice of all concerned.

(Circular No. 37/2016 F.No.279/Misc./140/2015/ITJ dated 2nd November, 2016)

Transport, Power and Interest subsidies received by an Industrial Undertaking- Eligibility for deduction under sections 80-IB, 80-IC etc., of the Income-tax Act, 1961

The issue whether revenue receipts such as transport, power and interest subsidies received by an Industrial Undertaking/ eligible business are part of profits and gains of business derived from its business activities within the meaning of sections 80-IB/80-IC of the Income-tax Act, 1961 (hereinafter referred to as "the Act") and thus eligible for claim of corresponding deduction under Chapter VI-A of the Act has been a contentious one. Such receipts are often treated as 'Income from other sources' by the Assessing Officers.

The Hon'ble Supreme Court in its judgment dated 9.3.2016 in the case of Meghalaya Steels Ltd in CA No. 7622 of 20141 and other cases has held that the subsidies of transport, power and interest given by the Government to the Industrial Undertaking are receipts which have been reimbursed for elements of cost relating to manufacture/ sale of the products.

Thus, there is a direct nexus between profit and gains of the industrial undertaking/ business and reimbursement of such business subsidies. Accordingly, such subsidies are part of profits and gains of business derived from the Industrial Undertaking and are not to be included under the head 'Income from other sources'. Therefore, deduction is admissible under section 80-IB/80-IC of the Act on such revenue receipts derived from the Industrial Undertaking. In view of the above, it is a settled position that revenue subsidies received from the Government towards reimbursement of cost of production/manufacture or for sale of the manufactured goods are part of profits and gains of business derived from the Industrial Undertaking / eligible business, and are thus, admissible for application deduction under Chapter VI-A of the Act.

Accordingly, henceforth, appeals may not be filed by the Department on the above settled issue, and those already filed may be withdrawn / not pressed upon.

The above may be brought to the notice of all concerned.

(Circular No. 39/2016 F.No.279/Misc./ 140/2015/ITJ dated 29th November, 2016)

Demonetization - tax investigations unearth misuse of jan-dhan accounts post demonetization

Investigation being conducted by the Income Tax Department across India into the sudden surge in cash deposits in Jandhan accounts have revealed various inconsistencies. Undisclosed moneys of approximately Rs.1.64 Crore deposited by persons who have never filed returns of income being below the taxable limits, into their Jandhan accounts have already been detected at Kolkata, Midnapore, Ara (Bihar), Kochi and Varanasi. Rs. 40 Lakh has been seized from one such account in Bihar. Undisclosed income so detected will be brought to tax as per the provisions of the Income Tax Act, 1961, apart from other actions depending upon the outcome of investigations. The Central Board of Direct Taxes (CBDT), once again urges the account holders not to consent to any kind of misuse of their accounts which would expose them to the dangers of being held responsible for the tax evasion by unscrupulous elements.

(Press Release, dated 4th December, 2016)

Direct Tax Collections for November, 2016 show Growth of 15.12 %

The figures for Direct Tax collections up to November, 2016 show that net collections are at Rs. 4.12 lakh crore which is 15.12% more than the net collections for the corresponding period last year. This collection is 48.67% of the total Budget Estimates of Direct Taxes for F.Y. 2016-17.

As regards the growth rates for Corporate Income Tax (CIT) and Personal Income Tax (PIT), in terms of gross revenue collections, the growth rate under CIT is 11.22% while that under PIT (including STT) is 22.41%. However, after adjusting for refunds, the net growth in CIT collections is 8.75% while that in PIT collections is 23.89%. Refunds amounting to Rs.1,05,561 crore have been issued during April-November, 2016, which is 17.35% higher than the refunds issued during the corresponding period last year.

(Press Release, dated 09 December, 2016)

Amounts exceeding Rs.5000 in old notes can be deposited only once between now and 30-12-2016

The deposits of old notes of Rs.500 and Rs.1000 denominations have been reviewed by the Government from time to time. Already more than five weeks have elapsed since the time of the announcement of the cancellation of the legal tender character of these notes. It is expected that, by now, most of the people would have deposited such old notes in their possession. Keeping this in view and to reduce the queues in the banks, it has now been decided that amounts exceeding Rs.5000 in old notes can be deposited only once between now and 30th December, 2016. The banks have been advised to conduct due diligence regarding the reasons for not depositing these notes earlier. Amounts of Rs.5000 or less may continue to be deposited with banks in the customer's account, as at present. However, cumulative deposits exceeding Rs.5000 between 19th and 30th December, 2016 will be as per the procedures advised by RBI in respect of deposits exceeding Rs.5000 as stated above. Further, an opportunity has been given to the public to make the payments towards tax, penalty, cess/surcharge and deposit under the Pradhan Mantri Garib Kalyan Yojana (PMGKY) 2016 with the old bank notes of Rs.500 and Rs.1000 denomination upto 30th December, 2016. A number of representations had been received from District Cooperative Central Banks (DCCBs) to allow them to deposit with their linked currency chests the old Rs.500 and Rs.1000 notes that had been collected by them between the 10th of November and 14th of November, 2016. An enabling notification to this effect has been issued. NABARD which supervises the DCCBs will conduct complete audit check of the Know Your Customer (KYC) documents of the individual customers who have deposited these notes or of the members of the Primary Agricultural Credit Society (PACS) who have deposited these notes. The details in this regard will be notified by RBI.

(Press Release, dated 19-12-2016)

INCOME TAX – DOMESTIC TAXATION

SUPREME COURT DECISION

Common Cause vs. UOI (Sahara Diaries)

Section 34 of the Evidence Act: Entries in loose papers/ sheets are irrelevant and inadmissible as evidence. Such loose papers are not "books of account" and the entries therein are not sufficient to charge a person with liability and the entries therein shall not alone be sufficient evidence. It is incumbent upon the person relying upon those entries to prove that they are in accordance with facts

Held:

- Entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act. It is only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible;
- As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability;
- The Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material.

Gopal And Sons (HUF) vs. CIT

Section 2(22)(e): The argument that as the shares are issued in the name of the Karta, the HUF is not the "registered shareholder" and so Section 2(22)(e) will not apply to loans paid to the HUF is not correct because in the annual returns filed with the Registrar of Companies, the HUF is shown as the registered and beneficial shareholder. In any case, the HUF is the beneficial shareholder. Even if it is assumed that the Karta is the registered shareholder and not the HUF, as per Explanation 3 to Section 2(22), any payment to a concern (i.e. the HUF) in which the shareholder (i.e. the Karta) has a substantial interest is also covered

Facts:

Hindu Undivided Family (HUF) had received certain advances from one Company. In the audit report and annual return for the relevant period, which was filed by it before the Registrar of Companies (ROC), it was found that the subscribed share capital of the said Company was that shares were subscribed by the HUF being 37.12% of the total shareholding of the Company. Hence, the Assessing Officer concluded that the assessee was both the registered shareholder and the beneficial owner of shares, as it was holding more than 10% of voting power. On this basis, "Reserve & Surplus" was included in the income of the assessee as deemed dividend.

Issue:

The Supreme Court had to consider that whether in view of the settled principle that HUF cannot be a registered shareholder in a company and hence could not have been both registered and beneficial shareholder, loan/advances received by HUF could be deemed as dividend within the meaning of

Section 2(22)(e) of the Income Tax Act, 1961, especially in view of the term “concern” as defined in the Section itself

Held:

- Section 2(22)(e) of the Act creates a fiction, thereby bringing any amount paid otherwise than as a dividend into the net of dividend under certain circumstances. It gives an artificial definition of ‘dividend’. The dividend taken note of by this provision is a deemed dividend and loan or payment made by the company to its shareholder is actually not a dividend. In fact, such a loan to a shareholder has to be returned by the shareholder to the company. It does not become income of the shareholder. Notwithstanding the same, for certain purposes, the Legislature has deemed such a loan or payment as ‘dividend’ and made it taxable at the hands of the said shareholder. Hence, such a provision which is a deemed provision and fictionally creates certain kinds of receipts as dividends, is to be given strict interpretation. Unless all the conditions contained in the said provision are fulfilled, the receipt cannot be deemed as dividends. Further, in case of doubt or where two views are possible, benefit shall accrue in favour of the assessee.
- For the case under consideration, following conditions need to be fulfilled:

    a) Payment is to be made by way of advance or loan to any concern in which such shareholder is a member or a partner.
    b) In the said concern, such shareholder has a substantial interest.

- Explanation 3(a) defines “concern” to mean HUF or a firm or an association of persons or a body of individuals or a company. As per Explanation 3(b), a person shall be deemed to have a substantial interest in a HUF if he is, at any time during the previous year, beneficially entitled to not less than 20% of the income of such HUF.
- In the instant case, the payment in question is made to the assessee which is a HUF. Shares are held by Karta of this HUF. The said Karta is, undoubtedly, the member of HUF and has substantial interest in the HUF, being its Karta. It was not disputed that he was entitled to not less than 20% of the income of HUF. Hence, provisions of Section 2(22)(e) of the Act get attracted and it is not even necessary to determine as to whether HUF can, in law, be beneficial shareholder or registered shareholder in a Company.
- From the audited annual return of the Company filed with ROC it is found that the money towards share holding in the Company was given by the HUF. Though, the share certificates were issued in the name of the Karta, but in the annual returns, it is the HUF which was shown as registered and beneficial shareholder. HUF is the beneficial shareholder. Even if it is presumed that it is not a registered shareholder, as per the provisions of Section 2(22)(e) of the Act, once the payment is received by the HUF and shareholder is a member of the said HUF and he has substantial interest in the HUF, the payment made to the HUF shall constitute deemed dividend within the meaning of clause (e) of Section 2(22) of the Act.

CIT vs. Yokogawa India Limited

Section 10A/ 10B: Though Section 10A/ 10B were amended by Finance Act 2000 w.e.f. 01.04.2001 to change "exemption" to "deduction", the "deduction" contemplated therein is qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. The deduction of

the profits and gains of the business of an eligible undertaking has to be made independently and before giving effect to the provisions for set off and carry forward contained in Section 70, 72 and 74. The deductions under section 10A/10B are prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income.

Issue:

The Supreme Court had to consider the following questions arising from the judgement of the Karnataka High Court in Yokogawa India Ltd 341 ITR 385 (Karnataka):

a. Whether Section 10A of the Act is beyond the purview of the computation mechanism of total income as defined under the Act. Hence, is the income of a Section 10A unit required to be excluded before arriving at the gross total income of the assessee?
b. Whether the phrase “total income” in Section 10A of the Act is akin and pari materia with the said expression as appearing in Section 2(45) of the Act?
c. Whether even after the amendment made with effect from 1.04.2001, Section 10A of the Act continues to remain an exemption section and not a deduction section?
d. Whether losses of other 10A Units or non 10A Units can be set off against the profits of 10A Units before deductions under Section 10A are effected?
e. Whether brought forward business losses and unabsorbed depreciation of 10A Units or non 10A Units can be set off against the profits of another 10A Units of the assessee.

Held:

- The retention of Section 10A in Chapter III of the Act after the amendment made by the Finance Act, 2000 would be merely suggestive and not determinative of what is provided by the Section as amended, in contrast to what was provided by the un-amended Section. The true and correct purport and effect of the amended Section will have to be construed from the language used and not merely from the fact that it has been retained in Chapter III. The introduction of the word ‘deduction’ in Section 10A by the amendment, in the absence of any contrary material, and in view of the scope of the deductions contemplated by Section 10A, it has to be understood that the Section embodies a clear enunciation of the legislative decision to alter its nature from one providing for exemption to one providing for deductions.
- The difference between the two expressions ‘exemption’ and ‘deduction’, though broadly may appear to be the same i.e. immunity from taxation, the practical effect of it in the light of the specific provisions contained in different parts of the Act would be wholly different. The above implications cannot be more obvious than from the case which have been filed by loss making eligible units and/or by non-eligible assessees seeking the benefit of adjustment of losses against profits made by eligible units.
- Sub-section 4 of Section 10A which provides for pro rata exemption, necessarily involving deduction of the profits arising out of domestic sales, is one instance of deduction provided by the amendment. Profits of an eligible unit pertaining to domestic sales would have to enter into the computation under the head “profits and gains from business” in Chapter IV and denied the benefit of deduction. The provisions of Sub-section 6 of Section 10A, as amended by the Finance Act of 2003, granting the benefit of adjustment of losses and unabsorbed depreciation etc. commencing from the year 2001-02 on completion of the period of tax holiday also virtually works as a deduction which has to be worked out at a future point of time, namely, after the expiry of period of tax holiday. The absence of any reference to deduction under Section

10A in Chapter VI of the Act can be understand by acknowledging that any such reference or mention would have been a repetition of what has already been provided in Section 10A. The provisions of Sections 80HHC and 80HHE of the Act providing for somewhat similar deductions would be wholly irrelevant and redundant if deductions under Section 10A were to be made at the stage of operation of Chapter VI of the Act. The retention of the said provisions of the Act i.e. Section 80HHC and 80HHE, despite the amendment of Section 10A, indicates that some additional benefits to eligible Section 10A units, not contemplated by Sections 80HHC and 80HHE, was intended by the legislature. Such a benefit can only be understood by a legislative mandate to understand that the stages for working out the deductions under Section 10A and 80HHC and 80HHE are substantially different.

- From a reading of the relevant provisions of Section 10A it is clear that the deductions contemplated therein is qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. This is clear from the contemporaneous Circular No. 794 dated 9.8.2000 which states in paragraph 15.6 that,

> *"The export turnover and the total turnover for the purposes of sections 10A and 10B shall be of the undertaking located in specified zones or 100% Export Oriented Undertakings, as the case may be, and this shall not have any material relationship with the other business of the assessee outside these zones or units for the purposes of this provision."*

- If the specific provisions of the Act provide [first proviso to Sections 10A(1); 10A (1A) and 10A (4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No.794 dated 09.08.2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gai ns of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income.
- Though Section 10A, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI.

Ashok Prapann Sharma vs. CIT

Section 55(2): In determining the cost of acquisition as on 01.04.1974 (or 01.04.1981), the value declared in the wealth-tax return as well as the comparable sales, even if later in point of time, have to be considered. The High Court should not interfere with findings of fact, unless palpably incorrect

Facts:

The Assessee was subjected to payment of income-tax on capital gains accruing from land acquisition compensation and sale of land.

Issue:

How the cost of acquisition is to be worked out for the purposes of deduction of such cost from the receipts so as to arrive at the correct quantum of capital gains eligible to tax under the Income-Tax Act, 1961 (Act). The Assessing Officer as well as the First Appellate Authority took into account the declaration made in the return filed by the Assessee under the Wealth Tax Act (Rs.2 per square yard) in respect of the very plot of land as the cost of acquisition. Some instances of comparable sales showing higher value at which such transactions were made (Rs.70/- per square yard) were also laid by the Assessee before the Assessing Officer. The same were not accepted on the ground that such sales were subsequent in point of time i.e. 1978-1979 whereas under Section 55(2) of the Act the crucial date for determination of the cost of acquisition is 1st April, 1974. The Tribunal took the view that the comparable sales cannot altogether be ignored. Therefore, though the comparable sales were at a higher value of Rs.70/- per square yard, the learned Tribunal thought it proper to determine the cost of acquisition at Rs.50/- per square yard. In Second Appeal, the High Court exercising jurisdiction under Section 260A of the Act reversed the said finding bringing the Assessee to this Court by way of present appeal.

Held:

- A declaration in the return filed by the Assessee under the Wealth Tax Act would certainly be a relevant fact for determination of the cost of acquisition which under Section 55(2) of the Act to be determined by a determination of fair market value. Also would be the comparable sales though slightly subsequent in point of time for which appropriate adjustments can be made as had been made by the learned Tribunal (from Rs.70/- per square yard to Rs.50/- per square yard). Comparable sales, if otherwise genuine and proved, cannot be shunted out from the process of consideration of relevant materials. The same had been taken into account by the learned Tribunal which is the last fact finding authority under the Act. Unless such cognizance was palpably incorrect and, therefore, perverse, the High Court should not have interfered with the order of the Tribunal. The order of the High Court overlooks the aforesaid severe limitation on the exercise of jurisdiction under Section 260A of the Act.
- It appears that there was an on-going process under the Land Acquisition Act, 1894 for determination of compensation for a part of the land belonging to the Assessee which was acquired [39 acres (approx.]. The Reference Court enhanced the compensation to Rs.40/- per square yard. The above fact, though subsequent, would not again be altogether irrelevant for the purposes of consideration of the entitlement of the Assessee. However, as the determination of the cost of acquisition by the learned Tribunal was on the basis of the comparable sales and not the compensation awarded under the Land Acquisition Act, 1894 (the order awarding higher compensation was subsequent to the order of the learned Tribunal) and the basis adopted was open for the learned Tribunal to consider. Hence, Tribunal order is affirmed.

Rayala Corporation Pvt. Ltd vs. ACIT

Section 28: Income from letting of property on rent by an assessee engaged in the business of letting is assessable as "business profits" under section 28 and not as "Income from house property" under section 22

Facts:

The assessee, a private limited company, had house property, which was rented and the assessee was receiving rent from it. The assessee claimed that though it is having house property and is receiving income by way of rent, the assessee is in business of renting its properties and is receiving rent as its business income and so the said income should be taxed under the Head “Profits and gains of business or profession”. The Revenue claimed that as the income is arising from House Property, the said income must be taxed under the head “Income from House Property”.

Issue:

The Supreme Court had to consider whether the rental income should be taxed under the head “Income from House Property” or “Profit and gains of business or profession”.

Held:

- The issue involved is that if an assessee is having his house property and by way of business he is giving the property on rent and if he is receiving rent from the said property as his business income, the said income, even if in the nature of rent, should be treated as “Business Income” because the assessee is having a business of renting his property and the rent which he receives is in the nature of his business income.
- The assessee is a private limited company and even as per its Memorandum of Association its business is to deal into real estate and also to earn income by way of rent by leasing or renting the properties belonging to the assessee company. The High Court and the authorities below had come to a specific finding to the effect that the assessee company had stopped its other business activities and was having only an activity with regard to the leasing its properties and earning rent therefrom. Thus, except leasing the properties belonging to the assessee company, the company is not having any other business and the said fact is not in dispute at all.
- As the business of the company is to lease its property and to earn rent and therefore, the income so earned should be treated as its business income.

ITC Limited Gurgaon vs. Commissioner of I.T. (TDS) Delhi

Concept of "salary" explained. Held that as "tips" are paid to employees of the assessee from an outsider on a voluntary basis and the employees have no vested right to receive the same, the same is not "salary" and the assessee has no obligation to deduct TDS

Facts:

- The Supreme Court had to consider whether the payment of banquet and restaurant tips to the employees of the assessee in its capacity as Employer were profits in lieu of salary within the meaning of section 17(3)(ii) of the I.T. Act, 1961.
- The High Court (CIT (TDS) vs. ITC Ltd. (2011) 338 ITR 598 (Del.)) reversed the order of the ITAT and decided the point against the assessee.

Issue:

- Concept of "salary" explained. Held that as "tips" are paid to employees of the assessee from an outsider on a voluntary basis and the employees have no vested right to receive the same, the same is not "salary" and the assessee has no obligation to deduct TDS.

Held:

Reversing the decision of the High Court the Supreme Court held as under:

- Under section 192(1), "any person responsible" for paying any income chargeable under the head “salaries” is alone brought into the dragnet of deduction of tax at source. The person responsible for paying an employee an amount which is to be regarded as the employee’s income is only the employer. In the facts of the present case, it is clear that the person who is responsible for paying the employee is not the employer at all, but a third person –namely, the customer. Also, if an employee receives income chargeable under a head other than the head "salaries", then section 192 does not get attracted at all. Thus, such income must necessarily be placed under section 56(1) of the Act as ‘income from other sources’. Following Emil Webber vs. CIT, (1993) 2 SCC 453 it is clear that as income from tips would be chargeable in the hands of the employees as income from other sources, such tips being received from customers and not from the employer, section 192 would not get attracted at all on the facts of the present case.
- It can be seen, on an analysis of section 15, that for the said section to apply, there should be a vested right in an employee to claim any salary from an employer or former employer, whether due or not if paid; or paid or allowed, though not due. In CIT vs. L. W. Russel reported in 53 ITR 91 (SC), this Court dealt with the provisions of section 7(1) of the 1922 Act, which preceded sections 15 and 17 of the present Act and held that it is necessary for the employee to have a vested right to receive an amount from his employer before he could be brought to tax under the head "salaries".
- Tips being purely voluntary amounts that may or may not be paid by customers for services rendered to them would not, therefore, fall within section 15(b) at all. Also, it is clear that salary must be paid or allowed to an employee in the previous year “by or on behalf of” an employer. Even assuming that the expression “allowed” is an expression of width, the salary must be paid by or on behalf of an employer. It must first be noticed that the expression “employer” is different from the expression “person”. An “employer” is a person who employs another person under a contract of employment, express or implied, to perform work for the employer. Therefore, section 15(b) necessarily has reference to the contract of employment between employer and employee, and salary paid or allowed must therefore have reference to such contract of employment. On the facts of the present case, it is clear that the amount of tip paid by the employer to the employees has no reference to the contract of employment at all. Tips are received by the employer in a fiduciary capacity as trustee for payments that are received from customers which they disburse to their employees for service rendered to the customer. There is, therefore, no reference to the contract of employment when these amounts are paid by the employer to the employee. The argument that there is an indirect reference to the contract of employment in as much as but for such contract, tips to employees could not possibly have been paid at all. We are afraid that this argument must be rejected for the simple reason that the payments received by the employees have no reference whatsoever to the contract of employment and are received from the customer, the employer only being at the two.
- Their Lordships approved the reasoning contained in Wrottesley vs. Regent Street Florida Restaurant, [1951] 2 K.B. 277 and held that payments of collected tips made in the manner indicated (Paras 7 and 9) above would not be payments made “by or on behalf of” an employer. Their Lordships agreed with the statement of law that there is no ground for saying that these tips ever became the property of the employers. Even if the box were kept in the actual custody of the employer he would have no title to the money as he would hold such money in a fiduciary capacity for and on behalf of his employees. In

the said circumstances, it is clear that such payments would be outside the purview of section 15(b) of the Act.

- It is well-settled that a case is an authority, for what it decides, and not for what logically follows from it. Karamchari Union, Agra vs. Union of India, (2000) 3 SCC 335 in no manner supports Shri Kaul's submission on section 17(3)(ii) that the moment any amount is received from an employer by an employee, without more, such amount becomes a profit in lieu of salary. In Karamchari Union, Agra vs. Union of India, (2000) 3 SCC 335, City Compensatory Allowance (CCA) and House Rent Allowance (HRA) arose directly from the employer – employee relationship. The question the Court had to answer was whether a pecuniary advantage in the form of CCA and HRA would be covered by section 17, which the Court answered in the affirmative. The decision of the Supreme Court cannot be understood to mean that even de hors the employer–employee relationship, any amount received from the employer by an employee would become 'salary' under the section. The Supreme Court did not subscribe to the High Court's view in understanding the aforesaid decision to mean that so long as the employer pays an amount to an employee, even in a fiduciary capacity and de hors the employer-employee relationship, the amount so paid would come within the head "salary".

VLS Finance Ltd. & Anr. vs CIT

A stay on the conduct of a "special audit" under section. 142(2A) amounts to a "stay of the assessment proceedings" and extends limitation under section. 158BE. One warrant of authorisation can be used for multiple visits and searches and limitation commences only after the panchnama records the conclusion of the search

Facts:

The Supreme Court had to consider two Question arising from the judgement of the Delhi High Court V.L.S. Finance Ltd vs. CIT 289 ITR 286 (Del):

- Whether an interim order staying the direction for special audit could be construed as amounting to stay of assessment proceedings?
- Whether it is permissible under Section 132 of the Act that the same warrant of authorisation be executed 16 times and be revalidated again and again instead of issuing fresh authorisation for each visit and whether such revalidation can be done without recording any reasons justifying the revalidation as in the present case.

Issue:

- A stay on the conduct of a "special audit" under section. 142(2A) amounts to a "stay of the assessment proceedings" and extends limitation under section. 158BE. One warrant of authorisation can be used for multiple visits and searches and limitation commences only after the panchnama records the conclusion of the search?

Held:

The Supreme Court held as under:

- It is not in doubt that Explanation 1 to Section 158BE(2) of the Act grants benefit of exclusion only for those cases where 'the assessment proceeding is stayed by an order or injunction' of the court. On literal construction, therefore, it becomes clear from the reading of this provision that the period that is to be excluded while computing the period of limitation for completion of Block Assessments is the period during which assessment proceedings are stayed by an order of a court and this provision shall

not apply if the stay of some other kind, i.e., other than staying the assessment proceedings, is passed. The provision relating to limitation need to be strictly construed.

- As a general rule, therefore, when there is no stay of the assessment proceedings passed by the Court, Explanation 1 to Section 158BE of the Act may not be attracted. However, this general statement of legal principle has to be read subject to an exception in order to interpret it rationally and practically. In those cases where stay of some other nature is granted than the stay of the assessment proceedings but the effect of such stay is to prevent the assessing officer from effectively passing assessment order, even that kind of stay order may be treated as stay of the assessment proceedings because of the reason that such stay order becomes an obstacle for the Assessing Officer to pass an assessment order thereby preventing the Assessing Officer to proceed with the assessment proceedings and carry out appropriate assessment. For an example, if the court passes an order injuncting the assessing officer from summoning certain records either from the assessee or even from a third party and without those records it is not possible to proceed with the assessment proceedings and pass the assessment order, even such type of order may amount to staying the assessment proceedings. The special audit is an integral part of the assessment proceedings, i.e., without special audit it is not possible for the Assessing Officer to carry out the assessment and so, stay of the special audit may qualify as stay of assessment proceedings and, therefore, would be covered by the said explanation.
- The argument of the appellants that there was only one warrant of authorisation which empowered the Revenue authorities to carry out search and visit of the revenue officials on 22nd June, 1998 on the basis of said Warrant of Authorisation dated 19th June, 1998, would end in exhausting the said warrant of authorisation and the subsequent visits, fresh was required and no such authorisation was taken and, therefore, subsequent searches are illegal and no benefit thereof should ensure to be respondent cannot be accepted.
- The appellants never challenged subsequent visits and searches of their premises by the respondents on the ground that in the absence of a fresh authorisation those searches were illegal, null and void. The revenue authorities visited and searched the premises of the appellants for the first time on 22nd June, 1998. In the panchnama drawn on that date, it was remarked 'temporarily concluded', meaning thereby, according to the revenue authorities, search had not been concluded. For this reason, the respondent authorities visited many times on subsequent occasions and every time panchnama was drawn with the same remarks, i.e. 'temporarily concluded'. It is only on 5th August, 1998 when the premises were searched last, the panchnama drawn on that date recorded the remarks that the search was 'finally concluded'. Thus, according to the respondents, the search had finally been completed only on 5th August, 1998 and panchnama was duly drawn on the said date as well. The appellants, in the writ petition filed, had nowhere challenged the validity of searches on the subsequent dates raising a plea that the same was illegal in the absence of any fresh and valid authorisation. On the contrary, the appellants proceeded on the basis that search was conduced from 22nd June, 1998 and finally concluded on 5th August, 1998. On the aforesaid facts and in the absence of any challenge laid by appellants to the subsequent searches, we cannot countenance the arguments of the appellants that limitation period is not to be counted from the last date of search when the search operation completed, i.e. 5th August, 1998. Therefore, this issue is also decided in favour of the respondents.

CIT vs Amitabh Bachchan Civil Appeal

Even if Assessing Officer applies mind and decides not to assess expenditure as unexplained under section. 69C because the assessee withdrew the claim for deduction, the CIT is entitled to revise the assessment on the ground that the matter needed further investigation

Facts:

- The CIT under section. 263 of the I. T. Act, 1961, took the view that notwithstanding the withdrawal of the claim by the assessee, in view of the earlier stand taken that the said expenses were incurred for security purposes of the assessee, the Assessing Officer ought to have proceeded with the matter as the assessee was following the cash system of accounting and the filing of the re-revised return, prima facie, indicated that the additional expenses claimed had been incurred.
- Withdrawal of claim by assessee can be for variety of reasons and this does not mean that Assessing Officer should abandon enquires regarding sources for incurring expenses.
- Assessee follows cash system of accounting and the claim regarding additional expenses was made through duly verified revised return. The claim was pressed during assessment proceedings carried on by Assessing Officer after filing revised return and it was specially stated in letter dated 13-2-2004 that expenses were for security purposes and that payments have been made out of cash balances available etc. Under the circumstances, the Assessing Officer was expected to examine the matter further to arrive at a definite finding whether assessee incurred expenses or not and in case, actually incurred, then what were sources for incurring these expenses. Assessing Officer was satisfied on withdrawal of the claim and his failure to decide the matter regarding actual incurring of additional expenses and sources thereof resulted into erroneous order which is prejudicial to the interest of revenue.

Issue:

- Even if Assessing Officer applies mind and decides not to assess expenditure as unexplained under section. 69C because the assessee withdrew the claim for deduction, the CIT is entitled to revise the assessment on the ground that the matter needed further investigation

Held:

Reversing the decision of the Appellate Tribunal and the High Court, the Supreme Court upholding the order of the CIT under section. 262 of the Act held as under:

- “There can be no doubt that so long as the view taken by the Assessing Officer is a possible view the same ought not to be interfered with by the Commissioner under Section 263 of the Act merely on the ground that there is another possible view of the matter.
- Permitting exercise of revisional power in a situation where two views are possible would really amount to conferring some kind of an appellate power in the revisional authority. This is a course of action that must be desisted from.
- However, the above is not the situation in the present case in view of the reasons stated by the learned C.I.T. on the basis of which the said authority felt that the matter needed further investigation, a view with which we wholly agree.
- Making a claim which would prima facie disclose that the expenses in respect of which deduction has been claimed has been incurred and thereafter abandoning/ withdrawing the same gives rise to the necessity of further enquiry in the interest of the Revenue.
- The notice issued under Section 69-C of the Act could not have been simply dropped on the ground that the claim has been withdrawn. We, therefore, are of the opinion that the learned C.I.T. was perfectly justified in coming to his conclusions insofar as the issue No. (iii) is concerned and in passing the impugned order on that basis. The learned Tribunal as well as the High Court, therefore, ought not to have interfered with the said conclusion.”

CIT vs. ITC Ltd. Special Leave Petition No. 31244 of 2014 dated 15th July, 2016

Special Leave Petition dismissed against High Court’s ruling that where assessee’s liability to pay excise duty relating to earlier years was adjudicated during relevant assessment year, assessee

could claim deduction of amount so paid in assessment year in question even though books of account were maintained on mercantile system of accounting.

Facts:

- ☐ The assessee incurred liability to pay the excise duty of Rs 85.71 lakhs. The assesse disputed the valuation and the matter went to the adjudicatory authority.
- ☐ Once the demand was adjudicated, the assessee paid the amount adjudicated and claimed deduction thereof. The assessee made the payment after adjudication and not during the relevant year.
- ☐ The Tribunal held that the liability of earlier assessment years could not be allowed as a deduction out of the profit of the relevant assessment year 1984-85 in terms of section 43B of the Income Tax Act, 1961.
- ☐ For arriving at the total income of the previous year, only the expenditure pertaining to that previous year to be deducted. It was not open to the assessee to deduct the expenses of earlier years or subsequent years for arriving at the total income of that previous year.

Issue:

- ☐ **Special Leave Petition** dismissed against High Court's ruling that where assessee's liability to pay excise duty relating to earlier years was adjudicated during relevant assessment year, assessee could claim deduction of amount so paid in assessment year in question even though books of account were maintained on mercantile system of accounting.

Held:

- ☐ In the case of CIT vs. Orient Supply Syndicate (134 ITR 12), the Division Bench took the view that the question whether the liability of the earlier years discharged subsequently can be allowed to be deducted is a question which would depend on the facts and circumstances of the case and the statutory provisions.
- ☐ Our attention was not drawn to any statutory provisions on the basis of which the appellant before us incurred the liability to pay the excise duty in question or in violation whereof the appellant refused to pay.
- ☐ On the contrary, it appears that the claim was made on the basis of a valuation which the assesse disputed and that is how the matter went to the adjudicatory authority. It is in those circumstances that the payment was made after adjudication and not during the relevant year.
- ☐ We are of the opinion that even before the introduction of section 43B, it could not have been said that in all cases the assessee, maintaining books of account in a mercantile system, could not be permitted to deduct the amount paid in respect of liability which was incurred in the earlier years. We are, in any event, bound by the judgment in the case of CIT vs. Orient Supply Syndicate and are not in a position to take a different view.
- ☐ Dismissing the Special Leave Petition of the Department of the Supreme Court held as under.
- ☐ We do not find any legal and valid ground for interference. The Special Leave Petition is dismissed."
- ☐

Travancore Diagnostics Private Limited Vs. Asst.

Provisions of section 292BB of the Act can be availed only if notice under section 143(2) of the Act is validly issued. Assessment would be invalid in absence of proper issuance of the notice even if the assessee participates in the proceedings.

Facts:

- The assessee is a company having a diagnostics laboratory at Kollam and a branch at Kottarakkara. On a suspicion of suppression or escaped assessment, a survey was conducted under the provisions of section 133A of the Act both in the Kollam and Kottarakkara premises of the assessee.
- On the basis of certain alleged incriminating documents and materials unearthed during the survey, the revenue issued a notice under section 148 of the Act. Submissions were made by the assessee and an assessment order was passed by the Assessing Officer after making certain additions.
- On appeal to the CIT(A) by the assessee, the CIT(A) restricted the additions made to the extent of difference in the actual gross collection as was reflected in the incriminating papers. The Assessing Officer and the assessee then filed cross objections with the Hon'ble Tribunal wherein the assessee stated that no notice under section 143(2) of the Act had ever been issued to him and that in such circumstances, the entire assessment fails.
- However, the Hon'ble Tribunal held that since the representative of the assessee had participated in the reassessment proceedings under Section 147 and the assessment proceedings under section 143 of the Act, absence of issuance of notice under section 143(2) would have no bearing and would stand condoned in view of Section 292BB of the Act.
- Thus, the assessee preferred an appeal before the Hon'ble Kerala High Court.

Issue:

- Provisions of section 292BB of the Act can be availed only if notice under section 143(2) of the Act is validly issued. Assessment would be invalid in absence of proper issuance of the notice even if the assessee participates in the proceedings.

Held:

- It is virtually admitted by the revenue that no notice under section 143(2) of the Act had been issued. In ACIT Vs. Hotel Blue Moon [2010] 321 ITR 362, the Hon'ble Supreme Court has already settled the position of law that the omission on the part of the AO to issue notice under section 143(2) of the Act cannot be a procedural irregularity and that the same is not curable and that therefore, the requirement of notice under section 143(2) of the Act cannot be dispensed with.
- There is no hesitation in holding that the Assessing Officer can and avail the benefit under section 292BB of the Act and the assessee will be burdened by the rigour of estoppel contained therein only after a notice under section 143(2) of the Act had been validly issued.
- When it is virtually admitted that no such notice had been issued, the Assessing Officer loses even the authority to enter into the jurisdiction under section 143 of the Act and the participation or otherwise of the assessee would be of no avail.

Thus, if a notice under section 143(2) of the Act has not been issued, the Assessing Officer cannot claim the benefit under section 292BB of the Act

HIGH COURT DECISIONS

Pr. CIT vs. N. C. Cables Ltd (Delhi High Court)

Section 147/ 151: The mere appending of the word "approved" by the CIT while granting approval under section 151 to the reopening under section 147 is not enough. While the CIT is not required

to record elaborate reasons, he has to record satisfaction after application of mind. The approval is a safeguard and has to be meaningful and not merely ritualistic or formal

Facts:

The Tribunal quashed the notice issued under section 147 of the Act for reassessment on the ground that the word "approved" appended by the Commissioner of Income while granting approval under section 151 of the Act reflected non-application of mind by the Commissioner and rendered the reassessment bad.

Issue:

"Did the Tribunal fall into error in holding that the Commissioner of Income Tax (CIT) did not in fact record satisfaction under Section 151 of the Income Tax Act, 1961 for issuing notice under Section 147, in the circumstances of the case?"

Held:

Section 151 of the Act clearly stipulates that the CIT, who is the competent authority to authorize the reassessment notice, has to apply his mind and form an opinion. The mere appending of the expression 'approved' says nothing. It is not as if the CIT has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner.

In the present case, the exercise appears to have been ritualistic and formal rather than meaningful, which is the rationale for the safeguard of an approval by a higher ranking officer. Hence, the Court is satisfied that the findings by the ITAT cannot be disturbed.

Ashish Gandhi Builders & Developers P. Ltd vs. ITAT (Bombay High Court)

Section 254(2): Facts recorded by the ITAT have to be accepted as correct and conclusive and cannot be contradicted by affidavit or otherwise. The mere placing of a case law in the paper book does not mean that it was cited before the ITAT and non-consideration thereof is not a mistake apparent from the record. A Miscellaneous Application to rectify such alleged mistake of non-consideration of a judgment must be filed as quickly as possible

- The statement of fact recorded in the order of the Court/Tribunal has to be accepted as correct and conclusive. It cannot be contradicted by affidavit or otherwise. Thus, mere filing of the paperbook is no indication of the fact that the case law referred to in paperbook was relied upon and submissions made on it during course of hearing of the appeal.
- In cases such as this where it is contended by a party that particular case was not considered by the Court/Tribunal/Adjudicating Authority which was cited during the course of hearing and is relevant to the issue, then a party would be expected to move the Tribunal as quickly as possible. This is to be done for the reason that the issues would be fresh in the mind of the Court/Tribunal/Adjudicating Authority.

CIT vs. Subhash Vinayak Supnekar (Bombay High Court)

Section 54EC: Investment in specified bonds from the amounts received as an advance is eligible for Section 54EC deduction. The fact that the investment is made prior to the transfer of the asset is irrelevant

Facts:

An Agreement to Sale for the subject property was entered into on 21st February, 2006. The final sale took place under a Sale Deed dated 5th April, 2007. The assessee invested an amount of Rs.50 lakhs from the advance received under the Agreement to Sale in the Rural Electrification Corporation Ltd. bonds on 2nd February, 2007. The Tribunal upheld the claim of the assessee by following the decision of its coordinate bench in Bhikulal Chandak HUF Vs. Income Tax Officer 126 TTJ 545 wherein it has been held that where an assessee makes investment in bonds as required under Section 54EC of the Act on receipt of advance as per the Agreement to Sale, then the assessee is entitled to claim the benefit of Section 54EC of the Act.

Issue:

Whether an amount received on sale of a capital asset as an advance on the basis of Agreement to Sale and the same being invested in specified bonds before the final sale, would entitle the assessee to the benefit of Section 54EC of the Act?

Held:

- The Sale Deed dated 5th April, 2007 records in clause (d) thereof the fact that the Agreement to Sale had been entered into on 21st February, 2006 in respect of the subject property and the amounts being received by the vendor (respondent assessee) under that Agreement to Sale. Thus, these amounts when received as advance under an Agreement to Sale of a capital asset are invested in specified bonds the benefit of Section 54EC of the Act is available.
- In the above view, the Tribunal holds that the facts of the present case are similar to the facts before the Tribunal in Bhikulal Chandak HUF (supra). The Revenue does not dispute the same before us.
- The Revenue had preferred an appeal against the order of the Tribunal in Bhikulal Chandak HUF (supra) to this Court (Nagpur Bench). This Court refused to entertain the Revenue's above appeal from the decision of the Tribunal in Bhikulal Chandak HUF (supra). Hence, the question as proposed for our consideration in the present facts does not give rise to any substantial question of law.

Reliance Infrastructure Ltd vs. CIT (Bombay High Court)
Section 40(a)(ii): Foreign taxes are not hit by the bar in Section 40(a)(ii) and are deductible on the real income theory. After the insertion of the Explanation to s. 40(a)(ii) by the Finance Act 2006, foreign taxes are not deductible only to the extent they are eligible for relief under section 90 & 91. Amounts not eligible for DIT relief are deductible. The Explanation is declaratory and has retrospective effect

Issue

- The Court in Inder Singh Gill v/s. CIT 47 ITR 284 was required to answer the question whether for the purpose of computing total world income of the assessee as defined in Section 2(15) of the I. T. Act, the income accruing in Uganda has to be reduced by the tax paid to the Uganda Government in respect of such income? The Court observed that it is not aware of any commercial principle / practice which lays down that the tax paid by one on one's income is allowed as a deduction in determining the income for the purposes of taxation.

Held:

- Income tax is a charge on the profits/ income. The payment of income tax is not a payment made / incurred to earn profits and gains of business and it cannot be allowed an as expenditure to determine the profits of the business. It is only after deducting all expenses incurred for the purpose of business from the total receipts that profits and/or gains of business/ profession are determined which are subject to tax as income tax under the Act. The main part of Section 40(a)(ii) of the Act does not allow deduction in computing the income i.e. profits and gains of business chargeable to tax to the extent, the tax is levied/ paid on the profits/ gains of business. Therefore, it was on the aforesaid general principle, that this Court answered the question posed to it in Inder Singh Gill (supra) in favour of the Revenue.
- However, the decision of this Court in Inder Singh Gill (supra) was rendered under the Indian Income Tax Act, 1922 and not under the Act. Just as Section 40(a)(ii) of the Act does not allow deduction on tax paid on profit and/or gain of business. The ratio of the aforesaid decision in Inder Singh Gill (supra) cannot be applied to the present facts as the Act defines “tax” as income tax chargeable under the provisions of this Act. Thus, by definition, the tax which is payable under the Act alone on the profits and gains of business are not allowed to be deducted notwithstanding Sections 30 to 38 of the Act.
- The tax which has been paid abroad would not be covered within the meaning of Section 40(a)(ii) of the Act in view of the definition of the word ‘tax’ in Section 2(43) of the Act. To be covered by Section 40(a)(ii) of the Act, it has to be payable under the Act. Section 2 of the Act, while defining the various terms used in the Act, qualifies it by preceding the definition with the word “In this Act, unless the context otherwise requires” the meaning of the word ‘tax’ as found in Section 2(43) of the Act would apply wherever it occurs in the Act. It is not even urged by the Revenue that the context of Section 40(a)(ii) of the Act would require it to mean tax paid anywhere in the world and not only tax payable/ paid under the Act.
- However, to the extent tax is paid abroad, the Explanation to Section 40(a)(ii) of the Act provides / clarifies that whenever an Assessee is otherwise entitled to the benefit of double income tax relief under Sections 90 or 91 of the Act, then the tax paid abroad would be governed by Section 40(a)(ii) of the Act. The occasion to insert the Explanation to Section 40(a)(ii) of the Act arose as Assessee was claiming to be entitled to obtain necessary credit to the extent of the tax paid abroad under Sections 90 or 91 of the Act and also claim the benefit of tax paid abroad as expenditure on account of not being covered by Section 40(a)(ii) of the Act. However, this departure from the meaning of the word “tax” as defined in the Act is only restricted to the above and gives no license to widen the meaning of the word “tax” as defined in the Act to include all taxes on income / profits paid abroad.
- Therefore, on the Explanation being inserted in Section 40(a)(ii) of the Act, the tax paid in Saudi Arabia on income which has accrued and / or arisen in India is not eligible to deduction under Section 91 of the Act. Therefore, not hit by Section 40(a)(ii) of the Act. Section 91 of the Act, itself excludes income which is deemed to accrue or arise in India. Thus, the benefit of the Explanation would now be available and on application of real income theory, the quantum of tax paid in Saudi Arabia, attributable to income arising or accruing in India would be reduced for the purposes of computing the income on which tax is payable in India.
- It is not disputed that some part of the income on which the tax has been paid abroad is on the income accrued or arisen in India. Therefore, to the extent, the tax is paid abroad on income which has accrued and/or arisen in India, the benefit of Section 91 of the Act is not available. In such a case, an Assessee such as the applicant assessee is entitled to a deduction under Section 40(a)(ii) of the Act. This is so as it is a tax which has been paid abroad for the purpose of arriving global income on which the tax payable in India. Therefore, to the extent the payment of tax in Saudi Arabia on income which has arisen / accrued in India has to be considered in the nature of expenditure incurred or arisen to earn income and not hit by the provisions of

Section 40(a)(ii) of the Act. The Explanation to Section 40(a)(ii) of the Act was inserted into the Act by Finance Act, 2006. However, the use of the words “for removal of doubts” it is hereby declared “…….” in the Explanation inserted in Section 40(a)(ii) of the Act, makes it clear that it is declaratory in nature and would have retrospective effect.

Pr. CIT vs. Bharat Heavy Electricals Ltd (Punjab &Haryana High Court)

Section 194C vs. 194J: Law on whether payments for construction, erection & commissioning etc of plants involving inputs from technical personnel constitutes "payments for technical services" and attracts TDS obligations under section 194J in the light of Bharti Cellular 330 ITR 239 (SC) explained

Facts:

The testing, pre-commissioning, commissioning and post-commissioning are required to be carried out by a contractor to satisfy the customer that the work has been executed in a proper manner; that the equipment has been installed as required and that its performance meets the parameters specified in the contract. The personnel do it to satisfy the customer on behalf of the contractor that the plant and equipment has been duly supplied as per the contractual specifications. The technical personnel are deployed not for and on behalf of the customer, but for and on behalf of the contractor itself to ensure that the contractor has supplied the equipment as per the contractual specifications. This is done not to supply technical services to the customer.

Held:

- The contract entered into between the respondent and each of the contractors, did not involve the supply of professional or technical services as per Section 194J. The consideration paid was not for the professional or technical services rendered by the contractors to the respondent. Section 194J is, therefore, not applicable to the present case.
- Sections 194C and 194J are independent provisions. In view of our finding that the contract does not fall within Section 194J, the dismissal of the appeal would follow in any event. The respondent has not denied that the present case falls under Section 194C.
- The contention of the Department that in accordance with the judgement of the Supreme Court in Commissioner of Income Tax Vs Bharti Cellular Ltd., (2011) 330 ITR 239 (SC), the matter ought to be remanded to the Assessing Officer to examine technical experts on this issue is not well founded.
- Firstly, the department never made an application for examining an expert. Secondly, it is not the department’s case that there was any material other than the contracts which required consideration. The case before us merely requires a construction of the contract. The extent of human intervention that was relied upon by the department is based on the provisions of the contract and it was contended that the human intervention contemplated under the contract constituted the consideration payable there under to be for professional and technical services.
- On the other hand, before the Supreme Court, the case was entirely different as noted in paragraph 6 of the judgement itself. As observed by the Supreme Court, in that case there was no expert evidence to show how human intervention takes place particularly during the process when the calls take place from one place to another. The issue as to whether during such calls there is any manual intervention was one of the points which the Supreme Court opined required expert evidence.

- In the present case, the nature of human intervention is reflected in the terms and conditions of the agreement itself. What was required to be considered is whether such human intervention constituted the provision of professional or technical services or not.

DIT (Exemptions) vs. Khar Gymkhana (Bombay High Court)

Section 2(15)/12AA(3): The DIT has no jurisdiction to cancel registration of a charitable institution on the ground that it is carrying on commercial activities which are in breach of the amended definition of "charitable purpose" in Section 2(15). Registration can be cancelled only if the activities of the trust are not genuine or are not being carried out in accordance with its objects. This is clarified by Circular No.21 of 2016

Issue:

The High Court had to consider whether in view of amended Section 2(15) of the Act, restricting the definition “charitable purpose”, by excluding carrying on any trade, commerce and business in receipt of an amount in excess of Rs.25 lakhs would by itself entitle the Director of Income Tax to cancel a Registration under Section 12AA (3) of the Act. The Tribunal set aside the cancellation of Registration under Section 12AA (3) of the Act done by the Director of Income Tax (Exemption) by holding that cancellation of a registration under Section 12AA(3) of the Act is permissible only when the activities of the trust/ institution are not genuine or are not being carried out in accordance with its objects. On appeal by the Department

Held:

- It is evident from Circular No.21 of 2016 dated 27th May, 2016 that the amendment to the definition of charitable purpose by adding of the proviso, would not ipso facto give jurisdiction to the Commissioner of Income Tax to cancel the Registration under Section 12AA (3) of the Act. The jurisdiction to cancel the Registration would only arise if there is any change in the nature of activities of the institution. The above Circular clearly directs the authorities not to cancel the Registration of the charitable institution just because the proviso to section 2(15) of the Act comes into play as receipts are in excess of Rs.25 lakhs in a year. It also refers to Section 13(8) of the Act which provides that where the receipts on account of commercial activities is in excess of the limit of Rs.25 lakhs provided in second proviso to section 2(15) of the Act, then the Assessing Officer would deny the benefit of registration as a Trust for the subject Assessment Year while framing the Assessment.
- The submission made on behalf of the Revenue that the Circular No.21 of 2016 would have only prospective effect in respect of Assessment made subsequent to the amendment under Section 2(15) of the Act w.e.f. 1st April, 2016 is also not sustainable. The amendment in Section 2(15) of the Act brought about by Finance Act, 2016 w.e.f. 1st April, 2016, is essentially that where earlier the receipts in excess of Rs.25 lakhs on commercial activities would exclude it from the definition of ‘charitable purpose’ is now substituted by receipts from commercial activities in excess 20% of the total receipts of the institution.
- In the above view, Circular No.21 of 2016 directs the Officer of the Revenue not to cancel Registration only because the receipts on account of business are in excess of the limits in the proviso to Section 2(15) of the Act would also apply in the present case. The impugned order has held that cancellation of a Registration under Section 12AA (3) of the Act, can only take place in case where the activities of trust or institution are not genuine and/or not carried on in accordance with its objects.

- The aforesaid Circular No.21 of 2016 is in line of the finding of the Tribunal in the impugned order. The submission on behalf of the Revenue that the Trust is not genuine because it is hit by proviso to Section 2(15) of the Act, is in fact, negatived by Circular No.21 of 2016. In fact, the above Circular No.21 of 2016 clearly provides that mere receipts on account of business being in excess of the limits in the proviso would not result in cancellation of Registration granted under Section 12AA of the Act unless there is a change in nature of activities of the institution.
- There is no change in nature of activities of the institution during the subject Assessment Year. The further submission on behalf of the Revenue that looking at the quantum of receipts on account of commercial activities, it is unlikely/ improbable that in the subsequent Assessment Years, the receipts would fall below Rs.25 lakhs and therefore, the Commissioner is entitled to cancel the Registration. The aforesaid submission made on behalf of the Revenue is based not on facts as existing but on probability of future events. Whenever the receipts on account of commercial activities is in excess of the limits provided in proviso to Section 2(15) of the Act, the Assessing Officer is mandated/ required to deny exemption under Section 11 of the Act as provided in Circular No.21 of 2016 dated 27th May, 2016. Accordingly, the issue stands covered in favour of the Revenue by virtue of Circular No.21 of 2016.

CIT vs. Mukesh Ratilal Marolia (Bombay High Court)

Section 10(38)/ 69: Fact that a small amount invested in "penny" stocks gave rise to huge capital gains in a short period does not mean that the transaction is "bogus" if the documentation and evidences cannot be faulted

Facts:

The assessee claimed that he had purchased 2,19,600 shares of different companies. The purchases were made through M/s. Rushab Investments, Radha Ashok and Anil Securities. The purchases were made during the period from February to August 1999 i.e., during the previous year periods relevant to the assessment years 1999-2000 and 2000-01. All the 2,14,600 shares were sold by the assessee during the period April 2000 to February 2001, which is the previous year relevant to the assessment year under appeal. The shares were sold through M/s. Richmond Securities Pvt. Ltd., and M/s. Scorpio Management. The assessing authority made enquiries regarding the bona fides of the purchase and sale of those shares. He had issued notice and summons to the concerned parties to explain the nature of transactions they had with the assessee. The Assessing Officer has discussed the details of the enquiries conducted by him in a detailed manner in the assessment order. Assessing Officer sought to disbelieve the purchase of shares recorded by the assessee and treated the transactions as bogus and assessed the sale proceeds as unexplained investment under section 69. The Tribunal, based on (2006) 6 SOT 247 (Mum) allowed the appeal on the following grounds:

a. The books of account maintained by the assessee for both the years clearly reflected the purchase of those shares. The shares are reflected in the balance sheets filed by the assessee along with the returns of income for the assessment years 1999-2000 and 2000-01.
b. The assessee has been declaring agricultural income in his returns of income for the assessment years from 1990-91 to 2001-02. It is, very clear that the investment made by the assessee in shares during the previous periods relevant to the assessment years 1999-2000 and 2000-01 was supported by cash generated out of agricultural income. The above agricultural incomes have been considered in the respective assessments. Therefore, the contention of the assessing authority that the assessee had no sufficient resourcefulness to make investments in the shares is unfounded.

c. Purchase and sale of shares outside the floor of Stock Exchange is not an unlawful activity. Off-market transactions are not illegal. It is always possible for the parties to enter into transactions even without the help of brokers. The assessee has stated that the transactions were made with the help of professional mediators who are experts in off-market transactions.
d. When the transactions were off-market transactions, there is no relevance in seeking details of share transactions from Stock Exchanges. Stock Exchanges cannot give details of transactions entered into between the parties outside their floor. Therefore, the reliance placed by the assessing authority on the communications received from the Stock Exchanges that the particulars of share transactions entered into by the assessee were not available in their records, is out of place. The materials collected by the assessing authority from the Stock Exchanges are not valid to dispel or disbelieve the contentions of the assessee.
e. The explanations of the assessee seem to have been rejected by the assessing authority more on the ground of presumption than on factual ground. The presumption is so compelling that comparatively a small amount of investment made by the assessee during the previous year period relevant to the assessment years 1999- 2000 and 2000-01 have grown into a very sizable amount ultimately yielding a fabulous sum of Rs. 1,41,08,484 which was used by the assessee for the purchase of the flat at Colaba. This is a provocation for the Assessing Officer to jump into a conclusion that the transactions were bogus. But, whatever it may be, an assessment has to be completed on the basis of records and materials available before the assessing authority. In the present case, every transaction of the assessee has been accounted, documented and supported.

Held:

The ITAT allowed the claim of the Assessee by recording that the purchase of shares was duly recorded in the books maintained by the Assessee. The ITAT has recorded a finding that the source of funds for acquisition of the shares was the agricultural income which was duly offered and assessed to tax in those Assessment Years. The Assessee has produced certificates from the aforesaid four companies to the effect that the shares were infact transferred to the name of the Assessee. Hence, the decision of the ITAT in holding that the Assessee had purchased shares out of the funds duly disclosed by the Assessee cannot be faulted.

Similarly, the sale of the said shares for Rs.1,41,08,484 through two Brokers namely, M/s Richmond Securities Pvt. Ltd. and M/s. Scorpio Management Consultants Pvt. Ltd. cannot be disputed, because the fact that the Assessee has received the said amount is not in dispute. It is neither the case of the Department that the shares in question are still lying with the Assessee nor it is the case of the Department that the amounts received by the Assessee on sale of the shares is more than what is declared by the Assessee.

CIT vs. ITC Ltd.

Captive generation – Self consumption of power – Deduction available – Deduction is to be allowed at the rate at which saleable to the distribution company

Facts:

- The assessee is in the business of manufacture of paperboard. For supplying power to its manufacturing unit, it installed a power generation unit. The entire power generated was consumed by the assessee. The Assessing Officer held that the deduction was not available to the assessee as it

did not make any profit from the sale of power as the same was self consumed. The question raised for adjudication before The High Court were,

- if the assessee is entitled To the benefit of the provision of section 80-IA,
- if yes, then the benefit should be computed at the rate at which electricity was supplied by the electricity board.

Issue:

- ☐ Captive generation – Self consumption of power – Deduction available – Deduction is to be allowed at the rate at which saleable to the distribution company

Held:

The Hon'ble High Court held that:

- ☐ Even if the entire power generated in consumed by the assessee, deduction cannot be denied on the ground that the assessee did not earn profit from sale of power on the second issue, it held that for determination of the market value of the power generated for the purpose of deduction under section. 80-IA, the rate at which power is salable to a distribution company is to be applied and not the rate at which power is supplied by electric board to consumers.

Rajapalayam Mills Ltd. vs. DCIT

Speculative Loss – Section 73 – Purchase and sale of sisiter concern resulted in loss – Section 73 not applicable.

Facts:

- ☐ Assessee was engaged in business of manufacture and sale of yarn, purchased shares of sister concern by way of financial support, which shares on subsequent sale, resulted in loss. Assessee's assessment was reopened as Assessing Officer felt that transaction in shares was hit by Explanation to S/73 of IT Act.
- ☐ Assessee contended in response to 148 notice and contended to treat transactions as short term capital loss. CIT(A) allowed appeal and cancelled reassessment. Tribunal reversed finding of the CIT(A) and restored finding of Assessing Officer.

Issue:

- ☐ Purchase and sale of sister concern resulted in loss – Section 73 not applicable.

Held:

- ☐ On appeal in High Court, High Court allowed assessee' appeal and held that transaction was one time activity by way of investment and not settled otherwise than by actual delivery.
- ☐ When the purchase of shares cannot come with definition of business under section. 2(13),there was no point in contending that the assessee was engaged in the business much less in a speculative business and not covered under section. 43(5), it could not be brought under Explanation to S.73.
- ☐ When genuineness of transaction was not being disputed by Revenue, it could not be termed as tax avoidance device.
- ☐ Therefore loss was allowable as short term capital loss.

TRIBUNAL DECISIONS

Dharamshibhai Sonani vs. DCIT (ITAT Ahmedabad)

Section 50C: The proviso to Section 50C inserted by the Finance Act 2016 w.e.f. 01.04.2017 to provide that the stamp duty valuation of property on the date of execution of the agreement to sell should be adopted instead of the valuation on the date of execution of the sale deed is curative and intended to remove an undue hardship to the assessee and an apparent incongruity. It should accordingly be given retrospective effect from 1st April 2003, i.e. the date effective from which Section 50C was introduced

Facts:

The assessee, along with a co-owner, sold land at Village Behstan, Surat, on 24.04.2007 at stated consideration of Rs.45,00,000/-. On that day, according to the stamp duty valuation authority, this land was valued at Rs.76,21,800/-. The Assessing Officer sought to add Rs.15,60,900/- to the value of sale consideration, for computing capital gains, received by the assessee. The assessee explained that though a registered “agreement to sell” was executed on 29.06.2005, the sale deed of land could finally be executed only on 24.04.2007 since the land had to be converted to non agricultural land before execution of sale deed, since the buyer was a private limited company. The stamp duty valuation as on 24.04.2007 was according to the assessee, not relevant for ascertaining whether the sale consideration was suppressed which is what is relevant for the purpose of section 50C.

Held:

- The fundamental purpose of introducing section 50C was to counter suppression of sale consideration on sale of immovable properties, and this section was introduced in the light of widespread belief that sale transactions of land and building are often undervalued resulting in leakage of legitimate tax revenues. This Section provides for a presumption, a rebuttable presumption that the value, for the purpose of computing stamp duty, adopted by the stamp duty valuation authority represents fair indication of the market price of the property sold.
- The trouble is that while the sale consideration is fixed at the point of time when agreement to sell is entered into, there is sometimes considerable gap in parties agreeing to a transaction (i.e. agreement to sell) and the actual execution of the transaction (i.e. sale deed), and yet, it is the value as on the date of execution of sale deed which is recognized by Section 50C for the purpose of computing the capital gain because that is what is relevant for the purpose of computing stamp duty for registration of sale deed.
- The comparison between the value as per sale deed and the value as per stamp duty valuation, accordingly, ceases to be devoid of a rational basis because these two values represent the values at two different points of time. In a situation in which there is significant difference between the point of time when agreement to sell is executed and when the sale deed is executed, therefore, should ideally be between the sale consideration as per registered sale deed, which is fixed by way of the agreement to sell, vis-à-vis the stamp duty valuation as at the point of time when agreement to sell, whereby sale consideration was in fact fixed, because, if at all any suppression of sale consideration should be assumed, it should be on the basis of stamp duty valuation as at the point of time when the sale consideration was fixed.
- The Proviso to Section 50C inserted by the Finance Act 2016, with effect from 1st April 2017, recognizes the genuine and intended hardship in the cases in which the date of agreement to sell is prior to the date of sale and introduces welcome amendments to the statue to take the remedial

measures. However, this brings no relief to the assessee as the amendment is introduced only with prospective effect from 1st April 2017.

- A statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity; such an amendment has to be treated as effective from the date on which the law, containing such an undue hardship or incongruity, was introduced.
- The same principles applied in the present context and amendment should be treated as retrospective in effect though not specifically stated so, and will be effective from the date related statutory provisions was introduced. Hence, the proviso to Section 50 C should also be treated as curative in nature and with retrospective effect from 1st April 2003, i.e. the date effective from which Section 50C was introduced.
- It is possible that, at first sight, first proviso to Section 50C may seem to work to the disadvantage of the assessee in certain situation in the event of the word 'may' being construed as mandatory in application, but then this proviso states that "the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer (emphasis supplied)" making it clearly optional to the assessee, and that, in any event, what has been brought by the lawmakers as a measure of relief to the taxpayers cannot be construed as resulting in a higher tax burden on the taxpayers. This statutory provision is in harmony with the legislative intention, insertion of words "at the option of the assessee" between "stamp valuation authority on the date of agreement may" and "be taken for the purposes of computing full value of consideration for such transfer", in first proviso to Section 50C(1), could have made the legal provision even more unambiguous.

Apollo Tyres Ltd vs. ACIT (ITAT Cochin)

Section 37(1): The loss on sale of shares of a wholly-owned subsidiary is allowable as a business loss if the investment in the subsidiary was made for commercial purposes

Facts:

- The assessee has shown a loss of Rs. 4,07,24,151 on the sale its 100% share holding in Apollo Tyres A.G., Switzerland (ATAG) to Apollo Tyres Cyprus Pvt. Ltd. (ATC). The said loss has been claimed as business expenditure. In assessment proceedings, the appellant submitted that the Apollo Tyres A.G. Switzerland , was set up in 2007 as 100% subsidiary of the appellant company with an objective of undertaking sales and marketing of the products of the brand of the appellant company and the investment was made in the subsidiary company for commercial expediency. The Assessing Officer in the draft assessment order was of the view that the said investment in shares cannot be held as business activity as the appellant was itself showing the said shares under the head investment. Appellant's view was that the investment in the shares of Apollo Tyres A.G. Switzerland ,ATAG and the subsequent sale thereof was for the business purpose of the appellant company i.e. refinement of overall structure of the appellant company with a view of obtaining synergies of operations. The said investment was not for the purpose of enhancement of the value of shares nor for earning dividends

Held:

- The appellant has submitted that the objective of Apollo Tyres A.G. Switzerland ,ATAG was undertaking sales and marketing related activities for the brand of the appellant in Singapore. The said factual assertion has not been rebutted by the Assessing Officer in the impugned assessment order. There is nothing on record to show that the said subsidiary company was doing any activity completely

independent and unrelated to the activities carried out by the appellant company. Thus, the claim of the appellant cannot be rejected.

- The unity of objectives of the appellant company and the subsidiary company clearly shows that the investment was in the nature of a trade investment only. The decision to invest in the subsidiary was not such that a prudent business man would not have made it. Hence, the business loss claimed by the appellant is in accordance with law.

J. M. Financial Services Ltd vs. JCIT (ITAT Mumbai)

Section 73 Explanation (speculation loss): If the assessee manages his transactions of sale and purchase of shares in cash segment and in future segment as a composite business, the transactions cannot be segregated to arrive at profit or loss in each segment separately. The provisions of the Income-tax Act cannot be interpreted to the disadvantage of the assessee and to segregate the transactions in cash and future segment which will be against the spirit of the taxation law

Held:

- The assessee manages his transactions of sale and purchase in shares in cash segment and in future segment such that the final outcome will be a profit. Such transactions cannot be segregated to arrive at profit and loss in both these transactions independently or separately. The nature of the business is such that the transactions of the assessee in both segments are part of composite business of the assessee and the transactions are so managed that the resultant figure will be a profit. Hence the provisions of the Income Tax Act cannot be interpreted to the disadvantage of the assessee and to segregate the transactions in cash and future segment which, will be against the spirit of the taxation laws.
- The peculiarity of the business of the assessee is such that the transactions carried out by the assessee in cash segment and in future segment cannot be segregated. The business of the assessee survives on the ultimate resultant figure arrived at after setting off/adjusting of the profit and loss from each segment. It cannot be said that the transactions in each segment done by the assessee are independent of each other.
- Certain exceptions have been carved out under section 43(5) vide which certain transactions in derivative named as ‘eligible transactions,’ done on a recognized stock exchange, subject to fulfillment of certain requirements, are deemed to be non-speculative. The said provisions have been inserted in the Act for the benefit of the assessees keeping in view the fact that in such type transactions on recognized stock exchange, the chance of manipulating and thereby adjusting the business profits towards speculative losses by the assessee is negligible because such transactions are done on recognized stock exchange and there are less chances of manipulation of figures of profits and losses. These provisions have been inserted for the benefit of the assessee so that the assessee may be able to set off and adjust his profit and losses from derivatives in commodities against the normal business losses. These provisions are intended to ease out the assessee from the difficulties faced due to the stringent provisions separating the speculative transactions from the normal transactions. However, these exclusions given to the assessee cannot be allowed to be so interpreted to the disadvantage of an assessee so as to give it a different meaning and thereby denying the assessee the set off of otherwise eligible business loss from one segment as against the other segment, especially when the activity done by the assessee is a composite activity and profit and loss in one segment not only depends but the very transaction is done taking into consideration not ‘expected’ but certain future profit or loss in other segment.

ITO vs. Dr. Vandana Bhulchandani (ITAT Mumbai)

Capital Gains: Mere fact that the assessee is shown as a co-owner of the property does not mean that the capital gains are partly assessable in her hands if the facts show that the other co-owner bought the property from his own funds and showed it as his sole property in the balance sheet

Facts:

The Assessing Officer (AO) in the course of assessment proceedings, on the basis of AIR information observed that the capital gains on sale of the said property in the period under consideration was not disclosed in the assessee's return of income. The explanation put forth by the assessee, that though the assessee's name appeared as one of the joint owners, the investment in the said property was made entirely by her husband out of his account; was reflected in his personal Balance Sheet from acquisition till disposal and the Short Term Capital Gains (STCG) arising on sale there from was disclosed in his return of income for the relevant period, was brushed aside by the Assessing Officer . The Assessing Officer was of the view that since the assessee's name appeared in the agreement, she was liable to be taxed for 50% of the Short Term Capital Gains (STCG) arising from sale of the said property, observing that since the assessee's husband had set off the Short Term Capital Gains on sale of the said property against sale of some shares, the entire arrangement was done with the intention to avoid payment of legitimate taxes.

Held:

- The Assessing Officer, after reopening the assessee's case for A.Y. 2005-06 for the purpose of examining, inter alia, the investment in the said property, has in the order of assessment not disputed the fact that the assessee has not purchased the said property, but rather that the same was purchased by the assessee's husband, out of his own funds. The department has also not been able to controvert the factual finding that even though the assessee is shown as the co-owner of the said property, the source of funds for investment in purchase of the said property is by the assessee's husband and that the property was reflected in his Balance Sheet from the period relevant to A.Y. 2005-06 (i.e. 31.03.2005) till its sale, after which the short term capital gains arising thereon was admittedly disclosed by the assessee's husband in his return of income.

  In this factual matrix of the case, it is held that the entire short term capital gains arising on sale of the said property is to be assessed in the hands of the assessee's husband and not in the assessee's hands

Bayer CropScience Limited vs. ACIT (ITAT Mumbai)

Seciton 37(1): (i) Product Trial expenses of a new product is revenue in nature as it does not provide the assessee with any enduring benefit, (ii) Compensation paid to supplier to ensure goodwill and continued relationship is revenue expenditure

1. Product Trial expenses of a new product is revenue in nature, does not provide Assessee any enduring benefit

Facts:

The assessee had incurred expenses to test as to whether any of its existing products could be used for certain other crops. This exercise was taken before selling the goods in the market. The products were sold in the past for a specific crop, that if those products were to be used for other crops same were to be tested for/on product quality, bioefficacy and toxicology and assessee's product line was such that required concurrence of such expenditure.

Held:

To decide the nature of the expenditure i.e. capital or revenue expenditure, the basic thing to be seen is as to whether the expenditure is for running the business of the Assessee smoothly. If the expenditure is incurred for day-to-day business activities of the Assessee and not for acquiring some asset it has to be allowed as revenue expenditure. In the case before us, it is a fact that no new asset came into existence. Secondly, the expenditure incurred was basically for carrying out the business. Therefore, these expenses have to be allowed.

2. Compensation to paid to supplier to ensure goodwill and continued relationship is revenue expenditure

Facts:

Assessee had entered into an agreement with a supplier to manufacture certain amount of raw material. However, due to adverse market conditions Assessee could not lift the goods from its supplier. Assessee appointed a valuer to determine the compensation to be paid to the supplier for the losses suffered by the supplier. The Assessing Officer and Dispute Resolution Panel treated this expenditure as capital expenditure.

Held:

The Tribunal held that for allowing / disallowing any expenditure under Section 37 of the Act, the basic thing to be seen as to whether the expenditure was incurred for furtherance of business interest of the Assessee or not. It is a fact that in this case because of the expenditure incurred no new assets came into existence. The expenditure was incurred considering the old relation with the supplier and to avoid future business complications. If an assessee makes payment which is compensatory nature, it has to be allowed. In this case, the payment was made in pursuance of an agreement and that was of compensatory nature i.e.it was not penal, hence it was to be allowed

Lahoti Overseas Ltd vs. DCIT (ITAT Mumbai)

A liberal view must be taken in matters of condonation of delay. A delay of 2191 days caused by an employee leaving the services of the assessee and not handing over papers to the assessee deserves to be condoned

Facts:

There was a delay of 2191 days in filing the instant appeal. In the affidavit, the assessee stated that the employee concerned, who was handling with the taxation matter left the assessee company and due to inadvertent mistake, the papers and documents, related to the appeal remained to be handed over, which caused the delay.

Held:

If a litigant satisfies the Courts that there was sufficient reason for availing the remedy after the expiry of limitation, delay could be condoned. In every case of delay, there can be some lapses on the part of the litigant concern. That alone is not enough to turn down the plea unless and until, it makes a mala-fide or a dilatory statutory, the court must show utmost consideration to such litigant. In matters concerning the filing of appeals, in exercise of the statutory right, a refusal to condone the delay can result in a meritorious matter being thrown out at the threshold, which may lead to miscarriage of justice. Since the employee who was earlier handling the tax matters of the assessee company, while leaving the job of the assessee company, did not handover the relevant papers either to the assessee or to the next person, a fact which caused the delay, the delay was liable to be condoned by taking a lenient view.

Avan Gidwani vs. ACIT (ITAT Mumbai)

Rule 46A of the Income Tax Rules which regulates the admission of additional evidence by the CIT(A) cannot override the principles of natural justice

The assessee could collect various evidences only after passing of the assessment order. According to the assessee, these additional evidences are vital documents which are required to be considered in order to adjudicate the issue in a judicious manner. The principle “Audi alteram partem”, i.e. no man should be condemned unheard is the basic canon principles of natural justice and accordingly we find merit in the contentions of the assessee that Rule 46A of the Income Tax Rules cannot be over ride the principles of natural justice. Hence, the learned CIT(A) was not justified in refusing to admit the various additional evidences furnished by the assessee. Since the assessee was not given opportunity to contradict the findings given by the Assessing Officer by not admitting the additional evidences, we are of the view that the Learned CIT(A) should re-adjudicate all the issues afresh by admitting the additional evidences.

B. L. International vs. ACIT (ITAT Delhi)

Section 271(1)(c): No penalty leviable on bonafide human error committed while filing return of income

When the assessee was confronted with the depreciation being claimed on the property, the income from which had been returned under the head income from house property, it immediately realized its mistake of computation of total income and agreed for the addition to its total income. The mistake was inadvertent, is evident from the fact that assessee had furnished return of income of Rs. 3,27,79,273/- and, therefore, there was no reason to make a false claim of a petty sum of Rs. 7,87,734/-. The property was appearing in the fixed assets schedule along with other properties, therefore, for all practical purposes, it was treated as a business asset and the depreciation was, accordingly, claimed in the books of account. This aspect is not disputed. It was only at the time of computation of income that the assessee should have made the addition to the profits as per P&L A/c because the income from this property was returned under the head income from house property. Under such circumstances it cannot be disputed that human error could have crept into while making the computation. Thus, it is evident that assessee did not misrepresent the facts at any stage of proceeding.

Trio Elevators Company (India) Ltd. vs. ACIT (ITAT Ahmedabad)

Assessee claimed depreciation on trademark not registered in its name – claim of depreciation is not contingent upon its registration – depreciation allowable.

Facts:

- ☐ Pursuant to slump sale agreement with 'A' Ltd., the assessee company purchased the business of selling, installation, commissioning and repairs and maintenance of elevators with all its assets and liabilities, benefits and obligations, employees and customers, as a going concern.
- ☐ One of the assets which were transferred to the assessee as such was trademark. The assessee claimed depreciation on the asset so acquired.
- ☐ The Assessing Officer held that since the assessee was not yet registered owner of the trademark its claim for depreciation could not be allowed.
- ☐ The Commissioner (Appeals) confirmed the order of Assessing Officer.

Issue:

- ☐ Assessee claimed depreciation on trademark not registered in its name – claim of depreciation is not contingent upon its registration – depreciation allowable?

Held:

- ☐ The assessee, pursuant to slump sale agreement dated 31-8-2007 with Alps Technologies Pvt. Ltd., purchased the business of selling, installation, commissioning and repairs and maintenance of elevators, with all its assets and liabilities, benefits and obligations, employees and customers, as a going concern. One of the assets which was transferred to the assessee as such was trademark which was assigned a value of Rs. 2,00,00,000/- in this agreement.
- ☐ The assessee claimed depreciation of ` 50 lakh on the asset so acquired. The Learned. Assessing Officer disallowed the depreciation claimed by the assessee on the ground that it is not yet registered owner of the trademark.
- ☐ The Learned. Assessing Officer further observed that as the assessee is not a registered owner of the trademark, it is not entitled to the use of the trademark, nor can the assessee bar any other person from using the same trademark.
- ☐ He further noted that in terms of Section 28(1) of the Trade Marks Act, 1999 it is only on the registration that the proprietor of the trademark gets the exclusive right to use the trademark and to obtain relief in respect of infringement of the trademark. On appeal, the First Appellate Authority upheld the disallowance made by the Learned. Assessing Officer
- ☐ The assessee being aggrieved by the order passed Learned. CIT(A) preferred an appeal before the Hon'ble Ahmedabad Appellate Tribunal.
- ☐ The Appellate Tribunal was pleased to allow the claim of the assessee by observing that admissibility of depreciation on trademark is not contingent upon its registration in name of assessee in as much as description of intangible asset in Part B of depreciation schedule describes same merely as 'know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature'.

DCIT vs. Kotak Securities Ltd – (ITAT Mumbai)

Payment made to holding company towards ESOP – disallowance of such payment holding that the discount on issue of ESOP is contingent expenditure.
Facts :

- The assessee is a subsidiary of Kotak Mahindra Bank Ltd. (‘KMBL’ for short). KMBL had formulated ESOP in accordance with Securities and Exchange Board of India guidelines, 1999. As per the scheme the employees of the assessee were granted option to acquire the equity shares of KMBL at a discount to the prevailing market price.
- The assessee made payment to KMBL in respect of its share of discount and debited such payment to Profit & Loss Account on the ground that the payment was nothing but compensation paid to the employees.
- However, the Learned. Assessing Officer while finalizing the assessment order rejected the claim of the assessee by observing that ESOP discounts were incurred in relation to the issue of shares to the employees and the same are not relatable to profits and gains arising or accruing from business/trade. Hence, the expenditure is not allowable under Section 37 of the Act.
- On appeal the First Appellate Authority allowed the claim of the assessee relying on the decision of Biocon Ltd. vs. DCIT [2014] 144 ITD 21 (Bangalore–Tribunal) (SB).
- The department being aggrieved by the above order passed by Learned. CIT(A) preferred an appeal before the Mumbai Appellate Tribunal.

Issue:

- Payment made to holding company towards ESOP – disallowance of such payment holding that the discount on issue of ESOP is contingent expenditure.

Held:

- Hon'ble Appellate Tribunal dismissed the appeal of the department and upheld that order of the Learned. CIT(A) relying on the decision of Bangalore Appellate Tribunal in the case of Biocon Ltd. (supra) wherein it has been held that conceptually the discount on issue of ESOP is an allowable deduction in computing taxable income.
- The discount is nothing but a part of remuneration packages and it is neither a short receipt of capital not a capital expenditure.
- The discount on issue of ESOP is not a contingent expenditure and the expenditure is allowable in the hands of the assessee since the amount is already paid.

Stewarts & Lloyds of India Ltd. vs. CIT

Capital gains – Section 55 of the Income-tax Act, 1961 – Cost of acquisition – The expression, 'where capital asset became property of assessee before 1st day of April 1981' as used in section 55(2)(b)(i) of Act cannot be equated to legal ownership?

Facts:

- In March 1971, by virtue of an assignment deed, State Government assigned a property to assessee for construction of building and installation of machinery. Thereafter, State Government handed over management of said industrial estate to State Small Industries Development Corporation Ltd., who sold property in question to assessee in year 1994 by executing a sale deed for a consideration already paid by assessee in terms of deed of assignment.
- During relevant previous year, assessee sold said property and computed capital gain on basis of fair market value of land as on 1-4-1981. Assessing Officer accepted capital gain declared by assessee. However, Commissioner was of view that assessee became owner of property in year 1994 only and, thus, he concluded that the order of the Assessing Officer accepting indexed cost of acquisition as on

1-4-1981 was erroneous and prejudicial to the interest of the Revenue and was liable to be revised in exercise of powers of Revision under section 263 of the Act.

Issue:

- Capital gains – Section 55 of the Income-tax Act, 1961 – Cost of acquisition – The expression, 'where capital asset became property of assessee before 1st day of April 1981' as used in section 55(2)(b)(i) of Act cannot be equated to legal ownership?

Held:

On appeal the Tribunal held that, the expression:

- 'Where the capital asset became the property of the assessee before 1-4-1981 in the context of section 55(2)(b)(i) of the Act, does not speak of the date of vesting of legal title to the property. Clause (b)(i) of section 55(2) would be attracted only when, the capital asset became the property of the assessee' before 1-4-1981.
- Thought in the present case a registered conveyance in respect of the property was obtained by the assessee only in the year 1994, it became the owner of the property by paying the entire consideration as set out in the deed of assignment dated executed in 1971 and by complying with the conditions of assignment much before 1-4-1981, thus, under clause (b)(i) of section 55 of the Act, it was entitled to adopt the fair market value as on 1-4-1981 as cost of acquisition while computing capital gain.

Trimurty Buildcon (P) Ltd. vs. DCIT [2016] 135 DTR (Jaipur Tribunal)

Concealment penalty – Section 271(1)(c) of the Income-tax Act, 1961 – Addition on account of debatable issue of deemed dividend under section 2(22) (e) – Assessee furnished all the details in return – Penalty levied under section 271 (1)(c) of the Act is unjustified

Facts:

- The assessee is engaged in the business of real estate development. The business premises of the assessee were subjected to search and seizure action under section 132 of the Act on 3-5-2007.
- Thereafter assessment was completed under section 153A of the IT Act. During the relevant years assessee company raised loans from its sister concerns Trimurty Landcon (India) Pvt. Ltd., Abhishek Finlease Pvt. Ltd., Abhishek Estate Pvt. Ltd. and Trimurty Colonisers & Builders Pvt. Ltd.
- These loans received were offered for tax as Deemed Dividend during the course of assessment proceedings and were accordingly taxed. The assessee had not filed any appeal. The Assessing Officer initiated proceedings to levy penalty on the above addition under section 2(22)(e) of the Act.
- During the course of penalty proceedings, assessee submitted that amounts were offered for tax voluntarily. These loans received for business purposes, all group companies are engaged in similar line of real estate business and that Deemed Dividend law is not applicable on business advances. The loans were re-paid back.
- The assessee further explained that on business advances made by the assessee company to its shareholders for business purposes are not covered under section 2(22)(e) of the Act as deemed dividend.
- However, the Assessing Officer passed the order under section 271(1)(c) of the Act and levied penalty on the addition made on account of deemed dividend under section 2(22)(e) of the Act. On appeal the First Appellate Authority upheld the action of Assessing Officer.

Issue:

- Concealment penalty – Section 271(1)(c) of the Income-tax Act, 1961 – Addition on account of debatable issue of deemed dividend under section 2(22) (e) – Assessee furnished all the details in return – Penalty levied under section 271 (1)[c] of the Act is unjustified

Held:

- The assessee being aggrieved by the order passed learned CIT(A) preferred an appeal before the Hon'ble Jaipur Appellate Tribunal.
- The Appellate Tribunal was pleased to allow the appeal of the assessee and directed the learned A.O. to delete the penalty levied under section 271(1)(c) of the Act by observing that the assessee filed the return under section 139 for all the years and disclosed the particulars of shareholding pattern, advances taken and given by the assessee company/individual in return itself.
- The accumulated profit also has been disclosed. Thereafter assessee filed return under section 153A of the IT Act wherein also all the details facts and figures were disclosed in the return. The assessee's case is auditable.
- The assessee at the time of quantum addition as well as at the time of penalty proceedings has reiterated that these advances are in the course of regular business. It is a running account, said advances later on repaid. This issue is debatable and various courts particularly in the case of Creative Dyeing & Printing (P) Ltd. (2009) 318 ITR 0476 (Del.) wherein it has been held that business transaction is not covered under section 2(22)(e) of the Act.

Urvi Chirag Sheth vs. ITO [2016] 136 DTR (Ahmedabad ITAT)

Income from other sources – Section 56 of the Income-tax Act, 1961 – interest received on motor accident compensation – not chargeable under the head income from other sources.

Facts:

- The assessee before the Hon'ble Tribunal is an individual. On 18th May 1990, the assessee was travelling in a car, which met a serious accident, leaving her permanently disabled, what is termed by the competent authority, at ninety per cent level. She claimed a compensation of 15,00,000/- for this tragic loss of her physical abilities. Her claim was upheld by the Hon'ble Apex Court on 26th April, 2011.
- The assessee has also received interest on the said claim of compensation. According to Assessing Officer the interest component on compensation awarded by Hon'ble Supreme Court is taxable as it is covered under section 145A(b) r.w.s. 56(viii) of the Act. On appeal the First Appellate Authority upheld the action of the Assessing Officer

Issue:

- Income from other sources – Section 56 of the Income-tax Act, 1961 – interest received on motor accident compensation – not chargeable under the head income from other sources.

Held:

- The assessee being aggrieved filed an appeal before the Hon'ble Ahmedabad Appellate Tribunal.
- The Appellate Tribunal was pleased to allow the appeal of the assessee by observing that when principal transaction i.e. accident compensation for the delayed payment of which the interest is awarded, itself is outside the ambit of taxation, similar fate must follow for the subsidiary transaction, i.e. interest for delay in payment of compensation, as well.

- Hence, the interest awarded by the court on account of delay in payment of motor accident compensation cannot be taxed in the hands of the assessee.

ITO vs. Bhansali Trust (Mumbai ITAT)

Cancellation of registration – Section 12AA of the Income-tax Act, 1961 – Mere non-intimation of amendments in Trust deed to Department cannot ipso facto lead to cancellation of registration.

Facts:

- The assessee before the Appellate Tribunal is a Trust registered under section 12A of the Act and is carrying out charitable activities for more than 40 years. During the relevant assessment year the assessee claimed exemption under sections 11/12 of the Act.
- The Assessing Officer however finalised the assessment denying the exemption claimed by the assessee and determining total income at Rs.16,46,14,071/- on the ground that the objects of the assessee Trust have been amended after the grant of Registration under section 12A of the Act and the assessee is required to get re-registered with the Director of Income Tax (Exemption) under section 12A of the Act after such amendments in the objects.

Issue:

- Cancellation of registration – Section 12AA of the Income-tax Act, 1961 – Mere non-intimation of amendments in Trust deed to Department cannot ipso facto lead to cancellation of registration.

Held:

- On appeal the First Appellate Authority deleted the addition made by Assessing Officer and allowed the claim of exemption under sections 11/12 of the Act. The Department being aggrieved by the above order preferred an appeal before the Hon'ble Mumbai Appellate Tribunal.
- The Tribunal upheld the order of the learned CIT(A) and dismissed the appeal of the Department by observing that mere non-intimation of amendments in Trust deed to Department cannot ipso facto lead to cancellation of registration because statutory requirement contained in section 12AA(3) prescribes that cancellation of registration cannot be effectuated unless a case is made out that new objects do not fit in with existing objects, i.e., new objects are 'non-charitable' in nature, or that activities are ungenuine.

ITO vs. Bhansali Trust [2016] 137 DTR (Mumbai ITAT Trib)

Deduction under section 80- IC of the Income-tax Act, 1961 – conversion of raw material into article as per the direction of the customers – amounts to manufacture or production – deduction under section 80-IC cannot be denied.

Facts:

- The assessee before the Appellate Tribunal is a firm engaged in the business of assembling and undertaking civil contracts for and on behalf of Government and public sector undertaking.
- The assessee in its return of income claimed deduction under section 80-IC of the Act.

Issue:

- Deduction under section 80- IC of the Income-tax Act, 1961 – conversion of raw material into article as per the direction of the customers – amounts to manufacture or production – deduction under section 80-IC cannot be denied.

Held:

- The Assessing Officer however while finalising the assessment denied the deduction claimed under section 80-IC of the Act on the ground that assessee had not explained about the article or things manufactured and manufacturing process
- On appeal the First Appellate Authority upheld the order of the Assessing Officer The assessee being aggrieved by the order passed by learned CIT(A) preferred an appeal before the Hon'ble Delhi Appellate Tribunal.
- The Appellate Tribunal was pleased to allow the claim of the assessee by observing that the assessee being engaged in carrying out the process of procurement, fabrication and installation of the retail visual identity whereby the raw material is fabricated in a manner so as to create an article which is of use to assessee's customers as per their specifications.
- Hence, the activity carried out by the assessee amounts to manufacture or production. Thus, the assessee is entitled to deduction under section 80-IC of the Act.

Amul Research & Development Association vs. ITO

Charitable purpose – Medical relief – Section 2(15) of the Income tax Act, 1961 – Assessee a registered society under section 12A of the Act – Object of assesse was to provide for research and running of veterinary hospitals and veterinary help to cattle owners for improving livestock health – The assesse collected cess from milk producers members for providing them research, animal nursery, fertility, and other facilities – The Assessing Officer invoking proviso to section 2(15) and denied exemption of income claimed by assessee – Held term 'medical relief' as mentioned in section 2(15) also includes relief made available by assessee to animals in lieu of a nominal cess, thus, assessee could not be regarded as an entity advancing any other object of general public utility covered by proviso to section 2(15).

Facts:

- The assessee was a registered society under section 12A of the Act. The main object of assessee was to provide for research, establishment and running of veterinary hospitals, laboratory services and provide veterinary help to cattle owners for improving health of livestock.
- The assessee collected a nominal cess from milk producers' members in lieu of providing them research, animal nursery and other improvement facilities.
- The Assessing Officer took a view that aforesaid activities carried out by assessee were in the nature of trade, commerce or business including profit motive.
- Thus, invoking the provision to section 2(15) of the Act he denied exemption of income as claimed by assessee under section 11(1) of the Act. The CIT(A) confirmed the order of the Assessing Officer

Issue:

- Assessee a registered society under section 12A of the Act – Object of assesse was to provide for research and running of veterinary hospitals and veterinary help to cattle owners for improving livestock

health – The assesse collected cess from milk producers members for providing them research, animal nursery, fertility, and other facilities – The Assessing Officer invoking proviso to section 2(15) and denied exemption of income claimed by assessee – Held term 'medical relief' as mentioned in section 2(15) also includes relief made available by assessee to animals in lieu of a nominal cess thus, assessee could not be regarded as an entity advancing any other object of general public utility covered by proviso to section 2(15).

Held:

- On appeal Tribunal setting aside the order of the Assessing Officer held that the assessee's activities in making available the facilities in question to milching animals are to ensure that they are free from diseases, their breed improvement and overall well being.
- Article 51(g) of Constitution of India prescribes to have compassion for living creatures. As neither the Constitution nor the Act contains any specific distinction between living beings for the purpose of providing medical relief to humans or animals.
- Thus, the Tribunal held that assessee's activities deserve to be treated under a specific category of 'medical relief' not covered by section 2(15) proviso of the Act inserted with effect from 1-4-2009.

Smt. Manasi Mahendra Pitkar vs. ITO (Mumbai ITAT)

Cash credit – Section 68 of the Income-tax Act, 1961 – Assessee was not maintaining any account books – Assessing Officer examined Bank Pass Book of assessee and treated cash deposits in bank account as unexplained cash credit within meaning of section 68 of the Act – Held as Bank Pass Book could not be construed to be a book maintained by assessee for any previous year provisions of section 68 of the Act was not applicable. A.Y. 2011-12.

Facts:

- The Assessing Officer while examining the Bank Pass Book of the assessee noted that during the year cash amounting to Rs. 29 lakhs was deposited on various dates in a bank account held by the assessee.
- Accordingly, the Assessing Officer directed the assessee to explain the nature and source of the cash deposits.
- Not satisfied with the with explanation of the assessee, the Assessing Officer treated the entire cash deposits in the bank account as unexplained cash credit under section 68 of the Act. The CIT(A) gave partial relief to the assessee.

Issue:

- Cash credit – Section 68 of the Income-tax Act, 1961 – Assessee was not maintaining any account books – Assessing Officer examined Bank Pass Book of assessee and treated cash deposits in bank account as unexplained cash credit within meaning of section 68 of the Act – Held as Bank Pass Book could not be construed to be a book maintained by assessee for any previous year provisions of section 68 of the Act was not applicable.

Held:

- On appeal before the Tribunal the assessee contended that the Bank Pass Book was not the books of account maintained by her so as to fall within the ambit of section 68 of the Act.

- Relying upon the decision of, CIT vs. Bhaichand Gandhi - [(1993) 141 ITR 67 (Bom.)] it was argued that under section 68 of the Act, it is only when an amount is found credited in the books of account of the assessee for any previous year, that the deeming provisions of section 68 of the Act would apply.
- The Tribunal noted that the assessee was not maintaining any books of account and section 68 of the Act has been invoked by the Assessing Officer merely on the basis of the Bank Pass Book.
- The Tribunal following the decision in the case of Bhaichand Gandhi (supra) concluded that Bank Pass Book or Bank Statement cannot be construed to be a books maintained by the assessee for any previous year.
- Thus, the Tribunal held that the addition made by the Assessing Officer under section 68 of the Act was not sustainable.

Amrik Singh vs. ITO – (ITAT Amritsar)

Sections 131 & 133 (6) of the Income-tax Act, 1961 – Power to call information – Assessing Officer sent a letter of inquiry to assessee to verify source of said cash deposit – As there was no response to the said letter the Assessing Officer **formed belief that income of assessee had escaped assessment and, consequently, assessed such cash deposits – Held** Assessing Officer **sent an invalid letter of enquiry as no proceeding was pending before him, thus, the assessee's non-response could not constitute material to form belief of escapement of income – Further, the** Assessing Officer **proceeded on fallacious assumption that bank deposits constituted undisclosed income, over-looking fact that source of deposits need not necessarily be income of assessee. A.Y. 2006-07**

Facts:

- The assessee was maintaining a savings bank account in which cash deposits were made by him. Assessee did not file any return of income.
- The Assessing Officer sent a letter of inquiry to the assessee to verify the source of said cash deposit in the bank account. In absence of any response to said letter, the Assessing Officer formed belief that income of the assessee had escaped assessment, and he issued a notice under section 148 of the Act proposing to assessee the income escaping assessment.
- In absence of any compliance with the notices the Assessing Officer completed the assessment under section 147 of the Act. The CIT(A) in appeal upheld the order of the Assessing Officer

Issue:

- Power to call information – Assessing Officer sent a letter of inquiry to assessee to verify source of said cash deposit – As there was no response to the said letter the Assessing Officer formed belief that income of assessee had escaped assessment and, consequently, assessed such cash deposits – Held Assessing Officer sent an invalid letter of enquiry as no proceeding was pending before him, thus, the assessee's non-response could not constitute material to form belief of escapement of income – Further, the Assessing Officer proceeded on fallacious assumption that bank deposits constituted undisclosed income, over-looking fact that source of deposits need not necessarily be income of assessee.

Held:

- On appeal Tribunal observed that the letter issued by the Assessing Officer did not make mention of the provision under which it has been issued, thus, the Tribunal examined various provisions of the Act viz., 133 (6), 131 (1), 131 (1A) and 131 (2), to ascertain as to under which provision it was issued. The

Tribunal noted that the enquiry letter was issued by the Income Tax Officer, that is, an officer below the rank of the Income-tax authorities referred to in the second proviso to section 133(6).

- Thus, prior approval was required to be obtained from the competent authority before exercising power under section 133(6) of the Act. In the assessee's case the Tribunal noted that there was nothing on record to suggest that any prior approval was obtained, or letter of enquiry sent by the Assessing Officer, mentioned of any such approval taken. Thus, the power exercised by the Assessing Officer., without compliance with the second proviso to section 133(6), amounted to an illegal exercise of power.
- Further, the enquiry letter did not merely ask for information from the assessee, the letter required the assessee to produce, cash book and ledger and documentary evidence for the source of the deposit of cash which is beyond the scope of provisions of section 133(6) of the Act. As regards provisions of section 131(1) of the Act the Tribunal held that it is only during the pendency of some proceeding before the Assessing Officer, that an Income Tax authority can exercise the power vested in them under section 131(1) of the Act. However, in the fact of the case no proceedings were pending before the Assessing Officer . when he issued the letter of inquiry requiring the assessee to, produce evidence. Thus, the letter of inquiry was not validly issued under section 131(1) of the Act also.
- Thus, the Tribunal held that the letter did not require any cognizance to be taken of, and being so, the assessee was not obliged to respond to this invalid and non est so called letter of enquiry, requiring the assessee, to produce evidence.
- Further, the Tribunal following the decision of, Bir Bahadur Singh Sijwali vs. ITO – [(2015) 68 SOT 197 (URO) (Del.)] held that the reassessment proceedings so initiated by the Assessing Officer were bad in law and liable to be quashed as the Assessing Officer had initiated the reopening proceedings merely on the fact that the deposits had been made in the bank account without indicating that these deposits constitute income which has escaped assessment.

DCIT vs. Nirmal Kumar Agarwal (Jaipur – Tribunal.)

Penalty Where search has been initiated (Illustrations) Assessment Year 2010-11 Search and seizure operations were carried out at premises of assessee group in which incriminating evidence was gathered A penalty proceedings were initiated under section 271AAA and penalty was imposed Whether where assessee admitted undisclosed income and during search under section 132(4) he also stated that income derived from business of financing and brokerage and Assessing Officer himself in assessment order and also in penalty order substantiated manner in which undisclosed income was derived, imposition of penalty under section 271AAA was arbitrary

Facts:

- The assessee filed return of income and declared income at Rs. 10.16 crores. There was a search and seizure operations were carried out at the business and residential premises of the assessee group and incriminating evidence was gathered.
- The assessment under section 143(3) was completed at total income of Rs. 25.40 crores. The penalty proceedings under section 271AAA were initiated for levy of penalty on undisclosed income and the penalty of Rs. 1.81 crores was imposed by the Assessing Officer.
- On appeal, the Commissioner (Appeals) deleted the penalty.

Issue:

- Penalty Where search has been initiated (Illustrations) Assessment Year 2010-11 Search and seizure operations were carried out at premises of assessee group in which incriminating evidence was gathered A penalty proceedings were initiated under section 271AAA and penalty was imposed Whether where assessee admitted undisclosed income and during search under section 132(4) he also

stated that income derived from business of financing and brokerage and Assessing Officer himself in assessment order and also in penalty order substantiated manner in which undisclosed income was derived, imposition of penalty under section 271AAA was arbitrary

Held:

- The Commissioner (Appeals) has given the finding of fact of his order as thus it is seen that during the course of statement under section 132(4) and subsequently in statements under section 131, the appellant has confirmed the notings in seized documents with reference to his unaccounted income from his business.
- The assessee admitted that the transactions as per the seized documents related to the unaccounted cash found and were not part of his regular books of account and the amount was surrendered by him while filing his return.
- Thus it cannot be held that the manner of deriving the income was not substantiated by the assessee because the substantiating evidence by way of seized documents was with the department and was confronted with the assessee, during the course of his statements under section 131 on the basis of which he affirmed the surrender.
- In fact it was noted by the Assessing Officer himself in the assessment order and also in the penalty order that the surrender made by the assessee was on account of his undisclosed business of financing and brokerage. Once he has given a finding regarding the source from which the undisclosed income was derived and the fact that the substantiating evidence of deriving this income was with the department by way of seized documents, he cannot take a contrary stand while imposing the penalty under section 271AAA by denying the immunity under its subsection (2).
- During the course of his statement under section 132(4) as noted above, the assessee has mentioned that cash found in the locker was related to documents which could be found at his office cum residence which were duly found and annexurized as AS1. These documents contained specific notings regarding names or persons and amounts advanced or received. Give this evidence found during course of search and admitted to by the assessee under section 132(4), it cannot be said that information was not available with the department regarding specific transactions, names of persons etc. to whom the amounts related.
- Therefore, in absence of any specific finding or evidence with reference to the seized material or lacuna in these statements with reference to the specific information in the seized documents it cannot be said that the manner of earning the income was not substantiated. Thus, the imposition of penalty under section 271AAA appears to be arbitrary on part of the Assessing Officer. Reliance is placed on the finding of the Tribunal, Cuttack Bench, in the case of Pramod Kumar Jain v. Dy. CIT [2013] 33 taxmann.com 651. The facts of the case are that the Assessing Officer initiated penalty proceedings in assessment year 200809. The Assessing Officer after issuing show cause under section 271AAA observed that the assessee has made disclosure for respective amounts but failed to specify manner in which such income had been derived and therefore imposed penalty being 10 per cent of amount surrendered under section 132(4).
- The Tribunal observed that 'there is no prescribed method to indicate manner in which income was generated when definition of 'undisclosed income' has been defined in Act itself when no income of specified previous year represented 'either wholly or partly' which onus lay upon assessee stood discharged. Therefore, levy of penalty under section 271AAA is not justified and penalty so levied under section 271AAA for assessment years under consideration in case of respective assessee is cancelled. The observations of the Tribunal are applicable to the facts of the case of the assessee'.
- There is no dispute with regard to the proposition that penalty under section 271AAA is not leviable, if the assessee in the course of search in a statement under subsection (4) of section 132 admits the undisclosed income and specifies the manner in which the said income has been derived, substantiated

the manner in which the undisclosed income is derived and pays the tax together with interest in respect of the undisclosed income.

- The first requirement of immunity under section 271AAA is that the assessee admits the undisclosed income in a statement recorded under section 132(4) and specifies the manner in which the income has been derived.
- The assessee in response to the statement recorded under section 132(4) has admitted the undisclosed income and stated that the income derived from the business of financing and brokerage. Therefore, the first condition is satisfied. Second requirement is to substantiate the manner in which the undisclosed income was derived.
- The Commissioner (Appeals) has reported that the Assessing Officer himself in the assessment order and also in the penalty order reported that the surrender made by the assessee was on account of undisclosed business of financing and brokerage. Therefore, this observation of the Commissioner (Appeals) is not disputed by the revenue.
- Therefore, the second requirement is also met by the statement of the assessee.
- The third requirement is of law that the assessee pays tax along with interest on the undisclosed income. The revenue has not disputed the payment of tax and interest thereon. Therefore, in view of the above discussion, there is no reason to interfere in the order of the Commissioner (Appeals), same is hereby upheld. The ground of the revenue is dismissed

INCOME TAX

International Taxation

Circulars/ Notifications/Press Release

Section 90 Of The Income-Tax Act, 1961 – Double Taxation Agreement – Agreement For Avoidance Of Double Taxation And Prevention Of Fiscal Evasion With Foreign Countries – Indonesia – Repeal Of Notification No. GSR 77(E), Dated 4-2-1988

1. An Agreement between the Government of the Republic of India and the Government of the Republic of Indonesia for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income was signed in July, 2012 and came into force on 5th day of February, 2016. The Agreement provides that the provisions shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the said Agreement enters into force. The Central Government notified that all the provisions of the said Agreement, as provided in the notification shall be given effect to in the Union of India.

(Notification No. SO 1144(E) [No. 17/2016 (F.No.503/4/2005-FTD-II)], dated 16-3-2016)

Section 92cc Of The Income tax Act, 1961 – Transfer Pricing – Advance Pricing Agreement (APA) – Signing Of 11 Unilateral Advance Pricing Agreements (APAS)

2. The Advance Pricing Agreement programme was introduced by the Finance Act, 2012 to provide a predictable and non-adversarial tax regime and to reduce litigation in the Indian transfer pricing regime. Taking this programme forward, the CBDT signed 11 unilateral APAs on 28th March, 2016. With this signing, India has entered into 59 bilateral and/or unilateral APAs. 50 of these agreements have been signed in the current financial year. The agreements cover a range of international transactions, including corporate guarantees, royalty, software development services, IT enabled services and trading. The agreements pertain to different industrial sectors like telecom, media, automobiles, IT services, etc. Some of the agreements have rollback provisions and provide certainty to the taxpayers for 9 years with regard to the covered international transactions.
3. Rollback provisions in APAs were introduced in the July 2014 Budget to provide certainty on the pricing of international transactions for 4 years (rollback years) preceding the first year from which APA becomes applicable. With the notification of Rollback rules in March, 2015 the taxpayer has been provided the option to choose certainty in transfer pricing matters with the Government for a total of nine years (5 future years and 4 prior years). Since the notification of the APA scheme on 30-8-2012, approximately 580 applications for APAs have been received and about half of these contain a request for the Rollback provisions.

(Press Release, dated 29-3-2016)

Section 90 Of The Income Tax Act, 1961 – Double Taxation Agreement –Signing Of Agreements With Respect Of Taxes Between India And Maldives

- The Government of the Republic of India and the Government of the Republic of Maldives signed two Agreements – for the exchange of Information with respect to Taxes and for the avoidance of double taxation of income derived from international air transport in April, 2016.
- The Agreement for the Exchange of Information with respect to taxes is based on international standards of transparency and exchange of information. It covers taxes of every kind and description imposed by the Governments of India and Maldives.

- The Agreement enables exchange of information, including banking information, between the two countries for tax purposes, which will help curb tax evasion and tax avoidance.
- The Agreement will enhance mutual co-operation between the two countries by having effective exchange of information in tax matters. The second Agreement provides for relief from double taxation for airline enterprises of India and Maldives by way of exemption of income derived by the enterprise of India from the operation of aircraft in international traffic, from Maldivian tax and vice-versa
- The object of the Agreement is that profits from the operation of aircraft in international traffic will be taxed in one country alone and accordingly the taxing right is conferred upon the country to which the enterprise belongs. The Agreement will provide tax certainty for airline enterprises of India and Maldives. The Agreement further provides for Mutual Agreement Procedure for resolving any difficulties or doubts arising as to the interpretation or application of the agreement.

(Press Release, Dated 11-4-2016)

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Exchange of information requests to British Virgin Islands (BVI)

[Letter F.No. 500/12/2013-FT&TR- III, Dated 12-5-2016]

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Protocol for amendment of convention for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital gains between India and Mauritius

[Press Release, Dated 10-5-2016]

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – India and Slovenia sign protocol amending India Slovenia Double Taxation Avoidance Convention

India and Slovenia signed a Protocol amending the existing Convention and Protocol between the two countries for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income in Ljubljana. The Protocol will broaden the scope of the existing framework of exchange of tax related information which will help curb tax evasion and tax avoidance between the two countries and will also enable mutual assistance in collection of taxes.

[Press Release, Dated 19-5-2016]

Section 90 of the Income Tax Act, 1961 – Double Taxation Agreement – India Mauritius Double Taxation Avoidance Agreement and related issues – Constitution of a working group to examine consequential issues arising out of amendment

With a view to examine consequential issues arising out of amendments of India-Mauritius Double Taxation Avoidance Convention and related issues, a Working Group Headed by Joint Secretary (FT&TR-II), CBDT and comprising of departmental officers and representatives of SEBI, custodians, brokerage firms and fund manager has been constituted. The Working Group will submit its report to the CBDT within 3 months, after examining the relevant issues.

(Press Release, dated 13-6-2016)

India and Switzerland agree to move towards an early agreement for implementation of AEOI between two countries

Fighting the menace of Black Money stashed in offshore accounts has been a key priority area for this Government. To further this goal, the two sides agreed to pursue the ongoing dialogue on tax and financial matters in a spirit of mutual friendship and co-operation. The text of the 'Joint Statement signed by the two Secretaries at the conclusion of the meeting is part of this press release.

(Press Release, dated 15-6-2016)

India and Switzerland agree to move towards an early agreement for implementation of AEOI between two countries.

Fighting the menance of black money statshed in offshore accounts has been a key priority area for this Government. It is decided that experts of both the countries will meet to further discuss the modalities for the reciprocal bilateral implementation of AEOI between India and Switzerland that will make possible for India to receive from 2018 financial information of accounts held by Indian residents in Switzerland on automatic basis. The two sides agreed to pursue the ongoing dialogue on tax and financial matters in a spirit of mutual friendship and co-operation. The text of the 'Joint Statement signed by the two Secretaries at the conclusion of the meeting is part of this press release.

(Press Release, Dated 15-6-2016)

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Cabinet approves protocol amending agreement for avoidance of Double Taxation and Prevention of Fiscal Evasion with Belgium.

The Cabinet approved the signing of a Protocol amending the Agreement between India and Belgium for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income. The amendment in the Protocol will broaden the scope of the existing framework of exchange of tax related information between the two countries, which will help curb tax evasion and tax avoidance. The Protocol will also revise the existing treaty provisions on mutual assistance in collection of taxes.

(Press Release, Dated 22-6-2016)

Income Declaration Scheme, 2016 – Acceptance of Cash Over the Counter

Please refer to the Circular DBOD.No.Leg BC. 38/09.07.005/2008-09 dated August 28,2008 wherein banks have been advised to ensure that their branches invariably accept cash from all their customers who desire to deposit cash at the counters. Further, they were also advised to refrain from incorporating clauses, in the terms and conditions, which restrict deposit of cash over the counters.

As you are aware, the Income Declaration Scheme, 2016 (the Scheme) has come into the effect from June 1, 2016 and some declarants may like to pay their tax dues in cash. In this connection, it has been brought to our notice by the Government that banks are hesitant in allowing deposit of large amounts by cash by the declarants under the Scheme, with them for credit to Government account.

We advise that banks must invariably accept cash, irrespective of amount, over the counters from all declarants who desire to deposit cash at the counters, including deposits under the above Scheme through challan ITNS-286. In this connection, banks shall comply with the Know Your Customer requirements for customers and walk-in customers as contained in Master Direction – Know Your Customer Direction, 2016 issued vide DBR.AML.BC No. 81/14.01.001/2015-16 dated February 25,2016.

You are advised to immediately issue appropriate instructions to your branches as indicated above so that the declarants do not face any difficulty in depositing tax dues under the Scheme.

(Circular 2016, dated 8th September,2016)

S.O. 3346(E). — Whereas the annexed Protocol amending the Convention between the Government of the Republic of India and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [hereinafter referred to as said "Protocol"] shall enter into force on the 29th day of October, 2016 in accordance with paragraph 1 of Article 4 of the said Protocol;

Now, therefore, in exercise of the powers conferred by Section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of said Protocol amending the Convention between the Government of the Republic of India and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income shall be given effect to in the Union of India with effect from the 29th day of October, 2016.

[Notification No.102/2016 /F. No. 506/69/81-FTD-I]

IBFD publishes the OECD Multilateral Convention (2016) on its Tax Research Platform

Many of the OECD/G20 Base Erosion and Profit Shifting (BEPS) project's 15 actions cannot be tackled without amending bilateral tax treaties. Given the sheer number of treaties in effect, implementing these changes on a treaty-by-treaty basis would be a very lengthy process.

More than 100 jurisdictions have concluded negotiations on a multilateral instrument (MLI) that implements a series of tax treaty measures to update international tax rules and reduce the opportunity for tax avoidance. The new instrument transposes results from the BEPS project into more than 2,000 tax treaties worldwide. "The MLI is a revolutionary but also very challenging and complicated instrument due to the many options from which participating countries can choose for supplementing their bilateral tax treaties.

Be assured that IBFD will do its utmost to provide the proper and necessary insight to its customers on how it will in due time work out in all of the thousands of bilateral tax treaties that will be affected by it", said Prof. Jan J.P. de Goede, Senior Principal Tax Knowledge Management at IBFD. IBFD will continue to work in close contact with the OECD regarding all relevant documentation and specific provisions countries will apply in relation to their treaty partners and in doing so will continue to update any relevant treaty information throughout the Tax Research Platform.

The OECD Multilateral Convention (2016) text (in HTML format) is now available and searchable on the IBFD Tax Research Platform.

(Press Release dated 28th November, 2016)

Purchase and sale of securities other than shares or convertible debentures of an Indian company by a person resident outside india

Attention of Authorized DEALER Category-I (AD Category-I) banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (the Principal Regulations) notified vide Notification No. FEMA.20/2000-RB, dated May 3, 2000, as amended from time to time, in terms of which, eligible investors, viz., SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (FPIs) and long term investors registered with SEBI, may purchase securities indicated in Schedule 5 on repatriation basis and subject to such terms and conditions as may be specified by the SEBI and the Reserve Bank from time to time.

With a view to providing flexibility in regard to the manner in which non-convertible debentures/bonds issued by Indian companies can be acquired by FPIs, it has now been decided to allow them to transact in such instruments either directly or in any manner as per the prevalent/approved market practice.

AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers.

The directions contained in this circular have been issued under Section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

(Circular No.23, A.P. (DIR Series 2016-17), dated 27th December, 2016)

Section 90 of the income-tax act, 1961 - double taxation agreement - india and Singapore sign a third protocol for amending Double Taxation Avoidance Agreement.

India and Singapore have amended the DTAA for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, by signing a Third Protocol today. This is in line with India's treaty policy to prevent double non-taxation, curb revenue loss and check the menace of black money through automatic exchange of information, as reflected in India's recently revised treaties with Mauritius and Cyprus and the joint declaration signed with Switzerland.

The Protocol for amendment of the India-Mauritius Convention signed on 10th May, 2016, provides for source-based taxation of capital gains arising from alienation of shares acquired from 1st April, 2017 in a company resident in India. Simultaneously, investments made before 1st April, 2017 have been grandfathered and will not be subject to capital gains taxation in India. Where such capital gains arise during the transition period from 1st April, 2017 to 31st March, 2019, the tax rate will be limited to 50% of the domestic tax rate of India. However, the benefit of 50% reduction in tax rate during the transition period shall be subject to the Limitation of Benefits Article. Taxation in India at full domestic tax rate will take place from financial year 2019-20 onwards.

The revised DTAA between India and Cyprus signed on 18th November, 2016, provides for source based taxation of capital gains arising from alienation of shares, instead of residence based taxation provided under the DTAA signed in 1994. However, a grandfathering clause has been provided for investments made prior to 1st April, 2017, in respect of which capital gains would continue to be taxed in the country of which taxpayer is a resident. It also provides for assistance between the two countries for collection of taxes and updates the provisions related to Exchange of Information to accepted international standards.

Fighting the menace of Black Money stashed in offshore accounts has been a key priority area for the Government. To further this goal, the 'Joint Declaration' for the implementation of Automatic Exchange of Information (AEOI) between India and Switzerland was signed in November, 2016. It will now be possible for India to receive from September, 2019 onwards, the financial information of accounts held by Indian residents in Switzerland for 2018 and subsequent years, on an automatic basis.

The India-Singapore DTAA at present provides for residence based taxation of capital gains of shares in a company. The Third Protocol amends the DTAA with effect from 1st April, 2017 to provide for source based taxation of capital gains arising on transfer of shares in a company. This will curb revenue loss, prevent double non-taxation and streamline the flow of investments. In order to provide certainty to investors, investments in shares made before 1st April, 2017 have been grandfathered subject to fulfillment of conditions in Limitation of Benefits clause as per 2005 Protocol. Further, a two year transition period from

1st April, 2017 to 31st March, 2019 has been provided during which capital gains on shares will be taxed in source country at half of normal tax rate, subject to fulfillment of conditions in Limitation of Benefits clause.

The Third Protocol also inserts provisions to facilitate relieving of economic double taxation in transfer pricing cases. This is a taxpayer friendly measure and is in line with India's commitments under Base Erosion and Profit Shifting (BEPS) Action Plan to meet the minimum standard of providing Mutual Agreement Procedure (MAP) access in transfer pricing cases. The Third Protocol also enables application of domestic law and measures concerning prevention of tax avoidance or tax evasion.

RECENT DEVELOPMENT IN INTERNATIONAL TAXATION

This section shall highlight developments in India during the year 2016. The developments during the year 2016 were in the backdrop of the release of BEPS reports by OECD, effort by developed economies on transparency & exchange of information and various tax challenges/issues surrounding cross border transactions. The ongoing treaty negotiations by India of its controversial and much talked about round tripping concern was one of the significant developments in India on international tax matter.

A. Regulatory developments

The Indian parliament passed requisite Bill in June 2016, which resulted into the amendments to the Income-tax Act, 1961 vide Finance Act 2016. Subsequent to the same, Government also released further clarifications on subject of “Indirect Transfer”1. Few of the important regulatory development of year 2016 are summarised below:

1. Relaxation to Non-Residents from higher withholding tax – PAN not required

- The earlier provisions of section 206AA of the Act, inter alia, provide that any person who is entitled to receive any amount on which tax is deductible at source, shall furnish his PAN to the deductor, failing which a higher withholding tax rate will be applicable.
- In order to reduce compliance burden, the Finance Act, 2016 amended the provisions of section 206AA of the Act (w.e.f. June 1, 2016) to provide relaxation from higher withholding tax rate while making payment to non-residents in the absence of PAN.
- Rule 37BC of the Rules provides that the provisions of section 206AA of the Act shall not apply on following payments made to non-residents who do not have PAN in India:
  - a. Interest;
  - b. Royalty;
  - c. Fee for Technical Services; and
  - d. Payments on transfer of any capital asset
  - e. In respect of the above specified payments, the non-residents shall be, however required to furnish following details and documents:
  - f. Name, e-mail id, contact number;
  - g. Address in the country of residence;
  - h. Tax Residency Certificate (TRC), if the law of country of residence provides for such certificate; and
  - i. Tax Identification Number (TIN) in the country of residence. Where TIN is not available, a unique identification number is required to be furnished through which the deductee is identified in the country of residence.
  - j.

2. Place of Effective Management (PoEM)

- ☐ The Finance Act, 2015 amended the provision of section 6(3) which provides the rule for determination of residential status of a foreign company. The effect of this amendment is that a company would be resident in India in any previous year if it is an Indian company or its PoEM in that year is in India. The PoEM was defined to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are in substance made.
- ☐ Implementation of PoEM based residence rule has given rise to various issues on applicability of current provisions of the Act to the foreign company. Determining the PoEM is a subjective issue and this fact was also accepted by the lawmakers when section 115JH was introduced to provide transitional relaxations to the foreign companies to whom PoEM applies for the first time. In order to provide clarity in respect of implementation of PoEM based rule of residence and also to address concerns of the stakeholders, the government had issued draft guidelines in December, 2015. However, the same guidelines couldn’t be finalised by the government for variety of reasons. Consequently, vide Finance Act, 2016,the implementation of PoEM was deferred by the government by one year so as to apply from 1st April 2016.CBDT vide Circular No. 06 dated December 24, 2017 issued the final guidelines for determination of PoEM which shall be effective from 1st April 2016.
- ☐ It provides guidance on 'active business outside India' (‘ABOI’) test especially with respect to determination of passive income, total asset base, number of employees and payroll expenses in India and outside; CBDT press release clarifies that the intent is not to target Indian Multi Nationals which are engaged in business activity outside India, but to target shell companies and companies which are created for retaining income outside India although real control and management of affairs is located in India; Press release further states that POEM guidelines shall not apply to companies having turnover or gross receipts of Rs. 50 core or less in a financial year (this is not reflected in Final Guidelines); Guidelines provide that if Board of Director delegates authority to make key management decision/commercial decision to promoter, strategic/legal/ financial advisor, POEM will be the place where such persons makes those decisions; Guidelines also provide for formation of 3 member collegium consisting of Principal CITs or CITs where the AO proposes to hold company incorporated outside India as Indian resident and require the collegiums to provide opportunity of being heard to the relevant company before issuing any directions.

3. Tax Issues for income arising through ‘Indirect Transfer’

- ☐ Post the retrospective amendment introduced by the Finance Act, 2012, India taxes the capital gains arising to a non-resident on transfer of shares of a foreign company if such shares derives its value substantially from the assets located in India (i.e. the fair market value (FMV) of assets located in India exceeds Rs. 10 cores; and FMV of assets located in India represents at least 50% of FMV of total assets of the foreign company or entity).
- ☐
- ☐ The CBDT has released rules specifying the method for determination of FMV of the Indian assets vis-a-vis global assets of the foreign company (Rule 11UB), way of determination of proportionality of capital gain taxable in India (Rule 11UC), and the manner of reporting requirement on the Indian concern in which the foreign company holds the assets in India (Rule 114DB).

- CBDT issued Circular No. 41 of 2016 providing clarification on various issues surrounding indirect transfer directly having effect on Foreign Portfolio Investors (FPI).The said circular was in FAQ structure &it dealt with broad subjects concerning:
    a. Tax issues arising from the redemptions by Investors in Offshore Funds registered as FPIs
    b. Master-Feeder Structures
    c. India specific Sub-Funds
    d. Offshore Listed Funds
    e. Valuation Considerations
    f. Corporate Reorganizations
    g. Retrograde positioning on retrospectivity

  After receiving representations of various stakeholders regarding concern in relation to the possible multiple taxation on the same income, CBDT vide a Press Release dated 17th January 2017 has decided keep the above circular in abeyance. In light of this, it was hoped that the Budget would address the various concerns raised, and provide clarity on the impending issues of redemptions, re-organizations and sales at pooling vehicle level.
- The Budget proposes to add a new explanation to Section 9(1)(i) which clarifies that the provisions contained therein shall not be applicable to an asset or capital asset that is held directly/ indirectly by way of investment in a category I or category II FPI. This resolves concerns for a class of offshore funds which are registered as a category I or category II FPIs as redemptions by investors at the level of the fund shall not be subject to the indirect transfer taxation. Further, in multi-tiered structures, if the entity investing into India is a category I or category II FPI, any upstreaming of proceeds by way of redemption / buyback will not be brought within the Indian tax net. The provisions also exclude, from applicability of the indirect transfer tax provisions, situations where any redemptions or re-organizations or sales result in capital gains by investors in category I or category II FPIs. The clarificatory explanations are applicable retrospectively from FY starting April 1, 2012, and therefore should help bring about certainty on past transactions that have been entered into by category I and category II FPI entities. However, the amendment has left out a large chunk of the affected sector i.e. category III FPIs, PE and VC investors investing in Indian securities.

4. Multilateral Instrument

- The multilateral instrument of BEPS Action 15 is a key part of the OECD's effort toward implementation of the recommended measures. The instrument will implement the tax treaty related BEPS measures into existing bilateral or regional tax treaties. Governments are currently preparing their lists of treaties to be covered by the multilateral instrument and are considering which options to select and reservations to make. They will have to notify this to the OECD, who will be the depositary of the multilateral instrument and will support governments in the process of its signature, ratification and implementation. The multilateral instrument was open for signature as of 31 December 2016 and a first high-level signing ceremony will take place in the week beginning 5th June 2017, with the expected participation of a significant group of countries.

B. Treaty Amendments and Negotiations

1. Introduction

In the year 2016, the Government of India has amended few treaties with the aim of avoiding treaty abuse and curbing the evasion of taxation. The developments during 2016 were in the backdrop of efforts made by India with the object of transparency and exchange of information with other jurisdictions.

The year 2016 also witnessed conclusion of much talked about treaty negotiation between India and Mauritius, Singapore & Cyprus. There was a reasonable apprehension that India's DTAA's with Mauritius, Singapore &Cyprus were misused for round tripping and bringing money back in India through this route. India has amended its tax treaty with Mauritius, Cyprus & Singapore, a significant milestone in plugging round-tripping of funds. These Amended treaties will help India to curb black money.

The table below summarizes few of the important tax treaties amended/renegotiated/revised by India during the year 2016.

Amended/Renegotiated/Revised Treaty	Effective Date	Stated Purpose of the Treaty
Singapore *	April 1, 2017	DTAA, Effective Exchange of Information on Tax matters, Eliminating Double Non Taxation
Mauritius *	April 1, 2017	DTAA, Effective Exchange of Information on Tax matters, Eliminating Double Non Taxation
South Korea *	April 1, 2017	DTAA,Effective Exchange of Information on Tax matters, Eliminating Double Non Taxation
Cyprus	April 1, 2017	DTAA,Effective Exchange of Information on Tax matters, Eliminating Double Non Taxation
Japan	April 1, 2017	Internationally accepted standards for Effective Exchange of Information on Tax matters
Tajikistan	Not yet notified	DTAA, Prevention of Fiscal evasion & Effective Exchange of Information on Tax matters
Kazakhstan	Not yet notified	DTAA, Prevention of Fiscal evasion & Effective Exchange of Information on Tax matters

* New Limitation of Benefits Clause introduced and taxing rights of capital gain on alienation of shares has now been given to the source country

On a broad review of the above table it can be observed that India's treaty policy has kept its focus on treaty shopping and ill effects of the treaty shopping (like giving rise to double non taxation).

Treaty Specific Analysis

It appears clear from the spate of amendments to India's tax treaties in the recent years, that the Indian government is making a concerted effort to bring the era of tax free investments in India to a close, and is consciously moving towards a source based taxation regime which factor should be considered by investors looking to invest in India. We have provided further analysis of few of the above mentioned treaties

India – Singapore Treaty

The Government of India and the Government of Singapore, on 30 December, 2016, signed a Protocol amending the Double Taxation Avoidance Agreement (tax treaty) between India and Singapore (India - Singapore tax treaty).

Key highlights of amendments

Following are the key highlights of the signed protocol between India and Singapore.

Taxation of capital gains on shares

India will have the right to tax capital gains arising from alienation of shares acquired on or after April 01, 2017 by a Singapore resident. Capital Gains will be taxed at 50% for 2 years post April 2017, subject to LOB clause. Earlier DTAA of the countries gave complete exemption from payment of tax on profits made through capital gains as there was no such levy in the host country. Capital gains on derivatives and fixed income securities will continue to be exempt. After 2 years i.e. post March 31, 2019, it will be taxed at 100% in India.

Taxation of interest income of banks

Withholding tax on interest income earned by Banks @ 15% in case of debt claims or loans made after 31stMarch 2017.

Anti-avoidance measure

The 2016 Protocol introduces a new article which explicitly provides that the India - Singapore tax treaty shall not prevent either of the countries from applying its domestic laws and measures concerning the prevention of tax avoidance or tax evasion.

Limitation of benefits

The LOB conditions provided in the 2016 Protocol are similar to the conditions prescribed in the 2005 Protocol2. For the specific information, in respect of capital gains arising from transfer of shares acquired prior to 1 April, 2017, the LOB conditions are same as in the 2005 Protocol. However, in respect of investments acquired after 1 April, 2017 and sold before 31 March, 2019, the expenditure test needs to be met for the twelve month period immediately preceding the date of transfer.

Promotion of bilateral investments

As per the media release issued by the Government of Singapore, both the countries have agreed to conclude an agreement in the second half of 2017 laying down new joint, initiatives to be undertaken for promotion of bilateral investments. This is a welcome development, and may give an impetus to future cross border investments.

Settlement of cross-border tax issues, especially transfer pricing, will be easier under the amended India-Singapore tax treaty

Impact and Analysis

This amendment will have far reaching impact across all the sectors and investors; however we have

Impact	Analysis
Impact on shares held by Foreign Portfolio Investors ("FPIs")	• Under the Indian income tax law, shares of listed Indian companies held by FPIs are deemed to be capital assets irrespective of the holding period or the frequency of trading equity carried out by the concerned FPI. As such, income from sale of shares results in capital gains and at present, FPIs enjoy the benefits of the capital gains provisions under the Singapore Treaty. • While the Protocol should provide some relief to FPIs based out of Singapore as regards the tax regime to be applicable to their investments after March 31, 2017, they will find themselves in a similar position to FPIs based out of Mauritius. The signing of the Protocol will no doubt result in an increase in tax costs, especially where short term capital gains are earned.
Impact on private equity funds and holding companies	• As mentioned earlier, while investments by a Singapore resident in shares of an Indian Company made before April 01, 2017 should continue to be eligible to avail of the benefits of the erstwhile provisions of the 2005 Protocol, such benefits shall be subject to fulfilling the requirements of the Revised LOB clause. • Such investments shall be subject to tax in India at the rate of 50% of the tax rate prevailing in India provided the investments are realized before March 31, 2019. All investments made after April 01, 2017 which is also realized after March 31, 2019 shall be subject to full taxation as per the domestic tax rate in India. • Investments made through hybrid instruments such as compulsory convertible debentures should continue to be exempt from tax in India and Singapore should have the right to tax gains from such instruments. • Quick implementation may allow companies to avail benefit of the grandfathering provisions. However, with the GAAR set to come into force, and a concerted effort by the Indian authorities to introduce source based taxation in those treaties which do not already provide for it, offshore investors may also need to carefully reconsider their choice of intermediate jurisdiction and the overall value of investing through intermediate jurisdictions.
Impact on P-Note issuers and Derivatives	• The Protocol will have a significant impact on P-Notes issued against underlying shares of Indian companies. This will have an impact on P-Note investments, especially in issues relating to tax pass through to the P-Note holders on the taxes payable by the FPI. • The Protocol should not adversely impact derivatives, which should also continue to enjoy exemptions from Indian capital gains taxes. The gap that is created between the tax treatment for equity shares vis-à-vis derivative instruments may lead to a shift in strategies that are dominated by exposure to derivative instruments as opposed to investments in equity shares.

provided impact and analysis for Private Equity Fund Companies, FPIS, and P-Notes.

India – Mauritius Treaty

The Government of India and the Government of Mauritius, on 10 May, 2016, signed a Protocol for amending the Double Taxation Avoidance Agreement (tax treaty) dated 24 August, 1982 between India and Mauritius. (India - Mauritius tax treaty). The Protocol is the outcome of an extensive and long drawn-out negotiation process that has been going for more than a year and a half. The revised position shall only be applicable to investments made on or after April 1, 2017.

Key highlights of amendments

Following are the key highlights of the signed protocol between India and Mauritius

Taxation of capital gains on shares

Under Article 13 (4) of the India-Mauritius DTAA, capital gains derived by a Mauritius resident from alienation of shares of a company resident in India ("Indian Company") were taxable in Mauritius alone. However, the Protocol marks a shift from residence-based taxation to source-based taxation. Consequently, capital gains arising on or after April 01, 2017 from alienation of shares acquired on or after 1st April 2017 of a company resident in India shall be subject to tax in India.

The Protocol provides for a relaxation in respect of capital gains arising to Mauritius residents from alienation of shares between April 01, 2017 and March 31, 2019 ("Transition Period"). The tax rate on any such gains shall not exceed 50% of the domestic tax rate in India ("Reduced Tax Rate").

Grandfathering of investments made before April 01, 2017

The Protocol states that capital gains arising out of sale of shares of an Indian Company that have been acquired before April 01, 2017 shall not be affected by the Protocol. Such investments shall continue to enjoy the treatment available to them under the erstwhile Article 13(4) of the DTAA.

Taxation of interest income of banks

The Protocol revises the tax rate on interest arising in India to Mauritius resident banks to state that such streams of income shall be subject to withholding tax in India at the rate of 7.5% in respect of debt claims and loans made after March 31, 2017. At present such streams of income are exempt from tax in India under the India-Mauritius DTAA.

Exchange of information

The text of the Protocol states that the exchange of information article (Article 26) has been amended to bring it at par with the international standards. Provisions such as assistance in collection of taxes and assistance in source-based taxation of other income have been introduced.

Limitation of benefits

As per the Press Release, the benefit of the Reduced Tax Rate shall only be available to such Mauritius resident who is (a) not a shell/conduit company and (b) satisfies the main purpose and bonafide business test. Further, a Mauritius resident shall be deemed to be a shell/conduit company if its total expenditure on operations in Mauritius is less than RS. 2,700,000 (approximately 40,000 US Dollars) in the 12 months immediately preceding the alienation of shares.

Other changes

Article 12A to deal with Fees for Technical Services has also been included. The rate of withholding tax is 10%

Impact and Analysis

This amendment will have far reaching impact across all the sectors and investors; however we have provided impact and analysis for Private Equity Fund Companies, FPIS, and P-Notes.

Impact	Explanation
Impact on private equity funds and holding companies	• As mentioned above, while investments in shares of an Indian Company made before April 01, 2017 shall receive the benefit of the erstwhile provisions of the India-Mauritius DTAA, such benefits shall be curtailed for investments made during the Transition Period. • Such investments shall be subject to tax in India at the rate of 50% of the tax rate prevailing in India provided the investments are realized before March 31, 2019. All investments made after April 01, 2017 which is also realized after March 31, 2019 shall be subject to full taxation as per the domestic tax rate in India. • However, investments that are made through hybrid instruments such as compulsory convertible debentures may still be eligible to claim residence-based taxation as the Press Release only refers to allocation of taxation rights in respect of shares and the Protocol may restrict the shift to source based taxation only to such transactions. Having said that, clarity on this issue shall only be available once the text of the Protocol is released.

Impact on shares held by Foreign Portfolio Investors ("FPIs")	• Under the Indian income tax law, shares of listed Indian companies held by FPIs are deemed to be capital assets irrespective of the holding period or the frequency of trading equity carried out by the concerned FPI. As such, income from sale of shares results in capital gains • At present, FPIs enjoy the benefits of the capital gains provisions under the India-Mauritius DTAA. • Such investments will also be impacted by the amendment and as per the Protocol such investments shall be subject to tax in India after April 01, 2017. While there is a zero percent rate applicable on gains arising out of shares that are listed and sold on a recognized stock exchange if such shares are held for more than 12 months, capital gains arising out of investments are subject to a tax rate of 15% (exclusive of applicable surcharge and cess) if such shares are held for less than 12 months i.e. short term capital gains. • During the Transition Period, and subject to the satisfaction of the limitation of benefits clause, this rate may be reduced to 7.5%.
Impact on P-Note issuers	• Issuers of promissory notes ("P-Notes") may be adversely affected by the Protocol as the cost of taxation arising out of the changed position on taxation would have to be built into such arrangements. This would make such arrangements not only costly but also less lucrative for investors who seek synthetic exposure to Indian securities. • Considering that it is the FPI entity is issuing the P-Note which will be subject to tax in India, issues may arise with respect to the tax amounts that they will be able to pass on to the P-Note holders due to a timing mismatch on the taxability of the FPI entity (which is taxed on a FIFO basis and not on a one-to-one co-relation). It will have to be seen whether P-Notes can still prove to be attractive for investors, considering the incremental tax associated with the same
Impact on F&O transactions	• Similar to the position in respect of compulsory convertible debentures, Mauritius based entities that enter futures and options contract in India, may still be able to claim the benefits of residence based taxation since such contracts relate to capital assets other than shares.

India – South Korea Treaty

India and South Korea have signed a revised Agreement for Avoidance of Double Taxation (tax treaty) on 18 May, 2015, in Seoul. The revised tax treaty replaces the existing tax treaty signed between the two countries in 1985 and shall be effective in India from 1 April, 2017. The Central Board of Direct Taxes has issued a press release dated 26th October, 2016 to this effect.

Key highlights of amendments

Significant changes have been highlighted below:

Taxation of capital gains on shares

The existing DTAA provided for residence based taxation of capital gains on shares. India – South Korea treaty provides for source based taxation of capital gains arising from alienation of shares comprising more than 5 % of share capital.

Limitation of benefits

The revised DTAA inserts new Limitation of Benefits Article i.e. anti-abuse provisions to ensure that the benefits of the Agreement are availed only by the genuine residents of both the countries.

Taxation of royalty income and Fees for technical service

In order to promote cross border flow of investments and technology, the revised DTAA provides for reduction in withholding tax rates from 15% to 10% on royalties or fees for technical services and from 15% to 10% on interest income.

Permanent Establishment

Service PE clause introduced – furnishing of services, including consultancy services, through employees or others would lead to a service PE, if such activities (same or connected project) continue for more than 183 days within any 12 - month period.

Insurance PE clause introduced – collection of premiums or insuring risk through dependent agent (other than re - insurance) would be deemed as PE.

Building site or construction, installation or assembly project, or supervisory activities in connection therewith, would constitute a PE if such site project or activities last more than 183 days within any 12 months period.

Dependent Agent PE – The scope has been expanded to include the following additional activities of agent:

Habitually exercising in that state an authority to conclude contracts in the name of the enterprise subject to activities mentioned in Article 4. Maintaining stock of goods or merchandise and regular delivery in the contracting state. Securing orders in the contracting state.

Dispute Resolution Changes

The revised DTAA, with the introduction of Article 9(2), provides recourse to the taxpayers of both countries to apply for Mutual Agreement Procedure (MAP) in transfer pricing disputes as well as apply for bilateral Advance Pricing Agreements (APA). Further, as per understanding reached between the two sides, MAP requests in transfer pricing cases can be considered if the request is presented by the tax payer to its competent authority after entry into force of revised DTAA and within three years of the date of receipt of notice of action giving rise to taxation not in accordance with the DTAA.

Exchange of information

The Article on Exchange of Information is updated to the latest international standard to provide for exchange of information to the widest possible extent. As per revised Article, the country from which information is requested cannot deny the information on the ground of domestic tax interest. Further, the revised DTAA contains express provisions to facilitate exchange of information held by banks. Information exchanged under the revised DTAA can now be used for other law enforcement purposes with authorization of information supplying country.

Other changes

Assistance between India and South Korea for collection of taxes.

India – Cyprus Treaty

The Government of India and the Government of Cyprus, on 18 November 2016, signed a protocol amending the provisions of the double taxation avoidance agreement (tax treaty) between India and Cyprus (India- Cyprus tax treaty). The Government of India has issued a press release dated 18 November 2016 (press release) providing a gist of the key amendments.

Key highlights of amendments

Following are the key highlights of the signed protocol between India and Cyprus

Taxation of capital gains on shares

Amendment shall result into source - based taxation of capital gains arising from alienation (disposal) of shares. In other words, India shall have the right to tax capital gains arising to Cyprus tax residents on transfer of shares of an Indian company.

However, grandfathering clause has been provided for investments made before April 01, 2017.

Exchange of information

The provisions related to exchange of information are updated as per international standards, which will enable exchange of banking information and allow the use of such information for purposes other than taxation (subject to prior approval of competent authorities).

Taxation of royalty income

The tax rate on royalty in the country from which payments are made to 10% from the existing rate of 15%, in line with the tax rate under Indian tax laws.

Other changes

Expanding the scope of the permanent establishment (PE), possibly to introduce the concept of service PE.

Assistance between India and Cyprus for collection of taxes.

Provisions of the India-Cyprus tax treaty in accordance with international standards and India's policy with respect with respect to tax treaties

Other Points

Besides concluding and renegotiating treaties, the government has also continued its dialogue with few countries and have carried out further amendment to the respective tax treaties by issuance of MOUs or Clarifications

India – Switzerland

The Central Board of Direct Tax has signed an agreement with Switzerland; it will now begin sharing with India from 2019 information on all investment or accounts maintained in its banks post-2018.

India - Sweden

The Competent Authorities of India and Sweden have signed a Memorandum of Understanding (MoU) regarding suspension of collection of taxes during the pendency of MAP. In terms of the MOU, the collection of outstanding taxes in case of a taxpayer whose case is pending in MAP before the Competent Authorities of India and Sweden, would be kept in abeyance for a period of two years (extendable to a maximum period of five years through mutual agreement between the Competent Authorities of India and Sweden) subject to furnishing of a bank guarantee of an amount equal to the amount of tax under dispute and interest accruing thereon, as per the provisions of the Income-tax Act.

India – Japan

A protocol amending the Double Taxation Avoidance Convention between India and Japan has come into force. The Amended Protocol will provide for internationally accepted standards for effective exchange of information on tax matters. It further provides that the information received from Japan in respect of a resident of India can be shared with other law enforcement agencies with authorization of the competent authority of Japan and vice versa. The protocol provides for exemption of interest income from taxation in the source country with respect to debt-claims insured by the government/government owned financial institutions.

OUTLOOK FOR 2017

Introduction

Necessary steps have been taken in the recent past to gain confidence of the investors over Indian tax system and implementation of tax laws. The tax issues are foremost in the mind of the investors, both domestic/international, and confidence in the Indian economy will get dampened by adverse tax environment in the country.

Over the past few years, the government has improved its engagement with taxpayers and have also provided clarity on various controversial issues. The present economic and global environment offers huge opportunity to the government and the budget for 2017 can be a platform for the government to announce and implement long term systematic reforms that could also assure stability, certainty and

predictability in the Indian regime. There are various controversial issues which can be revisited and revised in order to provide taxpayer friendly and effective policy implementation.

In the backdrop of developments of year 2016, both at India and outside India, economic activities in year 2017 will have many tax issues that would require adequate consideration. We have provided in the subsequent paragraphs, a broad overview of tax issues and challenges for selected activities/transactions.

International Taxation Case Laws

SUPREME COURT DECISION

DIT V. B4U INTERNATIONAL HOLDINGS LTD [INDIA – MAURITIUS DTAA]

Facts:

- The assessee was a Mauritius based company. It was engaged in the business of telecasting of TV channels such as B4U Music, MCM etc. the income of the assessee from India consisted of collections from time slots given to advertisers through its affiliates. The assessee claimed that it did not have any permanent establishment in India and thus had no tax liability in India. The Assessing Officer did not accept said contention of the assessee and held that affiliated entities of the assessee were basically an extension in India which constituted a permanent establishment of the assessee within the meaning of Article 5 of the India-Mauritius DTAA. Accordingly, amount received from advertisers was liable to tax in India. The Commissioner (Appeals) held that entity in India could not be treated as an independent agent of the assessee. Alternatively, assuming that it could be treated as such, if a dependent agent was paid remuneration at arm's length, further proceeds could not be taxed in India. The Tribunal upheld the order passed by the Commissioner (Appeals). Bombay High court ruled in the favour of assessee. Against this, revenue filed a SLP in Supreme Court.

Held:

- The Apex court granted leave to the departments SLP against High Court's ruling that where assessee, its affiliates/agents in India who were remunerated on arm's length basis for carrying out only routine functions in India, did not constitute assessee's PE in India.

CIT VS. FIRESTONE INTERNATIONAL PVT. LTD. – TS-806- SC-2016- TP

Apex Court admits SLP on whether for computing arm's length price only the value of international transactions and not the assessee's entire turnover should be considered

Facts:

- The assessee was engaged in the business of exporting diamonds and manufacturing of jewellery. During transfer pricing proceedings for AY 2006-07, the TPO made an addition of ` 1.20 crore in respect of import and export of polished diamonds, adopting TNMM at entity level.
- The assessee filed an appeal before the Tribunal wherein it was held that since ALP was to be determined only with reference to international transactions, ALP could only be considered on the value of such transactions, and not on the assessee's entire turnover and held that since the assessee was entitled to the benefit of the safe harbour range of 5%, no addition was required.
- Aggrieved, Revenue preferred an appeal before the High Court on the following substantial questions of law:
- "Whether, on the facts and in the circumstances of the case and in law, the Tribunal is justified in restricting the adjustment only on international transactions where the assessee has selected TNMM and applied the same on entity level because presumption underlying arm's length principle is that uncontrolled transactions are at arm's length, and therefore, if the overall margins are less than arm's length margins, the short fall must be on account of AE transactions only and not on pro rata basis."
- "Whether, on facts and in the circumstances of the case and in law, the Tribunal is justified in deleting addition … as the adjustment is within + /- 5% as the ITAT has restricted the adjustment only on AE transactions which has resulted in the adjustment being within +/- 5%".
- The Court observed that the first question itself was academic, and did not arise from the order of the Tribunal and accordingly held that there was no reason to entertain this question of law. In respect to the second question, the Court held that the decision of the Tribunal was a factual determination of the ALP, which was found to be within +/-5% safe harbour range and thus it held that the Tribunal decision was not perverse or arbitrary, and accordingly dismissed this question of law.
- Aggrieved, the Revenue filed an SLP before the Hon'ble Apex Court.

Issue:

- Apex Court admits SLP on whether for computing arm's length price only the value of international transactions and not the assessee's entire turnover should be considered

Held:

- The Apex Court admitted the SLP filed by the Revenue against the order of the Hon'ble High Court.

HIGH COURT DECISION

CIT V FARIDA LEATHER COMPANY

Facts:

- The assessee-company, engaged in the business of manufacturing and export of leather goods, availed the services of certain non-resident foreign agent for the purpose of procuring export orders and paid commission to them. The Assessing Officer held that transaction partook character of 'fees for technical services' under section 9(1)(vii) and disallowed commission payment under

section 40(a)(i) for non-deduction of tax at source under section 195.On appeal, the Commissioner (Appeals) allowed the appeal of assessee on ground that: (a) the agents abroad were non-resident operating outside India; (b) the commission paid related to services provided outside India; (c) the agent did not have any permanent establishment in India; (d) the amount was remitted directly outside India. On further appeal, the Tribunal upheld the order of the Commissioner (Appeals).

Held:

- On appeal before the High Court, the Court held that agency commission paid by the assessee to non- resident agents for procuring orders for the assessee outside India, would not be taxable as fees for technical services under section 9(1)(vii) of the Act and therefore section 195 of the Act would not be applicable, since obligation to deduct tax at source under section 195 only arises if the payment is chargeable to tax in the hands of the non-resident recipient.

DIT(IT) VS. M/S CREDIT LYONNAIS – TS-143-HC-2016 (BOM.)

Fees paid by the assessee to nonresident sub-arrangers was not taxable as fees for technical services under the Act since the services were provided outside India and there was no occasion for any income to accrue or arise in India and further the impugned services were not technical, consultancy or managerial services as per the definition of Fees for technical services – Accordingly, no obligation to deduct tax at source under section 195 of the Act

Facts:

- The assessee was appointed by the State Bank of India as an arranger for the purpose of mobilising deposits under the India Millennium Deposits Scheme (IMDS). In turn, the assessee was entitled to appoint sub-arrangers for mobilising IMDS both in and outside India. During the relevant year, it received arranger fees and commission from SBI and in turn paid sub-arranger fees to both residents and non-residents. The AO disallowed the said payment under Section 40(a)(i) of the Act as the assessee did not deduct tax under Section 195 of the Act, holding the payment to be fees for technical services.
- On appeal, the CIT(A) held that the sub-arranger fee paid by the assessee was in the nature of brokerage and commission and not fees for technical services and that there was no question of deducting tax at source on such payments.
- Aggrieved, the Revenue filed an appeal before the ITAT wherein, relying on CBT Circular No.786, the ITAT held that the amount paid to the non-resident sub-arrangers was in the nature of commission/brokerage and there was no obligation to deduct tax under Section 195 of the Act and that the impugned services provided by the sub-arrangers were neither technical, consultancy nor managerial in nature.
- Subsequently, the Revenue filed an appeal before the Hon'ble High Court

Issue:

- Fees paid by the assessee to nonresident sub-arrangers was not taxable as fees for technical services under the Act since the services were provided outside India and there was no occasion for any income to accrue or arise in India and further the impugned services were not technical, consultancy or managerial services as per the definition of Fees for technical services – Accordingly, no obligation to deduct tax at source under section 195 of the Act

Held:

- The Hon'ble High Court held that the impugned services were rendered by non-resident sub-arrangers outside India and there was no occasion for any income accruing or arising to the non-residents in India.
- Relying on the decision of the Apex Court in Toshoku Ltd. TS-4-SC-1980 and CBDT Circular No. 786 of 2000, the Court held that no income could accrue or arise in India where the payment was made for service by a non-resident outside India.
- Accordingly, it held that as no income had accrued or arisen to the non-resident sub-arrangers in India, the questions of deduction of tax at source under Section 195 of the Act did not arise. It also clarified that its view was in addition to the findings of the ITAT that the services rendered was not technical, consultancy or managerial services under the Act.

CIT VS. HERBALIFE INTERNATIONAL INDIA

For AY 2001-02, prior to the insertion of section 40(a)(ia) of the Act, disallowance of payments to nonresidents on account of non-deduction of tax at source was discriminatory and consequently assessees would be eligible to benefit of Article 26(3) of the India-US DTAA and the said expenses would be allowable in spite of non-deduction.

Facts:

- The assessee, an Indian subsidiary of Herbalife International Inc, USA, ('Herbalife USA') was engaged in the business of trading and marketing of herbal products. The assessee entered into an administrative services agreement with Herbalife USA, which was approved by the RBI, wherein Herbalife USA agreed to provide the assessee data processing services, accounting, financial and planning services, marketing services, long-term financial planning services etc for the purpose of obtaining government approvals / approvals from regulatory bodies for its products and also to assist the assessee in protecting the trademark and trade name logo of the Herbalife products, in consideration of an administrative fee. Since Herbalife USA followed the calendar year, the administrative fee amounting to ` 5.83 crore covered the period of January to March, 2000 which pertained to the earlier assessment year i.e. AY 2000-01. However, the assessee claimed the entire amount as deduction in AY 2001-02 on account of (i) the fact that it was informed about the said amount payable in AY 2001-02 and (ii) it received sanction from the RBI for the said payment only in June 2000, which pertained to AY 2001-02. Further, for the amount payable for January 2001 to March 2001, the assessee made a payment of the fee based on an estimate basis since no bills were received from Herbalife USA. It did not deduct tax at source on the payment contending that it was merely a cost sharing arrangement and not in the nature of fee being remitted overseas. The AO disallowed the payment on three grounds (i) that a portion of the amount pertained to the previous AY and therefore could not be claimed in the current AY and (ii) the fee for the current AY was in the nature of fees for technical services liable to deduction of tax at source under section 195 of the Act and since the assessee did not deduct any taxes, the AO invoked section 40(a)(i) of the Income-tax Act, 1961 ('the Act') and (iii) the amount pertaining to the period of January 2001 to March 2001 was a dead liability and neither were any bills received by the assessee, nor was any provision for future payment created by the assessee.
- The CIT(A) upheld the order of the AO with regard to the 40(a)(i) disallowance and failed to deliberate on the allowance of expenses pertaining to the previous AY. On further appeal, the Tribunal deleted the addition made by the AO / CIT(A) on the ground that the said administrative fee was not taxable in the hands of the payee as it was business income of Herbalife USA and in the absence of a PE in India no tax was to be paid. Further, it held that under the India – USA

DTAA, the same would not be taxable under Article 12(4) of the said DTAA and that even as per Article 26(3) of the DTAA, section 40(a)(i) of the Act was discriminatory and could not be invoked as no corresponding disallowances were applicable in the case of residents during AY 2001-02. As regards, the disallowance made by the AO on the account of the expenses pertaining to the previous AY, the Tribunal held that the payment could not have been made prior to the approval of the RBI which came only in June, 2000 and therefore the liability accrued to the assessee only in AY 2001-02 and therefore was eligible for deduction. For the fee attributable to the period January 2001 to March 2001, the Tribunal allowed the deduction on the ground that the same was made on a reasonable basis.

- Aggrieved by the order of the Tribunal, the Revenue filed an appeal before the Honourable High Court. The Revenue contended that Article 26(3) of the India–US DTAA would have no application in the instant case and that the amounts pertaining to the previous assessment year and the period of January 2001 to March 2001, for which no bill was raised, were not to be allowed. However, the Revenue did not raise any specific contention about the fee being in the nature of fees for technical services.

Issue:

- For AY 2001-02, prior to the insertion of section 40(a)(ia) of the Act, disallowance of payments to nonresidents on account of non-deduction of tax at source was discriminatory and consequently assessees would be eligible to benefit of Article 26(3) of the India-US DTAA and the said expenses would be allowable in spite of non-deduction.

Held:

The Hon'ble High Court observed that:

- Article 26(3) of the India-US DTAA states that for the purpose of determining the taxable profits of a resident of a contracting state (India), the payment of interest, royalty and other disbursements paid to resident of another contracting state (USA), shall be deductible under the same conditions that apply to such payments being made to residents of India. The High Court rejected the contention of the Revenue that the impugned payment of administrative fee did not fall under Article 26(3) of the India-US DTAA and held that the expression "other disbursements" was wide enough to encompass the administrative fee paid by the assessee to Herbalife USA.
- It held that section 40(a)(i) of the Act, as it was during AY 2001-02 did not provide for deduction of TDS where the payment was made in India and that such requirement was introduced for the first time vide section 40(a)(ia) with effect from April 1, 2005. While examining the term "same condition", the Court held that Article 26(3) of the DTAA clarifies the nature of receipt and conditions of deductibility and is not relatable merely to the compliance requirement of deduction of TDS. It held that the lack of parity in allowing the payment as deduction is what brings about the discrimination. It further held that as per section 90(2) of the Act, the provisions of the DTAA would prevail over the Act unless the Act was more beneficial to the assessee. Accordingly, the Court held that section 40(a)(i) of the Act was discriminatory and not applicable in terms of Article 26(3) of the India-US DTAA and therefore allowed the administrative fee paid. (iii) As regards, the expenses pertaining to the periods January 2000 to March 2000 (previous AY) and January 2001 to March, 2001 (for which the assessee claimed deduction on the basis of a reasonable estimation), the Court upheld the finding of the tribunal and allowed the same.

ADOBE SYSTEMS INCORPORATED VS. ADIT

Where the subsidiary company was compensated at ALP for international transactions with its AE, assuming the existence of a PE, no further profits were to be attributed. Also, assessee's subsidiary in India did not constitute a PE as none of the conditions in Article 5 of the India-US DTAA were satisfied

Facts:

- The Petitioner, a US Company, was engaged in providing software solutions for networking publishing. It had a wholly owned subsidiary in India viz. Adobe India which provided the Petitioner software related research and development services for which the Petitioner remunerated Adobe India at cost plus 15 per cent. The Petitioner claimed that it was not assessable to tax in India in respect of any of its income other than interest of advance fees for which appropriate tax had been deducted. Adobe India was assessed to tax in India in respect of its income and the international transaction of providing the impugned research and development services at cost plus 15 per cent had been accepted to be at ALP by the TPO.
- The AO issued notices under section 148 of the Act seeking to reopen the assessment of the Petitioner on the ground that the activities carried out by Adobe India were a part of the Petitioner's core business activities and therefore Adobe India constituted a Fixed Place PE, Service PE and Dependent Agent PE of the Petitioner under Article 5 of the India-US DTAA. Additionally, the AO contended that the transaction between the Petitioner and Adobe India was to be benchmarked under the PSM rather than TNMM as it involved transfer of intangibles and multiple interrelated transactions.
- Aggrieved, the Petitioner filed a writ petition before the Hon'ble High Court.

Issue:

- Where the subsidiary company was compensated at ALP for international transactions with its AE, assuming the existence of a PE, no further profits were to be attributed. Also, assessee's subsidiary in India did not constitute a PE as none of the conditions in Article 5 of the India-US DTAA were satisfied

Held:

- The Court noted that Adobe India was already assessed to tax on ALP basis and that since the transfer pricing provisions sought to tax the real income of the assessee derived from international transactions with AEs, the transfer pricing assessment of Adobe India would have resulted in capturing the entire income from the provision of such research and development services. Referring to Article 7 of the India-US DTAA, the Court held that even if Adobe India was to be considered as a PE of the Petitioner, only the income attributable to the PE could be brought to tax in India and since the entire income was already taxed in the hands of Adobe India at ALP, the AO was unjustified in reopening assessment having reason to believe that the income of the assessee had escaped assessment.
- As regards the contention of the AO, that the transaction of research and development services was to be benchmarked under the PSM, the court held that the question as to which was the correct method of determining ALP could only be debated in the proceedings relating to the assessment of Adobe India. Accordingly, the same was dismissed.
- Though academic, for the sake of completeness, the Court held that Adobe India could not be considered as a PE of the Petitioner merely because it was its subsidiary. It held that Adobe India was not a fixed place PE since there was no evidence that the Petitioner had the right to use its premises or any fixed place at its disposal. Further, it held that in the absence of any evidence that

any of the Petitioner's employees provided services in India, there could be no Service PE. Merely because the Petitioner had the right to audit Adobe India, it could not be concluded that the employees of the Petitioner provided services in India. Additionally, it held that there was no allegation that Adobe India was authorized to conclude contracts on behalf of the Petitioner and therefore could not be considered as a Dependent Agent PE.

- Accordingly, the Court quashed the notices issued and the orders passed by the AO dismissing the objectives filed by the Petitioner against the reasons recorded for reopening the assessments.

PR. CIT VS. CASH EDGE INDIA PVT LTD – TS-262- HC-2016 (DEL.) – TP

Companies engaged in software development, software products, marketing and finances could not be considered as comparable to a software development service provider in the absence of relevant segmental data

Facts:

- The assessee was engaged in the business of providing software development services to its AEs. During the relevant assessment year, the TPO held that the data of three comparable companies' viz., Persistent Systems Ltd., Zylog Systems Ltd. and Wipro Technology Services were to be included for determination of ALP. The assessee, filed objections before the DRP which were dismissed. Accordingly, the assessee preferred an appeal before the ITAT.
- The ITAT directed the exclusion of Persistent Systems Ltd. and Wipro Technology Services and remitted the issue with respect of Zylog Systems Ltd. with directions to ascertain the relevant audited segmental data.
- Aggrieved, the Revenue filed an appeal before the Hon'ble High Court.

Issue:

- Companies engaged in software development, software products, marketing and finances could not be considered as comparable to a software development service provider in the absence of relevant segmental data

Held:

- With regard to the inclusion of Persistent Systems Ltd., the Court held that the company was involved in software development, software products and marketing and that it did not publish segmental data as a result of which it could not be compared to the assessee in light of Rule 10(b) to 10(e) of the Income-tax Rules, 1962.
- With regard to Wipro Technology Services Ltd, it held that the said company was part of the Citi Group and was acquired by Wipro Ltd. as a subsidiary during the relevant year. Additionally, it held that there was no published segmented data as far as software development or its finance were concerned and therefore the same could not be considered as comparable.
- Accordingly, the Court upheld the order of the Tribunal and held that no substantial question of law arose.

PR CIT VS. FISERV INDIA PVT. LTD. – TS-437-HC-2016 (DEL.) – TP

Large companies, companies engaged in software development programmes, sale, offshore development services, research and development, companies failing the related party filter and companies having extraordinary events could not be compared with the assessee, a captive service provider engaged in providing software development services. Safe Harbour Rules do not have retrospective application.

Facts:

- ☐ The assessee, M/s. Fiserv India P. Ltd., a wholly owned subsidiary of Results International Systems Inc, USA was engaged in the provision of software development and maintenance services to its AEs, for which it was compensated at cost-plus 15 per cent markup. The assessee adopted the Transactional Net Margin Method ('TNMM'), using the operating profit to operating cost filter as the Profit Level Indicator to benchmark its international transactions and arrived at 29 comparable companies, the average PLI of which was 9.54 per cent as opposed to the mark-up of 15 per cent earned by it. Accordingly, it contested that its international transactions were at arm's length price.
- ☐ The TPO rejected the TP study of the assessee and carried on a fresh search process, arriving at 13 comparable companies having an average PLI of 25.78 per cent. Accordingly, the TPO proposed an addition of 19.69 crores which was upheld by the DRP upheld the proposed adjustment made by the TPO subject to the claim of working capital adjustment as per the OECD Guidelines. The TPO was also directed to compute the margins of the comparable companies in accordance with the provisions of the Safe Harbour Rules, introduced in September, 2013. Pursuant to the direction, the TPO reworked the addition to 19.04 crores.
- ☐ Aggrieved, the assessee filed an appeal before the Hon'ble ITAT wherein the Tribunal held as that:
    - Bodhtree Consulting Ltd., selected as comparable by the TPO, was not comparable to the assessee as it was engaged in software development programmes whereas the assessee was engaged in providing software development services.
    - Infosys Ltd. could not be compared to the assessee as the assessee was a captive service provider.
    - Thirdware Solutions was to be excluded as comparable as the annual report of the said company did not reveal the bifurcation of sales through SEZ and STPI units.
    - Sonata Software was to be excluded as comparable since it mainly dealt in product, sale, offshore development services, research and development as a result of which it was not functionally comparable to the assessee and that it also had significant related party transactions exceeding the 25 per cent RPT filter applied by the TPO.
    - TPO must take into account acquisition of TES PV Electronic Solutions Pvt. Ltd. by Mindtree, while determining the comparability of Mindtree.
    - The issue of inclusion / exclusion of foreign exchange fluctuation as operating income/ expenses had been dealt with in the decision of the co-ordinate bench in Westfalia Separator India Pvt. Ltd. vs. ACIT (ITA No. 4446 / D / 02) and in light of the same the foreign exchange fluctuation was to be considered as operating in nature.
    - Aggrieved, the Revenue filed an appeal before the Hon'ble High Court.

Issue:

- ☐ Large companies, companies engaged in software development programmes, sale, offshore development services, research and development, companies failing the related party filter and companies having extraordinary events could not be compared with the assessee, a captive service provider engaged in providing software development services. Safe Harbour Rules do not have retrospective application.

Held:

- ☐ The Court upheld the order of the Tribunal noting that the Tribunal had undertaken a detailed factual analysis and given cogent reasons for the exclusion of the comparables in question and accordingly held that no substantial question of law arose.

- The Court further held the Safe Harbour Rules, resorted to by the Revenue did not have application to the Assessment Year in question viz. AY 2009-10 since they were notified with prospective effect from September18, 2013.

CASHEDGE INDIA PVT. LTD. VS. DCIT – TS-445- HC-2016 (DEL) – TP

Assessee is to be afforded the opportunity to cross examine the authorised personnel of the companies whose segmental data was used by the TPO to benchmark the assessees' international transaction.

Facts:

- In the instant case, the TPO, while conducting the benchmarking exercise in relation to the international transactions undertaken by the Petitioner, used segmental data of several companies without affording the Petitioner the opportunity to cross examine the authorised personnel of the said companies even after the Petitioner sought the opportunity to do so.
- The Revenue submitted that all documents were made available to the Petitioner and therefore sufficient opportunity had been granted.
- Aggrieved, the Petitioner filed a writ petition before the Hon'ble High Court.

Issue:

- Assessee is to be afforded the opportunity to cross examine the authorised personnel of the companies whose segmental data was used by the TPO to benchmark the assessees' international transaction.

Held:

- The Court held that where reliance was placed on the data provided by different parties, the petitioner would have no opportunity of rebutting the data unless the persons who submitted the data, were subjected to cross examination and therefore it remitted the issue back to the TPO for affording the assessee opportunity to cross examine the authorised personnel of the companies.

PR CIT VS. AVERY DENNISON (INDIA) PVT. LTD. – TS-527- HC-2016 (DEL.) – TP

Where the assessee received a host services from its AE via a consolidated agreement which were all intrinsically linked to the manufacturing activity of the assessee, the TPO was not justified in splitting up the agreement to determine the ALP of certain services separately while accepting the price of the other services.

Facts:

- The assessee, a subsidiary of Avery Dennison Corporation, USA was predominantly engaged in the manufacturing and trading of pressure sensitive adhesive material, self-adhesive paper, self adhesive films in India. It entered into international transactions with its AEs for purchase of raw material, sale of finished goods, payments of service fee etc. for which it used TNMM as the most appropriate method for benchmarking its international transactions. The TPO applied the CUP method and proceeded to make a TP adjustment by splitting up the transactions entered into. The TPO also held that the services for which the payment was made did not result in any benefit and that no independent party would have made such payment.
- Aggrieved, the assessee filed an appeal before the Tribunal wherein the Tribunal held that the agreement between the AE and the assesse was a composite one and could not be split up to hold that some of the services were at ALP while the others were not. It noted that the assessee was

predominantly a manufacturer and that services received by it from its AEs were intrinsically linked to the core business operations. Further, the Tribunal also held that the observation of the TPO that the services availed by the assessee did not lead to any benefit to the assessee was not backed by any material and therefore did not hold good.

- Aggrieved, the Revenue filed an appeal before the Hon'ble High Court.

Issue:

- Where the assessee received a host services from its AE via a consolidated agreement which were all intrinsically linked to the manufacturing activity of the assessee, the TPO was not justified in splitting up the agreement to determine the ALP of certain services separately while accepting the price of the other services.

Held:

- The Court upheld the order of the Tribunal and held that the conclusions reached in its order i.e. that the agreement being intrinsic could not be split and that the TPO was not empowered to determine the benefit of services availed.
- Accordingly, the court dismissed the appeal filed by the Revenue.

PR CIT VS. ALLSCRIPTS (INDIA) PVT. LTD. – TS-552- HC-2016 (GUJ.) - TP

Companies having fluctuating profit margins could not be considered as comparable. Companies could not be excluded on the ground of non-availability of segments without verifying the actual activities carried on by it.

Facts:

- The assessee was engaged in providing captive software development services to its AE on a cost plus remuneration basis and adopted TNMM as the most appropriate method. The DRP had arrived at 12 companies as comparable pursuant to which the assessee filed an appeal before the Tribunal contending the exclusion of certain comparable companies.
- As regards Bodh tree Consulting Ltd., selected by the DRP, the Tribunal directed for its exclusion since its Operating Profit to Total Cost ratio fluctuated widely from -11.53 per cent to80.15 per cent in a span of 7 years and that the ratio fluctuated on a year to year basis as well and therefore it would be unsafe to assess the ALP based on TNMM by taking this company into consideration. The Tribunal also directed for the exclusion of E-Infochip Bangalore Ltd., selected by the DRP, on the ground that the company was engaged both in software development services as well as in IT enabled services and had only one reportable segment whereas the assessee was only engaged in providing software development services.
- Aggrieved, the Revenue filed an appeal before the Hon'ble High Court.

Issue:

- Companies having fluctuating profit margins could not be considered as comparable. Companies could not be excluded on the ground of non-availability of segments without verifying the actual activities carried on by it.

Held:

- The Court upheld the decision of the Tribunal with respect to the exclusion of Bodh tree consulting on account of the company's fluctuating profit margins.
- As regards E-Infochip Bangalore Ltd., the Court noted that during the TP proceedings, the TPO had examined the functionality of the said comparable and observed that it was engaged in

providing software development services alone, which had not been considered by the Tribunal in passing its judgment.

- It therefore held that that the very question whether E-Infochip Bangalore Ltd. was engaged in any services other than software development services remained unanswered and it was only when such question was answered in the affirmative, could the question of availability non-availability of segmental information arise.
- Accordingly, it reversed the ITAT ruling in this respect and restored the issue back to the Tribunal for re-consideration.

MT MAERSK MIKAGE VS. DIT (IT) – TS-474-HC-2016 (GUJ.)

Where the assessee was taxed on its shipping income in Singapore on accrual basis but the amounts were remitted to London, Article 24 of the India-Singapore DTAA would not apply and the benefit of Article 24 not be denied on the basis of Article 24 of the India-Singapore DTAA which restricts benefit of the income remitted to Singapore

Facts:

- The assessee, a Singapore based company was engaged in the business of providing shipping agency services. It had, through ships owned by it, undertaken voyages from various Indian Ports and earned income from exporters. While filing its return under section 172(3) of the Act, the assessee declared Nil income by relying on Article 8 of the India-Singapore DTAA claiming that the said income was only taxable in Singapore and not under the Act.
- Since the freight received was remitted to London and not Singapore, the AO denied the Treaty benefit and held that the said freight receipt was taxable in India in light of Article 24 which provides that the benefit of any other Article of the India-Singapore DTAA would be with respect to the amounts remitted or received in Singapore.
- The assessee filed a revision petition under section 264 of the Act and submitted a certificate issued by the Inland Revenue Authority of Singapore wherein it was certified that the full amount of income in question was assessable to tax in Singapore on accrual basis and not on the basis of remittance received.
- The assessee further contended that the limitation provided by Article24 of the India-Singapore DTAA would not apply. However, the Commissioner rejected the Petition.
- Accordingly, the assessee filed a Writ Petition before the Hon'ble High Court.

Issue:

- Where the assessee was taxed on its shipping income in Singapore on accrual basis but the amounts were remitted to London, Article 24 of the India-Singapore DTAA would not apply and the benefit of Article 24 not be denied on the basis of Article 24 of the India-Singapore DTAA which restricts benefit of the income remitted to Singapore.

Held:

- The Court held that the limitation of benefit under Article 24 of the India-Singapore DTAA would assume significance only if the income being taxed under any of the Articles of the DTAA were taxed with regard to income received/remitted. Noting the submissions of the assessee and the certificate issued by the Inland Revenue Authority of Singapore relied on by the assessee, it held that the said income was taxed on accrual basis and not on the basis of income remitted and therefore the fact that the amounts were remitted to London would be of no significance

- Accordingly, it held that the assessee was entitled to the benefit of Article 8 of the India-Singapore DTAA.

CIT VS. MERCER CONSULTING (INDIA) PVT. LTD. – TS- 664-HC-2016 (P&H) - TP

Companies outsourcing their activities, providing geospatial services and having substantially lower turnover could not be compared to the assessee who was engaged in IT enabled services. Further, companies having export to sales of 74.45 per cent could not be excluded as comparable merely because there was a difference of 0.55 per cent in the export filter.

Facts:

- The assessee, a wholly owned subsidiary of Mercer Mauritius Ltd. was engaged in providing IT and IT Enabled Services to its AE for which it was compensated on a cost plus basis. During the relevant year, the assessee reported three international transactions with its AEs for which it used TNMM as the most appropriate method. The TPO carried out its own analysis and arrived at an upward adjustment of ` 6.16 crore. The assessee filed objections before the DRP contesting the selection/non consideration of 5 companies viz. Allsec Technologies, Cosmic Global Ltd. Genesys International Corporation Ltd., R Systems International Ltd. & Coral Hub Ltd. without any relief.
- Aggrieved, the assessee filed an appeal before the Tribunal wherein the assessee's appeal was allowed.
- Accordingly, the Department filed appeal before the Hon'ble High Court.

Issue:

- Companies outsourcing their activities, providing geospatial services and having substantially lower turnover could not be compared to the assessee who was engaged in IT enabled services. Further, companies having export to sales of 74.45 per cent could not be excluded as comparable merely because there was a difference of 0.55 per cent in the export filter.

Held:

- The Court held that the TPO was incorrect in excluding Allsec Technologies Ltd on the ground that its export to sales filter amounted to 74.45 per cent as against the 75 per cent filter adopted. It upheld the order of the Tribunal wherein it was held that a company could not be excluded as comparable merely because of a deviation of 0.55 per cent. It held that there was nothing sacrosanct about the 75 per cent filter and therefore held that the said company was wrongly excluded by the TPO.
- As regards Cosmic Global Ltd., it held that since the turnover of the said company from BPO services was only ` 27.76 lakhs as opposed to the assessee's revenue of ` 59 crore, the said company could not be considered as comparable.
- The Court held that Genesys International Corporation Ltd. could not be considered as comparable to the assessee since the said company provided full range of geospatial services which was not comparable to the services provided by the assessee. Accordingly, it held that the same was to be excluded as comparable.
- The Court upheld the order of the Tribunal, wherein R Systems International Ltd. was included as a comparable despite having a different financial year ending. It held that where despite difference in financial years between the assessee and a comparable if it was possible to determine the value of international transactions during the corresponding periods, the purpose of comparability would be served.
- With respect to Coral Hubs Ltd., the Court dismissed the contention of the Department that the said company could not be argued by the assessee since it was included by the assessee as a

comparable in its TP study. On merits, it held that the company was not functionally comparable to the assessee since it outsourced a significant part of his work. It held that there could be no comparison between an enterprise that conducts its business activities itself with one that outsources its activities to a third party.

- Accordingly, the addition made by the TPO was deleted.

PCIT VS. NORTEL NETWORK INDIA PVT. LTD. – TS-770- HC-2016 (DEL.) – TP

Where the Revenue failed to urge the plea that a company was not functionally comparable to the assessee before the CIT(A) or the Tribunal, the same could not be urged before the Hon'ble High Court

Facts:

- The assessee was engaged in the business of marketing and after sales support services to its group companies viz. installation, testing and commissioning services in relation to telecom equipment / IT and other products, including repair and maintenance services in relation to telecom equipment / IT products supplied by the Nortel Group of Companies in India. During the relevant assessment year, the assessee selected TNMM as the most appropriate method to benchmark its transactions with its AE and chose 10 comparable companies having an average margin of 0.67 per cent as opposed to its margin of 7 per cent and therefore claimed that its transactions were at ALP.
- The TPO rejected 5 comparable companies chosen by the assessee – 3 on the ground that data for the year was not available and 2 on the ground that they were loss making companies. Retaining the remaining companies, the TPO made an upward TP adjustment.
- Aggrieved, the assessee filed an appeal before the CIT (A) objecting to the exclusion of Himachal Futuristic Communication Ltd. Simply because the said company had shown loss in 1-2 years. The CIT (A) allowed the assessee's appeal and held that the said company was comparable. The decision of the CIT (A) had been upheld by the Tribunal as well wherein the Tribunal noted that the Revenue had not assailed the CIT (A)'s finding that the said company was functionally comparable to the assessee and therefore held that merely because the company incurred losses in 1-2 years, it could not be excluded on the ground that it was a loss making company.
- Aggrieved by the order of the Tribunal, the Revenue filed an appeal before the Hon'ble High Court contending that HFCL was not functionally comparable to the assessee and therefore wrongly included by the CIT (A) and Tribunal.

Issue:

- Where the Revenue failed to urge the plea that a company was not functionally comparable to the assessee before the CIT(A) or the Tribunal, the same could not be urged before the Hon'ble High Court

Held:

- The Court noted that the Revenue had not urged this contention before the CIT (A) or the Tribunal and held that where the plea was not taken before the aforesaid authorities, it could not be considered as a question of law.
- Accordingly, it dismissed the appeal filed by the Revenue.

PRICEWATERHOUSE AND LOVELOCK & LEWES [TS-976- HC-2016 (CAL)-TP]

For making reference to TPO, AO does not require to first come to a definite finding that there is an 'international transaction' and prima Facie view will suffice.

Facts:

- ☐ The assessee was a partnership firm of CAs and was managed and controlled by its partners who were individuals and residents of India and no legal entity or corporation was a partner of the firm. Further, the entire capital had been contributed by its partners and not by any other person or entity.
- ☐ The assessee had entered into an agreement with PricewaterhouseCoopers International Limited (PWCIL) a company incorporated in the UK, to become a member of PwCIL. PwCIL had set standards, principles, strategies & policies applicable to all member firms and would monitor and review their implementation by members firms.
- ☐ PricewaterhouseCoopers Services BV, Netherlands (Services BV) was the central services entity of the PwC Network & operated exclusively for the mutual benefit of all PwC network members firms.
- ☐ Neither the member firms of the PwC network nor PwCIL nor Services BV nor any other overseas entity held any interest or control in PWH. Further, PWH was not a subsidiary, shareholder or agent of any of the overseas entities and had no profit sharing with any overseas entity. Services BV had not conferred on PWH any right regarding use of any brand name as Services BV itself did not own any brand name.
- ☐ The grant was received from Services BV under the contractual arrangement existing between Services BV and PWH and had been accounted for as sundry income on an accrual basis and has been offered for taxation in computing the total income for the year under consideration as business income.
- ☐ Case of assessee was selected for scrutiny and letter was issued by AO for making reference to the TPO.
- ☐ The assessee filed a writ petition and contended that reference under section 92CA of the IT Act could be made to the TPO only if there was an international transaction and international transactions was defined to mean a transaction between two associated enterprises. The enterprise would be associated enterprise only if the conditions mentioned under section 92A(2) were satisfied. The assessee contended that transfer pricing regulations did not apply to it as it did not have a relationship of being an associated enterprise with any overseas entity and accordingly, the reference to the TPO was without jurisdiction.
- ☐ The Revenue contended that assessee and Services BV were associated enterprises within the meaning of section 92A since as per the agreements, assessee had to utilize the services rendered by / practices envisaged by Services BV in all spheres of its professional activity and that Services BV was to constantly keep a watch over the activities and performance of assessee and was in full control of the assessee vis-à-vis finances and management.

Issue:

- ☐ For making reference to TPO, AO does not require to first come to a definite finding that there is an 'international transaction' and prima Facie view will suffice.

Held:

- ☐ The Court disposed off the writ petition and refused to interfere with AO's reference to TPO in respect of alleged international transactions of the assessee.

- The Court observed that section 92CA(1) does not require AO to first come to a definite finding that there is an ‘international transaction’ within the meaning of section 92B before referring the matter to TPO and held that a prima facie view would suffice.

FORMULA ONE WORLD CHAMPIONSHIP LTD. [TS-639- HC-2016 (DEL.)]

Where petitioner entered into a Race Promotion Contract by which it granted right to host, stage and promote Formula One (F1) Grand Prix of India event for a consideration and trademark was not licensed, it did not amount to royalty under DTAA

Facts:

- Formula One World Championship (FOWC) a UK based company entered into a Race Promotion Contract (RPC) by which it granted to Jaypee Sports the right to host, stage and promote Formula One (F1) Grand Prix of India event for a consideration of USD 40 million.
- An Artworks Licence Agreement contemplated in RPC was also entered into between FOWC and Jaypee the same day permitting the use of certain marks and intellectual property belonging to FOWC for a consideration of USD 1. The agreement was entered into only to grant the right to use trademark and intellectual property and the consideration of USD 1 was paid for that.
- The question before AAR was whether or not the payment of consideration receivable by FOWC outside India in terms of RPC from Jaypee was or was not royalty as defined in Article 13 of the India-UK DTAA and whether FOWC had PE in India in terms of Article 5 of India-UK DTAA.
- The AAR held that the amounts paid by the assessee were royalties and the petitioner did not have a PE, since it neither carried on any business activity in India nor did it authorise any person to conclude contracts on its behalf. Aggrieved, both the petitioner and the Revenue filed writ petitions before the High Court.

Issue:

- Where petitioner entered into a Race Promotion Contract by which it granted right to host, stage and promote Formula One (F1) Grand Prix of India event for a consideration and trademark was not licensed, it did not amount to royalty under DTAA

Held:

- The Court observed that in terms of the agreement, i.e. RPC, Jaypee was designated as the promoter or the event host and under the RPC, FOWC clearly had the exclusive right to exploit the commercial rights in the championship and to award Jaypee the right to host, stage and promote F1 Grand Prix events.
- Further, the amounts payable by Jaypee to FOWC under the RPC were really for the privilege of hosting and staging the championship race and not for the IP rights, which in any event, could be utilised by it only to promote the race and for no other purpose.
- Jaypee had no IP rights whatsoever independently of the staging and hosting of the event.
- The ALA also did not confer any additional rights, neither was a licence nor any form of right to use the trademark given to Jaypee by FOWC which resulted in royalty payment within the meaning of Article 13 of the DTAA.
- The Court held that, payments made to FOWC under the RPC was not 'royalty' either under the Act or the DTAA, they most certainly were not for the use of trademarks or IP rights, but rather for the grant of the privilege of staging, hosting and promoting the Event at the promoter's racing circuit in Noida (NCR).

- Further, it held that the petitioner had a Fixed place PE in India as the circuit constituted a fixed place of business. Also the petitioner decided the venue and terms of the race to which all participant teams were bound to, which showed that the petitioner carried on business in India and therefore the income received by it was taxable as business income.

TECHNIP SINGAPORE PTE LTD V DIT [INDIA - SINGAPORE DTAA]

Facts:

- The assessee a Singaporean company had entered into a contract with Indian Oil Corporation Ltd. (IOCL). The contract was made for offshore construction work which involved installation of SPM including anchor chains, floating and subsea hoses. IOCL sent to the assessee a 'Letter of Acceptance' in which it inter alia set out the 'contract value and price schedule'. The letter also indicated the amount in US dollar agreed to be paid for each item of work.The assessee stated that it did not have any project office or any other premises in India for executing of the work under the above contract. The assessee's obligations under the contract were fulfilled by deputing men and materials at the offshore site where the activity was performed.The assessee sought advance ruling on the questions as to whether consideration, including mobilization and demobilization revenues, for services provided by the assessee to 'IOCL' be construed to be in the nature of 'Fees for Technical Services' ('FTS') under section 9(1)(vii) or under article 12 of India - Singapore Double Tax Avoidance Agreement, and whether consideration for services provided by the assessee be construed to be in the nature of 'Royalty' under section 9(1) and/or under article 12 of the tax treaty. AAR held that as the installation was ancillary and subsidiary to the use of equipment or enjoyment of the right for such use, the payment for the installation would fall under the definition of FTS in terms of article 12.4(a) of the DTAA.

Held:

- On appeal to Delhi High Court, the Court held that where the assessee had entered into a contract with Indian Oil Corporation Limited (IOCL) for offshore construction work involving mobilization / demobilization and installation services, the Revenue was incorrect in separating the mobilization / demobilization services from the installation services since the payment made to the assessee was for the execution of a composite contract.It held that since the equipment used by the assessee while providing services to IOCL were in the exclusive control of the assessee and IOCL did not have any dominion or control over the same, the payment received by the assessee could not be taxed as equipment royalty under Article 12(3) of the India Singapore DTAA. Further, it rejected the contention of the Revenue that the installation services were incidental to mobilization / demobilization services and therefore taxable under Article 12(4)(a) of the DTAA and held that since the demobilization / mobilization services were not taxable under Article 12(3), the installation services even if considered ancillary, would not be taxable. Further, it held that the said services were neither taxable under the DTAA since they didn't make available any technology nor under the Act since it fell under the exclusionary clause to Explanation 9(1)(vii).

Formula One World Championship Ltd. v. CIT [India - UK DTAA]

(Racing Circuit Constitutes Permanent Establishment of Formula One)

Facts:

The assessee, FOWC was a UK tax resident company. Consequent to agreements entered into between the Federation International de l'Automobile ('FIA' an international motor sports events regulating association), Formula One Asset Management Limited (FOAM) and FOWC, FOAM

licensed all commercial rights in the FIA Formula One World Championship (Championship) to FOWC for 100-year term effective from 1-1- 2011.The assessee entered into a Race Promotion Contract(RPC) by which it granted to Jaypee Sports the right to host, stage and promote Formula One (F1) Grand Prix of India event for a consideration of USD 40 million.An Artworks license Agreement contemplated in RPC was also entered into between assessee and Jaypee the same day permitting the use of certain marks and intellectual property belonging to assessee for a consideration of USD 1.Every F1 racing event is hosted, promoted and staged by a promoter with whom FOWC as the right holder, enters into contract and whose event is nominated by the CRH (i.e. Contract Right Holder, which is in effect, FOWC), to the FIA for inclusion in the official F1 racing calendar. In other words FOWC is the exclusive nominating body at whose instance the event promoter is permitted participation.

FOWC and Jaypee both approached the AAR and sought advance ruling on the following questions:

i. Whether the payment of consideration receivable by FOWC outside India in terms of RPC from Jaypee was or was not royalty as defined in article 13 of Indo-UK DTAA.
ii. Whether FOWC was justified in its position that it did not have a permanent establishment (PE) in India in terms of article 5 of the DTAA.
iii. Whether any part of the consideration received or receivable from Jaypee by FOWC outside India was subject to tax at source under section 195 of the Indian income tax Act?

The AARconcluded that firstly the amounts paid were 'royalty'. Secondly, FOWC had no fixed place of business, was not doing any business activity in India and had not authorized any organization or entity to conclude contracts on their behalf and, therefore, had no PE in India.

Held:

The Delhi High Court discussed various illustrative examples across jurisdictions on the interpretation of a fixed place PE, such as Universal Furniture Ind AB v Government of Norway, the Swiss Server decision and Joseph Fowler v Her Majesty the Queen. No conclusive rule could be laid down as to the number of days which could impart a degree of permanence to a place of business to make it a fixed place. The AAR also noted that a place of business could constitute a PE even for a very short period of time because of the nature of the business. Therefore, even if the business was done for a short duration with intermittent gaps, the existence of a fixed place of could not be ruled out. Further, relying on the OECD commentary and Klaus Vogel's commentary on the general principles applicable to a fixed place PE, the Court noted that as long as the presence was in a physically defined geographical area, permanence in such fixed place could be relative, having regard to the nature of the business.

Adobe Systems Incorporated v ADIT [India - US DTAA]

Facts:

The assessee was a company incorporated under the laws of Delaware in USA. It provided software solutions for network publishing which included web, print, video, wireless and broadband applications. The assessee had a wholly owned subsidiary in India, namely, Adobe India. Adobe India provided software related Research and Development (R&D) services to the assessee and the assessee did not have any business operations in India. The R&D services rendered by Adobe India, were paid for by the assessee on cost plus basis in terms of an agreement entered into between the assessee and Adobe India. For relevant years, the Assessing Officer and the TPO accepted the fees paid by the assessee on cost plus 15 per cent basis as being on ALP and Adobe India's assessment was made accordingly. Subsequently, the Assessing Officer sought to reopen the assessment. The reasons recorded for said purpose were that activities carried out by Adobe India were a part of the assessee's core business activities and, consequently, Adobe India constituted the assessee's PE under article 5(1) of DTAA.The Assessing Officer further reasoned that since the assessee had a PE in India, a part of the profit accruing

to the assessee which was attributable to the activities in India was chargeable to tax under the Act. The assessee's objections to initiation of reassessment proceedings were rejected.

Held:

The Court held that where the subsidiary company of the assessee was compensated at ALP for international transactions with the assessee (its AE), assuming that the subsidiary company was the PE of the assessee, no further profits could be attributed to the assessee's operations in India. Without prejudice to the above, the Court held that the assessee's subsidiary in India did not constitute a fixed place PE since there was no evidence that the assessee had the right to use its premises or any fixed place at its disposal. The Court held that held that in the absence of any evidence that any of the assessee's employees provided services in India, there could be no Service PE and merely because the assessee had the right to audit the Indian subsidiary, it could not be concluded that the employees of the assessee provided services in India. Further, it held that there was no allegation that the Indian subsidiary was authorized to conclude contracts on behalf of the Petitioner and therefore could not be considered as a Dependent Agent PE.

CIT v Herbalife International India Pvt Ltd [India - US DTAA]

Facts:

The assessee entered into an agreement with its US-AE to avail services like date processing, accounting, financial and planning, etc., and paid consideration in the name of administrative fee. It did not deduct TDS thereon on ground that it was only a cost sharing agreement. The Assessing Officer held that said payment was fee for technical services and, consequently, disallowed it for non-deduction of TDS by invoking section 40(a)(i).The Commissioner (Appeals) upheld order of the Assessing Officer.The Tribunal negated order of the Assessing Officer on ground that, in light of article 26(3) of the Indo-US DTAA, section 40(a)(i) was discriminatory and could not be invoked to disallow the claim of the assessee for deduction even if sum in question was chargeable to tax in India.

Held:

On revenue's appeal before the High Court, the Court held that for AY 2001-02, prior to the insertion of section 40(a)(ia) of the Act, disallowance of payments to non-residents on account of non-deduction of tax at source was discriminatory, since payments to residents were not subject to such disallowance arising out of non-deduction of tax at source and consequently assessee would be eligible to benefit of Article 26(3) of the India-US DTAA i.e. Non-discrimination, and therefore it held that the administrative fee paid by the assessee to its US based holding company was allowable in spite of non-deduction of tax at source.

TRIBUNAL DECISIONS

DDIT VS. MSV INTERNATIONAL INC. [2016-TII-34-ITATDEL.-INTL.] ASSESSMENT YEARS: 2006-07 & 2008-09

FTS – Definition vs. 9(1)(vii) Applicability of Section 44D –Consultancy charges on account of construction activity are not taxable as fees for technical services under Section 44D but as business income under the provisions of the Income–tax Act – In assessee's favour

Facts:

- The assessee is a foreign company incorporated in the U.S.A. and engaged in the business of providing consultancy services in the areas of highways, transportation, water supply, waste management, etc. The assessee has set up several projects offices in India to carry on its activities in India.
- During the Assessment Year (AY) 2006-07, the assessee had entered into contracts with various parties, mainly State Governments, to provide them consultancy services as required under such agreements. The assessee disclosed consultancy charges of ` 33.76 million after deducting expenses of ` 28.88 million. The assessee showed a profit before tax of `4.88 million.
- The Assessing Officer (AO) taxed consultancy charges at 20 % under Section 44D read with Section 115A of the Act.
- The Commissioner of Income tax (Appeals) [CIT(A)] after considering the provisions of Section 9(1)(vii) of the Act, Section 44D and Section 44DA inserted with effect from 1st April, 2004, held that the gross receipts of the assessee were covered by the exclusion provided in the definition of FTS, and therefore, the same cannot be taxed as FTS.

Issue:

- FTS – Definition vs. 9(1)(vii) Applicability of Section 44D –Consultancy charges on account of construction activity are not taxable as fees for technical services under Section 44D but as business income under the provisions of the Income–tax Act – In assessee's favour

Held:

The Tribunal held in assessee's favour as under:

- It has been observed that to determine the nature of receipt, it is imperative to examine the scope of the work to be carried out by the assessee. In the present case, the assessee is engaged in the business in India.
- The AO has made an irrelevant analysis of disclosure in the return of income as well as the nomenclature described in TDS certificate when AO himself agrees that the assessee is engaged in the business of services with respect to highways, transport, etc. Therefore, it cannot be said that assessee is not carrying any business in India.
- Any consideration which is for the rendering of any managerial, technical or consultancy services is characterized as FTS. However some exceptions are carved out where such managerial, technical or consultancy consideration is for any construction, etc. or like projects undertaken by the recipient. The AO has failed to consider these exceptions carved out in the definition of FTS. Therefore, the attempt made by the AO was on an incomplete reading of that explanation ignoring exceptions.
- From the nature of work carried on by the assessee it was apparent that it had got the consultancy work related to laying down of roads, etc. which was for construction activity or a like project. Undisputedly the services rendered by the assessee were technical in nature but merely because the services were technical in nature they do not qualify as FTS in accordance with the provision of Explanation 2 to Section 9(1)(vii) of the Act.
- It was observed that the services provided by the assessee fall in the exceptions carved as construction activity and like projects
- On a perusal of the decision in the case of Agland Investment Services Inc. vs. ITO [1985] 22 Taxman 9 (Del.) it has been observed that the case of the assessee stands on stronger footings than the case relied upon by the tax department.
- On a perusal of Section 44AD of the Act, it indicates that the FTS should have the same meaning as provided in Explanation 2 to Section 9(1)(vii) of the Act. Since receipt of the assessee is out of the purview of presumptive taxability under Section 44AD of the Act.

- It is also not controverted that assessee was carrying on similar activities in the preceding years as well, and the income earned from the said activities have been accepted by the tax department as business income and assessment made under Section 143(3) of the Act. Principle of consistency has been accepted by the Indian courts in many judicial precedents. Accordingly, it was held that consultancy charges were not taxable as FTS under the provisions of Section 44AD read with Section 9(1)(vii) of the Act but were taxable under the provision of Act as business income.

FORBES CONTAINER LINE PTE. LTD. VS. ADIT [TS-126- ITAT-2016 (MUM.)] ASSESSMENT YEAR : 2009-10

India – Singapore DTAA – Taxation of container services cannot be treated as income arising from shipping business since the assessee did not own or charter or take on lease and vessel or ship – and hence not taxable under Section 44B of the Income tax Act. In the absence of a PE under the India – Singapore tax treaty, the business income is not taxable in India.

Facts:

- The assessee, a Singapore-based company, engaged in the business of operating ships in international traffic across Asia and the Middle East. It is a wholly owned subsidiary of Forbes and Co. Ltd. (FCL), a company incorporated in India.
- FCL had entered into an agency agreement with Volkart Flemming Co. and Services Ltd. (VFSSL). VFSSL is a wholly owned subsidiary of FCL. VFSSL had demerged its shipping agency division into FCL with effect from 1st April, 2008.
- The Assessing Officer (AO) held that income of the assessee was arising out of the operation of ships in international traffic, and it was taxable in India as per the provisions of Section 5(2) of the Act read with the provisions of Section 44B of the Act. The assessee had real and intimate connection because the holding company secured the business from India for the assessee, the principal and agent had common control mechanism, the promoters of the holding company, created the assessee as a 100 per cent subsidiary in Singapore, one of the directors of the company was also a director of the Indian parent company, he was permanently residing in India and was looking after the policy matters of the assessee and control mechanism of both the entities were in India. Therefore, the assessee had business connections in India. Further, the assessee had a PE in India under Article 5 of the India-Singapore tax treaty (tax treaty), the income was taxable under Article 7 of the tax treaty.
- The Commissioner of Income Tax (Appeals) [CIT(A)] upheld the order of the AO.

Issue:

- India – Singapore DTAA – Taxation of container services cannot be treated as income arising from shipping business since the assessee did not own or charter or take on lease and vessel or ship – and hence not taxable under Section 44B of the Income tax Act. In the absence of a PE under the India – Singapore tax treaty, the business income is not taxable in India.

Held:

The Tribunal held in assessee's favour as under:–

- The assessee had proved that its books of account were maintained in Singapore. It was also proved that it was maintaining a bank account in Singapore, and all banking transactions were made from that account only.
- The lower authorities were not able to establish that effective management and control of affairs of the company as it was in India. On a reference to the e-mails placed by the assessee, it indicates that business activities were carried out by the Singapore office.
- Factors like staying off one of the directors in India or holding of only one meeting during the year under consideration or the location of the parent company in India in themselves would not decide the residential status of the assessee.
- The assessee had received a substantial portion of its income from the operation carried out in the Middle East and other countries. It was handling its business from Singapore. On a perusal of details of income of the parent company, it indicates that the claim made by the assessee about earning substantial income from the entities other than the holding company was factually correct.
- The assessee had not claimed exemption under Article 8 of the tax treaty as it was not engaged in the shipping business. Therefore, the income of the assessee had to be assessed under the provisions of the tax treaty which deals with business income (Article 7).
- The assessee did not own or charter or take on lease any vessel or ship for the year under consideration; it was only providing container, services to various clients. Therefore, provisions of Section 44B of the Act were not applicable to the facts of the present case.
- The income of the assessee was liable to be taxed as business income and in the absence of a PE, no income was taxable in India.

SNL FINANCIAL (INDIA) PVT. LTD. VS. DCIT 2016-TII-268-ITAT-AHM-TP ASSESSMENT YEAR: 2009-2010

Transfer Pricing – BPO vs. KPO – Assessee considered as BPO in subsequent years, cannot be considered as KPO in earlier year for providing same services – Held – In favour of the assessee

Facts:

- The assessee is engaged in the business of gathering, collating, organizing, arranging, storing and transmitting all types of financial information in written, electronic or any other medium through the database, web applications, and analytical models and to act as the consultant, counselors on all matters relating to finance, trade and industry. It is a wholly owned subsidiary of a US based company.
- During the Assessment Year (AY) 2009-10, the assessee entered into an international transaction with its Associate Enterprise (AE) in the nature of rendering of data analysis and data entry services. For the year under consideration, the TPO categorised the assessee as a KPO.
- For the same international transactions under the same agreement in AY 2013-14, the assessee exercised an option of Safe Harbour Rule. After analysing the facts and the same agreement while examining the applicability of Safe Harbour Rules, the TPO considered the assessee as a low-end service provider and categorised the assessee as a BPO.
- Objections filed by the assessee for AY 2009-10 with the Dispute Resolution Panel (DRP) did not bring any relief, which brought the assessee before the Tribunal.

Issue:

- Transfer Pricing – BPO vs. KPO – Assessee considered as BPO in subsequent years, cannot be considered as KPO in earlier year for providing same services – Held – In favour of the assessee

Held:

- The Tribunal held in assessee's favour as follows:
- Taking cognizance of Safe Harbour Rules entered by the assessee, the Tribunal held that if under the same agreement, the TPO had accepted the assessee's contention and had categorised it as low-end service providers/BPO, then how for an earlier period, the nature of services would be different? In other words, the same agreement cannot give rise to two types of services, merely on the basis of services being provided at different times.
- The TPO in the proceedings for the purpose of Safe Harbour Rules paid a visit in the office of the assessee, and himself/herself collected information regarding nature of services.
- Based on above, the Tribunal held that impugned assessment order is not sustainable including that of the DRP and therefore, restore the issue back to the AO for fresh adjudication. The Tribunal specifically directed the AO to take into consideration the TPO's order for the purpose of Safe Harbour for AY 2013-14.

STEMPEUTICS RESEARCH PRIVATE LIMITED VS. JOINT DIRECTOR OF INCOME TAX (INTL TAX) (IT(IT)A NO. 1450/BANG/2013 AND 1196/BANG/2014)

Reimbursement of expenses by assessee to its subsidiary made on account of provision of services to third party under a tripartite agreement falls within the ambit of term 'fees for technical services' ('FTS').

Facts:

- The assessee is a company formed with a mandate of Research & Development ('R&D') and manufacturing of therapeutic product based on stem cells. The assessee has a subsidiary in Malaysia engaged in development and manufacturing of product based on stem cells. A tripartite product development agreement was entered into between the assessee, the assessee's Malaysian subsidiary and Cipla Ltd. for carrying out research activity at all the units of the assessee as well as all the units of the Malaysian subsidiary. The agreement with Cipla Ltd. was to sell the new product manufactured by the assessee and the Malaysian subsidiary to Cipla Ltd. on a principle to principle basis. Cipla Ltd. paid a certain amount to the assessee for the R&D expenses which would be incurred by the assessee and the Malaysian subsidiary. The Malaysian subsidiary carried out clinical trials and the R&D expenses incurred towards research activity in respect of the same were reimbursed to it by the assessee.
- The Assessing Officer ('AO') held that the payment by the assessee to its subsidiary is fees for technical service and therefore chargeable to tax in India on gross basis. Consequently, the assessee was under obligation to deduct tax at source under section 195 of the Income Tax Act,1961 ('the Act') failing which the assessee is liable as assessee in default under section 201(1) and 201(1A) of the Act. The CIT(A) upheld the order of the AO. Thus, the assessee preferred an appeal with the Hon'ble Bangalore Tribunal.

Issue:

- Reimbursement of expenses by assessee to its subsidiary made on account of provision of services to third party under a tripartite agreement falls within the ambit of term 'fees for technical services' ('FTS').

Held:

- The outcome product of the R&D as well as clinical trials conducted by the assessee and its subsidiary would not belong to either of them, but Cipla Ltd. would have the right over the same i.e.

right to acquire the outcome in the shape of technical information, technology documentation, know-how and process involved in all clinical R&D.

- Also, under the Article 13 of the India-Malaysia Double Tax Avoidance Agreement ('DTAA'), it is clear that there is no clause of 'make available' and thus, the term FTS means payment of any kind in consideration for rendering of managerial, technical or consultancy services.
- Conducting clinical trials and R&D is clearly a service which is technical in nature therefore providing the outcome of the research to Cipla Ltd. through the assessee clearly falls under the ambit of the term 'fees for technical services' as per the Article 13 of the DTAA between India & Malaysia.
- Thus, mere terming of the payment as 'reimbursement of expenses' would not exclude the payment from being covered within the ambit of 'fees for technical services' if the services are rendered to a third party through an intermediary.

ABB FZ LLC VS. INCOME TAX OFFICER (ITA NO. 188/BANG/2016)

Fees for technical services received by UAE entity from its Indian counterpart would not be chargeable to tax in India in absence of the provision in the Indo-UAE DTAA.

Facts:

- The assessee was engaged in the business of exporting diamonds and manufacturing of jewellery. During transfer pricing proceedings for AY 2006-07, the TPO made an addition of ` 1.20 crore in respect of import and export of polished diamonds, adopting TNMM at entity level. The assessee was a company incorporated in the UAE which provided technical services across the globe. The assessee received fees for technical services rendered to its Indian counterpart. In absence of the provision to tax FTS as per Indo-UAE DTAA, the assessee had not offered the said income for taxation in India. The assessee claimed that the said income had already been offered to tax in UAE. Further, the assessee stated that it did not have a permanent establishment ('PE') in India.
- However, the AO held that since there was no contrary provision governing the taxability of FTS in the IndoUAE DTAA, the said income was ought to be taxed as per the domestic provisions under section 9(1)(vii) of the Act.
- The assessee filed his objections before the Hon'ble DRP. However, the Hon'ble DRP confirmed the view taken by AO.
- Aggrieved by the decision of Hon'ble DRP, the assessee preferred an appeal before the Hon'ble Bangalore Tribunal.

Issue:

- Fees for technical services received by UAE entity from its Indian counterpart would not be chargeable to tax in India in absence of the provision in the Indo-UAE DTAA.

Held:

- Relying on the decision rendered by the Hon'ble Tribunal in the case of IBM India Pvt. Ltd. Vs. DDIT IT(IT)A Nos.489 to 498/Bang/2013, the Hon'ble Tribunal opined that the income in the nature of FTS shall be taxed as business and profession and not FTS since there is no express provision governing the taxability of FTS in the DTAA.
- Thus, the Hon'ble Tribunal disregarded the contentions of the AO and held that the said income will not be taxable under section 9(1)(vii) of the Act.

- Further, it was held that since the assessee did not have a PE in India, the said income will not be taxable in India.
- Therefore, the appeal of the assessee was allowed.
- Thus, in the absence of the provision in the DTAA to tax FTS, the same would be taxed as per the Article 7 of the DTAA. Further, in the absence of a PE in India, the FTS will not be taxed in India.

KAWASAKI HEAVY INDUSTRIES LTD. VS. ACIT [INDIA – JAPAN DTAA]

Facts:

- The assessee-company was engaged in diversified business of ship building, consumer product such as motor cycles and all-terrain vehicles. It had two subsidiaries in India by the name of 'W' Ltd. and 'K' Ltd. The assessee had also opened a Liaison Office (LO) in India. The Assessing Officer in view of various clauses of power of attorney granted by the assessee to the person in charge of LO, concluded that said LO constituted assessee's PE in India. The DRP upheld the order of Assessing Officer.

Held:

- The Delhi Tribunal held that where the assessee, a Japanese company engaged in business of manufacturing consumer products, opened a liaison office in India, since power of attorney did not authorize employee of LO to do core business activity or to sign and execute contracts etc., on behalf of assessee, it could not be regarded as assessee's PE in India.

BNP PARIBAS SA V. ADIT [INDIA - FRANCE DTAA]

Facts:

- The assessee, a foreign company, was carrying on the business of banking in India through its branch offices. Indian Office of the assessee had paid interest to it. The assessee submitted that since it was carrying on business in India through a permanent establishment by way of branch, it was only the income of permanent establishment, on net basis, which could be taxed in India under article 7.The Assessing Officer treated interest so received as income of assessee and proceeded to bring the said amount to tax in the hands of the assessee. The Commissioner (Appeals) upheld the addition made by the Assessing Officer.

Held:

- The Mumbai Tribunal held that as interest payment by Permanent establishment (Branch office) to its head office (a foreign company) was a payment by a foreign company's Indian PE to foreign company itself; it could not give rise to any income, in the hands of foreign company.

KRISHAK BHARATI COOPERATIVE LTD V ACIT [INDIA – OMAN DTAA]

Facts:

- The assessee, a co-operative society, was primarily engaged in manufacture of fertilizers like urea and ammonia. It entered into a Joint Venture with Oman Oil Company to form a fertilizer company OMIFCO. The assessee held 25 per cent shares in OMIFCO and the fertilizers manufactured by OMIFCO were purchased by the Government of India under a long term agreement. The assessee also had a branch office in Oman to oversee its investment in the JV company and it constituted Permanent Establishment (PE) in Oman in terms of India-Oman DTAA.

- The Assessing Officer allowed tax credit of Rs. 41.53 crores with respect to dividend income of Rs. 134.41 crores received by assessee from OMIFC which was exempt in Oman by virtue of article 8(bis) of Omanian Tax Laws. The said dividend income was simultaneously brought to the charge of tax in the assessment as per the Indian Tax Laws.
- However, subsequently, Commissioner of Income-tax (CIT) was of view that as assessee did not pay any tax in Oman owing to exemption, no foreign tax credit was available to it. It was observed that article 25(4) requires that in order to claim credit, tax should have been payable in Oman if not for the tax incentives granted in Oman to promote economic development. The Commissioner opined that exemption granted by Oman cannot be treated as a tax incentive as same existed across the board and was simply a feature of Oman's Tax Law which does not tax dividend income. Accordingly the Commissioner revised the order of the Assessing Officer and disallowed the tax credit so claimed by assessee.

Held:

The Mumbai Tribunal held that where the assessee society received dividend income from an Omani company, which was offered to tax in India, it would be liable to credit of tax paid under the India - Oman DTAA, in spite of the fact that the Omani tax laws exempts tax on such income, as the term 'tax payable' in Article 25(4) of the DTAA includes tax which would have been payable but not paid due to certain tax incentives under laws of the contracting State.

INSTRUMENTARIUM CORPORATION LTD. V. ADIT[INDIA – FINLAND DTAA]

Facts:

- The assessee foreign company had advanced an interest free loan to its wholly owned Indian subsidiary. The tax authorities imputed notional interest in the hands of the assessee foreign company. The assessee argued that such non charging of interest by it was a beneficial approach from an Indian perspective since if interest was charged on the loan advanced by foreign lender company the same would have been claimed as a deduction by the Indian subsidiary thereby reducing the taxable income / increasing the loss incurred in the statement of total income – advocating the concept of base erosion from an Indian perspective.

Held:

- The SB rejected the ‘base erosion’ argument on account of the following:
- Section 92(3) of the Act, essentially refers to computation of income in the hands of the assessee in respect of whom income is being computed under Section 92(1)of the Act. Section 92(3) does not contemplate taking of a holistic view, considering lowering of overall profits / increasing overall losses, i.e., not only for the assessee but in respect of all AEs (taxable in India) taken as a whole.
- A plain reading of Section92(3) of the Act indicates that what is to be seen is impact on profits or losses for the year inconsideration itself, rather than taking into account the impact on taxes for the subsequent years. The tax shield available to the Indian AEs as a result of accumulated losses, if any, could only affect income of the subsequent years, which were not relevant for the purpose of Section92(3) of the Act. Thus, if the transaction in the instant case as accepted without an ALP adjustment, then it would result in base erosion to the extent of taxability of interest in the hands of the non-resident taxpayer, as the India Sub had incurred a loss.
- To what extent this tax revenue could have been offset by the increase in the India Sub’s loss was wholly academic, as there was no way to ascertain, at least at the assessment stage, as to whether this loss would be actually set off against future profits of the India Sub. The tax administration

could not be expected to predict whether or not the India Sub would actually make sufficient profits in the next eight assessment years to sub sum e the losses. Further, time value of money could also not be ignored.

- If an ALP adjustment was made in the hands of a non-resident assessee (for example, a recipient of interest income),the Indian AE would not be entitled to get any additional deduction in respect of such an adjustment, as there was no provision in the law enabling such an additional deduction. Accordingly, there would be no base erosion. The reference to the second proviso of section 92C(4) of the Act was thus unwarranted, as it applies to situations distinct from those prevailing in the instant case. This proviso constitutes a bar against lowering of the non-resident AE's income as a result of lowering the deduction in the Indian AE's hands, rather than as enabling a higher deduction in the Indian AE's hands as a result of increasing the non-resident AE's income.

RHEINBRAUN ENGINEERING UND WASSER GMBH V DDIT [INDIA - GERMANY DTAA]

Facts:

- The assessee-company was registered in Germany and its core business activities included consulting services in the fields of exploration, mining and extraction. During relevant year, assessee entered into agreement with three Indian companies to render various services. The assessee filed its return wherein amount received from Indian companies for providing technical consultancy services was offered to tax under article 12(2) of India-Germany DTAA. Assessing Officer held that assessee had PE in India and, thus, its tax liability had to computed as per provisions of section 115A

Held:

In the case under consideration the basic issue to be decided is as to whether the assessee had PE in India or not. If it had rendered services in India for more than 6 months continuously, it has to be held that it had PE in India. Therefore, it would be useful to find out as what services were rendered by the assessee in India. The assessee had issued 10 invoices to three Indian parties. A close scrutiny of the invoices proves that the assessee had rendered services that were of consultancy nature and therefore same are governed by the provisions of article 12 of the DTAA. For computing continuous period of stay for PE purpose, actual stay of employees has to be considered and not the entire contract period. The assessee had deputed one of its employee 'D' to India and he had not stayed in India for more than 180 days. It is also a fact the in two of the contracts no supervisory charges were booked by the assessee for the year under appeal, that the assessee had offered its income under the head FTS in its return. Article 12(4) deals with FTS in nature of managerial, technical or consultancy. Considering the above, it is held that payments received by the assessee should be assessed as per the provisions of article 12 and not as per article 7 of the India-Germany DTAA. In these circumstances, it is held that payments received by the assessee have to be taxed at the rate of 10 per cent and that the provisions of section 115A would not be applicable.

ADVANCE AUTHORITY RULINGS

MAHINDRA-BT INVESTMENT (AAR) [INDIA -MAURITIUS DTAA]

Facts:

- The applicant a company incorporated in Mauritius had acquired 99.31 lakh shares in Tech Mahindra Limited, India('TML') listed on Bombay Stock Exchange and National Stock Exchange in India. The control and management of the affairs of the applicant was exercised by the Board of directors of the applicant whose meetings were conducted in and chaired from Mauritius. AT &T International Inc. ('AT&T'), a corporation, organised and existing under the laws of Delaware, USA, TML and the applicant entered into an Option Agreement pursuant to which AT&T was given an

option to purchase 99.31 lakh equity shares of TML held by applicant on achieving certain milestones stipulated in Option Agreement. AT&T achieved the milestone and decided to exercise the options. The applicant transferred the shares of TML to AT&T and realized long-term capital gain. This gave rise to the issue of taxability of gains. The applicant sought advance ruling whether applicant, a tax resident of Mauritius, is not chargeable to capital gains tax in India under article 13(4) of the DTAA between India and Mauritius in respect of transfer of shares of an Indian Company, to AT&T a US company?

Held:

- The AAR held that as per Article 13(4) of the India-Mauritius DTAA, the assessee, Mahindra-BT, Mauritius, was not liable to tax in India in respect of the transfer of shares in TML to AT&T. It rejected the Revenue's contention that the applicant was incorporated without any economic substance and that its sole purpose was to hold shares to facilitate a tax neutral share transfer noting that there was a commercial option agreement between TML and AT&T, whereby AT&T was to be offered an opportunity to hold shares in TML only once AT&T had provided TNML was a certain level of business and that there was nothing wrong if the Applicant held the shares in TML and transferred them to AT&T subsequent to the fulfilment of conditions prescribed in the Options Agreement. It further rejected the stand of the Revenue that the control and management of the Applicant was situated in India under section 6(3) of the Act since the condition of control and management being wholly situated in India was not satisfied as various important decisions on financial matters were taken by the Applicant's Board of Directors in Mauritius.

Inbound Investment and Outbound Investment

RECENT CHANGES IN FDI SECTORWISE CAP

A. FOREIGN DIRECT INVESTMENT (FDI)

I. Changes in Sectoral caps and sector specific conditions as amended in FDI Policy 2016:

In following sectors/activities, changes have been made in sectoral caps or sector specific conditions:

Sector/Activity	**FDI Policy 2015**		**FDI Policy 2016**		**Circular/Press Release/Notification**
	% of equity cap/FDI cap	**Entry route**	**% of equity cap/FDI cap**	**Entry route**	
Tea sector including Tea plantations Newly added - Coffee Plantations, rubber plantations, cardamom plantations, palm oil plantations, olive oil plantations	100%	Government	100%	Automatic	Foreign Direct Investment Policy, 2016
Manufacturing sector - A manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval. (In erstwhile policy this was restricted only to	100%	Automatic	100%	Automatic	

manufacture of items reserved for MSEs)					
1. Teleports (setting up of up-linking HUBs/Teleports); 2. Direct to Home (DTH); 3. Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalisation and addressability); 4. Mobile TV; (5) 5. Headend-in-the Sky Broadcasting Service (HITS)	74%	Automatic upto 49%, Government route beyond 49% and upto 74%	100%	Automatic upto 49%, Government route beyond 49%	
Cable Networks(Other MSOs not undertaking upgradation of networks towards digitalisation and addressability and Local Cable Operators (LCOs))	49%	Automatic	100%	Automatic upto 49%, Government route beyond 49%	
Terrestrial Broadcasting FM(FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	26%	Government	49%	Government	
Up-linking of 'News & Current Affairs' TV Channels	26%	Government	49%	Government	Foreign Direct Investment Policy, 2016
Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels	100%	Government	100%	Automatic	
Air Transport Service Non-Scheduled Air Transport Service	74% (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%	100%	Automatic	
Ground Handling Services subject to sectoral regulations and security clearance	74% (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%	100%	Automatic	
Construction Development: Townships, Housing, Built up Infrastructure. Conditions: **a.** Investor will be permitted to exit either on completion of project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage or on after completion of lock in period of three years.	100%	Automatic	100%	Automatic	

b. Conditions for minimum area and capitalisation have been removed. **c.** Earning of rent/income on lease of property, not amounting to transfer, will not amount to real estate business. **d.** "Transfer", in relation to FDI policy on the sector, includes,— (i) The sale, exchange or relinquishment of the asset ; or (ii) The extinguishment of any rights therein; or (iii) The compulsory acquisition thereof under any law ; or (iv) Any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or (v) Any transaction, by acquiring shares in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.					
Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	74%	Government	100%	Automatic	Foreign Direct Investment Policy, 2016
Cash and Carry Wholesale trading / wholesale trading (including sourcing from MSEs) – Following condition has been amended: A wholesale/cash & carry trader can undertake single brand retail trading, subject to the conditions of single brand retail trading. An entity undertaking wholesale/cash and carry as well as retail business will be mandated to maintain separate books of accounts for these two arms of the business and duly audited by the statutory auditors. Conditions of the FDI policy for wholesale/cash and carry business and for retail business have to be separately complied with by the respective business arms.	100%	Automatic	100%	Automatic	
Single brand retail trading - Following conditions have been added/modified:	100%	Automatic upto 49%,	100%	Automatic upto 49%,	

A single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms. Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, at least 70% of its products in house, and sources, at most 30% from Indian manufacturers. Indian brands should be owned and controlled by resident Indian citizens and/or companies which are owned and controlled by resident Indian citizens. Government may relax sourcing norms for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible.		Government route beyond 49%		Government route beyond 49%	
E-commerce activities - E-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce.	100%	Automatic	100%	Automatic	
Civil Aviation Brownfiled Projects	74%	Automatic up to 74% Government route beyond 74%	100%	Automatic	Press Release dated 20th June 2016 and DIPP Press Note No. 5 (2016 Series) dated June 24, 2016
Civil Aviation Scheduled Air Transport Service / Domestic Scheduled Passenger Airline	49%	Automatic	100%	Automatic up to 49% Government route beyond 49%	
Private Security Agencies	49%	Automatic	74%	Automatic up to 49% Government route beyond 49% and upto 74%	
Pharmaceuticals Brownfeilds	100%	Government	100% - Subject to Fulfilment of Conditions	Automatic - 74% Government - Beyond 74%	

<table>
<tr><td>Pension Sector</td><td>-</td><td>-</td><td>49%</td><td>Automatic</td><td rowspan="2">DIPP Press Note No. 2 (2016 Series) dated March 23, 2016 and A.P. (DIR Series) Circular No.58 dated March 31, 2016</td></tr>
<tr><td>Insurance Sector</td><td>26%</td><td>Automatic up to 26% Government route beyond 26% and upto 49%</td><td>49%</td><td>Automatic</td></tr>
</table>

II. Review of Foreign Direct Investment (FDI) Policy on various sectors

The Government of India has reviewed the extant FDI Policy on various sectors and made following amendments in the Consolidated FDI Policy, 2016 issued on June 7, 2016.
The details of amendments made are as under:

1. Establishment of Branch/Liaison/Project office for certain sectors:

For establishment of branch office, liaison office or project office or any other place of business in India if the principal business of the applicant is Defense, Telecom, Private Security or Information and Broadcasting, approval of Reserve Bank of India is not required in cases where FIPB approval or License/permission by the concerned ministry/regulator has already been granted.

2. Animal Husbandry

As per FDI Policy 2016, FDI in Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture and Apiculture is allowed 100% under Automatic Route under controlled conditions. It has been decided to do away with this requirement of 'controlled conditions' for FDI in these activities. Accordingly, conditions relating to animal husbandry "under controlled conditions" have also been deleted from the said para.

3. Radical Changes for promoting Food Products manufactured/produced in India

Notwithstanding the FDI Policy provisions on trading sector, it has now been decided to permit 100% FDI under government approval route for trading, including through e-commerce, in respect of food products manufactured or produced in India. Applications for FDI in food products retail trading would be processed in the Department of Industrial Policy & Promotion before being considered by the Government for approval.

4. Foreign Investment in Defence Sector up to 100%

FDI above 49% was permitted through government approval on case to case basis, wherever it was likely to result in access to modern and 'state of art' technology in the country. In this regard, the following changes have inter-alia been brought in the FDI policy on this sector:

a) The condition of access to 'state-of-art' technology in the country has been done away with. Thus, foreign investment beyond 49% has now been permitted through government approval route, in cases resulting in access to modern technology in the country or for other reasons to be recorded.

b) FDI limit for defense sector has also been made applicable to Manufacturing of Small Arms and Ammunitions covered under Arms Act 1959.

5. Single Brand Retail Trading

It has now been decided to relax local sourcing norms up to three years and a relaxed sourcing regime for another five years for entities undertaking Single Brand Retail Trading of products having state-of-art' and 'cutting edge' technology. Thereafter provisions of para 5.2.15.3 (2)(e) will be applicable.

Press Release dated 20th June 2016 and DIPP Press Note No. 5 (2016 Series) dated June 24, 2016

III. Payment for Transfer of Shares between Resident and Non-Resident

In case of transfer of shares between a resident buyer and a non-resident seller or vice-versa, not more than twenty five per cent of the total consideration can be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement subject to compliance of applicable pricing guidelines.

Notification No.FEMA.368/2016-RBdated 20th May, 2016

IV. Relaxation from RBI approval for investment by FVCI in certain cases

As per the Amendment, any FVCI which has obtained registration under the SEBI (FVCI) Regulations, 2000, will not require any approval from Reserve Bank of India and can invest in:

a. Equity or equity linked instrument or debt instrument issued by an Indian company whose shares are not listed on a recognised stock exchange at the time of issue of the said securities/instruments and engaged in any of the following sectors:

i. Biotechnology
ii. IT related to hardware and software development
iii. Nanotechnology
iv. Seed research and development
v. Research and development of new chemical entities in pharmaceutical sector
vi. Dairy industry
vii. Poultry industry
viii. Production of bio-fuels
ix. Hotel-cum-convention centers with seating capacity of more than three thousand
x. Infrastructure sector

b. Equity or equity linked instrument or debt instrument issued by an Indian 'startup' irrespective of the sector in which the startup is engaged.

c. Units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund (Cat-I AIF) (registered under the SEBI (AIF) Regulations, 2012) or units of a Scheme or of a fund set up by a VCF or by a Cat-I AIF.

It is clarified that downstream investments by a Venture Capital Fund (VCF) or a Cat-I AIF, which has received investment from FVCI, shall have to comply with the provisions for downstream investment as laid down in Schedule 11 of the Principal Regulations.

Other salient features of the revised regulatory framework are as under:

a) FVCI may open a foreign currency account and/or a rupee account with a designated branch of an Authorised Dealer for the purpose of making transactions only and exclusively under this Schedule.

b) The consideration for all investment by an FVCI shall be paid out of inward remittance from abroad through normal banking channels or out of sale / maturity proceeds of or income generated from investment already made as above.

c) There will be no restriction on transfer of any security/instrument held by the FVCI to any person resident in or outside India.

d) An entity receiving investment directly from a registered Foreign Venture Capital Investor (FVCI) will be required to report the investment, mutatis mutandis, in form FCGPR.

A.P. (DIR Series) Circular No. 7 dated 20th October, 2016

Regulation 5

The existing sub-regulation (5) shall be substituted by the following namely:-

"A Foreign Venture Capital Investor registered with SEBI may make investment in the manner and subject to the terms and conditions specified in the revised Schedule 6."

Notification No. FEMA.363/2016-RB dated April 28, 2016

V. Foreign investment in Other Financial Services:

At present, foreign investment up to 100%, under the automatic route, in Non-Banking Finance Companies (NBFCs) engaged in the 18 activities listed therein is permissible subject to conditions prescribed.

It has been decided to allow foreign investment up to 100% under the automatic route in 'Other Financial Services'.

Other Financial Services will include activities which are regulated by any financial sector regulator viz. RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India in this regard.

Such foreign investment shall be subject to conditionalities, including minimum capitalisation norms, as specified by the concerned Regulator/ Government Agency.

A.P. (DIR Series) Circular No. 8 dated 20th October, 2016

VI. Purchase of Convertible Notes from Start Ups by a Person Resident Outside India

Highlights of "Regulation 6D: Issue of Convertible note (CN) by a startup company" inserted in the Notifications are as under:

- ☐ A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered / incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian start-up company for an amount of twenty five lakhs rupees or more in a single tranche.

- ☐ A start-up company engaged in a sector where foreign investment requires Government approval may issue convertible notes to a non-resident only with approval of the Government. Explanation: For the purpose of this regulation, the issue of shares against such convertible notes shall have to be in accordance with the Schedule 1 of the Principal Regulations.

- A start-up company shall receive consideration by inward remittance through banking channels or by debit to the NRE / FCNR (B) / Escrow account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time.

- NRIs may acquire convertible notes on non-repatriation basis in accordance with Schedule 4 of the Principal Regulations.

- A person resident outside India may acquire or transfer, by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the pricing guidelines as prescribed by RBI. Prior approval from the Government shall be obtained for such transfers in case the startup company is engaged in a sector which requires Government approval.

- 'Convertible Note' – an instrument issued by a start-up company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such start-up company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.

- 'start-up company' means a private company incorporated under the Companies Act, 2013 or Companies Act,1956 and recognised as such in accordance with notification number G.S.R. 180(E) dated February 17, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

The start-up company issuing convertible notes shall be required to furnish reports as prescribed by Reserve Bank.

NOTIFICATION NO.FEMA.377/2016-RB/GSR 16(E), DATED 10-1-2017

VII. "Category I AIF" and "Start-ups" defined in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India)

Amendments made to FEMA Notification No. 20 are as under:

a. A new sub-regulation (iiA) defining the term 'Category I Alternative Investment Fund (Cat-I AIF)' has been inserted as under :

'Category I Alternative Investment Fund (Cat-I AIF)' means an Alternative Investment Fund registered under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 which raises money and invests in such funds or sectors or activities or areas in accordance with the said Regulations."

b. A new sub-regulation (xA) defining the term Start ups as per Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) has been inserted as under :

'startup' shall mean an entity, incorporated or registered in India not prior to five years, with an annual turnover not exceeding RS. 25 Crores in any preceding financial year, working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property, Provided that such entity is not formed by splitting up, or reconstruction of a business already in existence.

Provided that it will not include the mere act of developing (a) products or services or processes which do not have potential for commercialisation; or (b) undifferentiated products or services or processes or (c) products or services or processes with no or limited incremental value for customers or workflow.

Notification No. FEMA.363/2016-RB dated April 28, 2016

VIII. Review of sectoral caps and simplification of Foreign Direct Investment (FDI) Policy:

Some of the salient features brought though the amendment in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 are as under:

a. The Reserve Bank of India has clarified that the total Foreign Direct Investment in any sector shall include all the Foreign investments regardless of the schedule in which it is made so as to comply with the prescribed limits of Sectoral Caps.
b. “Total foreign investment" in an Indian company will be the sum total of direct and indirect foreign investments.
c. Portfolio investment up to aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance with the sectoral conditions, as the case may be, provided such investment does not result in change in ownership leading to control of Indian entities by non-resident entities. Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the FDI policy and the related Regulations under the Foreign Exchange Management Act 1999.
d. The onus of compliance with the sectoral/statutory caps on foreign investment and attendant conditions, if any, shall be on the company receiving foreign investment.
e. A company shall be considered as owned by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens. A Limited Liability Partnership (LLP) will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/ or entities which are ultimately ‘owned and controlled by resident Indian citizens’ and such resident Indian citizens and entities have majority of the profit share.
f. Foreign investment in LLP is permitted under the automatic route if the LLP is engaged in sector where 100% FDI is allowed and there are no attendant FDI linked performance conditionalities to the sector.
g. Foreign investment by way of swap of shares has been permitted provided the resident company in which the investment is made is engaged in an automatic route sector subject to the condition that irrespective of the amount, valuation of the shares involved in the swap arrangement will have to be made by a Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker outside India registered with the appropriate regulatory authority in the host country.
h. A Non-resident Indian (NRI) has been permitted to purchase or sell shares, convertible preference shares, convertible debentures and warrants of an Indian company or units of an investment vehicle, on repatriation basis (under Schedule 3 to principal regulation) and non-repatriation basis (under schedule 4 to principal regulation). Investment by an NRI, including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRI, on non-repatriation basis under Schedule 4 of notification ibid, will be deemed to be domestic investment at par with the investment made by residents.

A.P. (DIR Series) Circular No. 6 dated 20th October, 2016

IX. Purchase and sale of securities other than shares or convertible debentures of an Indian company by a person resident outside India

Presently, eligible investors, viz., SEBI registered FIIs, Foreign Investors (QFIs), registered Foreign Portfolio Investors (FPIs) and long-term investors registered with SEBI, are allowed to purchase securities indicated in Schedule 5 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) on repatriation basis and subject to such terms and conditions as may be specified by the SEBI and the Reserve Bank from time-to-time. With a view to providing flexibility in regard to the manner in which non-convertible debentures/bonds issued by Indian companies can be acquired by FPIs, RBI has allowed them to transact in such instruments either directly or in any manner as per the prevalent/approved market practice.

A.P. (DIR Series) Circular No. 23 dated 27th December, 2016

X. Foreign Investment in units issued by REIT, InvITs and AIF governed by SEBI regulations

With a view to rationalising foreign investment regime for Alternative Investment vehicles and to facilitating foreign investment in collective investment vehicles for real estate and infrastructure sectors, it has been decided, in consultation with the Government of India, to allow foreign investment in the units of Investment Vehicles registered and regulated by SEBI or any other competent authority. At present, Investment Vehicle will include the following

- Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014;
- Infrastructure Investment Trusts (InvITs) registered and regulated under the SEBI (InvITs) Regulations, 2014;
- Alternative Investment Funds (AIFs) registered and regulated under the SEBI (AIFs) Regulations 2012.

Further, unit shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests.

The salient features of the new investment regime are as follows:

i. A person resident outside India including a Registered Foreign Portfolio Investor (RFPI) and a Non-Resident Indian (NRI) may invest in units of Investment Vehicles.

ii. The payment for the units of an Investment Vehicle acquired by a person resident or registered / incorporated outside India shall be made by an inward remittance through the normal banking channel including by debit to an NRE or an FCNR account.

iii. A person resident outside India who has acquired or purchased units in accordance with the regulations may sell or transfer in any manner or redeem the units as per regulations framed by SEBI or directions issued by RBI.

iv. Downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian ‘owned and controlled’ as defined in Regulation 14 of the Principal Regulations.

v. In case the sponsors or managers or investment managers are organized in a form other than companies or LLPs, SEBI shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

vi. The extent of foreign investment in the corpus of the Investment Vehicle will not be a factor to determine as to whether downstream investment of the Investment Vehicle concerned is foreign investment or not.

vii. Downstream investment by an Investment Vehicle that is reckoned as foreign investment shall have to conform to the sectoral caps and conditions / restrictions, if any, as applicable to the company in which the downstream investment is made as per the FDI Policy or Schedule 1 of the Principal Regulations.

viii. Downstream investment in an LLP by an Investment Vehicle that is reckoned as foreign investment has to conform to the provisions of Schedule 9 of the Principal Regulations as well as the extant FDI policy for foreign investment in LLPs.

ix. An Alternative Investment Fund Category III with foreign investment shall make portfolio investment in only those securities or instruments in which a RFPI is allowed to invest.

x. The Investment Vehicle receiving foreign investment shall be required to make such report and in such format to Reserve Bank of India or to SEBI as may be prescribed by them from time to time.

xi. It is also clarified that foreign investment in units of REITs registered and regulated under the SEBI (REITs) Regulations, 2014 will not be included in "real estate business" for the purpose of these regulations.

A.P.DIR Series Circular No.63 dated 21stApril, 2016

B. External Commercial Borrowings:

I. **Hedging of ECBs** –

With respect to hedging of ECBs clarification have been issued vide the below circular.

With a view to provide clarity and bring uniformity in hedging practices in the market so as to effectively address currency risk at a systemic level, the following clarifications are issued:

i. **Coverage**: Wherever hedging has been mandated by the RBI, the ECB borrower will be required to cover principal as well as coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day liability is created in the books of the borrower).

ii. **Tenor and rollover**: A minimum tenor of one year of financial hedge would be required with periodic rollover duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of ECB.

Natural Hedge: Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting year. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as natural hedge.

A.P. (DIR Series) Circular No. 15 dated 7th November, 2016

II. **Approval Route cases**

In terms of the Circular/Direction of ECB, cases coming under the approval route were required to be considered by an Empowered Committee set up by the Reserve Bank based on the parameters stated therein.

With a view to rationalising and expediting the process of giving approval, it has been decided that ECB proposals received in the Reserve Bank above a certain threshold limit (refixed from time to time) be placed before the Empowered Committee. The Reserve Bank will take a final decision in the cases taking into account the recommendation of the Empowered Committee.

A.P. (DIR Series) Circular No. 80 dated June 30, 2016

III. Revised framework for Infrastructure Sector

Taking into account prevailing external funding sources, particularly for long term lending and the critical needs of infrastructure sector of the country, the extant ECB guidelines have been reviewed in consultation with the Government of India. Accordingly, it has been decided to make the following changes in the ECB framework:

a) Companies in infrastructure sector, Non-Banking Financial Companies - Infrastructure Finance Companies (NBFC-IFCs), NBFCs-Asset Finance Companies (NBFC-AFCs), Holding Companies and Core Investment Companies (CICs) will also be eligible to raise ECB under Track I of the framework with minimum average maturity period of 5 years, subject to 100 per cent hedging.

b) For the purpose of ECB, "Exploration, Mining and Refinery" sectors which are not included in the Harmonised list of infrastructure sector but were eligible to take ECB under the previous ECB framework (c.f. A.P. (DIR Series) Circular No. 48 dated September 18, 2013) will be deemed as in the infrastructure sector, and can access ECB as applicable to infrastructure sector under (i) above.

c) Companies in infrastructure sector shall utilize the ECB proceeds raised under Track I for the end uses permitted for this Track. NBFCs-IFCs and NBFCs-AFCs will, however, be allowed to raise ECB only for financing infrastructure.

d) Holding Companies and CICs shall use ECB proceeds only for on-lending to infrastructure Special Purpose Vehicles (SPVs).

e) The individual limit of borrowing under the automatic route for aforesaid companies shall be as applicable to the companies in the infrastructure sector (currently USD 750 million).

f) Companies in infrastructure sector, Holding Companies and CICs will continue to have the facility of raising ECB under Track II of the ECB framework subject to the conditionalities prescribed thereof.

The companies added under Track I should have a Board approved risk management policy. Further, the designated AD Category-I bank shall verify that 100 per cent hedging requirement is complied with during the currency of ECB and report the position to RBI through ECB 2 returns

It is further clarified that-

a) The designated AD Category-I banks may, under the powers delegated to them, allow refinancing of ECBs raised under the previous ECB framework, provided the refinancing is at lower all-in-cost, the borrower is eligible to raise ECB under the extant ECB framework and residual maturity is not reduced (i.e. it is either maintained or elongated).

b) ECB framework is not applicable in respect of the investment in Non-convertible Debentures (NCDs) in India made by Registered Foreign Portfolio Investors (RFPIs).

c) Minimum average maturity of Foreign Currency Convertible Bonds (FCCBs)/ Foreign Currency Exchangeable Bonds (FCEBs) is 5 years irrespective of the amount of borrowing. Further, the call and put option, if any, for FCCBs shall not be exercisable prior to 5 years.

d) Only those NBFCs which are coming under the regulatory purview of the Reserve Bank are permitted to raise ECB. Further, under Track III, the NBFCs may raise ECBs for on-lending for any activities including infrastructure as permitted by the concerned regulatory department of RBI.

e) The provisions regarding delegation of powers to designated AD Category-I banks is not applicable to FCCBs/FCEBs.

f) In the forms of ECB, the term “Bank loans” shall be read as “loans” as foreign equity holders / institutions other than banks, also provide ECB as recognized lenders.

A.P. (DIR Series) Circular No.56 dated March 30, 2016

IV. Issuance of Rupee denominated bonds overseas

- According to the Monetary Policy Statement, the current limit of USD 51 billion for foreign investment in corporate debt has been fixed in Rupee terms at Rs. 2443.23 billion. Issuance of Rupee denominated bonds overseas will be within this aggregate limit of foreign investment in corporate debt.
- As the overall limit is now prescribed in Rupee terms, the maximum amount which can be borrowed by an entity in a financial year under the automatic route by issuance of these bonds will be Rs. 50 billion and not USD 750 million as given earlier. Proposals to borrow beyond Rs. 50 billion in a financial year will require prior approval of the Reserve Bank.
- The Rupee denominated bonds can only be issued in a country and can only be subscribed by a resident of a country:
  - that is a member of Financial Action Task Force (FATF) or a member of a FATF- Style Regional Body; and
  - whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO’s) Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the Securities and Exchange Board of India (SEBI) for information sharing arrangements; and
  - should not be a country identified in the public statement of the FATF as:
    a. A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
    b. A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.
- It has been decided to reduce the minimum maturity period for Rupee denominated bonds issued overseas to three years

A.P.DIR Series Circular No.60 dated 13th April, 2016

V. Issuance of Rupee denominated bonds overseas by Indian banks

It has been allowed to Indian banks, within the limit set for foreign investment in corporate bonds (RS. 244323 crore at present), to issue:

- **i.** Perpetual Debt Instruments (PDI) qualifying for inclusion as Additional Tier 1 capital and debt capital instruments qualifying for inclusion as Tier 2 capital, by way of Rupee Denominated Bonds overseas; and
- **ii.** Long term Rupee Denominated Bonds overseas for financing infrastructure and affordable housing.

Further, underwriting by overseas branches/subsidiaries of Indian banks for such issuances will not be allowed.

A.P. (DIR Series) Circular No. 14 dated 3rd November, 2016

VI. Relaxation for FPI to invest in Corporate Debt securities:

At present, Foreign Portfolio investors (FPI) are permitted to invest only in listed or to-be-listed debt securities. Investment in unlisted debt securities is permitted only in case of companies in the infrastructure sector.

FPIs can also invest in:

- ☐ Unlisted corporate debt securities in the form of non-convertible debentures/bonds issued by public or private companies subject to conditions as specified.
- ☐ Securitised debt instruments as under:
  - a. Any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of asset/s where banks, FIs or NBFCs are originators; and/or
  - b. Any certificate or instrument issued and listed in terms of the SEBI Regulations on Public Offer and Listing of Securitised Debt Instruments, 2008.

Investment by FPIs in the unlisted corporate debt securities and securitised debt instruments shall not exceed Rs.35,000 crore within the extant investment limits prescribed for corporate bond from time to time which currently is Rs.2,44,323 crore.

A.P. (DIR Series) Circular No. 19 dated 17thNovember, 2016

VII. Extension and conversion of ECB

1. Designated AD Category-I banks can approve requests from borrowers for changes in repayment schedule during the tenure of the ECB, i.e., prior to maturity provided average maturity and all-in-cost are in conformity with applicable ceilings/ norms. Designated AD Category-I banks are delegated powers to approve requests from borrowers for extension of matured but unpaid ECB, subject to the following conditions:
   - a) No additional cost is incurred;
   - b) Lender's consent is available;
   - c) Reporting requirements are fulfilled.
2. Further, powers are also delegated to designated AD Category – I bank to approve cases of conversion of matured but unpaid ECB into equity subject to same conditions as set out in the concerned notification.

A.P. (DIR Series) Circular No. 10 dated 20th October, 2016

C. Overseas Direct Investment (ODI)

I. Foreign Exchange Management (Deposit) Regulations, 2016

Foreign Exchange Management (Deposit) Regulations, 2000 have been repealed and superseded by the Foreign Exchange Management (Deposit) Regulations, 2016 w.e.f. 1st April, 2016.

Notification No. FEMA 5(R)/2016-RB dated 1st April, 2016

II. Rationalization and reporting of ODI Forms

a. The rationalised and revised Form ODI will now comprise the following parts:

Part I – Application for allotment of Unique Identification Number (UIN) and reporting of Remittances / Transactions:

Section A – Details of the IP / RI.

Section B – Capital Structure and other details of JV/ WOS/ SDS.

Section C - Details of Transaction/ Remittance/ Financial Commitment of IP/ RI.

Section D – Declaration by the IP/ RI.

Section E – Certificate by the statutory auditors of the IP/ self-certification by RI.

Part II - Annual Performance Report (APR)
Part III – Report on Disinvestment by way of

- Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of overseas JV / WOS;
- Sale/ Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident;
- Closure / Voluntary Liquidation / Winding up/ Merger/ Amalgamation of IP; and
- Buy back of shares by the overseas JV/ WOS of the IP / RI.

b. Further, a new reporting format has also been introduced for Venture Capital Fund (VCF) / Alternate Investment Fund (AIF), Portfolio Investment and overseas investment by Mutual Funds. In case of reporting purchase and repurchase of ESOPs, the AD banks may continue to report the same in the existing format.

c. In case of Resident Individual (RI) undertaking ODI, certification of Form ODI Part I by statutory auditor or chartered accountant need not be insisted upon. Self-certification by the RI concerned may be accepted.

A.P.DIR Series Circular No.62 dated 13th April, 2016

III. Submission of Annual Performance Report

In the matter of submission of APRs by the Indian Parties (IPs) / Resident Individuals (RIs), it is now advised as under:

a. The online OID application has been modified;

b. Certification of APRs by the Statutory Auditor or Chartered Accountant need not be insisted upon in the case of Resident Individuals. Self-certification may be accepted;

c. In case multiple IPs / RIs have invested in the same overseas JV / WOS, the obligation to submit APR shall lie with the IP / RI having maximum stake in the JV / WOS. Alternatively, the IPs / RIs holding stake in the overseas JV / WOS may mutually agree to assign the responsibility for APR submission to a designated entity which may acknowledge its obligation to submit the APR in terms of Regulation 15 (iii) of Notification, ibid, by furnishing an appropriate undertaking to the AD bank;

d. An IP / RI, which has set up / acquired a JV / WOS overseas in terms of the Regulations of the Notification, ibid, shall submit, to the AD bank every year, an APR in Form ODI Part II in respect of each JV / WOS outside India and other reports or documents by 31st of December each year or as may be specified by the Reserve Bank from time to time. The APR, so required to be submitted, shall be based on the latest audited annual accounts of the JV / OS unless specifically exempted by the Reserve Bank.

A.P.DIR Series Circular No.61 dated 13th April, 2016

D. Remittance of Assets

Notification No. FEMA 13/2000-RB dated May 3, 2000, Foreign Exchange Management(Remittance of Assets) Regulations, 2000 have been repealed and superseded by the Foreign Exchange Management (Remittance of Assets) Regulations, 2016 (Notification No. FEMA 13(R)/2016-RB dated April 1, 2016, and shall come into force with effect from April 1, 2016.

- Few important definitions which have been added or definitions in which an amendment have been made as per the new regulations in reproduced hereunder:

a. A 'Non-resident Indian (NRI)' is a person resident outside India who is a citizen of India

b. A 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

i. Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or

ii. Who belonged to a territory that became part of India after the 15th day of August, 1947; or

iii. Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or

iv. Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

Explanation: PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

c. 'Remittance of asset' means remittance outside India of funds in a deposit with a bank/ firm/ company, provident fund balance or superannuation benefits, amount of claim or maturity proceeds of Insurance policy, sale proceeds of shares, securities, immovable property or any other asset held in India in accordance with the provisions of the Act or rules/ regulations made under the Act;

d. 'Expatriate staff' is a person whose provident/ superannuation/ pension fund is maintained outside India by his principal employer outside India;

e. 'Not permanently resident' is a person resident in India for employment of a specified duration or for a specific job/ assignment, the duration of which is not more than three years

- Amendments made in the relevant regulation are reiterated hereunder:

Remittance in case of deceased

As per the amendment, if a widow/ widower is a resident outside India and has inherited assets of the deceased spouse who was an Indian citizen resident in India, may remit through an authorised dealer an amount, not exceeding USD 1,000,000 (US Dollar One million only) per financial year on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter.

Declaration of source of amount to be remitted

Where the remittance is to be made from the balances held in the NRO account, the account holder shall furnish an undertaking to the Authorised Dealer that "the said remittance is sought to be made out of the remitter's balances held in the account arising from his/ her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, the account holder will render himself/ herself liable for penal action under FEMA."

Tax Clearance Certificates for Companies

The requirement of obtaining a No Objection or tax clearance Certificate from the Income-tax Authority is waived off for remittance out of the assets of Indian companies under liquidation under the provisions of the Companies Act, 2013.

Remittance of assets subject to payment of applicable taxes

Any transaction involving remittance of assets under these regulations shall be subject to the applicable tax laws in India.

A.P.DIR Series Circular No. 64/2015-16 [(1)/13(R)] dated 28th April, 2016 and Notification No. FEMA 13 (R)/2016-RB dated 1st April, 2016

E. Foreign Direct Investment (FDI)

Amendments in FDI Policy

Following amendments have been made through the consolidated FDI Policy, 2016:

1. Amendment / Insertion in Definitions: -

1.2 Definition of "Capital" has been amended and warrants and partly paid shares have been included in definition of capital.

1.3 Definition of "Control" is amended to include control in respect of Limited Liability Partnership

1.4 New definition of “Employees Stock Option” is inserted as under:
“Employees’ Stock Option” means the option given to the directors, officers or employees of a company or of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

1.5 New definition of “Investment Vehicle” is inserted as under:
‘Investment Vehicle’ shall mean an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and shall include Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012.

1.6 Definition of “Non-Resident Indian” as per FDI is amended and ‘Person of Indian Origin’ is replaced by ‘Overseas Citizen of India’ cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

1.7 Definition of "company owned” by resident India citizens is amended and a Limited Liability Partnership is also included in the amended definition.

1.8 New definition of “Sweat Equity Shares” is inserted as under:
‘Sweat Equity Shares’ means such equity shares as issued by a company to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by Whatever name called.

1.9 New definition of “unit” is inserted as under:
‘Unit’ shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests.

1.10 Definition of “Venture Capital Fund” is revised as under:
‘Venture Capital Fund’ (VCF) means an Alternative Investment Fund which invests primarily in unlisted securities of start-ups, emerging or early-stage venture capital undertakings mainly involved in new products, new services, technology or intellectual property right based activities or a new business model and shall include an angel fund as defined under Chapter III-A of SEBI (AIF) Regulations, 2012.

2. Addition to the meaning of “eligible investors”:

A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can now invest in India with the special dispensation as available to NRIs under the FDI Policy.
A Non- Resident Indian may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels and the person is eligible to invest as per the provisions of the PFRDA Act. The annuity/accumulated saving will be Repatriable.

3. Addition to the meaning of "Investee Entities":

FDI in LLPs is now permitted under automatic route in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.

An entity being 'investment vehicle' registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose including Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014, Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012 and notified under Schedule 11 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 is permitted to receive foreign investment from a person resident outside India (other than an individual who is citizen of or any other entity which is registered/incorporated in Pakistan or Bangladesh), including an Registered Foreign Portfolio Investor (RFPI) or a non-resident Indian (NRI).

4. Addition to the meaning of "eligible Instruments":

An Indian company may issue warrants and partly paid shares to a person resident outside India.

5. Foreign investment in companies with no operations:

In erstwhile FDI Policy foreign investment into Indian company with no operations and does not have any downstream investment was under government approval regardless of the amount of investment. This has been amended and as per FDI Policy of 2016 for undertaking activities which are under automatic route and without foreign investment linked performance conditions, Indian company which does not have any operations and also does not have any downstream investments, will be permitted to have infusion of foreign investment under automatic route. However approval of the Government will be required for such companies for infusion of foreign investment for undertaking activities which are under Government route, regardless of the amount or extent of foreign investment.

6. Share Swap:

Approval of the Government will also be a prerequisite for investment by swap of shares for sector under Government approval route. No approval of the Government is required for investment in automatic route sectors by way of swap of shares

7. Limits of approval for cases under Government route:

Minister of Finance who is in-charge of FIPB would consider the recommendations of FIPB on proposals with total foreign equity inflow of and below Rs. 5000 crore. (Earlier this limit was Rs. 2000 crore)

The recommendations of FIPB on proposals with total foreign equity inflow of more than Rs. 5000 crore would be placed for consideration of Cabinet Committee on Economic Affairs (CCEA). (Earlier this limit was Rs. 2000 crore)

(Circular of 2016 dated June 07, 2016)

OVERVIEW OF ECONOMIC SURVEY

The Economic Survey of this year comes with international developments like Brexit, political changes in advanced economies and two radical domestic policy actions: the GST and demonetisation. This Survey produces the first estimate of the flow of goods across states within India, based on analyzing transactions level data provided by the Goods and Services Tax Network (GSTN). The striking findings are that India's internal integration is strong, and substantially stronger than conventional wisdom believes. The Survey produces new estimates of the effectiveness of targeting of major current programs, contrasting the wedge between the number of poor in a district and the amount of funding it receives. This leads naturally to a discussion of providing a Universal Basic Income (UBI) that has emerged as a raging new idea both in advanced economies and in India. It is also an honour that this year's Survey has a contribution from the Honourable Minister of Finance.

Indians are on the Move: New estimates based on railway passenger traffic data reveal annual work-related migration of about 9 million people, almost double what the 2011 Census suggests.
Political Democracy but Fiscal Democracy? India has 7 taxpayers for every 100 voters ranking us 13th amongst 18 of our democratic G-20 peers.

India Trades More Than China: As of 2011, India’s openness - measured as the ratio of trade in goods and services to GDP has far overtaken China’s, a country famed for using trade as an engine of growth.
The year was marked by two major domestic policy developments- Goods and Services Tax (GST), and the action to demonetise the two highest denomination notes.

The GST will create a common Indian market, improve tax compliance and governance, and boost investment and growth; it is also a bold new experiment in the governance of India’s cooperative federalism. Demonetisation is unprecedented in international economic history, in that it combined secrecy and suddenness amidst normal economic and political conditions. All other sudden demonetisations have occurred in the context of hyperinflation, wars, political upheavals, or other extreme circumstances. But the Indian economy had been growing at the fastest clip in the world on the back of stable macroeconomics and an impressive set of reforms. In such normal circumstances, demonetisations—such as the one announced recently in Europe— tend to be phased in gradually.

Demonetisation has had short-term costs but holds the potential for long term benefits. Follow-up actions to minimize the costs and maximise the benefits include: fast, demand-driven, remonetisation; further tax reforms, including bringing land and real estate into the GST, reducing tax rates and stamp duties; and acting to allay anxieties about over-zealous tax administration. These actions would allow growth to return to trend in 2017-18, following a temporary decline in 2016-17.

The aim of the action was fourfold: to curb corruption, counterfeiting, the use of high denomination notes for terrorist activities, and especially the accumulation of “black money”, generated by income that has not been declared to the tax authorities. Demonetisation has the potential to generate long-term benefits in terms of reduced corruption, greater digitalization of the economy, increased flows of financial savings, and greater formalization of the economy, all of which could eventually lead to higher GDP growth, better tax compliance and greater tax revenues.

The government has:

- Overhauled the bankruptcy laws so that the “exit” problem that pervades the Indian economy--with deleterious consequences highlighted in last year’s Survey--can be addressed effectively and expeditiously;
- Codified the institutional arrangements on monetary policy with the Reserve Bank of India (RBI), to consolidate the gains from macroeconomic stability by ensuring that inflation control will be less susceptible to the whims of individuals and the caprice of governments; and
- Solidified the legal basis for Aadhaar, to realise the long-term gains from the JAM trifecta (Jan Dhan-Aadhaar-Mobile), as quantified in last year’s Survey.

The government enacted a package of measures to assist the clothing sector that by virtue of being export-oriented and labour intensive could provide a boost to employment, especially female employment. The National Payments Corporation of India (NPCI) successfully finalized the Unified Payments Interface (UPI) platform. By facilitating inter-operability it will unleash the power of mobile phones in achieving digitalization of payments and financial inclusion, and making the “M” an integral part of the government's flagship “JAM”- Jan Dhan, Aadhaar, Mobile-- initiative.

Further FDI reform measures were implemented, allowing India to become one of the world’s largest recipients of foreign direct investment. For India, the external developments are of significant consequence. In the short run, the change in the outlook for global interest rates as a result of the US elections and the implied change in expectations of US fiscal and monetary policy will impact on India’s capital flows and exchange rates. The medium-term political outlook for globalisation and in particular for the world’s “political carrying capacity for globalisation” may have changed in the wake of recent developments. The stagnant or declining trade at Global level will affect India’s export and growth prospects. Developments in the US, especially the rise of the dollar, will have implications for China’s currency and currency policy. If China is able to successfully re-balance its economy, the spillover effects on India and the rest of the world will be positive. On, the other hand, further declines in the yuan, even if dollar-induced, could interact with underlying vulnerabilities to create disruptions in China that could have negative spillovers for India.

GDP and Inflation

- Real GDP growth in the first half of the year was 7.2 percent and somewhat lower than the 7.6 percent rate recorded in the second half of 2015-16.
- Core inflation has, however, been more stable, hovering around 4.5 percent to 5 percent for the year so far. The outlook for the year as a whole is for CPI inflation to be below the RBI’s target of 5 percent, a trend likely to be assisted by demonetisation.
- During the first half of the fiscal year, the main factor was the contraction in imports, which was far steeper than the fall in exports. But during October-December, both exports and imports started a long-awaited recovery, growing at an average rate of more than 5 per cent. The improvement in exports appears to be linked to improvements in the world economy, led by better growth in the US and Germany.

Impact on supply of cash and money and interest rates

- Demonetisation is also very unusual in its monetary consequences. It has reduced sharply, the supply of one type of money— cash—while increasing almost to the same extent another type of money—demand deposits. This is because the demonetized cash was required to be deposited in the banking system.

Demonetisation coincided with the announcement of the US election results which also heralded a regime economic shift in the US. Hence, the impacts on India are compared with comparable emerging market countries to isolate, albeit imperfectly, the demonetisation effect.

Outlook for 2017-18

Fiscal outlook

- The increase in the tax to GDP ratio of about 0.5 percentage points in each of the last two years, owing to the oil windfall will disappear. In fact, excise-related taxes will decline by about 0.1 percentage point of GDP, a swing of about 0.6 percentage points relative to FY2017. There will be a fiscal windfall both from the high denomination notes that are not returned to the RBI and from higher tax collections as a result of increased disclosure under the Pradhan Mantri Garib Kalyan Yojana (PMGKY).
- It appears that the GST will probably be implemented later in the fiscal year. The transition to the GST is so complicated from an administrative and technology perspective that revenue collection will take some time to reach full potential. Combined with the government's commitment to compensating the states for any shortfall in their own GST collections (relative to a baseline of 14 percent increase), the outlook must be cautious with respect to revenue collections. The fiscal gains from implementing the GST and demonetisation, while almost certain to occur, will probably take time to be fully realized. Muted non-tax revenues and allowances granted under the 7th Pay Commission could add to pressures on the deficit.

The macroeconomic policy stance for 2017-18

- An economy recovering from demonetisation will need policy support. On the assumption that the equilibrium cash-GDP ratio will be lower than before November 8, the banking system will benefit from a higher level of deposits. Thus, market interest rates—deposits, lending, and yields on government securities—should be lower in 2017-18 than 2016-17.

Redistribution: universal basic income (UBI) as a radical new vision

- Serious consideration is to be given to the new idea of a universal basic income as a more effective way of achieving Mahatma Gandhi's objectives of "wiping every tear from every eye."
- There is misallocation for six of the largest programmes; it contrasts the share of poor in India's districts with the shortfall in allocation of funds to them. This shortfall defined as the difference in the share of fund allocation and the share of the poor.
- A universal basic income, UBI for short. UBI has three components: universality, unconditionality, and agency (by providing support in the form of cash transfers to respect, not dictate, recipients' choices). As the above two quotes suggest Gandhiji would have been conflicted by it. A universal basic income is, like many rights, unconditional and universal: it requires that every person should have a right to a basic income to cover their needs, just by virtue of being citizens.
- UBI is being thought of for a number of reasons like, social justice, poverty reduction, poor being treated as objects of the government policy, society's obligation to guarantee a minimum living standard, the weakness of existing welfare schemes which have done misallocation, leakages and exclusion of the poor.
- The Mahatma as moralist would have had doubts because of seeing uncompensated rewards as harming responsibility and effort. Recognizing the difficulty of exit, the Mahatma as astute

political observer would have anxieties about UBI as being just another add-on government programme. But on balance he may have given the go-ahead to the UBI.

Exchange rate policy

- India has managed to maintain export competitiveness despite capital inflows and inflation that has been greater than in trading partners. Reflecting this, India's global market share in manufacturing exports has risen between 2010 and 2015. The policy implication is that if India is concerned about competitiveness and the rise of exporters in Asia, it should monitor an exchange rate index that gives more weight to the currencies of these countries.

Trade policy

- The environment for global trade policy has probably undergone a paradigm shift in the aftermath of Brexit and the US elections. These are likely to be exacerbated by macro-economic developments in the United States, and in particular the sharp rise in the dollar that is already under way: since November 8, 2016 the dollar has appreciated by 5.3 percent by end December before recovering to 3.1 percent in January 2017 in nominal terms against an index of partner countries. India must play a more proactive role in ensuring open global markets.
- A vacuum in international trade leadership is being created which must be filled with voices and influences such as India's that favour open markets. This will require that India also be more willing to liberalize its own markets, a greater "openness to its own openness."

India's soon-to-recede demographic dividend

- The Year 2016 was a turning point in global demographic trends. It was the first time since 1950 that the combined working age (WA) population (15-59) of the advanced countries declined. India, seems to be in a demographic sweet spot with its working-age population projected to grow by a third over the same period; India's demographic cycle is about 10-30 years behind that of the other countries, indicating that the next few decades present an opportunity for India to catch up to their per capita income levels. Demographically speaking, there are two policy concerns: a soon-to begin-ageing India and a young India.
- Of course, heterogeneity within India offers greater labour mobility, which would reduce this demographic imbalance. India will approach, within four years, the peak of its demographic dividend meaning that the positive impact will slow down.)

- Over three years, the Survey has probably fallen short of lofty standards. But they have been – and must be – the aspiration for this and all Surveys to come

KEY BUDGET PROPOSALS

INCOME TAX RATES

TDS

TDS RATES FOR ASSESSMENT YEAR 2018-19 (FINANCIAL YEAR 2017-18)

(A) On payments to Residents (subject to notes below)

Sr. No.	Payments to Resident Payee	Criteria for Deduction	Section	Company	Partner-ship Firm	Individual, HUF, AOP, BOI
				Rate (%)		
1	Pre-mature withdrawals from Employee Provident Fund Scheme (Note 1)	Payment in excess of Rs. 50,000	192A	-	-	10
2	Interest on Securities (Note 2)	No Threshold Limit	193	10	10	10
3	Interest on Bank Deposits, Co-operative society carrying on banking business and Deposits with Post Office (Note 3)	Payment in excess of Rs. 10,000	194A	10	10	10
	Other Interest	Payment in excess of Rs. 5,000	194A	10	10	10
4	Winning From Lotteries crossword puzzles, card games and other games of any sort	Payment in excess of Rs. 10,000	194B	30	30	30
5	Winning From Horse Race	Payment in excess of Rs. 10,000	194BB	30	30	30
7	**Insurance Commission (Note 5)**	**Payment in excess of Rs. 15,000**	**194D**	**5**	**5**	**5**
6	Payment to contractors (Note 4)	Payment in excess of Rs. 30,000 per transaction or Rs. 1,00,000 p.a.	194C	2	2	1
8	Sum received for Life Insurance Policy including bonus [except exempt under section 10(10D)]	Payment in excess of Rs. 100,000 p.a.	194DA	1	1	1
9	Commission on Sale of Lottery Tickets	Payment in excess of Rs. 15,000	194G	5	5	5
10	Other Commission / Brokerage	Payment in excess of Rs. 15,000	194H	5	5	5
11	Rent for Land or Building/ Furniture and Fixture	Payment in excess of Rs. 1,80,000 p.a. (In case rent	194I(b)	10	10	10

Sr. No.	Payments to Resident Payee	Criteria for Deduction	Section	Company	Partner-ship Firm	Individual, HUF, AOP, BOI
				Rate (%)		
	Rent for Plant & machinery, Equipments	is directly paid to REITs no TDS is required)	194I(a)	2	2	2
12	Consideration for transfer of Immovable Property (other than agricultural land)	Sale Consideration must exceeds Rs. 50,00,000	194IA	1	1	1
13	**Income by way of Rent (Note 7)**	**Rent exceeds Rs. 50,000 p.m. or part thereof**	**194-IB**	**5**	**5**	**5**
14	**Monetary Payment in respect of Agreement referred to in Section 45 (5A) (Note 8)**	**No Threshold Limit**	**194-IC**	**10**	**10**	**10**
15	Professional Fees / Royalties / FTS (Note 9)	Payment in excess of Rs. 30,000 p.a.	194J	10	10	10
16	**Professional Fees (for certain payees) (Note 10)**	**Payment in excess of Rs. 30,000 p.a.**	**194J**	**2**	**2**	**2**
17	Consideration for compulsory acquisition of Immovable Property (other than agricultural land)	Payment in excess of Rs. 2,50,000 p.a.	194LA	10	10	10
18	Income by way of Interest from SPV distributed by Business Trusts i.e. REITs & Invits	No Threshold Limit	194LBA	10	10	10
19	Income other than business income distributed by an Alternate Investment Fund (Category I & II)	No Threshold Limit	194LBB	10	10	10
20	Income in respect of Investment in Securitization Trust	No Threshold Limit	194LBC	30	30	30
21	Payments in respect of deposits under National Savings Scheme, etc Central Govt Schemes	Payment in excess of Rs. 2,500 p.a.	194EE	10	10	10

Notes:

1. TDS to be deducted at maximum marginal rate in case PAN is not furnished by the deductee.
2. In case payment of interest on listed debentures to individuals or HUFs, TDS is required to be deducted on payments in excess of Rs. 5,000/-
3. For interest on Bank Deposits and Deposits with Post Office, the threshold limit is Rs 10,000.
   - Also applicable on payment of Interest on time deposits by co-operative banks to its members and payment of interest on Recurring Deposit.
   - Computation of interest income shall be made taking into account income credited or paid by the bank (including all branches) who has adopted core banking solutions.
4. No TDS on payment made to contractor who owns ten or less goods carriage at any time during the year and furnishes PAN to the person person paying or crediting such sum.
5. **No TDS where the deductee furnishes a self- declaration in Form 15G/ 15H for deduction of tax under Sections 194D.**
6. **No deduction shall be made under section 194-I of the Act where the income by way of rent is credited or paid to a Real Estate Investment Trust.**
7. **Provisions of Section 194-IB are applicable in cases where the deductors are individuals and HUFs other than those covered by Tax Audit under section 44AB in immediately preceding financial year, subjects to the threshold and other conditions.**
   - **Deduction under section 206AA shall not exceed Amount of Rent payable for last month of previous year or last month of tenancy, as the case maybe**
8. **TDS is to be deducted under section 194-IC at 10 percent on any monetary consideration paid under the agreement referred to in Section 45(5A).**
9. Any payments to a director of a company other than those which are "salaries" are specifically covered under section 194J.
10. **TDS is to be deducted under section 194J at 2 percent where the payee is only engaged in the business of operation of call centre.**

(B) On payments to Non-Residents (subject to notes below)

Sr No	Payments to Non-Resident Payee	Criteria for Deduction	Section	Rate (%)
1	Tax on Short Term Capital Gains	On sale of shares or units of mutual funds where STT is paid	111A	15
		On sale of shares or units of mutual funds where STT is not paid	45	40
		(a) In case of companies		
		(b) In case of persons other than companies		30
2	Tax on Long Term Capital Gains	Not being long term capital gains referred to section 10(33), 10(36) and 10(38) i.e. on listed shares, units of an equity oriented fund, or units of business trust i.e. REITs & Invits (Except for transactions covered under section 112(1)(c)(iii)	112	20
		on income by way of long-term capital gains from unlisted securities under section 112(1)(c)(iii)	**112**	**10**
3	Winning From Lotteries crossword puzzles, card games and other games of any sort	Payment in excess of Rs. 10,000	194B	30
4	Winning From Horse Race	**Payment in excess of Rs. 10,000**	194BB	30

Sr No	Payments to Non-Resident Payee	Criteria for Deduction	Section	Rate (%)
5	Tax on royalty on copyrights or on fees for technical services matters included in industrial policy or under approved agreements by an Indian concern or by Government of India	Agreements made / entered after 31st March, 1976	115A(1)(b)	**10**
6	**Tax on Interest**	On borrowings in foreign currency:-		
		(a) by an Indian concern or by Government of India other than interest referred in (b) or (c) below	115A(1)(a)	20
		(b) On notified infrastructure debt fund	194LB	5
		(c) By Specified Companies or Business Trusts (REITs & Invits) under a loan agreement or any long term bond	**194LC**	**5**
7	Income by way of interest from SPV distributed by Business Trusts (REITS & Invits)	No Threshold Limit	194LBA	5
8	Income by way of Rent from SPV distributed by REITs	No Threshold Limit	195	-
9	Income other than business income distributed by an Alternate Investment Fund (Category I & II)	No Threshold Limit	194LBB	Rate in force
10	**Income in respect of Investment in Securitization Trust**	**No Threshold Limit**	**194LBC**	Rate in force
11	Income by way of interest to FII or QFI	On Rupee denominated Bonds of Indian Company and Government Securities.	194LD	5
12	Payments to Non-Resident Sportsmen/Entertainer/Sports Association	Other than to a non-resident being an Indian citizen	194E	20
13	Other income	(a) In case of non-resident companies	-	40
		(b) In case of non-residents other than non-resident companies	-	30
14	**Equalization Levy**	**(Refer Note No.6 below)**		

Notes:

1. Cess at 3 percent shall be levied additionally.
2. Treaty rates will differ from Country to Country. Treaty rates will apply only if Tax Residency Certificate is produced.
3. NRI's opting to be taxed under chapter XII-A, tax shall be deductible at the rate of ten percent on long term capital gains referred to in section 115E and twenty percent on investment income
4. W.e.f. 1st April, 2010, the rate of TDS will be deducted under section 206AA at 20 percent in all cases, if PAN is not quoted by the deductee. However, this condition is not applicable

- in respect of Royalties, FTS, Interest and Capital Gains on compliance of conditions in Rule 37BC
- in respect of Interest covered under section 194LC

5. TDS is to be deducted at "Rate in Force". The term "Rate in force" means rate as per Income Tax Act, 1961 or Relevant DTAA rate which is beneficial.
6. It may be noted that a new levy viz. Equalisation Levy has been introduced for online advertisement / digital advertising space services provided by a non-resident to a resident or a permanent establishment of non-resident in India. The rate for such levy shall be six percent of the consideration. The date of applicability is yet to be notified.
7. Concessional TDS rate on Interest Payments under section 194LC shall now be available in respect of borrowings made before 1st July, 2020.

8. Concessional TDS rate on Interest Payments under section 194LD shall now be available in respect of borrowings made before 1st July, 2020.

9. The beneficial provisions shall be applicable with retrospective effect from 1st April, 2013.
10. TDS is to be deducted at "Rate in Force". The term "Rate in force" means rate as per Income Tax Act, 1961 or Relevant DTAA rate whichever is beneficial.

TCS

TCS RATES FOR ASSESSMENT YEAR 2018-19 (FINANCIAL YEAR 2017-18)

Sr No	Nature of Goods/Contract/License /Lease	Criteria for Collection	Percentage*
1	Alcoholic Liquor for Human Consumption	No Threshold Limit	1
2	Tendu Leaves	No Threshold Limit	5
3	Timber obtained under a Forest Lease	No Threshold Limit	2.5
4	Timber obtained by any mode other than under a Forest Lease	No Threshold Limit	2.5
5	Any other Forest produce	No Threshold Limit	2.5
6	Scrap	No Threshold Limit	1
7	Minerals, being Coal or Lignite or iron ore	No Threshold Limit	1
8	**Motor Vehicle**	**Payment in excess of Rs. 10,00,000/-**	**1**
9	Cash Sale of Bullion	Payment in excess of Rs. 2,00,000/-	1
11	**Cash Sale of any other goods (other than bullion and jewellery) or Providing any service for Cash**	**Payment in excess of Rs. 2,00,000/-**	**1**
12	Transfer of right or interest in any Parking Lot or Toll Plaza or Mining and Quarrying (other than of mineral oil) under any contract, license and lease	No Threshold Limit	2

Note 1 "No TCS shall be deducted where the buyer is the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade

representation of a foreign State; local authority as defined in explanation to clause (20) of Section 10;a public sector company which is engaged in the business of carrying passengers."

- In case of a non-resident Individual, HUF, AOP, BOI or Artificial Jurisdictional Person and the amount Of deduction exceeds Rs 1 crore, then surcharge will be applicable at the rate of 15%.
  In case of a non-resident Co-operative Society or Firm and the amount of deduction exceeds Rs 1 crore, then surcharge will be applicable at the rate of 12% of such tax.
  In case of a every company other than domestic company and the amount of deduction exceeds Rs 1 crore but upto 10 crores, then surcharge will be applicable at the rate of 2% of such tax. If the amount of deduction exceeds Rs 10 crores, then the surcharge will be applicable at the rate of 5% of such tax.
- In case of an Individual, HUF, AOP, BOI or Artificial Jurisdictional Person and the amount of deduction exceeds Rs 1 crore, then surcharge will be applicable at the rate of 15% subject to marginal relief.
  In case of an Firm, Local Authority or Co-operative Society and the amount of deduction exceeds Rs 1 crore, then surcharge will be applicable at the rate of 12% subject to marginal relief.
  In case of a every domestic company and the amount of total income exceeds Rs 1 crore but upto 10 crores, then surcharge will be applicable at the rate of 7% of such income-tax. If the amount of total income exceeds Rs 10 crores, then the surcharge will be applicable at the rate of 12% of such income-tax.
  In case of a every company other than domestic company and the amount of total income exceeds Rs 1 crore but upto 10 crores, then surcharge will be applicable at the rate of 2% of such income-tax. If the amount of total income exceeds Rs 10 crores, then the surcharge will be applicable at the rate of 5% of such income-tax.
- Certificate for deduction at lower rate can be applied for sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC and 195.
- Certificate for nil rate of tax deduction can be applied for sections 194, 194EE, 192A, 193, 194A, 194DA, 194K, 194-I
- No TDS where the deductee furnishes a self- declaration in Form 15G/ 15H for deduction of tax under Sections 194, 194EE, 192A, 193, 194A, 194D, 194DA, 194-I and 194K.

FOREIGN POLICY ANNOUNCEMENTS

1. Foreign Exchange Regulations

- ☐ The Foreign Investment Promotion Board (FIPB) offered a single window clearance for applications on Foreign Direct Investment (FDI) in India that are under the approval route.
- ☐ The FIPB has successfully implemented e-filing and online processing of FDI applications.

- ☐ The sectors under automatic route did not require any prior approval from the FIPB and are subject to only sectoral laws & caps. A stage has been reached where FIPB can be abolished.
- ☐ The Budget proposes to abolish the FIPB in 2017-18 and create a new framework. A roadmap for the same will be announced in the next few months.
- ☐ In the meantime, further liberalization of FDI policy is under consideration and necessary announcements will be made in due course.

2. International Taxation

☐ **Section 9: Indirect transfer provisions not to apply to Category I and Category II Foreign Portfolio Investors**

New explanation 5A has been inserted to section 9 to clarify that Explanation 5 to section 9 shall not apply to any asset or capital asset mentioned therein being investment held by non-resident, directly or indirectly, in a Foreign Institutional Investor registered as Category-I or Category-II Foreign Portfolio Investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, as these entities are regulated and broad based. Finance Act, 2012 has inserted provisions relating to indirect transfer and whereby an asset or capital asset, being any share or interest in a company or entity registered or incorporated outside India is deemed to be situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India. This amendment to section 9 will apply retrospectively from assessment year 2012-13 onwards.

☐ **Section 9A: Corpus threshold condition shall not apply to off shore funds in year of winding up**

In order to avail benefit of section 9A, an offshore investment fund, amongst other conditions, needs to have an average monthly corpus fund of rupees hundred crores. Section 9A is amended to provide that this eligibility condition shall not apply to an offshore investment fund in the previous year in which the fund is being wound up. This amendment will retrospectively apply from assessment year 2016-17 onwards.

☐ **Section 47: Capital gain on transfer of Rupee Denominated Bonds issued outside India by one non-resident to another exempt**

New clause (viiaa) has been inserted in section 47 to provide that any transfer of capital asset, being rupee denominated bond of Indian company issued outside India, by a non- resident to another non- resident shall not be regarded as transfer for the purposes of computation of capital gains.

Further in fifth proviso to section 48 it was provided that 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 to secondary holders shall be ignored for the purposes of computation of full value of consideration in respect of bonds subscribed by the non-resident. It is now clarified that the benefit of the proviso shall be available in respect of bonds held by the non-resident and shall not be limited to bonds subscribed only. These amendments will take effect from 1st April, 2018.

- **Sections 90 and 90A: Clarification with regard to interpretation of 'terms' used in an agreement entered into under section 90 and 90A**

  With a view to bring in more clarity in the Act and to avoid litigation in respect of interpretation of 'terms' used in an agreement entered under Sections 90 and 90A, new Explanations to the sections 90 and 90A are inserted. It provides that where any 'term' used in an agreement entered into under Section 90 and 90A of the Act, is defined under the said agreement, the term shall be assigned the meaning as provided in the said agreement. Further, if the said 'term' is not defined in the agreement, but it is defined in the Act, it shall be assigned the meaning as defined in the Act or given under explanation issued by the Central Government.This amendment will take effect from 1st April, 2018.

- **Section 94B: Restriction on deduction in respect interest paid/payable to associated enterprise (thin capitalization)**

  New section 94B has been introduced to provide that where an Indian company or permanent establishment of foreign company in India, being borrower pays interest or similar consideration exceeding rupees one crore, which is deductible in computing income chargeable under the head "Profits and gains from business and profession" shall be limited to 30% of EBITDA (earnings before interest, taxes, depreciation and amortization) or interest paid to associated enterprise, whichever is less. Further, for the purpose of determining borrowings from associated enterprises, the funds borrowed from a non-associated lender shall also be deemed to be borrowed from an associated enterprise if such borrowing is based on implicit or explicit guarantee of non-resident associated enterprise. It is however provided that excessive interest which is not deductible shall be allowed to be carry forward for 8 assessment years immediately succeeding the assessment year in which the interest was first computed to be set-off against income of that respective year subject to overall limit as explained above.

  The provisions of this section shall not apply to entities engaged in Banking or Insurance business. This amendment will apply from assessment year 2018-19 onwards.

3. Provisions relating to Transfer Pricing

- **Section 92CE: Secondary adjustments introduced with respect to transfer pricing.**

  The Finance Bill has introduced a new section 92CE to provide that a secondary adjustment shall be made by the assessee where there is a primary adjustment made suomotu by the assessee in his return of income; or made by the Assessing Officer which has been accepted by the assessee; or determined by an advance pricing agreement entered into by the assessee under section 92CC; or made as per the safe harbour rules framed under section 92CB; or arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered under section 90 or 90A for avoidance of double taxation.

  Where as a result of the primary adjustment, there is an increase in the total income or reduction in the loss of the assessee, the assessee is required to repatriate the excess money available with the associated enterprise to India, as may be prescribed. If the repatriation is not made within the prescribed time, the excess money shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed as the income of the assessee, in the manner as may be prescribed.

  This section shall not apply where the primary adjustment made in any previous years does not exceed one crore rupees and where the primary adjustment is made in respect of an assessment year commencing on or before 1st April, 2016.

For this purpose the terms “excess money”, “primary adjustment” and “secondary adjustment” has been defined in the said section.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

- **Section 92BA and 40A: Provisions relating to specified domestic transaction**

  Clause (i) of section 92BA of the Act has been omitted which implies that any expenditure incurred in respect of which payment has been made by the assessee to certain "specified persons" covered under section 40A(2)(b) is out of the ambit of section 92BA and therefore not to be treated as specified domestic transaction.

  A consequential amendment has been made in section 40A whereby for all the assessment year commencing on or after 1st day of April 2017 the proviso to clause (a) of sub section 2 of section 40A shall not be applicable and therefore any expenditure made in respect of which payment has been made by the assessee to certain "specified persons" covered under section 40A(2)(b) may be disallowed by the assessing officer if he is of the opinion that such expenditure is excessive or unreasonable having regard to the fair value of such transaction.

DIRECT TAX PROPOSALS

DOMESTIC TAXATION

Personal Tax

- The tax rate for individual has been decreased from 10 per cent to 5 per cent for the income slab of Rs.2,50,00/- (or Rs. 3,0,001/- as the case may be) to Rs.5,00,000/-.

Surcharge for (Individuals)

- Surcharge is proposed to be levied at 10 per cent on income exceeding Rs. 50 lacs but not exceeding Rs. 1 crore. The same shall be in addition to the existing surcharge at 15 per cent on the income exceeding Rs. 1 crore. Marginal Relief shall be available

Corporate Tax

- The rate of tax for domestic companies with turnover or gross receipts not exceeding Rs. 50 crores during financial year 2015-16 will be 25 per cent. For other domestic companies, the rate of 30 per cent shall continue to apply.
    - The rate of tax payable by Foreign Companies has not been changed and remains at 40 per cent.
- Surcharge remains unchanged at 7 per cent and 12 per cent for domestic companies and 2 per cent and 5 per cent for foreign companies.

Provisions Affecting Individuals

- **Section 71: Limit on the set off of loss under the head income from house property against any other head of income.**
  Section 71 deals with set off of losses from one head against income from other head. A new subsection (3A) is inserted in section 71, restricting the set off of loss from Income from house property against any other head of Income to Rs. 200,000/- for any assessment year.
  This amendment will apply from assessment year 2018-19 onwards.

- **Section 80CCD: Deduction in respect of contribution to pension scheme of Central Government**
  In order to provide parity between an individual who is an employee and an individual who is self-employed, Section 80CCD has been amended to include persons other than salaried persons to be able to claim deduction in respect of contribution made under a pension scheme as notified by the Central Government, up to 20% of gross total income from the existing 10%.
  This amendment will take effect from 1st April, 2018 and, will accordingly apply in relation to assessment year 2018-19 and subsequent years.

- **Section 80CCG: Non allowability of deduction for amount invested on or after 1st April, 2017 in shares or units eligible for deduction under section 80CCG**
  Section 80CCG, allows deduction to the extent of 50% of amount invested in equity shares as specified therein provided the deduction does not exceed Rs.25,000/-. Further the deduction was allowed for 3 consecutive assessment years beginning with the assessment year relevant to the

previous year in which the listed equity shares or listed units of equity oriented funds are first acquired.

A new sub section (5) has been inserted to section 80CCG to provide that no deduction in respect of investment made under an equity savings scheme under sec 80CCG shall be allowed from Assessment year 2018-19 onwards. However, assessee who has acquired shares/ units under the scheme and claimed deduction under section 80CCG on or before Assessment year 2017-18 shall be allowed deduction till Assessment year 2019-20, if he is otherwise eligible to claim the deduction in accordance with the other provisions of this

This amendment will apply from assessment year 2018-19 onwards.

- **Section 80G: Restricting Cash Donations**

  Section 80G has been amended to provide that no deduction shall be allowed in respect of any donation exceeding Rs. 2000/- if paid in cash.

- **Section 87A: Rebate of income-tax in case of certain individuals.**

  The existing provisions of the section 87A allowed a resident individual a rebate of upto Rs. 5,000 from the income-tax payable if the total income did not exceed Rs. 5,00,000 which is now amended to allow a maximum amount of rebate of Rs. 2,500 if the total income on which tax is payable does not exceed Rs. 3,50,000.

  These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

- **Section 234C: Rationalization relating to advance tax**

  Section 234C has been amended to provide that if there is a shortfall in the payment of advance tax on account of under-estimation or failure in estimation of such income referred to in section 115BBDA, interest under section 234C shall not be levied if the assessee makes good the shortfall by 31st March of the financial year.

Provisions relating to Small Businesses

- **Section 44AA: Increasing the threshold limit for maintenance of books of accounts in case of Individuals and HUF**

  Section 44AA was amended to provide that individuals and HUFs carrying on business or profession, other than those carrying on certain specified professions, will be required to maintain books of account only if income from such business or profession exceeded Rs. 2.5 lakhs (increased from Rs. 1.2 lakhs), or the total sales, turnover or gross receipts exceeded Rs. 25 lakhs (increased from Rs. 10 lakhs). For other class of persons, the earlier limits would continue to be applicable.

- **Section 44AB: Exclusion of certain specified person from requirement of audit of accounts**

  Section 44AB has been amended to provide that for taxpayers declaring income in accordance with section 44AD (i.e. on a presumptive basis), and total sales, turnover or gross receipts of the business does not exceed Rs. 2 crores, are exempted from having their books of account audited.

- **Section 44AD: Measures for promoting digital payments in case of small unorganized businesses**

Section 44AD has been amended to provide that while computing the deemed income of on a presumptive basis will be calculated at a lower rate of 6% of such amounts that are received by an account payee cheque or bank draft or use of electronic clearing system through a bank account. For other manner of receipts, the rate of 8% would continue to apply.

- **Section 211 & 234C: Rationalization relating to advance tax**

  Section 211 has been amended to provide that those assessees who declare profits and gains in accordance with presumptive taxation regimes under section 44AD or section 44ADA shall be liable to pay advance tax in only one annual instalment on or before the 15th of March of that year, instead of in quarterly instalments.

  Section 234C has been amended to provide that assessees that are liable to pay advance tax in a single annual instalment would have to pay simple interest at the rate of 1% on the shortfall between the amount of advance tax paid and the actual tax due on returned income.

Provisions affecting Corporates

- **Section 43B: Extension of scope to include payments of interest to Co-operative Banks**

  Section 43B of the Act provides for admissibility of certain deductions only on payment basis. Now, considering amendment under section 43D of the Act, corresponding amendment is made under section 43B of the Act to provide that any sum payable by the assessee as interest on any loan or advance from a co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) shall be allowed as deduction if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

- **Section 47(vic): Cost of acquisition in Tax neutral demerger of a foreign company**

  Under section 47(vic) of the Act, transfer of shares of an Indian company by a demerged foreign company to a resulting foreign company is not regarded as transfer. In respect of shares of such Indian Company, section 49 of the Act is amended so as to provide that, the cost of acquisition of shares of such Indian company referred to in section 47(vic) of the Act, shall be the same as it was in the hands of demerged foreign company.

  This amendment will take effect from 1st April, 2018

- **Section 47, 49 and 2(42A): Transfer by way of conversion of preference shares into equity shares**

  A new clause to Section 47 of the Act is amended by inserting a new clause which provides that any transfer by way of conversion of preference shares into equity shares will not be regarded as a transfer

  Further, consequential amendments are also made in section 49 and section 2(42A) in respect of cost of acquisition and period of holding.

  Section 49 has been amended to provide that the cost of acquisition of preference shares shall be the cost of acquisition for equity shares so acquired pursuant to conversion.

  A new sub clause in explanation 1 to Clause (i) of section 2(42A) has been inserted to provide that the period of holding for equity shares acquired by way of conversion of preference shares shall also include period for which the preference shares were held by the assessee prior to the conversion.

  These amendments are applicable with effect from 1st day of April, 2018

- **Section 50CA: Fair Market Value to be full value of consideration in case of unquoted shares**

Under the existing provisions of the Act, income chargeable under the head 'Capital Gains' is computed by taking into account the amount of full value of consideration received or accrued on transfer of a capital asset. In order to ensure that the full value of consideration is not understated, the Act also contained provisions for deeming of full value of consideration in certain cases such as deeming of stamp duty value as full value of consideration for transfer of immovable property in certain cases.

In order to rationalise the provisions relating to deeming of full value of consideration for computation of income under the head 'Capital Gains', a new sec. 50CA is inserted to provide that where consideration for transfer of share of a company (other than quoted share) is less than the Fair Market Value (FMV) of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head 'Capital Gains'.

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

- **Section 112: Clarification regarding the applicability of section 112**

  Amendment has been made in section 50 of the Finance Act, 2016 in order to clarify that the amendment made by finance Act 2016 shall apply retrospectively from 1st April, 2013 instead of 1st April, 2017.

- **Section 115JAA and 115JD: Rationalization of MAT / AMT credit in case of foreign tax credit (FTC)**

  Section 115JAA and 115JD providing for carry forward of MAT and AMT has been amended to provide that the amount of MAT/ AMT credit shall not be allowed to be carried forward to subsequent year to the extent such credit relates to the difference between the amount of FTC allowed against MAT/ AMT liability and FTC allowable against the tax liability computed under normal provisions of the ITA.

  Further, the time limit for carry forward of MAT / AMT credit has been increased to 15 years from 10 years.

  Effective from AY 2018-19 and subsequent assessment years.

- **Section 155: Enabling claim of credit for foreign tax paid in cases of dispute**

  A new sub-section (14A) is inserted to section 155 to enable the assessee to claim the credit of income tax paid in any country outside India for which credit was denied to the assessee on the ground that the payment of such foreign tax was in dispute. It is now provided that the assessee can claim credit of such tax paid within six months from the end of the month in which the dispute is settled on submission of proof of settlement of such dispute and evidence that the foreign tax has been paid. Further, an undertaking that credit of such foreign tax paid has not been directly or indirectly claimed or shall not be claimed for any other assessment year is to be provided by the assessee.

  This amendment will take effect from 1st April, 2018.

Promoting Digital Economy

- **Section 35AD & Section 43 – Disallowance of depreciation and capital expenditure on cash payment**

Section 35AD has been amended to provide that no deduction will be allowed on any expenditure in respect of which payment exceeding Rs. 10,000/- is made to a person in a day, otherwise than by account payee cheque/ draft or electronic clearing system.

Section 43 has been amended to provide that any expenditure incurred for acquisition of any asset in respect of which payment exceeding Rs. 10,000/- is made to a person in a day, otherwise than by account payee cheque/ draft or electronic clearing system, shall be ignored for the purpose of determination of actual cost of asset.

Section 43 of the Act has been amended to provide that where any capital asset in respect of which a deduction has been allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of sub-section (7B) of the said section, the actual cost to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purposes of business since the date of its acquisition.

These amendments shall apply in relation to assessment year 2018-19 and subsequent years.

- **Section 40A – Measures to discourage cash transactions**

  Section 40A(3) has been amended to reduce the limit for disallowances of payments made in cash from Rs. 20,000/- to Rs. 10,000/-. This amendment shall apply in relation to assessment year 2018-19 and subsequent years.

- **Section 269ST – Restriction on cash transactions**

  Section 269ST has been introduced with effect from 1st April 2017, to provide that no person shall receive Rs. 3 lakhs or more in aggregate from a person in a day, in respect of a single transaction, in respect of transactions relating to one event/occasion from a person otherwise than by account payee cheque/draft or electronic clearing system. The said restriction shall not apply to Government, any banking company, post office, savings bank or co-operative bank.

  Further, such other persons or class of persons or receipts may be notified by the Central Government, for reasons to be recorded in writing, on whom the proposed restriction on cash transactions shall not apply.

  Section 271DA has also be inserted into the Act to provide for levy of penalty equal to the amount of money received in contravention of section 269ST on such persons receiving the money.

  The said penalty shall however not be levied if the person proves that there were good and sufficient reasons for such contravention.

  Transactions of the nature referred to in section 269SS and section 206C relating to tax collection at source on cash sale of jewellery are not covered by these sections.

Provision relating to Affordable Housing Scheme

- **Section 2(42A): Incentives for Promoting Investment in immovable property**

  Third proviso to section 2(42A) of the Act has been amended to provide that immovable property being capital asset shall be short term capital asset if it is held for a period less than 24 months instead of 36 months. Accordingly, any capital asset being immovable property shall be treated as long term capital asset if it is held for period more than 24 months.

  This amendment will take effect from 1st April, 2018.

- **Section 80-IBA: Deduction in respect of profits and gains derived from developing and building housing projects**

  The existing provisions of section 80-IBA provides for 100 per cent deduction in respect of the profits and gains derived from developing and building certain housing projects subject to specified

conditions. The conditions specified, include the limit of 30 square meters for the built-up area of residential unit in respect of project located in the Chennai, Delhi, Kolkata and Mumbai or within 25 kms from the municipal limits of these four cities. Further, in order to be eligible to claim deductions, the project is to completed within a period of three years.

It is provided to amend section 80-IBA to modify certain conditions specified for claiming deduction. For applying the condition relating to the area, unit of measurement has been modified to "carpet area" from the "built-up area". Further, the restriction of 30 square meters on the size of residential units shall not apply to the place located within a distance of 25 kms from the municipal limits of the Chennai, Delhi, Kolkata or Mumbai. It is now provided that benefit of the deduction shall be available to the projects completed within a period of five years instead of three years.

This amendment will take effect from 1st April, 2018.

- **Section 10(37A): Tax Incentive for the development of capital of Andhra Pradesh**

  New section 10(37A) is inserted to exempt income from capital gains arising to Individual or HUF who was the owner of land as on 2nd June, 2014 which is notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014 on transfer of such land or building or both under land pooling scheme; or sale of land pooling ownership certificates by the said persons received in lieu of land transferred under the scheme; or sale of reconstituted plot or land by said persons within two years from the end of the financial year in which the possession of such plot or land was handed over to the said persons.The aforesaid amendment will take effect retrospectively from A.Y. 2015-16.

  Further, it is provided that in case of transfer of reconstituted plot or land after the expiry of two years from the end of the financial year in which the possession was handed to the assessee the cost of acquisition for calculating capital gains of reconstituted plot or land shall be deemed to be its stamp duty value on the last day of second financial year after the end of financial year in which the possession of such plot or land was handed over to the assessee.

  This amendment will take effect from 1st April, 2018.

- **Section 45(5A): Special provisions for computation of capital gains in case of Joint development agreement**

  New sub-section (5A) in the said section is inserted to provide that where the capital gains arises to an assessee, being an individual or HUF, from the transfer of a capital asset, being land or building or both, under joint development agreement, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. For the purpose of section 48 of the Act, the stamp duty value on the date of issuance of said certificate in respect of the share in the project as increased by consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

  It is further provided that provisions of this sub-section (5A) shall not apply where the individual or HUF transfer their share in the project to any other person on or before the date of issue of said certificate of completion and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place in accordance with the other provisions of the Act so far as determination of the full value of consideration received or accruing as a result of such transfer is concerned.

  New section 194IC has been inserted to provide that any person responsible for paying to a resident any sum by way of any consideration (other than consideration in kind) under joint development agreement shall at the time of credit of such amount or payment, whichever is earlier, deduct tax at source at the rate of 10 per cent.

  This amendment will take effect from 1st April, 2017.

☐ **Section 55: Shifting base year from 1981 to 2001 for computation of capital gains**

For the purpose of computation of long term capital gain under section 48 and section 49 of the Act, the term "cost of acquisition" and "cost of improvement" as defined in section 55 of the Act is amended to replace the base year of indexation as April 1st, 2001. Accordingly, for the capital assets purchased on or before 1st April, 2001 the cost of acquisition or cost of improvement (incurred before 1st April, 2001), shall be considered as the actual cost to the assessee or the fair market value of the asset as on April 1st, 2001, at the option of the assessee. The cost of improvement shall include only those capital expenses which are incurred after April 1st, 2001.

These amendments will take effect from 1st April, 2018.

☐ **Section 54EC: Expanding the scope of long term bonds**

Under the existing provisions investment in bond issued by National Highways Authority of India or by the Rural Electrification Corporation Limited is eligible for exemption under this section. Now investment in any bond redeemable after three years which has been notified by the Central Government would be also eligible for exemption under this section.

These amendments will take effect from 1st April, 2018.

☐ **Section 23: Notional income for house property held as stock-in-trade**

New sub-section (5) inserted to provide that where the property consisting of any building and land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be Nil.

These amendments will take effect from 1st April, 2018.

Measures for Stimulating Growth

☐ **Section 194 LD: Extension of eligible period of concessional tax rate on interest.**

Section 194LD has been amended to provide that concessional rate of TDS @ 5% on interest payment covered under this section will be available in respect of investments made till 1st July 2020 instead of 1st July 2017.

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

☐ **Section 79 and 80-IAC: Relaxation in condition for carry forward and set off of loss in case of Start-up companies and extending breathing time to start-up companies to claim profit-linked deduction**

The existing provisions of section 79 of the Act dealing with conditions for carry forward and set off of losses in case of change in shareholding pattern requires the dual condition to be satisfied, i.e., same shareholders as well as the stake of such same shareholders to be more than 51%. The condition of maintaining the stake of 51% by the same shareholders has been relaxed for start-up companies referred to in section 80-IAC. This benefit is available for carry forward of losses incurred during first 7 years of incorporation.

Further, the limiting period to get 100% deduction of profit and gains for 3 years out of 5 years has been extended to 7 years.

Effective from AY 2018-19 and subsequent assessment years.

- **Section 43D: Extension of scope to Co-operative Banks**

  The existing provisions of section 43D of the Act, inter-alia, provides that interest income in relation to certain categories of bad or doubtful debts received by public financial institutions, scheduled banks, state financial corporations, state industrial investment corporations and certain public companies shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier.

  It is now provided that co-operative banks (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) shall fall within the purview of provisions of section 43D of the Act and would be entitled to take the advantage of offering interest income in respect of bad or doubtful debts in the year in which it is credited to the profit and loss account or received, whichever is earlier.

- **Section 36(1)(viia): Increase in deduction limit in respect of provision for bad and doubtful debts**

  In order to strengthen the financial position of the entities specified in sub-clause (a) of section 36(1)(viia) of the Act which interalia includes a scheduled bank (not being a bank incorporated by or under the laws of a country outside India) or a non-scheduled bank or a co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank), the said sub-clause is amended to enhance the present limit of deduction in respect of provision for bad and doubtful debts from 7.5 percent to 8.5 percent of the total income (computed before making any deduction under this clause and Chapter VIA).

Anti-abuse Measures

- **Section 10(38): Exemption of long term capital gain tax**

  Under the existing provisions of the sec. 10(38) of the Act, the income arising from a transfer of long term capital asset, being equity share of a company or a unit of an equity oriented fund, is exempt from tax if the transaction of sale is undertaken on or after 1st October, 2014 and is chargeable to Securities Transaction Tax ('STT')

  Now, the section has been amended to provide that exemption for income arising on transfer of equity share acquired or on after 1st day of October, 2004 shall be available only if the acquisition of share is chargeable to Securities Transactions Tax to curb the malpractices of evasion of tax by many persons. However, to protect the exemption for genuine cases where the Securities Transactions Tax could not have been paid like acquisition of share in IPO, FPO, bonus or right issue by a listed company acquisition by non-resident in accordance with FDI policy of the Government etc. central government will notify transfers for which the condition of chargeability to Securities Transactions Tax on acquisition shall not be applicable.

  This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

- **Section 50CA: Fair Market Value to be full value of consideration in case of unquoted shares**

  Under the existing provisions of the Act, income chargeable under the head 'Capital Gains' is computed by taking into account the amount of full value of consideration received or accrued on transfer of a capital asset. In order to ensure that the full value of consideration is not understated, the Act also contained provisions for deeming of full value of consideration in certain cases such

as deeming of stamp duty value as full value of consideration for transfer of immovable property in certain cases.

In order to rationalise the provisions relating to deeming of full value of consideration for computation of income under the head ‘Capital Gains’, a new sec. 50CA is inserted to provide that where consideration for transfer of share of a company (other than quoted share) is less than the Fair Market Value (FMV) of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head ‘Capital Gains’.

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

- **Section 56(2): Widening scope of Income from other sources**

  Under the existing provisions, any sum of money or any property which is received without consideration or for inadequate consideration (in excess of the specified limit of Rs. 50,000) by an individual or Hindu undivided family is chargeable to tax under the head ‘Income from other sources’ subject to certain exceptions. Further, receipt of certain shares by a firm or a company in which the public are not substantially interested is also chargeable to tax in case such receipt is in excess of Rs. 50,000 and is received without consideration or for inadequate consideration.

  These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or company in certain cases. Therefore, receipt of sum of money or property without consideration or for inadequate consideration does not attract these anti-abuse provisions in cases of other taxpayers.

  In order to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration, a new clause (x) in sub-sec. (2) of sec. 56 is inserted so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of Rs. 50,000 shall be chargeable to tax in the hands of the recipient under the head ‘Income from other sources’. It is also widens the scope of existing exceptions by including the receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under sec.47.

  Consequently, sec. 49 is amended for determination of cost of acquisition.

  Further, as per newly inserted clause (x) to section 56(2) of the Act, certain receipts without consideration or with less consideration is chargeable to tax under the said section. In consequence to such amendment, section 49(4) of the Act is amended so as to provide that, cost of acquisition in respect of such receipts shall be the value which has been taken into account for the purpose of clause (x) of section 56(2) of the Act.

  These amendments will take effect from 1st April, 2017 and accordingly, the said receipt of sum of money or property on or after 1st April, 2017 shall be chargeable to tax.

- **Section 58: Disallowance for non-deduction of tax from payment to resident**

  Existing section 58 of the Act provides for the amounts which shall not be deductible in computing the income chargeable under the head “Income from other sources”. With a view to improve the compliance on provisions relating to tax deduction at source (TDS), section 58 is amended to provide that the provisions of section 40(a)(ia) (i.e. disallowances for non-deduction of tax from payment made to resident) shall apply while computing income chargeable under the head “Income

from other sources" as they apply in computing income under the head "Profit and gains of business or Profession".
This amendment will take effect from 1st April, 2018.

- **Section 94B: Restriction on deduction in respect interest paid/payable to associated enterprise (thin capitalization)**
  New section 94B has been introduced to provide that where an Indian company or permanent establishment of foreign company in India, being borrower pays interest or similar consideration exceeding rupees one crore, which is deductible in computing income chargeable under the head "Profits and gains from business and profession" shall be limited to 30% of EBITDA (earnings before interest, taxes, depreciation and amortization) or interest paid to associated enterprise, whichever is less. Further, for the purpose of determining borrowings from associated enterprises, the funds borrowed from a non-associated lender shall also be deemed to be borrowed from an associated enterprise if such borrowing is based on implicit or explicit guarantee of non-resident associated enterprise. It is however provided that excessive interest which is not deductible shall be allowed to be carry forward for 8 assessment years immediately succeeding the assessment year in which the interest was first computed to be set-off against income of that respective year subject to overall limit as explained above.
  The provisions of this section shall not apply to entities engaged in Banking or Insurance business.
  This amendment will apply from assessment year 2018-19 onwards.

I. Rationalisation Measures

- **Rationalisation of provisions of section 115JB in line with Indian Accounting Standard (Ind-AS)**
  With the advent of globalisation and multi-national corporations, there arose a need for common language of accounting which led to creation of IFRS. India has adopted a carved out version of the IFRS which are known as Ind AS. Central Government notified the Indian Accounting Standards (Ind AS) and the roadmap for implementation of theseInd AS. Central Board of Direct Taxes (CBDT) constituted a committee in June 2015 for suggesting the framework for computation of minimum alternate tax (MAT) liability under section 115JB for Ind AS compliant companies in the year of adoption. After taking into account all the suggestions/comments received, the Committee submitted its final report on 22nd December, 2016.
  A new sub-section (2A) has been inserted in section 115JB to provide the framework for computation of book profit for Ind AS compliant companies in the year of adoption and thereafter.

- **Computation of MAT on Ind AS compliant financial statement**
  In case on Ind AS compliant companies, no further adjustments to the net profits before other comprehensive income is required, other than those already specified under section 115JB of the Act.
  In case of non-Ind AS compliant companies which are getting aligned to Ind-AS, the other comprehensive income (referred as 'OCI') would include certain items that will permanently be recorded in reserves and hence never be reclassified to the statement of profit and loss included in the computation of book profits. These items shall be included in book profits for MAT purposes at the point of time as specified below:

- At the time of realisation, disposal, retirement or otherwise transfer in respect of changes in revaluation surplus of Property, Plant or Equipment (PPE) and Intangible assets (as per Ind AS 16 and Ind AS 38); and gains and losses from instruments designated at fair value through other comprehensive income (as per Ind AS 109)
- Every year as the gains and losses arise in the case of re-measurement of defined benefit plans (as per Ind AS 19) or any other item

Appendix A of Ind AS 10 provides that any distributions of non-cash assets to shareholders (for example, in a demerger) shall be accounted at fair value. The difference between carrying value of the assets and fair value is recorded in statement of profit and loss. Correspondingly, the reserves are debited at fair value to record distribution as a 'deemed dividend' to the shareholders. As there is a corresponding adjustment in retained earnings, clause (d) of Section 115JB(2A) specifies that this difference arising on demerger shall be excluded from the book profits. It also states that in the case of a resulting company, where the property and the liabilities of the undertaking(s) being received by it are recorded at values different from values appearing in the books of account of demerged company immediately before demerger, any change in such value shall be ignored for the purpose of computing book profit of the resulting company.

Computation of MAT on first time adoption

The adjustments (referred to as "transition amount") arising on account of transition to Ind AS from existing Indian GAAP is required to be recorded directly in 'other equity' at the date of transition to Ind AS in terms of Ind AS 101. Several of these items would subsequently never be reclassified to the statement of profit and loss / included in the computation of book profits. Accordingly, it is provided that the following treatment is to be adhered to in computation of MAT:

- Those transition amounts recorded in other comprehensive income and which would subsequently be reclassified to the profit and loss, shall be included in book profits in the year in which these are reclassified to the profit and loss;
- Those transition amounts recorded in other comprehensive income and which would never be subsequently reclassified to the profit and loss shall be included in book profits as specified hereunder-
  i. At the time of realisation, disposal, retirement or otherwise transfer in respect of changes in revaluation surplus of Property, Plant or Equipment (PPE) and Intangible assets (as per Ind AS 16 and Ind AS 38); and gains and losses from instruments designated at fair value through other comprehensive income (as per Ind AS 109)
  ii. To be included in book profits equally over a period of five years starting from the year of first time adoption of Ind AS. in the case of Re-measurements of defined benefit plans (Ind AS 19) or any other item.

All other transition amounts recorded in reserves and surplus (excluding capital reserve and securities premium reserve) as referred to in Division II of Schedule III of Companies Act, 2013 and which would otherwise never subsequently be reclassified to the statement of profit and loss, shall be included in the book profits, equally over a period of five years starting from the year of first time adoption of Ind AS.

For this purpose, the term 'transition amount' has been defined to mean the amount or aggregate of the amounts adjusted in the other equity (excluding equity component of compound financial instruments, capital reserve, and securities premium reserve) on the convergence date, but not including the following:

- amount or the aggregate of the amounts adjusted in other comprehensive income on the convergence date which shall be subsequently re-classified to the statement of profit or loss.
- revaluation surplus for assets in accordance with the Ind AS 16 and Ind AS 38 adjusted on the convergence date.
- gains or losses from investments in equity instruments designated at fair value through other comprehensive income in accordance with Ind AS 109 adjusted on the convergence date.
- adjustment relating to items of property, plant and equipment and intangible assets recorded at fair value as deemed cost in accordance with paragraph D5 and D7 of Ind AS 101 on convergence date.
- adjustments relating to investments ins subsidiaries, joint ventures and associates recorded at fair value as deemed cost in accordance with paragraph D15 of Ind AS 101 on convergence date.
- adjustment relating to cumulative translation differences of a foreign operation in accordance with paragraph D13 of Ind AS 101 on convergence date.

Reference year for first time adoption adjustments

In the first year of adoption of Ind AS, the companies would prepare Ind AS financial statement for reporting year with a comparative financial statement for immediately preceding year. As per Ind AS 101, a company would make all Ind AS adjustments on the opening date of the comparative financial year. The entity is also required to present equity reconciliation between previous Indian GAAP and Ind AS amounts, both on the opening date of preceding year as well as on the closing date of the preceding year.

It is provided that for the purposes of computation of book profits under section 115JB of the year of adoption and the proposed adjustments, the amounts adjusted as of the opening date of the first year of adoption shall be considered. For example, companies which adopt Ind AS with effect from 1 April 2016 are required to prepare their financial statements for the year 2016-17 as per requirements of Ind AS. Such companies are also required to prepare an opening balance sheet as of 1 April 2015 and restate the financial statements for the comparative period 2015-16. In such a case, the first time adoption adjustments as of 31 March 2016 shall be considered for computation of MAT liability for previous year 2016-17 (Assessment year 2017-18) and thereafter. Further, in this case, the period of five years above shall be previous years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.
As the Ind-AS is required to be adopted by certain companies for financial year 2016-17 mandatorily in terms of the roadmap as laid down, these amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

Amendments relating to Procedural matters and Penalty provisions

- **Section 12A: Procedure in respect of change or modifications of object and filing of return of income in case of entities exempt under sections 11 and 12**

  The existing provisions of section 12A lack clarity with respect to the procedure to be followed by the trust or institution for fresh registration in the event of adoption or modifications of the objects of the trusts/institution after the registration has been granted in cases wherein modifications of the objects do not conform to the conditions of registration. Section 12A has now been amended to clarify that, in such cases trust can obtain fresh registration by making an application within a period of 30 days from the date of such adoption or modifications of the objects in the prescribed form and manner.

Further, the ambiguity with respect to due date for filing of return of income by a trust or institution has be resolved by clarifying that return of income has to be filed within the time allowed under section 139.
Effective from AY 2018-19 and subsequent assessment years.

- **Section 132(1) and Section 132(1A): Reason to believe to conduct a search, etc. not to be disclosed**
  Under the existing provisions, specified income-tax authority, based on the 'reason to believe' or 'reason to suspect' of circumstances mentioned therein, may authorize search and seizure operation in respect of any person or authorise requisition from some other authority to deliver books of account, documents or assets of the assessee to the income-tax authority so authorised.
  It has now been clarified that these specified authorities need not disclose, the 'reason to believe' or 'reason to suspect', as the case may be, to any person or any authority or the Appellate Tribunal.
  These amendments will take effect retrospectively from the date of enactment of the said provisions viz. to sub-section (1) of section 132 from 1st day of April, 1962 and to sub-section (1A) of section 132 and to sub-section (1) of section 132A from 1st day of October, 1975.

- **Sub-section 9B, 9C and 9D to section 132: Power of provisional attachment and to make reference to Valuation officer**
  In case of search and seizure cases, power has been given to authorised officer to attach provisionally any property belonging to the assessee with the prior approval of Principal Director General or Director General or Principal Director or Director which shall have effect for a period of six months from the date of order of such attachment.
  Further, the power has been given to the authorised officer to make a reference to the valuation officer of investment and property seized in search and seizure operation. The Valuation Officer shall furnish the valuation report within sixty days of receipt of such reference.
  These amendments will take effect from 1st April, 2017.

- **Section 133: Rationalisation of the provisions in respect of power to call for information**
  Power under section 133 to call for information for the purpose of any inquiry or proceeding under the Act has been extended to the Joint Director, the Deputy Director and the Assistant Director who may exercise this power without seeking approval of higher authorities.
  These amendments will take effect from 1st April, 2017.

- **Section 133A: Extension of the power to survey**
  The power to survey under section 133A has been extended to include any place, at which an activity for charitable purpose is carried on.
  This amendment will take effect from 1st April, 2017.

- **Section 133C: Legislative framework to enable centralised issuance of notice and processing of information**
  In order to expedite verification and analysis of the information and documents which are in the possession of income-tax authority, section 133C has been amended to empower the Central Board of Direct Taxes to make a scheme for centralised issuance of notice in order to call for information and documents for the purpose of verification of such information, processing of such documents and making the outcome thereof available to the Assessing Officer for necessary action.
  This amendment will take effect from 1st April, 2017.

- **Section 139: Mandatory furnishing of return by certain exempt entities**

Section 139(4C) has been amended to provide that any person referred to in clause (23AAA),Investor Protection Fund referred to in clause (23EC) or clause (23ED), Core Settlement Guarantee Fund referred to in clause (23EE) and Board or Authority referred to in clause (29A) of section 10 shall also be mandatorily required to file return of income.
This amendment is effective from AY 2018-19.

- **Section 139: Revised Return**
  From now onwards the time limit for furnishing revised return of income under section. 139(5) shall be upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier.
  This amendment is effective from AY 2018-19.
- **Section 143 and 241A: Processing of return within the prescribed time and enable withholding of refund in certain cases**
  In order to expedite the issuance of refund in cases routinely selected for scrutiny assessment, provisions of section 143(1D) has been relaxed w.e.f. AY 2017-18 to provide that the return shall be processed even in cases wherein notice under section 143(2) of the Act has already been issued.
  To address the concern of recovery of revenue in doubtful cases, a new section 241A has been inserted which provides that for returns filed for AY 2017-18 and onwards wherein the assessing officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, with the previous approval of the Principal Commissioner or Commissioner, withhold the refund up to the date on which the assessment is made even after processing of return under section 143(1).
  Effective from AY 2017-18 and subsequent assessment years.

- **Section 153: Time limits for completion of assessment and reassessment**
  It is proposed to insert proviso to sub-section (1) of the said section to provide that for the assessment year 2018-2019, the time limit for making an assessment order under section 143 or 144 shall be reduced from existing twenty-one months to eighteen months from the end of the assessment year, and for the assessment year 2019-2020 and onwards, the said time-limit shall be twelve months from the end of the assessment year in which the income was first assessable.
  It is further proposed to insert proviso to sub-section (2) of the said section to provide that the time-limit for making an order of assessment, reassessment or re-computation under section 147, in respect of notices served under section 148 on or after the 1st day of April, 2019 shall be twelve months from the end of the financial year in which notice under section 148 was served.
  It is also proposed to insert proviso to sub-section (3) of the said section to provide that the time-limit for making an order of fresh assessment in pursuance of an order passed or received in the financial year 2019-2020 and onwards under section 254 or 263 or 264 shall be twelve months from the end of the financial year in which order under section 254 is received or order under section 263 or 264 is passed by the authority referred therein.
  These amendments will take effect from 1st April, 2018.

- **Sec 153B: Time limit for completion of assessment under section 153A**
  Provisions of section 153B of the Act are amended to provide that the time limit for completion of assessment of FY in which search or requisition is conducted shall be as per section 153B. For the FY 2018-19, the time limit for completion of assessment under section 153A shall be reduced from existing twenty one months to eighteen months from the end of the FY in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.

Further, search and seizure cases conducted in the FY 2019-20 and onwards, the said time limit shall be further reduced to twelve months from the end of the financial year.

It is also provided that period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period available to make assessment or reassessment in case of person on whom search is conducted or twelve months from the end of the FY in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other persons, whichever is later.

However, if the reference under section 92CA of the ITA is made, the above time limit shall be extended by twelve months.

Further, new proviso has been inserted under Explanation to section 153B providing that in cases where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section for assessment or reassessment shall after the exclusion of the period under sub-section (4) of section 245HA shall not be less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.

These amendments will take effect from 1st April, 2017.

The above provisions will not apply to the cases where a notice under section 153A or section 153C has been issued prior to 1st June, 2016 and the assessment has not been completed by such date due to exclusion of time referred to in the Explanation then such cases will be governed by the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016. This amendment will take effect retrospectively from 1st June, 2016.

- **Section 197A: Filing of Form15G/15H in case of commission payments mentioned under section. 194D**

  Section 197A is amended to make individual insurance agent eligible to file self-declaration in Form 15G/15H for non-deduction of TDS in respect of insurance commission as mentioned in section 194D if their income is below taxable limit.

  This amendment will take effect from 1st June, 2017

- **Section 206CC: Strengthening of PAN quoting mechanism in the TCS regime**

  A new section i.e. 206CC has been introduced in order to strengthen the PAN quoting mechanism in respect of TCS provisions. The provisions of section 206CC are as follows:

  - Any person paying any sum on which tax is collectible at source under Chapter XVII BB (collectee) shall furnish his PAN to the person responsible for collecting such tax(collector), failing which tax shall be collected at twice the rate mentioned in the relevant section under Chapter XVII BB or at the rate of 5%, whichever is higher.
  - Declaration filed under sub section (1A) of section 206C shall be invalid if PAN is not furnished.
  - In case the declaration under section 206C (1A) becomes invalid, collector shall collect tax in accordance with provisions of sub-section (1).
  - No certificate under sub section (9) of section 206C shall be granted unless it contains PAN of the applicant.
  - The collectee shall furnish his PAN to the collector, and the collector shall indicate the same in all its correspondence, bills, vouchers and other documents which are sent to each other.
  - Where the PAN is invalid or it does not belong to the collectee, then it shall be deemed that PAN has not been furnished and the collector shall collect tax in accordance with provisions of sub-section (1).

- The new section 206CC shall not apply to a non-resident who does not have permanent establishment in India.

The amendment will take effect from 1st April, 2017.

- **234F: Fee for delay filing of return of income**

In order to ensure that returns are filed within the time prescribed under section. 139(1) of the ITA, a new section 234F has been inserted which provides for fees for delay in filing return of income within the time specified under section. 139(1). If return is furnished after the due date but on or before 31st day of December of the assessment year then Rs.5,000/- shall be levied and in any other case Rs.10,000/- shall be levied. Such delayed fees shall not exceed Rs.1000/-, if the total income does not exceed Rs. 5,00,000/-.

In addition to the above, consequential amendment is made under section. 140A (Self assessment tax and section 143(1) (Intimations) which provides that in case of delay in furnishing of return of income there shall be levied a fee payable as per this section.

Further, penalty under section. 271F for failure to furnish return of income shall not apply from AY 2018-19 and for subsequent assessment years.

This amendment is effective from AY 2018-19.

- **Section 244A: Interest on refund due to deductor**

A new sub-section, namely (1B) has been inserted in section 244A to provide that where a deductor of tax at source (as per the provisions of Chapter XVII-B of the Act), is due a refund with respect to the TDS deducted and paid by him, the deductor will now be entitled to simple interest at the rate of 0.5% (per month or part thereof) in addition to the refund due to him.

- **Section 245N and Section 245Q: Merger of Structure of Authority for Advance Rulings**

With a view to promote ease of doing business, it has been decided to merge the Authority for Advance Ruling (AAR) for Income-Tax, Central Excise, Customs Duty and Service Tax. Accordingly, definition of 'applicant' has been modified and similarly, scope of the application to AAR has been widened to include the application under Chapter V of the Customs Act, 1962 or under Chapter IIIA of the Central Excise Act, 1944 or under Chapter VA of the Finance Act, 1994.

These amendments will take effect from 1st April, 2017

- **Section 245-O: Modifications to eligibility for Chairman of Authority for Advance Rulings**

The qualifications for appointment of person to be Chairman of Authority for Advance Rulings has been amended to include the person who has been former Chief Justice of a High Court or a person who has been a High Court Judge for at least seven years.

These amendments will take effect from 1st April, 2017

- **Section 253: Appeals to the Appellate Tribunal**

Section 253 has been amended to the effect that the orders passed by Commissioner of Income-tax (Exemptions) in respect of approval granted under section 10(23C)(iv) and 10(23C)(v) are appealable before the Income Tax Appellate Tribunal.

This amendment will take effect from 1st April, 2017.

- **Section 271J: Penalty on professionals for furnishing incorrect information in statutory report or certificate**

Section 271J is inserted into the Act with effect from 1st April 2017, to provide that where an accountant or a merchant banker or a registered valuer furnishes incorrect information or in a report or a certificate, a penalty of Rs. 10,000 for every such incorrect report or certificate may be levied. Section 273B has been consequentially amended to provide that where reasonable cause is shown for furnishing incorrect information, penalty shall not be imposed.

Deductions/Exemptions for Businesses

- **Section 10(12B): Tax-exemption to partial withdrawal from National Pension System (NPS)**
  In order to provide further relief to an employee subscriber of NPS, a new sub-section 12B to section 10 has been inserted to provide exemption to partial withdrawal not exceeding 25% of the contribution made by an employee in accordance with the terms and conditions specified under Pension Fund Regulatory and Development Authority Act, 2013 and regulations made there under. This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

- **Section 10(23C) and 11: Corpus Donation by entities covered under section 10(23C) and 11**
  Under the existing provision donations given by entities exempt under section 10(23C) and section 11 of the Act to other entities, enjoying the same exemption under the said sections, out of its current year income, is treated as 'application of income.'
  Section 10(23C) and section 11 have been amended to provide that where any donations is made by entities exempt under these sections to other entities availing the same exemption under the said sections with the specific direction that they shall form part of the corpus, then such donation shall not be allowed as 'application of income' in the hands of the donor.
  Effective from AY 2018-19 and subsequent assessment years.

- **Section 10(23C): Income of Certain Funds or Institutions**
  The Chief Minister's Relief Fund and the Lieutenant Governor's Relief Fund have been added to the list of exempt funds under section 10(23C). As a result, the income of these funds will be exempt under section 11 and section 12 without the requirement to obtain registration under section 12A of the Act.
  This amendment will take effect retrospectively from the 1st April, 1998, and will, accordingly, apply in relation to assessment year 1998-99 and subsequent years.

- **Section 10(38): Exemption of long term capital gain tax**
  Under the existing provisions of the sec. 10(38) of the Act, the income arising from a transfer of long term capital asset, being equity share of a company or a unit of an equity oriented fund, is exempt from tax if the transaction of sale is undertaken on or after 1st October, 2014 and is chargeable to Securities Transaction Tax ('STT')
  Now, the section has been amended to provide that exemption for income arising on transfer of equity share acquired or on after 1st day of October, 2004 shall be available only if the acquisition of share is chargeable to Securities Transactions Tax to curb the malpractices of evasion of tax by many persons. However, to protect the exemption for genuine cases where the Securities Transactions Tax could not have been paid like acquisition of share in IPO, FPO, bonus or right issue by a listed company acquisition by non-resident in accordance with FDI policy of the Government etc. central government will notify transfers for which the condition of chargeability to Securities Transactions Tax on acquisition shall not be applicable.

This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent assessment years.

- **Section 10(48B): Exemption of income of Foreign Company from sale of leftover stock of crude oil from strategic reserves at the expiry of agreement or arrangement**
  Section 10(48A) provides that any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India shall be exempt, if the said storage and sale is pursuant to an agreement or an arrangement entered into by the Central Government; and having regard to the national interest, said foreign company and the said agreement or arrangement are notified by the Central Government in that behalf. New clause 48B is inserted in section 10 to extend the exemption benefit to sale of the leftover stock of crude after the expiry of said agreement or the arrangement subject to conditions to be notified.
  This amendment will apply from assessment year 2018-19.

Miscellaneous Provisions

- **Section 10(4): Correct reference to FEMA instead of FERA**
  The proviso to section 10(4) contained a reference to a clause of the defunct Foreign Exchange Regulation Act, 1973, (FERA), which defined 'a person resident outside India'. This reference has now been updated to refer to the relevant clause of the Foreign Exchange Management Act, 1999 (FEMA).
  This amendment will take effect retrospectively from 1st April, 2013, and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent years.

- **Section 10AA: Rationalisation of provision of section 10AA**
  Section 10AA of the Act is amended to include new Explanation to sub-section (1) of section 10AA of the Act so as to provide that, the amount of deduction shall be allowed from the total income of the Assessee computed in accordance with the provisions of the Act, before giving effect to the provisions of this section and the deduction under this section shall not exceed such total income of the Assessee.
  This amendment will take effect from 1st April, 2018

- **Section 13A: Transparency in political funding**
  In order to discourage cash transactions and to bring transparency in the source of funding to political parties, section 13A is amended to provide that no donation exceeding Rs.2000/- should be received otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system or through electoral bond and return of income is to be furnished under section 139(4B) of the Act on or before the due date.
  Further, where the contribution is by way of electoral bond, the political parties shall not be required to furnish the name and address of the donors.
  This amendment will take effect from 1st April 2018.

- **Section 115BBDA – Rationalization of taxation of income by way of dividend**
  Section 115BBDA has been amended to provide that include all categories of resident taxpayers, except domestic companies and certain funds, trusts, institutions etc., earning income by way of dividend declared by domestic companies shall be taxed at 10 per cent on the amount of dividend exceeding Rs. 10 lakhs.

- **Section 115BBG – Income from transfer of Carbon Credits**
  Section 115BBG has been inserted into the Act with effect from 1st April, 2018, to provide that income from the transfer of Carbon Credits shall be taxed at a concessional rate of 10 per cent plus applicable surcharge and cess. Further no expenditure or allowance shall be available in respect of such income.

Definitions

- **Section 2(42A): Consolidation of plans within a scheme of mutual fund**
  Section 47 of the Act exempts transfer of a unit(s) held in the consolidating plan of mutual fund scheme, if such transfer is made in consideration of the allotment of units(s) in the consolidated plan of that scheme of the mutual fund. In consequence to such amendment, clause (i) in Explanation 1 to section 2(42A) of the Act is amended to insert new sub-clause (hg) so as to provide that holding period of the unit(s) shall include the period for which the earlier unit or units in the consolidating plan of mutual fund scheme were held by the Assessee.
  Further consequential amendment has been made to section 49 of the Act to provide that, cost of acquisition of such newly allotted units shall be deemed to the cost of acquisition of the earlier unit(s) in the consolidated plan of the scheme of the mutual fund.
  These amendments will take effect from 1st April, 2017

- **Section 204: Definition of 'person responsible for paying' in case of payments covered under Section 195(6)**
  In the case of furnishing of information relating to payment to a non-resident, not being a company, or to a foreign company, of any sum, whether or not chargeable under the provisions of this Act as per section 195(6), 'person responsible for paying' would be the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.
  This amendment will take effect from 1st April, 2017.

Accounting and Auditing Update

International Accounting Standard Board (IASB) Updates

- The IASB has issued several amendments to International Financial Reporting Standards (IFRS) and an Interpretation that clarifies the requirements in particular Standards. These changes are part of the Board's process to maintain IFRS Standards.

The changes include:

a) annual improvements to IFRS Standards—these are minor amendments that clarify, correct or remove redundant wording in a Standard; Annual Improvements to IFRS Standards 2014–2016 Cycle has made amendments to 3 Standards:

Amended Standard		Effective Date	Subject of Amendment
IFRS 1	First-time Adoption of IFRS	1st January 2018	Deletion of short-term exemptions for 1st time adopters
IFRS 12	Disclosure of Interests in Other Entities	1st January 2017	Clarification of the scope of the Standard
IAS 28	Investments in Associates and Joint Ventures	1st January 2018	Measuring an associate or joint venture at fair value.

b) an International Financial Reporting Interpretations Committee (IFRIC) Interpretation— this interprets a Standard and was developed by the IFRS Interpretations Committee and ratified by the Board;

IFRIC Interpretation 22- Foreign Currency Transactions and Advance Consideration addresses the exchange rate to be used in transactions that involve advance consideration paid or received in a foreign currency. It clarifies that the date of transaction for the purpose of determining the exchange rate to be used on initial recognition of the related asset, expense, or income when an entity has received or paid advance consideration in a foreign currency is the date of the advance consideration i.e. when the prepayment or income received in advance was recognised.

It is effective from 1st January 2018.

c) A narrow-scope amendment to an existing Standard—this clarifies particular aspects of the Standard.

The amendments to International Accounting Standard (IAS) 40- Investment Property clarify the requirements on transfers to, or from, investment property. It clarifies that an entity can only reclassify a property to/from investment property when, and only when, there is evidence that a change in the use of the property has occurred.

It is **effective from 1st January 2018**.

1. Effective dates of amendments to IFRS/IAS issued in 2016

a) IFRS

IFRS	Pronouncement	Issued	Effective for annual periods beginning on or after	Corresponding Ind AS
IFRS 1-First time adoption of IFRS	Amendments resulting from Annual Improvements 2014 - 2016 Cycle (removing short -term exemptions)	December 2016	1st January 2018	Ind AS 101
IFRS 2- Sharebased Payment	Amendments to clarify the classification and measurement of share based payment Transactions	June 2016	1st January 2018	Ind AS 102
IFRS 4- Insurance Contracts	Amendments regarding the interaction of IFRS 4 and IFRS 9	September 2016	An entity choosing to apply the overlay approach retrospectively to qualifying financial assets does so when it first applies IFRS 9. An entity choosing to apply the deferral approach does so for annual periods beginning on or after 1st January 2018.	Ind AS 104

IFRS 12- Disclosure of Interests in Other Entities	Amendments resulting from Annual Improvements 2014-2016 Cycle (clarifying scope)	December 2016	1st January 2017	Ind AS 112
IFRS 15- Revenue from Contracts with Customers	Clarifications to IFRS 15	April 2016	1st January 2016	Ind AS 115
IFRS 16- Leases	Original Issue	January 2016	1st January 2019	Not yet issued

b) IAS

IFRS	Pronouncement	Issued	Effective for annual periods beginning on or after	Corresponding Ind AS
IAS 7- Statement of Cash Flows	Amendments as result of the Disclosure initiative	January 2016	1st January 2017	Ind AS 7
IAS 12- Income Taxes	Amendments regarding the recognition of deferred tax assets for unrealised losses	January 2016	1st January 2017	Ind AS 12
IAS 28- Investments in Associates and Joint Ventures	Amendments resulting from Annual Improvements 2014-2016 Cycle (clarifying certain fair value measurements)	December 2016	1st January 2018	Ind AS 28
IAS 40- Investment Property	Amendments to clarify transfers or property to, or from, investment property	December 2016	1st January 2018	Ind AS 40

For details refer: http://www.iasplus.com/en/standards/effective-dates/effective-ifrs

2. Ind AS

a) Frequently asked questions (FAQs)

The ICAI has issued the following FAQs under Ind AS:

- ☐ Elaboration of terms 'infrequent number of sales' or 'insignificant in value' used in Ind AS 109, Financial Instruments.
  For details refer: http://resource.cdn.icai.org/43792asb33473b.pdf
- ☐ Dividend Distribution Tax **(DDT)**

The purpose of this FAQ is to illustrate and to assist in clarifying the requirements regarding treatment of DDT
For details refer: http://resource.cdn.icai.org/43791asb33473a.pdf

b) Guidance Note on Accounting for Oil and Gas Producing Activities (Ind AS)

This Guidance Note **(GN)** applies to costs incurred on acquisition of mineral interests in properties, exploration, development and production of oil and gas activities, i.e., upstream operations. This GN also deals with other accounting aspects such as accounting for abandonment costs and impairment of assets that are peculiar to the entities carrying on oil and gas producing activities. It does not address accounting and reporting issues relating to the transporting, refining and marketing of oil and gas. This GN also does not apply to accounting for –

- ☐ activities relating to the production of natural resources other than oil and gas; and
- ☐ the production of geothermal resources or the extraction of hydrocarbons as a by- product of the production of geothermal and associated resources.

This GN comes into effect in respect of accounting periods commencing on or after 1st April 2017; its earlier application is encouraged.

For details refer: http://resource.cdn.icai.org/44181research33961.pdf

3. Guidance Note on Audit of Consolidated Financial Statements (Revised 2016)

This Guidance Note (GN) supersedes the GN on Audit of Consolidated FS issued in 2003.This GN Note does not

- ☐ Provide guidance in relation to amalgamation/business combination.
- ☐ Deal with accounting matters arising on consolidation of FS.

For details refer: http://resource.cdn.icai.org/43577aasb-gncfs171016.pdf

4. Guidance Note on Report under Section 92E of the Income-Tax Act, 1961 (Transfer Pricing) [Based on the law as amended by the Finance Act, 2016]

The ICAI has revised GN on Report under Section 92E of the Income Tax Act, 1961 (Transfer Pricing) based on the law as amended by the Finance Act, 2016.

For details refer: http://resource.cdn.icai.org/43783citax33453.pdf

77Guidance Note on Reports in Company Prospectuses (Revised 2016)

This GN Note provides guidance to the practitioners in reporting requirements in relation to financial information to be included in the prospectus in case of initial public offering (IPO). This GN, apart from the IPO, is also applicable to other types of filings for the issue of securities (equity shares, debentures and notes etc.) such as letter of offer (in case of right issue), placement document (in case of Qualified Institutional Buyers) etc. and filings for the issue of units under SEBI (Infrastructure Investment Trusts) Regulations, 2014, as amended and SEBI (Real Estate Investment Trusts) Regulations, 2014, as amended to the extent applicable.

This GN is applicable from 1st January 2017.

For details refer: http://resource.cdn.icai.org/44092aasb-gnrcp-rev2016.pdf

5. Withdrawal of the Accounting Standard AS 30, Financial Instruments: Recognition and Measurement, AS 31, Financial Instruments: Presentation, AS 32, Financial Instruments: Disclosures

The ICAI noted that with implementation of Indian Accounting Standards (Ind AS) in India, many companies will be preparing their FS as per Ind AS, which includes Ind AS on financial instruments which are based on current IFRS/ IAS issued by International Accounting Standards Board.

In view of the above, the ICAI noted that there may not be any users of AS 30, Financial Instruments: Recognition and Measurement, AS 31 Financial Instruments: Presentation and AS 32 Financial Instruments: Disclosures and retaining these Accounting Standards will create confusion. Accordingly, AS 30, AS 31, and AS 32 has been withdrawn.

An announcement 'Application of AS 30, Financial Instruments: Recognition and Measurement' issued by ICAI in March 2011 on status of AS 30, AS 31 and AS 32 also stands withdrawn

For details refer: http://resource.cdn.icai.org/43918asb33625.pdf

Corporate Law Updates

1. **Standing Committee report on Companies (Amendment) Bill, 2016**

The Standing Committee of Finance has issued a report on Companies (Amendment) Bill, 2016. This report includes views from various stakeholders such as the Institute of Chartered Accountants of India (ICAI), Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industry (CII), Associated Chambers of Commerce and Industry of India (ASSOCHAM) and Institute of Company Secretaries of India (ICSI).

The Ministry of Corporate Affairs based on this report is expected to make changes in the Bill and introduce the final Bill for amendments in the Companies Act, 2013.

Fordetailsrefer:http://www.prsindia.org/uploads/media/Companies,%202016/SCR%20Companies%20(A)%20Bill,%202016.pdf

2. **Companies (Incorporation) Fourth Amendment Rules, 2016 & Fifth Amendment Rules, 2016**

The above Rules issued by the MCA made amendments in the Companies (Incorporation) Rules, 2014. Among other matters, following new Rules have been inserted-

- **Rule 38**- Simplified Proforma for Incorporating a Company Electronically (SPICE) with effect from 2nd October 2016.
- **Rule 39**- Conversion of a company limited by guarantee into a company limited by shares with effect from 1st November 2016.

MCA has also issued Companies (Incorporation) Fifth Amendment Rules, 2016 which is applicable from 1st January 2017

Amongst other matters, following amendments were incorporated –

- Rule 36- pertaining to Integrated Process for Incorporation has been omitted
- Rule 38- Has been substituted

For details refer:
http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationFourthAmendmentRules_01102016.pdf and http://www.mca.gov.in/Ministry/pdf/5th_Amendment_Rules_29122016.pdf

3. **Companies(Registration Offices and Fees) Second Amendment Rules, 2016**
Notification dated 7th November 2016- Substitution of Rule pertaining to certification of Form AOC-4, etc.

Among other matters, the e-form AOC-4 can also be now certified by a Company Secretary or, as the case may be, by a Cost Accountant in whole-time practice, in addition to a Chartered Accountant in whole- time practice.
For details refer:

http://www.mca.gov.in/Ministry/pdf/CompaniesRegistrationOffices2ndamdRules_08112016.pdf

4. **Companies (Transfer of Pending Proceedings) Rules, 2016.**
   Notification dated 7th December 2016

These Rules for transfer of pending proceedings from the High Court to the Benches of the National Company Law Tribunal (NCLT) have come into effect from the 15th December, 2016, except Rule 4, pertaining to pending proceedings relating to Voluntary Winding up, which will come into force from 1st April 2017.

For details refer: http://www.mca.gov.in/Ministry/pdf/CompaniesTransferofPending_08122016.pdf

5. **Companies (Compromises, Arrangements and Amalgamation) Rules, 2016**
   Notification dated 14th December 2016

NCLT now assumes jurisdiction of High Courts as the sanctioning authority in relation to corporate restructuring schemes like compromises, arrangements and amalgamations.

The above Rules have come into force with effect from 15th December 2016.
For detail refer:
http://www.mca.gov.in/Ministry/pdf/compromisesrules2016_15122016.pdf

6. **Rule relating to National Company Law Tribunal (NCLT)**

MCA has issued the following Rules pertaining to NCLT

- NCLT (Procedure for reduction of share capital of Company) Rules, 2016, Notification dated 15th December 2016

For details refer: http://www.mca.gov.in/Ministry/pdf/NCLTRules2016.pdf

- NCLT (Amendment) Rules, 2016, Notification dated 20th December 2016

For details refer:
http://www.mca.gov.in/Ministry/pdf/NCLT(Amendment)Rules_21122016.pdf

7. **Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016**
   Notification dated 26th December 2016

The above includes among other matter, the following Rules –

- **Removal of name of company from the Register on suo-motu basis**

The Registrar can remove name of a company from the register of companies subject to some conditions. Certain companies like listed companies, companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws, companies against which any prosecution for an offence is pending in any court etc. cannot be removed. The Registrar should give notice in writing to all the directors along with reasons for removal.

- **Application for removal of name of Company**

Application should be accompanied by a No Objection Certificate from appropriate Regulatory Authority concerned in case of certain mentioned companies.

For details refer: http://www.mca.gov.in/Ministry/pdf/Rules_28122016.pdf

8. Amendment of Schedule II to the Companies Act, 2013

Notification dated 17th November 2016

The MCA has amended Schedule II to the Companies Act, 2013. As per the amendment, for intangible assets, the relevant Indian Accounting Standards (Ind AS) will apply. Where a company is not required to comply with Ind AS, it will comply with relevant Accounting Standards issued under the Companies (Accounting Standards) Rules, 2006.

This notification will be applicable for accounting period commencing on or after 1st April, 2016.

For details refer: http://www.mca.gov.in/Ministry/pdf/Noti_18112016.pdf

9. Commencement notification of sections of Companies Act, 2013

Notification dated 7th December 2016

The Central Government (CG) has appointed 15th December 2016 as the date on which certain provisions of the Companies Act, 2013 have come into force. These provisions are:-

Sr. No	Section	Nomenclature
1	Section 2 Clause (23)	Definition of Company Liquidator
2	Section 7(7)(c) and (d)	Incorporation of company
3	Section 8(9)	Formation of companies with charitable objects, etc.
4	Section 48	Variation of shareholders' rights
5	Section 66	Reduction of share capital
6	Section 224 (2)	Actions to be taken in pursuance of inspector's Report
7	Section 226	Voluntary winding up of company, etc., not to stop investigation proceedings
8	Section 230 [except sub- section (11) and (12)]	Power to compromise or make arrangements with creditors and members

Sr. No	Section	Nomenclature
9	Section 231 to Section 233	Power of Tribunal to enforce compromise or arrangement; Merger and amalgamation of companies; Merger and amalgamation of companies
10	Sections 235 to 240	Power to acquire shares of shareholders dissenting from scheme or contract approved by majority; Purchase of minority shareholding; Power of CG to provide for amalgamation of companies in public interest; Registration of offer of schemes involving transfer of shares; Preservation of books and papers of amalgamated companies; Liability of officers in respect of offences committed prior to merger, amalgamation etc.
11	Sections 270 to 288	Provisions of Chapter XX pertaining to Winding Up except Section 289 Power of Tribunal on application for stay of winding up) , Section 304 to 323 (Circumstances in which company may be wound up voluntarily, Declaration of solvency in case of proposal to wind up voluntarily, Meeting of creditors, Publication of resolution to wind up voluntarily, etc.) and Section 325 (Application of insolvency rules in winding up of insolvent companies)
12	Sections 290 to 303	
13	Section 324	
	Sections 326 to 365	
14	Proviso to Section 370	Continuation of pending legal proceedings
15	Sections 372 to 373	Power of Court to stay or restrain proceedings; Suits stay on winding up order.
16	Sections 375 to 378	Winding up of unregistered companies; Power to wind up foreign companies although dissolved; Provisions of Chapter cumulative; Saving and construction of enactments conferring power to wind up partnership, association or company in certain cases.

Sr. No	Section	Nomenclature
17	Section 391(2)	Application of Sections 34 (Criminal liability for mis-statements in prospectus); Section 35 (Civil liability for mis-statements in prospectus); Section 36 (Punishment for fraudulently inducing persons to invest money) and Chapter XX (Winding Up)
18	Section 434(1) Clause (c)	Transfer of certain pending proceedings.

10. Commencement notification of Chapter XVIII of Companies Act, 2013 pertaining to removal of names of companies from the Register of Companies

Notification dated 26th December 2016

The MCA had appointed 26th December 2016 as the date when the provisions of the following sections of Chapter XVIII came into force.

Sr. No.	Section	Nomenclature
1	248	Power of Registrar to remove names of a company from register of
		companies
2	249	Restriction on making application under Section 248 in certain situations
3	250	Effect of a company notified as dissolved
4	251	Fraudulent application for removal of name
5	252	Appeal to Tribunal

11. Companies (Removal of Difficulties) Fourth Order, 2016.

This order is to facilitate a smooth transition of the proceedings initiated under the Companies Act, 1956 and pending before any district court or high courts to the NCLT.

It shall come into force with effect from the 15th December, 2016.

For details refer: http://www.mca.gov.in/Ministry/pdf/CompaniesROD_08122016.pdf

Securities and Exchange Board of India (SEBI)

1) Disclosure of financial information in offer document/placement memorandum for Infrastructure Investment Trusts (InvITs)

Circular No. CIR/IMD/DF/114/2016 dated 20th October 2016

SEBI (Infrastructure Investment Trusts) Regulations, 2014 prescribe disclosures to be made in an offer document and placement memorandum. The said disclosures, inter-alia, include disclosures for financial information of the InvIT as well as the Investment Manager and the Sponsor. With reference to these regulations, the SEBI has issued circular containing detailed requirements for disclosure of financial information in offer document/placement memorandum for InvITs

For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1476958899483.pdf

2) Disclosures in case of listed insurance companies

Circular No.CIR/CFD/DIL/115/2016 dated 24th October 2016

The SEBI had issued circular on Revised Formats for Financial Results and Implementation of Ind-AS by listed entities dated 5th July 2016

(https://www.nseindia.com/content/equities/SEBI_Circular_05072016.pdf)

which stated that insurance companies to follow the formats as prescribed under the respective Acts/Regulations as specified by their Regulators. Accordingly, the SEBI in consultation with IRDA, has clarified:

- The insurance companies (life and non-life) will submit the following disclosures for quarters ending 30th September 2016 and 31st December 2016 in the format as specified by IRDA-
  - Format for quarterly financial results
  - Format for Reporting of Segment wise Revenue, Results and Capital Employed along with the quarterly results
  - With respect to the format for newspaper publishing purpose (Standalone/Consolidated), the insurance companies are required to continue to follow the format as specified under the aforesaid circulars issued by SEBI. Additional disclosures may also be made as prescribed by IRDA.
  - The other requirements specified under the aforesaid circular will continue to apply to insurance companies.

For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1477287349972.pdf

3) Enhanced Standards for Credit Rating Agencies

Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated 1st November 2016

The SEBI has issued guidelines on Enhanced Standards for Credit Rating Agencies (CRAs). Among other matters, the guidelines include guidance on strengthening and improving the relevance of the Internal Audit of CRAs — i.e. eligibility, appointment and rotation of auditors and scope of the audit.

The CRAs are required to effectively implement these guidelines within 60 days from the date of issue of this circular

For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1477999985100.pdf

4) SEBI Board Meeting for approval of the proposal to amend the Listing Regulations to enforce disclosures for compensation agreements, etc.

The SEBI in its board meeting dated 23rd November 2016 among other matters approved the proposal to amend Listing Regulations to enforce disclosures and shareholder approval for all compensation agreements that incentivise promoters, directors and key managerial personnel (KMP) of listed investee companies and could potentially lead to unfair practices including existing agreements that extend beyond the date of the amendment. The revised norms for such disclosures and shareholder approvals are as under:

- No employee including KMP, director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other 3rd party with regard to compensation or profit sharing unless prior approval has been obtained from the board as well as public shareholders.
- All such agreements entered into during the past 3 years from the date of notification shall be informed to the stock exchanges for public dissemination including those which may not be currently valid.
- Existing agreements entered into prior to the date of notification and which may continue to be valid beyond such date will be informed to the stock exchanges and approval will be obtained from public shareholders by way of an ordinary resolution in the forthcoming general meeting. The term “public” shall carry the same meaning as defined under Rule 2 of Securities Contracts (Regulation) Rules, 1957.
- Interested persons involved in the transactions shall abstain from voting on the said resolution

For details refer: http://www.sebi.gov.in/cms/sebi_data/pdffiles/35234_t.pdf

5) **Continuous disclosures and compliances by InvITs**
Circular No-CIR/IMD/DF/127/2016 dated 29th November 2016

The SEBI has issued the above circular to prescribe disclosures to be made by an Infrastructure Investment Trust (InvIT) to the stock exchange(s) where its units are listed. The circular includes the requirements for disclosure of financial information and pertinent compliances on a continuous basis and disclosure for non-financial information and pertinent compliances on a continuous basis.

For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1480419642127.pdf

6) **Amendments to Real Estate Investment Trusts Regulations and Infrastructure Investment Trust Regulations**

No-SEBI/LAD/NRO/GN/2016-17/021 & SEBI/LAD/NRO/GN/2016-17/022 dated 30th November 2016

SEBI has issued the following amendments:

- SEBI (Real Estate Investment Trusts) (Amendment) Regulations, 2016.
  For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1480513080291.pdf
- SEBI (Infrastructure Investment Trusts) (Amendment) Regulations, 2016
  For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1480513049714.pdf

7) **Guidelines for public issue of units of REITs**
Circular No-CIR/IMD/DF/136/2016 dated 19th December 2016

SEBI has issued detailed guidelines for public issue of units of Real Estate Investment Trusts (REITs). The guidelines, among other matters, deal with:

- Appointment and obligations of merchant banker and others
- Filing of offer document
- Allocation in public issue
- Application and abridged version of the offer document
- Maintenance of books and records
- Opening of an issue and subscription period.

For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1482144526306.pdf

8) **Disclosure of financial information in offer document for REITs**
Circular No-CIR/IMD/DF/141/2016 dated 26th December 2016

The SEBI (REIT) Regulations, 2014 prescribe disclosures to be made in an offer document, which includes disclosures for financial information of the REITs as well as of the Manager and the Sponsor.

The SEBI has issued circular containing the detailed requirements for disclosure of financial information in the offer document.

For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1482749480208.pdf

9) Continuous disclosures and compliances by REIT

Circular No-CIR/IMD/DF/146/2016 dated 29th December 2016

The SEBI has issued the above circular to prescribe disclosures to be made by REIT to the stock exchange(s) where its units are listed. The circular includes the requirements for disclosure of financial information and pertinent compliances on a continuous basis and disclosure for non-financial information and pertinent compliances on a continuous basis.

For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1483009219503.pdf

10) Guidance Note on Board Evaluation

Circular No-SEBI/HO/CFD/CMC/CIR/P/2017/004 dated 5th January 2017

The Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 contain broad provisions on Board Evaluation i.e. evaluation of the performance of: (i) the Board as a whole, (ii) individual directors (including independent directors and Chairperson) and (iii) various Committees of the Board. The provisions also specify responsibilities of various persons / committees for conduct of such evaluation and certain disclosure requirements as a part of the listed entity's corporate governance obligations. The guidance note covers all major aspects of Board Evaluation

For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1483607537807.pdf

11) **SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2016**

Notification dated 4th January 2017

The SEBI has issued the above Regulations relating to obligations with respect to employees including senior management, key managerial persons, directors and promoters.

For details refer: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1483605829638.pdf

INDIRECT TAXES

SERVICE TAX

CIRCULARS

Clarification on issues regarding levy of Service Tax on the services provided by Government or a local authority to business entities

This circular provides following clarifications for various issues related to levy of service tax on the services provided by Government or Local Authority to business entities:

- It clarifies that taxes, cess or duties levied are not consideration for any service provided and hence not leviable to Service Tax.
- Fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax.
- Activities undertaken by Government or a local authority against a consideration constitute a service and hence liable to Service Tax.
- Various illustrations explaining how the CENVAT Credit is to be availed on Service Tax paid for assignment of right to use natural resources have also been provided under the said circular

(CIRCULAR NO. 192/02/2016-ST dated 13-04-2016)

Clarification regarding leviability of Service Tax in respect of service provided by arbitral tribunal and members of such tribunal

- Service Tax liability for services provided by an arbitral tribunal (including the individual arbitrators of the tribunal) shall be on the service recipient if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year.

(CIRCULAR NO.193/03/2016-ST dated 18-05-2016)

Regarding accounting code for payment of Krishi Kalyan Cess (KKC)

In order to make payment of KKC which came into effect from 01-06-2016 at the rate of 0.5%, following accounting codes have been notified:

KrishiKalyanCess (Minor Head)	Tax Collection	Other Receipts (Interest)	Deduct Refunds	Penalties
0044-00-507	00441509	00441510	00441511	00441512

(CIRCUALR NO: 194/04/2016-ST dated 26-05-2016)

Speedy disbursal of pending refund claim of exporter of service under rule 5 of CENVAT Credit Rules, 2004

- Guidelines have been prescribed for Service Tax assessee who are exporter of service and has filed refund claims which have been filed under rule 5 of the CENVAT Credit Rules on or before 31-03-2015 and which have not been disposed of as on the date of the issue of the Circular No. 187/6/2015-ST dated 10-11-2015.

(CIRCULAR NO: 195/05/2016-ST dated 15-06-2016)

Instruction regarding provisional attachment of property under Section 73C of the Finance Act 1994

- This circular was issued following the orders of the Honorable Allahabad High Court in a case where it stated that since proceedings under Section 73 of the Act had been initiated and a show cause notice had already been issued to the petitioner, action for attachment could have been initiated only by the Commissioner and not the Deputy Commissioner. The High Court emphasized that the powers under Rule 3 should be exercised with utmost care and caution and should not be exercised frivolously.

(CIRCULAR NO: 196/06/2016-ST dated 27-07-2016)

Service tax on freight forwarders on transportation of goods from India

In cases where the freight forwarders acts as an agent of an airline /carrier/ocean, as one who merely acts as booking agent with no responsibility of actual transportation and the service of transportation is provided by the airline/ carrier/ ocean liner while the freight forwarder is merely an agent, the service of freight forwarder will be subjected to tax while the service of actual transportation will not be liable for service tax under rule 10 of POPS. This is because the freight forwarder would fall under the definition of an intermediary under rule 2(f) read with rule 9 of Place of Provision of Service Rules, 2012.

However, the freight forwarder when acting as a principal will not be liable to pay service tax when the destination of the goods is from a place in India to a place outside India as the place of provision of service is outside India.

(CIRCULAR NO: 197/07/2016-ST. dated 12-08-2016)

Service tax liability in case hiring of goods without the transfer of right to use goods

The Supreme Court in the case of Bharat Sanchar Nigam Limited Vs Union of India, had laid down the following criteria to determine whether a transaction involves transfer of the rights to use goods:

- There must be goods available for delivery
- There must be consensus ad idem as to the identity of the goods
- The transferee should have a legal right to use the goods- consequently all legal consequences of such use, including any permissions or licenses required therefore should be available to the transferee
- For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor ie. a “transfer of the right to use” and not merely a license to use the goods
- Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

The board has given direction to its officers to follow the above criteria and apply to cases involving hiring, leasing or licensing of goods as the transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods is a “declared service” and hence liable to service tax.

(CIRCULAR NO: 198/08/2016-ST dated 17-08-2016)

Service provided to Government, a local authority, or a governmental authority with regard to water supply.

On the basis of Notification No. 25/2012- St dated 20-06-2012, it can be concluded that exemption is available to the following services provide to the Government, a local authority, or a governmental authority by way of :

- Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for water supply, water treatment, and
- Water supply.

The phrase “water supply” is a general phrase and would involve providing users access to a source of water. Thus the exemption stated above will include the activity of construction of tube wells.

(CIRCULAR NO: 199/09/2016-ST dated 22-08-2016)

Clarification regarding scope of Notification No.25/2012-ST dated 20-06-2012, Sl. no. 5(a)

Notification No. 25/2012-ST dated 20-06-2012 exempts services by way of renting of precincts of a religious place meant for general public.

The circular clarifies that all immovable property of the religious place located within the outer boundary walls of the complex (of buildings and facilities) in which the religious place is located would be considered as located in the precincts of the religious place. Also, the immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place , may be considered as being located in the precincts of the religious place and would be extended the benefit of the above mentioned exemption

(CIRCULAR NO: 200/10/2016-ST dated 06-09-2016)

Guidelines for arrest in relation to offences punishable under the Finance Act, 1994 and Central Excise Act, 1944.

Following the legislative amendments vide the Finance Act 2016, the following conditions have been prescribed to be considered before arresting a person:

1. Amount should be collected as service tax
2. Amount should exceed Rs. 2crores
3. Failure to pay the amount so collected to the credit of Central Government
4. Such a failure should be beyond the period of six months from the date on which payment becomes due

In addition, the Commissioner must also consider if the alleged offender is likely to hamper the course of further investigation by his unrestricted movement or tamper with evidence, intimidate or influence witnesses. Also, if the alleged offender is assisting in the investigation and has deposited at least half of the evaded tax, the arrest need not be made

(CIRCULAR NO: 201/11/2016-ST dated 30-09-2016)

India finalizes four-tier GST rate structure but Centre & States disagree on assessing taxpayers

The GST Council announced a four-tier rate structure under India’s proposed GST regime, with fixed rates at 5%, 12%, 18% and 28% and a zero tax rate for several items constituting 50% of the CPI basket. “Demerit goods” such as aerated drinks, luxury cars, tobacco products and pan masala will be subject to additional cess, which will form part of the compensation pool for the States. However, no consensus has been reached between the Centre and the States on the assessment of taxpayers.

India's finance minister, Arun Jaitley, says "we cannot have two assessing authorities competing for the same assessee…there should be clear norms on who should assess whom". The next Council meeting will be held on 24 and 25 November to approve draft GST legislation, with a ministerial meeting on 20 November to achieve political consensus. Four drafts will be prepared by 14 or 15 November, namely Central GST, State GST, Integrated GST and Compensation laws, and States will have one week to suggest changes.

The last GST Council meeting, which was held on 3 and 4 November, saw the announcement of a four-tier rate structure for India's upcoming GST regime. The rates are fixed at 5%, 12%, 18% and 28%, along with 0% for several items constituting 50% of the CPI basket, including essential commodities and food products. The 5% basket will comprise items of mass consumption, while standard rates of 12% and 18% will comprise the bulk of goods and services. The higher rate of 28% will be imposed on the "demerit list", i.e. luxury items, tobacco products, pan masala and aerated drinks, with an additional cess that will be used towards compensating the States. This cess will have a sunset clause of five years.

A technical committee consisting of central and state government officials will finalize the allocation of items into different rate categories. As per the finance minister's statement, the underlying principle for determining the rate on each item will be to levy and collect GST at the rate slab closest to current tax incidence.

However, no consensus has been reached yet on the issue of assessment of taxpayers by the Centre and the States. Two models have been discussed to divide administrative control between central and state governments. One of these is a horizontal model, whereby the States will have sole control over taxpayers up to Rs 1.5 crore a year and dual administration above this level. The other is a vertical/cross-empowerment model, whereby both the Centre and the States will have control over taxpayers right from the beginning. Under this model, the taxpayers for scrutiny and audit will be divided in a pre-decided ratio between the Centre and the States.

When the Council meets again on 24 and 25 November, it will attempt to approve the GST legislation drafts. Efforts are being made to pass the CGST and IGST bills in the winter session of Parliament, which will be held for a month from 16 November.

Withdrawal of exemption from service tax on cross border B2C OIDAR services provided online/electronically from non-taxable territory to consumers in taxable territory in India

With effect from 1st December 2016, service tax would be chargeable on Online Information and Database Access or Retrieval [OIDAR] services provided by any person located in non-taxable territory and received by Government, local authority, governmental authority, or an individual in relation to any purpose other than commerce, industry or any other business or profession [cross border B2C (business to consumer) OIDAR services provided in taxable territory]. Online information and database access or retrieval [OIDAR] services have been re-defined in Service Tax Rules, 1994 to include electronic services.

Under this circular, various clarifications have been provided with regard to the taxation of these services. Some important ones are mentioned below:

1. Cross border OIDAR services provided in taxable territory in India to a business entity will be taxed under reverse charge i.e. the business entity receiving the services will pay tax under reverse charge.

2. Using the internet, or some electronic means of communication, just to communicate or facilitate outcome of service does not always mean that a business is providing OIDAR services.

3. Indicative list of non-OIDAR services:
   i. Supplies of goods, where the order and processing is done electronically
   ii. Services of lawyers and financial consultants who advise clients through email
   iii. Booking services or tickets to entertainment events, hotel accommodation or car hire
   iv. Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (in other words, using a remote link)
   v. Advertising services in newspapers, on posters and on television

4. OIDAR services covers services which are automatically delivered over the internet, or an electronic network, where there is minimal or no human intervention. In practice, this can be either:
   i. where the provision of the digital content is entirely automatic e.g., a consumer clicks the Buy Now button on a website and either:
   The content downloads onto the consumer's device, or the consumer receives an automated e-mail containing the content
   ii. where the provision of the digital content is essentially automatic, and the small amount of manual process involved doesn't change the nature of the supply from an OIDAR service
   All electronic services that are provided in the ways outlined above are OIDAR services.
5. Examples of whether or not OIDAR services

Service	Whether Provision of service *mediated by information technology over the internet or an electronic network*	*Wheter it is Automated and impossible to ensure in the absence of information technology*	OIDAR service
Pdf document manually emailed by provider	Yes	No	No
Pdf document automatically emailed by providers system	Yes	Yes	Yes
Pdf document automatically downloaded from site	Yes	Yes	Yes
Stock photographs available for automatic download	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable pdfs	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable pdfs plus support from a live tutor	Yes	No	No
Individually commissioned content sent in digital form eg, photographs, reports, medical results	Yes	No	No

6. In order for a taxpayer or a tax authority to determine whether a person is taking part in the provision of online information and database access or retrieval services provided through a telecommunications network, an electronic interface or a web portal, the facts and the nature of the

contractual relations need to be examined. If there is a contradiction between contractual arrangement and economic reality, then the latter will prevail. This means that even though there is contract to the contrary but the intermediary involved in the supply authorizes the charge to the customer or takes part in its charge i.e. intermediary collects or processes payment in any manner and is responsible for the payment between the non-assessee online recipient and the supplier of such services. Further, the intermediary involved in the supply does authorize delivery of online information and database access or retrieval services.

7. Registration of suppliers of cross border B2C OIDAR services in India is mandatory in India. If the service provider does not have a physical presence in India, then he can appoint an authorized person/agent to comply with the service tax laws and remit tax to the Government. In case the service provider is represented by authorized person or agent, such person may be allowed to take registration on behalf of service provider and comply with all service tax provisions on behalf of such service provider.

(CIRCULAR NO: 202/12/2016-ST dated 09-11-2016)

NOTIFICATION

Exclusion of some services provided by Government to business entity from Mega Exemption Notification

Services provided by Government or a local authority to a business entity with a turnover up to Rs. 10 lakhs in the preceding financial year would be liable to service tax on following services:

a) Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
b) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
c) Services of transport of goods or passengers
d) Services by way of renting of immovable property.

(Notification No. 26/2016-ST Dated. 20-05-2016)

Krishi Kalyan Cess

- In order to support financing initiatives relating to improvement of agriculture and welfare of farmers, Central Government has imposed Krishi Kalyan Cess (KKC) @ 0.5% on all taxable services with effect from 1st June 2016. It has been further notified that KKC would be calculated in the similar manner like Service tax and paid to the government treasury and all the provisions of exemptions, valuation and abatements would be applicable accordingly.

(Notification No. 27/2016- Service Tax, 28/2016-Service Tax, 29/2016-Service Tax,30/2016-Service Tax & 31/2016-Service Tax- all Dated. 26-05-2016)

Service Tax on Senior Advocates under reverse charge

- Union Budget 2016-17, provided for service tax to be paid by Senior Advocates (as defined under Advocates Act) under forward charge w.e.f. 1st April 2016.
- Now, Central Government vide Notification No. 32/2016 – ST dated June 6, 2016 has amended Mega Exemption Notification No. 25/2012 -ST to exempt services provided by a Senior Advocate by way of

legal services to any person other than a business entity; or a business entity with a turnover up to Rs. 10 lakhs in the preceding financial year.

- Also, Notification No. 33/2016 – ST dated June 6, 2016 has amended Service Tax Rules, 1994 to provide that services provided by senior advocates would be covered under reverse charge mechanism. Also, if the senior advocate is engaged by another lawyer, the Service Tax is to be paid by the litigant under reverse charge.
- Further, Notification No. 34/2016 – ST dated June 6, 2016 has amended Reverse Charge Notification No. 30/2012 – ST to provide 100% payment of tax by the recipient of the service provided by senior advocates.
- In the nutshell, it has now been provided that services provided by senior advocate to a business entity with a turnover of more than Rs. 10 lakhs are taxable under reverse charge mechanism and the whole of the tax is to be paid by the client who is litigating.

(Notification Nos. 32/2016 – ST, 33/2016 – ST, 34/2016 – ST all dated 06-06-2016)

Services Provided prior to 31st May 2016 exempt from Krishi Kalyan Cess (KKC)

- The Central Government vide Notification No. 35/2016–ST dated June 23, 2016 has exempted taxable services for which the invoice for the service has been issued on or before the 31st May, 2016, from the whole of Krishi Kalyan Cess provided that provision of service has been completed on or before the 31st May, 2016.

(Notification No. 35/2016-ST Dated. 23-06-2016)

Transportation of goods by a vessel from outside India upto the customs station in India prior to 31st May 2016 exempt from Service Tax

- Vide this Notification the CBEC has exempted from service tax the taxable services by way of transportation of goods by a vessel from outside India upto the customs station in India for which the invoice has been issued on or before the 31st May, 2016, provided that the import manifest or import report required to be delivered under section 30 of the Customs Act, 1962 has been delivered on or before the 31st May, 2016 and the service provider or recipient produces Customs certified copy of such import manifest or import report.

(Notification No. 36/2016-ST Dated. 23-06-2016)

Service tax Abatement for transport of passengers by air embarking from or terminating in Regional Connectivity Scheme (RCS) Airport for a period of 1 year

- The Central Government vide Notification No. 38/2016-Service Tax, Dated: August 30, 2016 has amended Abatement Notification No. 26/2012-Service tax dated June 20, 2012 by inserting a new entry 5A to grant service tax abatement of 90% on the value of service of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a RCS Airport subject to the condition that CENVAT credit on inputs, capital goods and input services, used for providing the taxable service has not been taken by the service provider under the provisions of the CENVAT Credit Rules, 2004.

- The abatement will be valid for a period of 1 year from the date of commencement of operations of the RCS Airport as notified by the Ministry of Civil Aviation.

(Notification No. 38/2016-ST Dated. 18-08-2016)

Amendment in Entry 62 of Mega Exemption Notification: Time period for Services provided by Government or a local authority amended.

- Exemption period for "Services by Government or a local authority has been exempted by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum on payment of license fee or spectrum user charges provided during the period prior to 1st April, 2016 as against the earlier provision of services provided during the financial year 2015-16.
- Now, all such services provided prior to 1st April 2016 would stand exempted and not only the ones provided during financial year 2015-16.

(Notification No. 39/2016-ST Dated. 02-09-2016)

Exemption to taxable services provided by State Govt. etc. by way of granting long term lease of industrial plots to industrial units

- Exemption from service tax payable under section 66B of Finance Act 1994 has been extended to taxable services provided by State Government Industrial Development Corporations/Undertakings to industrial units by way of granting long term (30 years, or more) lease of industrial plots. However, this exemption is restricted to service tax payable on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease.

(Notification No. 41/2016-ST Dated. 22-09-2016.)

Exemption to Certain Services from levy of Service Tax

Central Government has exempted the following services from the levy of service tax:

Sr.No.	Services	Period of Exemption	Vide Notification
1	Services by way of Advancement of Yoga provided by entities registered under section 12AA of Income-tax Act, 1961 (Charitable or Religious Trusts and Institutions)	The period from 1st July 2012 to 20th October 2015	42/2016

2	Transportation, by educational institutions to students, faculty and staff of such institutions	Period commencing on and from the 1st April, 2013 to 10th July, 2014.	45/2016

(Notification No. 42/2016-ST Dated 26-09-2016, 45/2016-ST Dated 30-09-2016.)

Form ST 3 amended to include One Person Company, KKC etc.

The Central Government vide Notification No. 43/2016-Service Tax; Dated: September 28, 2016 has amended Service Tax Rules, 1994 in turn amending Form ST-3 (Service Tax Return under section 70 of the Finance Act, 1994 & Rule 7 of Service Tax Rules, 1994) to give effect to the following changes:

• Insertion of word One Person Company with words Individual/Proprietary

• Insertion of word "Limited Liability Partnership", with the word "Partnership"

• Insertion of columns and entries relating to Krishi Kalyan Cess at relevant places.

(Notification No.43/2016-ST Dated. 28-09-2016.)

Revision of Monetary limits for issuing Service tax notice by officers

Central Government vide Notification No. 44/2016-Service Tax, Dated: September 28, 2016 has amended the adjudication power of officers. The revised limits are as under:

Sr.No.	Rank of the Central Excise Officer	Amount of service tax of CENVAT credit specified in a notice issued under the Finance Act 1994. w.e.f. 28th September 2016	Amount of service tax of CENVAT credit specified in a notice issued under the Finance Act 1994. Prior to 28th September 2016
1	Superintendent	Not exceeding Rs. 10 lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation).	Not exceeding Rs. 1 lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.)

Sr.No.	Rank of the Central Excise Officer	Amount of service tax of CENVAT credit specified in a notice issued under the Finance Act 1994. w.e.f. 28th September 2016	Amount of service tax of CENVAT credit specified in a notice issued under the Finance Act 1994. Prior to 28th September 2016
2	Assistant Commissioner or Deputy Commissioner	Not exceeding Rs. 50 lakh (except cases where Superintendents are empowered to adjudicate).	Not exceeding Rs. 5 lakh (except cases where Superintendents are empowered to adjudicate.)
3	Joint Commissioner or Additional Commissioner	Rs. 50 lakh and above but not exceeding Rs. 2 crore.	Above Rs. 5 lakh but not exceeding Rs. 50 lakhs (JC) & Above Rs. 20 lakh but not exceeding Rs. 50 lakh (AC)
4	Commissioner	Without limit.	Without limit.

(Notification No.44/2016-ST Dated. 28-09-2016)

Amendments in Place of Provision of Service Rules, 2012 regarding levy of Service Tax on "Online Information and Database Access or Retrieval Services" (OIDAR) w.e.f 1st December 2016

Place of Provision of Service Rules has been amended to provide that in case of online information and database access or retrieval services the place of provision of service would be location of the service receiver.

(Notification No.46/2016-ST Dated. 09-11-2016)

Amendments in Mega Exemption Notification regarding levy of Service Tax on "Online Information and Database Access or Retrieval Services" (OIDAR) w.e.f 1st December 2016

- Mega Exemption Notification has been amended to provide that the exemption shall not apply to online information and database access or retrieval services received by Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

(Notification No.47/2016-ST Dated. 09-11-2016)

Amendments in Service Tax Rules, 1994 regarding levy of Service Tax on "Online Information and Database Access or Retrieval Services" (OIDAR) w.e.f 1st December 2016

- Central Government vide Notification No. 48/2016-ST, Dated: November 09 2016 has amended Service Tax Rules, 1994 to prescribe that the person located in non-taxable territory providing OIDAR services to 'non-assesse online recipient', as defined therein, is liable to pay service tax.
- Also, vide Notification No. 53/2016-ST, Dated: December 19 2016, it has been provided that a person located in non-taxable territory providing OIDAR services to a non-assessee online recipient located in taxable territory may issue online invoices not authenticated by means of a digital signature for a period upto 31st January, 2017

(Notification No.48/2016-ST Dated. 09-11-2016, 53/2016-ST Dated 19-12-2016)

Amendments in Reverse Charge Notification regarding levy of Service Tax on "Online Information and Database Access or Retrieval Services" (OIDAR) w.e.f 1st December 2016

- Reverse Charge Notification has been amended to put compliance liability of service tax payment and procedure on to the service provider located in the non-taxable territory with respect to OIDAR services provided in the taxable territory to 'non-assessee online recipient'.

(Notification No.49/2016-ST Dated. 09-11-2016.)

OIDAR services-Jurisdiction to LTU, Bangalore

- Central Government vide Notification No. 50/2016-ST, Dated: November 22 2016 has amended Notification No.20/2014-Service Tax, dated 16th September, 2014 to provide that the Principal Commissioner, Bangalore LTU will have exclusive jurisdiction with respect to online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a 'non-assessee online recipient'.

(Notification No.50/2016-ST Dated. 22-11-2016)

Online information and database access excluded from the definition of Telecom Service

- Place of Provision of Service Rules, 2012 has been amended to provide that, with effect from 1st December 2016, OIDAR services have been excluded from the definition of telecom service in addition to broadcasting services specified earlier.
- Now the OIDAR including electronic services in India, provided either by Indian service provider or by a Foreign Service provider would be taxable in India w.e.f 1st December 2016.

(Notification No.51/2016-ST Dated. 30-11-2016.)

Service Tax Exemption extended to Card Transactions

- With a view to promote cashless transactions and encourage card payments as a popular mode of transactions Mega Exemption Notification has been amended so as to exempt services by an Acquiring Bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service.

- Further “Acquiring Bank” has been defined to mean any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

(Notification No.52/2016-ST Dated. 08-12-2016)

Amendment in Mega Exemption Notification No.25/2012-ST dated 20-06-2012

Mega Exemption Notification has been amended to provide following exemptions:

- Exemption from service tax for service provided by business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch which was earlier restricted to specified accounts only.

- Following services have been excluded from the exemption List even though provider of service is located in a non- taxable territory:
  - OIDAR services received by Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession
  - services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by a person located in a non-taxable territory.

(Notification No.01/2017-ST Dated. 12-01-2017)

Amendments in Service Tax Rules, 1994

Service Tax Rules, 1994 has been amended to prescribe that aggregator shall not include such person who enables a potential customer to connect with persons providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes subject to following conditions, namely:-

(a) The person providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes has a service tax registration under provision of these rules; and

(b) Whole of the consideration for services provided by such service provider is received directly by such service provider and no amount, which forms part of the consideration of services of such service provider, is received by the aggregator directly from either recipient of the service or his representative.

Also, the person liable to pay service tax in relation to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the person in India who complies with sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) with respect to such goods.

(Notification No.02/2017-ST Dated. 12-01-2017)

Amendment in Reverse Charge Notification No.30/2012-ST Dated 20-06-2012.

- Reverse Charge Notification has been amended w.e.f January 22, 2017 to provide that the service provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India shall be a taxable service under this notification. Also, the liability to pay the service tax shall be on the service receiver completely.
- Also, an explanation has been added "Explanation IV.- For the purposes of this notification, in respect of services provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, person liable for paying service tax other than the service provider shall be the person in India who complies with sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) with respect to such goods."

(Notification No.03/2017-ST Dated. 12-01-2017)

Amendment in Abatement Notification No.26/2012-ST Dated 20-06-2012

- Abatement Notification has been amended to provide that w.e.f January 22, 2017 Services by a tour operator shall be given abatement of 60% provided:
- CENVAT credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
- The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.

(Notification No.04/2017-ST Dated. 12-01-2017)

GOODS AND SERVICE TAX

Dual GST Structure

Type of Tax	Levy on -	Levied by -
State Goods and Services Tax GST)	Supply of Goods, or of services, or both within the state.	Respective State Governments
Central Goods and Services Tax (CGST)	Supply of Goods, or of services, or both within the state.	ntral Government
Integrated Goods and Services Tax (IGST)	Supply of Goods, or of services, or both in the course of interstate trade or commerce.	ntral Government

An Insight of Revised Model GST law which was released in November 2016

Definition of Supply

1) Supply includes—
   a) all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

   b) importation of services, for a consideration whether or not in the course or furtherance of business, and

   c) A supply specified in Schedule I, made or agreed to be made without a consideration.

2) Schedule II, in respect of matters mentioned therein for what is to be treated as a supply of goods or a supply of services.
3) Does not include

   a) Activities or transactions specified in schedule III; or

   b) activities or transactions undertaken by the CG/ SG/ LA as specified in Schedule IV

Location of Supplier of Service

Provision of Supply	Location

from a place of business for which registration has been obtained	Location of such place of business
from a place other than the place of business for which registration has been obtained i.e. fixed establishment	location of such fixed establishment
from more than one establishment, whether the place of business or fixed establishment	location of the establishment most directly concerned with the provision of the supply
For others	location of the usual place of residence of the supplier

Location of Recipient of Service

Receipt of Supply	Location
at a place of business for which registration has been obtained	Location of such place of business
at a place other than the place of business for which registration has been obtained (fixed establishment)	location of such fixed establishment
at more than one establishment, whether the place of business or fixed establishment	location of the establishment most directly concerned with the receipt of the supply
For others	location of the usual place of residence of the recipient

Place of Supply of Goods other than supply of goods imported into, or exported from India

Where Movement of Goods	Place where Movement of Goods Terminate
Supply on Direction of Agent	Location of Such Agent
Supply Without Movement	Location of goods at time of delivery to recipient
Supply are assembled or installed at site	Location of place of such installation or assembly
Supply on Board Conveyance	Location at which Goods are taken on board
Others	As manner prescribed by Central Government based on GST Council's suggestion

Place of Supply of Service Where Location of Supplier of Service and recipient of service is in India

Particulars	Place of Supply
General Provision	Supply to Registered Person - Location of such person Supply to any other person - Location of recipient of services where the address is on record; and in other cases location of supplier of service
Immovable property, Lodging, Accommodation, Boat, Vessel or any Ancillary services	Location of such Immovable property or Boat or Vessel Location of Immovable property outside India – Location of Recipient of Service
Restaurant, personal grooming, fitness etc.	Location where the services are performed
Training service,	Where supplied to a registered person, location of such person Any other person, location where services are performed
Admission to a cultural, sporting event etc.	Location where event is actually held
Organization of a cultural, sporting event etc.	Supply to Registered Person - Location of such person Supply to any other person - Location where event is held

Particulars	Place of Supply
Transportation of goods including mail & courier	Supply to Registered Person - Location of such person Supply to any other person - Location where goods are handed over for their transportation
Passenger Transportation Service	Supplied to Registered Person - Location of such person Supply to any other person - Location from where the passenger embarks on the conveyance
Services provided on board a conveyance	Location of first scheduled point of departure of that conveyance
Telecommunication services, including data transfer, broadcasting, DTH	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed For mobile connection for telecommunication and internet services: • Post-paid basis - Location of billing address of the recipient • Pre-paid basis through a voucher - Location where such pre-payment is received / vouchers are sold • In other case Location of Service Provider
Banking & other financial services including Stock Broking Service	Account linked services - Location of recipient Non account linked services - Location of supplier
Insurance Services	Supplied to Registered Person - Location of such person Supply to any other person - Location of the recipient of services on record of supplier
Advertisement Service to Central Government, State Government, A Statutory Body or a local Authority	Location of Central Government, State Government, A Statutory Body or a local Authority

Place of Supply of Service Where Location of Supplier of Service and recipient of service is outside India

Particulars	Place of Supply
General Provision	Location of Recipient of Service
• Service In respect of goods physically available	Location where the services are performed

Particulars	Place of Supply
• Services Supplied to an individual, represented either as recipient of service or acting on behalf of recipient	
In relation to an Immovable property	Location of such Immovable property
Admission to or organisation a cultural, sporting event etc.	Location where event is actually held
Services by Banking Company, Financial Institution, NBFC, Intermediary Service, Hiring of means of Transport other than Aircraft, Vessels	Location of Supplier of Service
Transportation of goods other than mail & courier	Place of Destination of Goods
Passenger Transportation Service	Location from where the passenger embarks on the Conveyance for a continuous journey
Services provided on board a conveyance	Location of first scheduled point of departure of that conveyance
Online information and database access or retrieval services	Location of recipient of service

Input Tax Credit (ITC)

"Input tax" in relation to a taxable person, means the IGST, including that on import of goods, CGST/ SGST and includes the tax payable under RCM, but does not include the tax paid under Composition

Input Tax Credit not eligible if:

- ☐ used for purpose other than business
- ☐ used for exempt supplies (Credit restricted to 50% for Banking & FI as option)
- ☐ Used for various services such as rent-a-cab, outdoor catering, health service, works contract etc...
- ☐ Works contract service when supplied for construction of immovable property other than plant and machinery or further supply of Works contract service
- ☐ Goods and services received for constructions of immovable property
- ☐ Goods and services for personal consumptions
- ☐ Good and services on which tax has been paid under composition scheme
- ☐ Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

Credit to be reversed if payment not made to supplier within 3 months including tax

Input Tax Credit to be availed maximum up to September of next financial year or before filing of annual return whichever is earlier.

Set off of available Input Tax Credit under GST

To be Set off in the same order	Credit of CGST	Credit of SGST	Credit of IGST
1	CGST Liability	SGST Liability	IGST Liability
2	IGST Liability	IGST Liability	CGST Liability
3	X	X	SGST Liability

Works Contract

"Works contract" means a contract wherein transfer of property in goods is involved in the execution of such contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property;"

Few Returns under GST

Types of Return	Form	Period for filing Return
Outward supplier	GSTR -1	10th of next month
Inward supplier	GSTR-2	15th of next month
All assessees except specified (Monthly Return)	GSTR-3	20th of next month
Person paying TDS	GSTR-7	10th of next month
ISD	GSTR-6	13th of next month
Composition Dealer	GSTR-4	18th of next month following end of quarter
Annual Return	GSTR-9	31st December following F.Y.
Final Return	-	3 months from date of cancellation or order of cancellation whichever is later

Anti-Profiteering Measure

- ☐ The Central Government may by law constitute an Authority

- Authority to examine whether input tax credits availed by any registered taxable person or the reduction in the price on account of any reduction in the tax rate have actually resulted in a commensurate reduction in the price of the said goods and/or services supplied by him.

- Authority may impose penalty for violation

Transitional Provision

- The amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately proceeding the appointed day, eligible for credit not just under earlier law but also under the GST law.

- These are provisions made in the law to enable change from current indirect tax regime structure to GST regime

- Total 34 sections related to transition are incorporated in the revised CGST/SGST/IGST Model Law which is mainly deals with migration, input tax credits, Opt in or Out of Composition Scheme, return of goods, changes in value, pending claims, long term contracts, on approval Goods, Goods under Job work, etc.

CUSTOMS

CIRCULARS

Relaxation of Know your Customer (KYC) Norms

Earlier two documents, one for proof of identity and other for proof of address, were required for KYC verification. However, Circular No. 07/2015 dated 12-02-2015 laid down that in case of an individual if any one document listed in the Circular No. 9/2010 dated 08-04-2010 contains both proof of identity and proof of address; the same shall suffice for the purpose of KYC verification. Circular No. 13/2016 dated 26-04-2016 lays down that in cases where the proof of present address is not available with the individual, the proof of identity collected at the time of delivery along with the address recorded for the delivery purpose by the courier companies would suffice for KYC verification. The courier company would keep a record of the address where the goods are delivered and the same would be treated as proof of address of the individual. The above dispensation for proof of address would be available only in respect of individuals for import of documents, gifts/samples/low value dutiable consignments upto the maximum CIF value limit of Rs. 50,000/-.

(Circular No. 13/2016-Custom dated 26-04-2016)

Amendment to Ch IX of the Customs Act, 1962 – removal of goods from a customs station - instructions regarding affixation of one-time-lock

The regulations prescribe the procedure to be followed by the licensee or bond officer, as the case may be, to permit deposit of the goods into a warehouse. The regulations require that goods arriving at the warehouse from a customs station shall be affixed with a one-time-lock (bottle seal) with its serial number endorsed upon the bill of entry for warehousing and the transport of document.

(Circular No. 17/2016-Custom dated: 14-05-2016)

Amendment to Ch IX of the Customs Act, 1962 – Bond required to be filed under section 59.

The circular prescribes the format of triple duty bonds to be executed by the importer under subsection (1) or sub-section (2) of section 59 of the Customs Act.

(Circular No. 18/2016-Custom dated: 14-05-2016)

Allotment of Warehouse Code for Customs Bonded Warehouses.

The circular lays down the business process to be followed to capture details of customs bonded warehouses licensed in each Commissionerate and generate a warehouse code in the system in accordance with the changes made in the Finance Act, 2016 to shift towards record based control with respect to Bonded Warehouses.

(Circular No. 19/2016-Custom dated: 20-05-2016)

Security under section 59 (3) of the Customs Act.

Sub-section (3) of section 59 prescribes that the importer, shall, in addition to the execution of a bond, furnish a security. The above mentioned circular states the cases wherein the requirement of a security shall be dispensed with.

(Circular No. 21/2016-Custom dated: 31-05-2016)

Procedure regarding filing of ex-bond bill of entry.

The CBEC has clarified the procedure regarding filing of ex-bond bill of entry for clearance of any warehoused goods for home consumption. The importer or owner of the warehoused goods seeking to clear goods for home consumption under section 68 shall henceforth file ex-bond bills of entry on ICES and the customs station of import shall assess the Bill of Entry for clearance of the warehoused goods for home consumption. Also, he shall produce a copy of the assessed ex-bond bill of entry with the order for clearance of goods for home consumption given by the proper officer, to the jurisdictional bond officer assigned to the warehouse, for permitting clearance of the warehoused goods.

(Circular No. 22/2016-Custom dated: 31-05-2016)

Manner of payment of interest on warehoused goods.

In view of having prescribed the requirement of furnishing a bank guarantee as security, it has been decided by the Board that henceforth there would be no requirement of payment of interest prior to allowing extensions of warehousing period nor would there be any need to issue a demand for payment of interest. Interest, if any, shall be paid at the time of ex-bonding of the goods from the warehouse.

(Circular No. 23/2016-Custom dated: 01-06-2016)

Requirement of Solvency Certificate for the purposes of Private Warehouse Licensing Regulations 2016.

While making an application for licensing of a private bonded warehouse, an applicant (importer) shall be required to indicate the maximum amount of duty involved on the goods proposed to be stored in the private bonded warehouse at any point of time. The Board has decided that for the purposes of uniformity, the Principal Commissioners /Commissioners of Customs shall require that the importer furnish a solvency certificate from a scheduled bank equivalent to the aforesaid amount of duty involved except in the case of EoUs / EHTP / STPI units.

(Circular No. 24/2016-Custom dated: 02-06-2016)

Maintenance of records in relation to warehoused goods in electronic form, filing of Returns and acknowledgement of receipt of goods.

It has been clarified that every licensee shall maintain records of receipt, handling, storing and removal of the warehoused goods in the Form –A. The software for maintenance of electronic records must incorporate the feature of audit trail which means a secure, computer generated, time-stamped electronic record that allows for reconstruction of the course of events relating to the creation, modification, or deletion of an electronic record and includes actions at the record or system level, such

as, attempts to access the system or delete or modify a record. The Regulations also prescribe various other procedures in the said regard.

(Circular No. 25/2016-Custom dated: 08-06-2016)

Form of application for a Warehousing License.

Under this circular, the CBEC has prescribed the Form to be used by an applicant seeking a license for a bonded warehouse under Public Warehousing Licensing Regulations, 2016 / Private Warehousing Regulations, 2016 / Special Warehousing Regulations, 2016.This application form has been prescribed for use by applicants for new warehouses to be licensed and is not required to be filed by existing licensees covered under the transitional provisions provided in the Regulations for licensing of warehouses or the Warehouse (Custody &Handling) Regulations, 2016.

(Circular No. 26/2016-Custom dated: 09-06-2016)

Procedure to be followed by nominated agencies importing gold/silver/platinum under the scheme for 'Export against Supply by Nominated Agencies'

By circular 28/2009 – Cus dated 14.10.2009 the Board had in order to avoid divergent practices and to streamline supply of precious metal for exports, laid down a procedure for duty free import of gold/silver/platinum by nominated agencies for supply to exporters. The same has now been reviewed by the Board and the simplified procedure laid down which shall henceforth be followed.

(Circular No. 27/2016-Custom dated: 10-06-2016)

Single Window Project - Simplification of procedure in SWIFT for clearance of consignments related to drugs & cosmetics.

The Single Window Interface for Trade (SWIFT) provides the importers/exporters a single point interface for clearance of import and export goods thereby reducing dual time and cost of doing business. The CBEC has simplified the procedure for clearance of drugs, cosmetics and medical equipments to resolve the issues involved in the import of these goods.

(Circular No. 28/2016-Custom dated: 14-06-2016)

Increase in All Industry Rates (AIR) of Duty Drawback on gold jewellery and silver jewellery/articles.

With effect from 24.06.2016, the specific AIRs of Drawback for export of gold jewellery, silver jewellery and silver articles under tariff item numbers 711301, 711302 and 711401, respectively, and specified additional conditions when the AIRs on these items shall not be applicable. Accordingly, it will be necessary for the exporter claiming these AIRs to make a declaration at the time of export.

(Circular No. 30/2016-Custom dated: 24-06-2016)

Sale of goods at Duty Free Shops in Indian Currency.

In consonance with the regulation of the RBI permitting export from and import into India of Indian currency up to an amount not exceeding Rs. 25,000/- (Rupees twenty five thousand) per person,

passengers shall be permitted to purchase goods at duty free shops in Indian rupees upto an amount not exceeding Rs. 25,000/-.

(Circular No. 31/2016-Custom dated: 06-07-2016)

Assessment of Bulk Liquid Cargo

Following the judgment of Hon'ble Supreme Court in the case of Mangalore Refinery and Petrochemical Limited Vs. Commissioners of customs, dated 02-09-2015, the CBEC rescinding the earlier circular has issued this circular stating that in case of all bulk Liquid cargo imports, whether for home consumption or for warehousing, the shore tank receipt quantity should be taken as the basis for levy of Custom Duty irrespective of whether Custom Duty is leviable at a specific rate or Ad valorem basis (including cases where tariff value is fixed under Section 14(2) of the Customs Act). However, where bulk liquid cargo is cleared directly on payment of duty without being pumped in a shore tank, assessment may continue to be done as per the ship's Ullage survey report at the port of discharge.

(Circular No. 34/2016-Custom dated: 26-07-2016)

Removal of mandatory warehousing requirements for EOUs, STPIs, EHTPs etc. -Amendment to Notification 52/2003- Customs dated 31.03.2003.

Recognizing the potential role of EOUs, STPIs, EHTPs etc. Units in the Make in India initiative and as a measure of improving the ease of doing business, it has been decided to do away with the need to comply with warehousing provisions by these units.

(Circular No. 35/2016-Custom dated: 29-07-2016)

Procedure for exports through FPO, Delhi / Mumbai / Chennai using ecommerce platform under MEIS Scheme of Chapter 3 of Foreign Trade Policy (2015-20)

This circular prescribes the procedure for export of goods sold through e-commerce from FPOs at Chennai, Delhi and Mumbai. Any exporter holding a valid Import-Export Code shall be permitted to export goods sold through ecommerce through the FPOs at Delhi, Mumbai & Chennai. The exporter shall be required to file a Postal Bill of Export (PBE).

(Circular No. 36/2016-Custom dated: 29-07-2016)

Special Advance Authorization under para 4.04A of FTP 2015-20 in combination with All Industry Rates (AIRs) of Duty Drawback.

Under this Circular the CBEC has notified the Special Advance Authorisation Scheme following the DGFT Notification No. 21/2015-2020 dated 11th August 2016 which has notified para 4.04A in the FTP 2015-20 providing for duty free pre-import of fabric (including interlining)only under a Special Advance Authorisation Scheme wherein the said fabric gets physically incorporated (making normal allowance for wastage) in goods of Chapter 61 and 62 of ITC(HS) that are physically exported to fulfill the export obligation.

(Circular No. 37/2016-Custom dated: 13-08-2016)

Guidelines regarding Provisional Assessment under section 18 of the Custom Act, 1962.

Section 18 of the Customs Act, 1962 defines the cases where provisional assessment may be resorted and also states how a provisional assessment is to be carried out. This circular has clarified several provisions of the Section 18. The CBEC has dispensed the condition of obtaining a 20% deposit of the duty provisionally assessed. Also, the requirement of the security can be fulfilled either by means of a bank guarantee or a cash deposit as convenient to the importer and no surety shall be required. The circular also states the procedure and guidelines to be followed by all Custom stations while assessing goods provisionally.

(Circular No. 38/2016-Custom dated: 22-08-2016)

Admissibility of un-utilized Cenvat credit of DTA unit converted into EOU.

On conversion from a DTA unit to EOU, the transfer of unutilized CENVAT credit lying in the books of DTA unit on the date of conversion into EOU unit is now made admissible.

(Circular No. 41/2016-Custom dated: 30-08-2016)

Courier bond executed CCSPs

The amount of insurance to be provided by CCSPs should be equal to the average value of goods likely to be stored in the Customs area for a period of 10 days (based on projected capacity) and for an amount as Commissioner of Customs may specify having regard to the goods that are already insured by the importers or exporters. Also, the value of bond being furnished in respect of imported/export goods has been reduced to the extent of 10days storage from the current 30 days.

(Circular No. 42/2016-Custom dated: 31-08-2016)

Rebate of State Levies on Export of Garments – Implementation by CBEC.

The Government of India has decided to adopt a mechanism wherein the Rebate of State Levies (ROSL) on garment exports is provided based on a budgetary allocation of the Ministry of Textiles under a scheme in which the Department of Revenue/Central Board of Excise and Customs (CBEC) handles disbursement along with the extant Duty Drawback. Under this Circular, the guidelines for the implementation of the said ROSL scheme are prescribed.

(Circular No. 43/2016-Custom dated: 31-08-2016)

Incorrect simultaneous issuance of dual benefit of Zero Duty EPCG and SHIS to exporters under the FTP 2009-14 – option providing flexibility to return either benefit.

The said circular explains option extended by DGFT for surrendering one benefit in case of simultaneous issuance of SHIS and Zero duty EPCG/Post Export EPCG.

(Circular No. 45/2016-Custom dated: 23-09-2016)

Guidelines for launching of prosecution in relation to offences punishable under the Customs Act, 1962

Para 6 of the Circular No. 27/2015- Custom dated 23.10.2015 has been amended to include Gold among items for which prosecution may be preferably launched immediately after issuance of show cause notice.

(Circular No. 46/2016-Custom dated: 04-10-2016)

Transferability of goods imported/procured by debiting duty in SFIS scrip.

The goods imported/procured utilizing SFIS Scrip issued in terms of FTP 2009-14 may be sold/transferred on completion of 3 years from the date of clearance of import/procurement in terms of the Department of Commerce notification no. 30 dated 1.8.2013. In view of DGFT conveying interpretation under para 2.3 of FTP 2004-09/2009-14 that the provision of transferability after 3 years is not applicable to consumables (including food items and alcoholic beverages) since such consumables are meant to be consumed in the course of day to day business of the applicant, such consumables are non-transferable even after 3 years.

(Circular No. 49/2016-Custom dated: 27-10-2016)

All Industry Rates of Drawback and other Drawback related changes.

The Central Government has revised All Industry Rates (AIRs) of Drawback vide Notification No. 131/2016-Customs (N.T.) dated 31.10.2016 which comes into force on 15.11.2016. These AIRs take into account relevant broad average parameters including, inter alia, prevailing prices of inputs, input output norms, share of imports in input consumption, the rates of central excise and customs duties, incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods, incidence of duty on HSD/furnace oil, value of export goods, etc.

(Circular No. 50/2016-Custom dated: 31-10-2016)

Deferred payment of Customs duty

Notification No. 134/2016-Customs (N.T) &135/2016-Customs (N.T.) dated 02-11- 2016 permits importers certified under Authorized Economic Operator Programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of duty of Customs.

(Circular No. 52/2016-Custom dated: 15-11-2016)

Further rationalization of revised simplified procedure for fixation of brand rates.

This circular states that the working sheet submitted by the applicant with brand rate fixation claim in support of the claim shall bear a declaration signed by the applicant and a certificate from an Independent Cost Accountant/ Chartered Accountant. Also, the applicant shall file self- attested copies of the duty paid documents (like bill of entry, invoice etc.) carrying their self- endorsement/ defacement to the extent of utilization under the brand rate fixation claim.

(Circular No. 54/2016-Custom dated: 22-11-2016)

Regarding Roll out of Express Cargo Clearance System (ECCS) at Courier Terminal, Sahar, Mumbai.

A new system, the Express Cargo Clearance System (ECCS) would be introduced as Pilot Project at courier Terminal, CSI Airport, Mumbai With effect from 5th December 2016 to carry out the automated assessment and clearance under the Courier imports and Export (Electronic Declaration and Processing) Regulations, 2010.

(Circular No. 58/2016-Custom dated: 02-12-2016)

Outsourcing by an authorized courier.

For functions namely pick-up or local delivery of export/ imported courier packages/ shipments, transportation for officials and housekeeping activities, permission to sub-contract/ outsource will not be required. Prior intimation would suffice. However, due diligence and necessary checks should be carried before outsourcing such activities.

(Circular No. 59/2016-Custom dated: 02-12-2016)

Declaration form to be filled up by NRIs for depositing Specified Bank Notes (SBNs) on arrival.

Under this Circular the Government of India has released a declaration form to be filled up by the resident Indians and non-resident Indians (NRIs) for depositing Specified Bank Notes (SBNs) on arrival. As informed earlier, for resident's Indian citizens the period for depositing the SBNs is extended till 31st March, 2017 and for non-resident Indians, it is extended till 30th June, 2017. The above facility is not available to the Indians coming from Nepal & Bhutan.

This facility would be subject to the "Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 under which bringing back such currency into the country is restricted to Rs.25, 000/- per person.

(Circular No. 60/2016-Custom dated: 31-12-2016)

Amendments effective from 15.01.2017 to the All Industry Rates of Duty Drawback.

This circular notifies changes to the All Industry Rates of Duty Drawback which will take effect from 15.01.2017 few of which are listed below:

- ☐ Drawback cap is being increased for tariff item 500799 (other Silk fabric);
- ☐ Drawback rates/caps are being changed for Man-made fibre floor coverings covered under tariff items 570104, 570203, 570303, 570402 & 570503 and for babies garments covered under tariff items 611101 & 620901;
- ☐ Drawback rates are being decreased for Gold jewellery, Silver jewellery and silver articles covered under tariff items 711301, 711302 and 711401.

New entry with AIR is being created separately for "Monopods, bipods, tripods and similar articles" under tariff item 9620;

(Circular No. 02/2017-Custom dated: 13-01-2017)

Import of point of sale (PoS) terminal devices, its cells & batteries and labelling requirements thereof.

Vide notification No. 35/2016-Central Excise, dated 28.11.2016; the Government has levied excise duty on Point of Sale (Pops) devices and also goods required for their manufacture. These devices are already exempted from customs duty.

Ministry of Electronics and Information Technology have relaxed the import conditions of Po Terminal devices and cells/ batteries fitted in these devices to the following extent:

Import of non-labelled registered PoS devices shall be allowed subject to the condition that the importer shall put standard logo on each carton at the port instead of each separate PoS Terminal device along with the declaration to the Customs confirming that each terminal device would be labelled after clearance but before sale /distribution in the Indian market. Customs may release the consignments of PoS devices based on the declaration along with the details of model/ Serial nos. of the PoS terminal devices inside the cartons.

Special permission for import of batteries and cells coming along (fitted) with the BIS registered PoS terminals if the said cells /batteries are either registered with BIS as per IS 16046 or are certified as per the International standard IEC 62133: 2012. Spares shall not be allowed under this relaxation. Exemptions from the regulatory requirements shall be valid till 31.3.17 or till further orders issued by ministry of electronics and information technology.

The above exemptions from the regulatory requirements shall be valid till 31.3.17or till further orders issued by MeitY.

(Circular No. 03/2017-Custom dated: 13-01-2017)

NOTIFICATION

Regarding vessels carrying exclusively coastal goods.

It has granted exemption to vessels carrying exclusively coastal goods from the following provisions of the Customs Act, 1962:

a. Section 92: Entry of coastal goods

b. Section 93: Coastal goods not to be loaded until bill relating thereto is passed, etc.

c. Section 94: Clearance of coastal goods at destination

d. Section 95: Master of a coasting vessel to carry an advice book

e. Section 97: No coasting vessel to leave without written order

f. Section 98(1): Sections 33, 34 and 36 to apply to coastal goods as they apply to imported goods or export goods.

(Notification No. 56/2016-Customs (N.T.) dated 27-04-2016)

It has provided that for the vessels carrying exclusively coastal goods the following sections of the Customs Act, 1962 would apply:

a. Section 30: Delivery of import manifest or import report

b. Section 41: Delivery of export manifest or export report

However, it is important that the vessels carrying exclusively coastal goods must be operating from berths used by vessels carrying imported goods or export goods and a coastal manifest is delivered to the proper officer by the person-in-charge of such vessel or his agent prior to the arrival/departure of the vessel in the specified format.

Since the present procedure governing the movement of coastal goods were restrictive there was a need to relax the procedure further so as to facilitate faster movement of the coastal goods, bringing down the transaction cost and also give fillip to the developmental activities in the coastal cities. Further, the cabotage restrictions have been relaxed to encourage movement of coastal goods. Vessels like RoRo (Roll on Roll off), PCC (Pure Car Carriers), Pure Car and Truck Carriers (PCTC), LNG vessels; Over-Dimensional Cargo or Project Cargo carriers etc are covered under the new relaxed policy guidelines for a period of five years i.e. up to 1st September 2020.

(Notification No. 57/2016-Customs (N.T.) dated 27-04-2016)

Amendment in Import of Goods at Concessional Rate for manufacture of excisable goods rules.

It has amended Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 to provide that these rules will apply mutatis mutandis to a service provider and any reference to the expressions manufacture, excise duty and factory in these rules will be construed as service, service provider, service tax and registered premises respectively of a service provider referred to in chapter V of the Finance Act, 1994 and the rules made thereunder.

Further, the time limit for Re-export or clearance of unutilised or defective goods under Rule 7 has been increased to 6 months from the existing limit of 3 months.

(Notification No. 100/2016-Customs (NT) dated 14-07-2016)

It has rescinded the Customs (Provisional Duty Assessment) Regulations 2011 as Section 18 of the Customs Act, 1962 itself defines the cases where provisional assessment may be resorted and requires that:

a) The importer binds himself for the payment of deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed; and

B) Furnishes such security as the proper officer deems fit for the payment of the deficiency. Herein the amount of security is at the will of the proper officer which may be different in different cases. Thus to maintain uniformity of practice, transparency and predictability for the tax payer, the Central Government vide Circular No. 38/2016-Customs, Dated: August 22, 2016 has provided that wherever, duty is to be assessed provisionally, the importer shall:

a) for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed, execute a bond in the prescribed form; and

b) Furnish such “Amount of Bank Guarantee or Cash deposit to be obtained as "security" of the differential duty” for the payment of the duty deficiency, prescribed as per his class.

It has further been reiterated that the amount of security will be determined on the basis of duty differential and not the CIF value of goods. Also provisional assessments under Section 18 will be carried out with respect to cases only where the duty is in dispute.

(Notification No. 113/2016-Customs (N.T.), Dated: 22-08-2016)

Conditions for custody of imported or export goods

The value of bond being furnished in respect of imported/export good has been reduced to the extent of 10 days storage from the current 30 days by the Customs Cargo Service provider for custody of imported or export goods and handling of such goods in a customs.

(Notification No. 115/2016-Customs (N.T.), Dated: 26-08-2016)

Customs, Central Excise Duties and Service Tax Drawback Rules amended.

Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 has been amended w.e.f. 15 November 2016 by deleting sub-rule (1) of Rule 8 which did not allow AIR or Brand Rate drawback to exports (other than postal exports or exports under advance authorisation) if the amount of drawback is less than 1% of F.O.B. value of export, except where the amount of drawback per shipment exceeded Rs.500

(Notification No. 132/2016- Customs (N.T), Dated: 31-10-2016)

Deferred Payment of Import Duty Rules, 2016 notified.

It has notified Deferred Payment of Import Duty Rules, 2016 to be effective from 16th November 2016. These rules apply to eligible importers i.e. class or classes of importers as specified by Central Government who shall pay such duty electronically.

The due dates for payment of duty by an eligible importer are:

For goods corresponding to Bill of Entry returned for payment from	Duty to be paid By:
1st day to 15th day of any month	17th day of that Month
16th day till the last day of any month other than March	2nd day of the following month
16th day till the 29th day of March	31st March

30th day of March to 31st day of March	2nd April

The duty needs to be paid electronically and if there is a default more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full. Provisions of these rules are not applicable to the goods which have not been assessed or not declared by the importer in the entry made under the Customs Act, 1962.

Further, Central Government vide Notification No. 135/2016-Customs (NT), Dated: November 2, 2016 has made Importers certified under Authorised Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three), as eligible importers for the deferred payment of duty scheme.

(Notification No. 134/2016-Customs (NT), Dated: 2-11-2016)

CENTRAL EXCISE

CIRCULAR

Constitution of sub-committee of the High Level Committee for Imposition of Central Excise duty on jewellery

CBEC vide Circular No. 1021/9/2016-CX, Dated: March 21, 2016 has provided that in order to tackle the issues related to compliance procedure for the excise duty, including records to be maintained, forms to be filled including Form 12AA, operating procedures and any other issued that may be relevant, a Sub-Committee of the High Level Committee to Interact with Trade & Industry on Tax Laws has been constituted.

It would be chaired by Sh. Ashok Lahiri with 3 industry representatives, legal expert, one officer nominated by Ministry of Commerce & Industry and CBEC representative(s). The Sub-Committee will submit its report within 60 days of its constitution.

The key guidelines for jewellers include:

- Payment of excise based on first sale invoice value
- CBEC not to challenge valuation of product given in the invoice (weight of gold and carat weight of diamonds and precious gemstone is mentioned on invoice)
- Excise officials not to visit shops/residence/ manufacturing unit
- No arrests or criminal prosecution
- No search and seizure of stock
- Exporters to be allowed on self-declaration on submission of LUT with need to ratify with excise.
- Exporters will be allowed to export on self declaration and submission of LUT to customs without the need to get LUT ratified by central excise. Prevailing system will continue.
- The registration of the establishment with the central excise department can be taken within 60 days from 1st March, 2016. However, the liability for payment of central excise duty will be with effect from 1st March, 2016, and as a special case for the month of March, 2016, the assessee jewellers will be permitted to make payment of excise duty along with the payment of excise duty for the month of April, 2016.

(Circular No. 1021/9/2016-CX dated: 21-03-2016)

Classification of Micronutrients, Multi-micronutrient, Plant Growth Regulators and fertilizers.

Under this Circular the CBEC has to Clarified the issue relating to micro constituents such as what constitutes micronutrient, its Usage and distinction from plant growth regulator etc. The CBEC has decided to take opinion of Indian Agricultural Research Institute (IARI). In the light of the opinion received from IARI, Central Excise Tariff and Explanatory Notes of HSN, Nature, usage and Classification of Micro constituents, multiconstituents. Plant growth regulators and fertilizers has been explained under this circular.

(Circular No. 1022/10/2016-CX, Dated: 06-04-2016)

Regarding adjudication of Show Cause Notices issued on the basis of CERA/CRA objection

The CBEC vide Circular No. 1023/11/2016-CX dated April 8, 2016 has provided the detailed guidelines to be followed while adjudicating the Show Cause Notices issued on the basis of audit objections of Central Excise Revenue Audit (CERA) and Customs Revenue Audit (CRA), which is receipt audit wing of the Comptroller and Auditor General of India. Further, the procedure for dealing with audit objections raised by CERA/CRA has also been prescribed.

(Circular No. 1023/11/2016-CX dated 08-04-2016)

Extension of Time Limit for registration and payment of Excise duty by Jewelers

CBEC vide Circular No. 1021/9/2016-CX, Dated: March 21, 2016 provided for constitution of a Sub-Committee of the High Level Committee to Interact with Trade & Industry on Tax Laws, chaired by Dr. Ashok Lahiri to study the issues relating to the imposition of excise duty on jewellery including the issues related to compliance procedure for the excise duty, records to be maintained, operating procedures and any other issues that may be relevant.

In this regard, CBEC vide Circular No. 1025/13/2016-CX, Dated: April 22, 2016 has provided that names of the committee members with a request that all associations may submit representations before the subcommittee in writing and the all India associations would need to state their cases in person.

Further CBEC vide Circular No. 1026/14/2016- CX, Dated: April 23, 2016 has provided that now a jeweller may take central excise registration of an establishment upto 01.07.2016. However, it is to be noted that excise duty would be payable w.e.f from 1st March 2016 itself. Further, jewellers may make the payment of excise duty for the months of March, 2016; April, 2016 and May, 2016 along with the payment of excise duty for the month of June, 2016.

(Circular No. 1025/13/2016-CX, Dated 22-04-2016 & Circular No. 1026/14/2016-CX, Dated 23-04-2016)

Disposal of Call Book cases which have been decided by Courts or Board

CBEC has specified following category of cases which need to be transferred to Call book:

i. Cases in which the department has gone in appeal to the appropriate authority,
ii. Cases where injunction has been issued by Supreme Court/High Court/CEGAT, etc.
iii. Cases where the board has specifically ordered the same to be kept pending and to be entered into the Call Book.
iv. Cases referred to Settlement Commission.

In this regard, Central Government vide Circular No. 1028/16/2016-CX, Dated: April 26, 2016 has provided that in respect of cases involving Central Excise duty, Customs duty and Service Tax the following cases will be taken out of Call Book and adjudicated where:-

The issue involved has either been decided by Hon'ble Supreme Court or Hon'ble High Court and such order of the Hon'ble High Court has attained finality or, b) Board has issued new instruction or circular clarifying the issue involved, subsequent to issue of the order to transfer the case to the Call Book.

(Circular No. 1028/16/2016-CX, Dated 26-04-2016.)

Information returns to be furnished under 'Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016

Rule 3 of 'Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016' provides that a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act 2003, or any other similar entity, who is duly authorised by 'State Electricity Agency', shall furnish information return electronically under Section 15A(I) of the Central Excise Act, 1944, with regard to certain class of assesses in the Form AIRF along with the Annexure Form (AIRA-II).

Further, the Principal Chief Commissioner or the Chief Commissioner of Central Excise and Service Tax in-charge needs to identify and intimate the State Electricity Agency, information of such manufacturers using an induction furnace or rolling mill to manufacture goods falling under Section XV of the First Schedule to the Central Excise Tariff Act, 1985, whose aggregate value of clearances exceeds R150 lakh in the financial year to which the return pertains. For detailed procedure the said circular may be referred.

(Instruction F.No.221/01/2016-CX.6 Dated: 06-06-2016)

Levy of excise duty on readymade garments and made articles of textiles bearing a brand name or sold under a brand name and having a retail sale price of Rs. 1000 or more

A retailer shall not be liable to pay excise duty if:

a) The retail sale price of such readymade garments or made up articles of textiles is less than Rs. 1000, or

b) The aggregate value of clearances for home consumption by such person is less than Rs. 1.5 crore in a year [provided aggregate value of clearances during previous financial year was less than Rs. 4 crore].

It has also been provided that affixing a brand name on the product, labeling or relabeling of its containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture.

Deemed manufacture and liability to excise duty will arise only if such retailer affixes a brand name on the readymade garments and affixes a label bearing the RSP on the packages containing the readymade garments of Rs. 1000 or above.

(Circular No. 1031/19/2016- CX, Dated: 14-06-2016.)

Common registration and return for First Stage Dealer and Importer

The Central Government vide Notification No. 30/2016-Central Excise (N.T.), Dated: June 28, 2016 has provided that an assessee who is registered as a First Stage Dealer is exempt from taking registration as an importer and vice-versa. A single registration would suffice for both the activities at the option of assessee. It has also been clarified that assessees opting for a single registration for both activities need to file a single quarterly return giving details of transactions as a first stage dealer and an importer, one after the other in the same table of the return.

(Circular No. 1032/20/2016- CX, Dated: June 28, 2016)

Time limit for taking Registration under Central Excise by Jewellers

The Central Government vide Circular No. 1033/21/2016-CX dated July 1, 2016 has extended the time limit for taking central excise registration of an establishment by a jeweller upto 31st July 2016. Further, the central excise duty is liable to be paid from 1st March 2016, however jewellers may make the payment of excise duty for the months of March, 2016; April, 2016 and May, 2016 along with the payment of excise duty for the month of June, 2016 upto the extended date of July 31, 2016.

(Circular No. 1033/21/2016-CX dated 01-07-2016)

Procedure for supply of bunker fuels to Indian vessels carrying containerised cargo

Central Government vide Circular No. 1034/22/2016- CX, Dated: July 01, 2016 has prescribed procedure for clearance of indigenous bunker fuels (i) IFO 180 CST (ii) IFO 380 CST without payment of Central Excise duty for use in ships or vessels from bonded stocks of bunker fuel being maintained by the Oil Manufacturing Companies (OMCs) at the ports located in the coastal areas where the specified ships/vessels operate.

(Circular No. 1034/22/2016-CX, Dated 01-07-2016)

Recovery of confirmed demands during the pendency of stay application

Earlier the Central Government vide Circular No. 967/1/2013-CX dated 01.01.2013 provided clarification on the issue of recovery of confirmed demands during the pendency of stay application filed by the assessee. However, Hon'ble High Court of Punjab and Haryana judgment in case of M/s PML Industries Ltd. Vs Commissioner of Central Excise-2013-TIOL-201-HC-P&H-CX pronounced that during the pendency of stay, irrespective of the conduct of the assessee, no recovery could be made. SLP filed by the Department against this judgment has also been dismissed by the Hon'ble Supreme Court, thus upholding the decision of the Hon'ble High Court. Based on the decisions, Circular No. 967/1/2013-CX dated 01.01.2013 has been rescinded by the Government.

Also, in cases where stay application is pending before Commissioner (Appeals) or CESTAT for periods prior to 06.08.2014, no recovery will be made during the pendency of the stay application. For subsequent period i.e. from 06.08.2014 onwards, if the assessee has made the payment of stipulated amount as pre-deposit of 7.5% / 10%, and the copy of appeal memo is filed with the appellate authority to the jurisdictional authorities, no coercive measures for recovery of the balance amounts can be taken during the pendency of the appeal.

Further, as a measure of liberalisation and to ensure uniformity of practice the Central Government has clarified that recovery proceeding in relation to an order of Hon'ble High Court or Tribunal confirming demand of duty, may be initiated only after a period of 60 days from the date of order of the Hon'ble Tribunal or Hon'ble High Court, where no stay has been granted by Hon'ble High Court or Hon'ble Supreme Court against the order of Hon'ble Tribunal or Hon'ble High Court, respectively.

(Circular No. 1035/23/2016-CX dated 04-07-2016)

Classification of Tamarind Kernel Powder under CETA, 1985

Tamarind Kernel Powder shall be classified under tariff item 1302 32 90 of CETA, 1985. This shall apply to both treated (modified) and unmodified tamarind kernel powder.

(Circular No. 1037/25/2016-CX, Dated: July 19, 2016)

Simultaneous authentication of invoice by digital as well as manual signatures

The Central Government vide Circular No. 1038/26/2016-CX, Dated: July 19, 2016 has clarified that a manufacturer or a service provider who opts to issue invoices authenticated by digital signature may also print a copy of such invoice and sign them manually for the customers who are unable to accept or receive the digitally signed invoices due to lack of Information Technology infrastructure. Thus, such invoices, authenticated by digital signature as well as manual signature, will be valid document to avail CENVAT credit and will be considered to be in conformity with rule 11 of Central Excise Rules, 2002 or Rule 4A, 4B and 4C of the Service Tax Rules, 1994.

(Circular No. 1038/26/2016-CX, Dated: July 19, 2016)

Supply of goods from EOUs without payment of Duty against Advance Licence

Presently exemption from excise duty on inputs is denied in cases where goods cleared into DTA are either non-excisable or in case of imports attract nil rate of Customs duty and additional Customs duty, when goods manufactured by EOU are supplied to Advance Licence/ Authorisation holder in DTA.

Central Government vide Circular No. 1046/34/2016-CX, Dated: September 16, 2016 has clarified that manufactured goods supplied by EOU to an Advance Licence/ Authorisation Holder would be exempt from Excise Duty.

Now, clearance from EOU or DTA unit to Advance Licence/ Authorisation holder has been allowed without payment of Central Excise duty, as both the cases are of "Import substitution." In case of supply of goods to Advance Licence/ Authorisation holder, the export obligation is cast upon person holding Advance Licence/ Authorisation and in case of default in export obligation recovery from the person holding Advance Licence/ Authorisation is provided for in law.

(Circular No. 1046/34/2016-CX, Dated: 16-09-2016)

Rebate of duties paid on raw materials used in manufacture or processing of export goods and admissibility of duty drawback

Assessees have been facing difficulty in simultaneously availing drawback of Customs portion and rebate of duties of excise on raw material used in the manufacture or processing of goods exported.

In this regard, Central Government vide Circular No. 1047/35/2016-CX, Dated: September 16, 2016 has provided the following:

i) Where in respect of exports, CENVAT credit is not availed on inputs but input stage rebate on excisable goods except diesel is availed under rule 18 of the Central Excise Rules, 2002, drawback of Customs portion, as per rates and caps specified in drawback schedule will be admissible;

ii) Where in respect of exports, CENVAT credit is not availed on inputs but the inputs except diesel, are procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, drawback of Customs portion, as per rates and caps specified in the drawback schedule will be admissible;

iii) Where in respect of exports, input stage rebate on diesel under rule 18 of Central Excise Rules, 2002 is availed or diesel is procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, no drawback under the drawback schedule will be admissible.

a) Divisional Assistant/Deputy Commissioner, Central Excise, while sanctioning the rebate claim should verify this aspect and in case of availment of any drawback, where input stage rebate on diesel under rule 18 of Central Excise Rules, 2002 is also availed will deny the claim of rebate involved on diesel out of the rebate claimed, for violation of the declaration (d) of the ARE 2.

b) In cases where diesel is procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, and the goods are exported under claim of drawback the Central Excise duty involved on diesel will be recovered for violation of the declaration (d) of the ARE 2, while examining the proof of export.

(Circular No. 1047/35/2016-CX, Dated: 16-09-2016)

No Photocopies of Railway Receipts required to be submitted with STTG Certificate for Claiming CENVAT Credit

Central Government vide Circular No. 1048/36/2016-CX, Dated: September 20, 2016 has prescribed the detailed procedure for availing CENVAT credit of service tax paid on transportation of goods by rail.

(Circular No. 1048/36/2016-CX, Dated: 20-09-2016)

Revised Monetary Limits for adjudication of Show Cause Notice in Central Excise and Service Tax

Central Government vide Circular No. 1049/37/2016-CX, Dated: September 29, 2016 has supressed specified circulars (8 in total) and revised the existing monetary limits for adjudication so as to allow a greater flexibility in allocation of cases amongst adjudicating authorities.

Henceforth, powers of adjudication both in Central Excise and Service Tax will be exercised, based on the following monetary limits of the duty/ tax/credit involved in a case:

Sr. No.	Central Excise Officer	Monetary Limits of duty/ tax/ credit demand for Central Excise and Service Tax
1	Superintendent	Not exceeding Rs. 10 lakh

2	Deputy/Assistant Commissioner	Above Rs. 10 lakh but not exceeding Rs. 50 lakh
3	Additional/ Joint Commissioner	Above Rs. 50 lakhs but not exceeding Rs. 2 Crore
4	Commissioner	Without limit i.e. cases exceeding Rs. 2 Crore

However, cases involving taxability, classification, valuation and extended period of limitation will be kept out of the purview of adjudication by Superintendents. Such cases, upto Rs. 10 lakh, will also be adjudicated by the Deputy Commissioner/ Assistant Commissioner in addition to the cases exceeding Rs. 10 lakh but not exceeding Rs. 50 lakh.

For special category cases following monetary limits have been prescribed:

a) Cases of refund (including rebate) will be adjudicated by the Deputy Commissioner/ Assistant Commissioner without any monetary limit.

b) Cases relating to appeals to the Appellate Tribunal regarding loss of goods,

- where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse or
- credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance Act, 1998

Sr. No.	Central Excise Officer	Monetary Limits for Central Excise
1	Superintendent	Not exceeding Rs. 10 lakh
2	Deputy/Assistant Commissioner	Above Rs. 10 lakh but not exceeding Rs. 50 lakh
3	Additional/ Joint Commissioner	Exceeding Rs. 50 lakh.

c) In case different show cause notices have been issued on the same issue answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.

d) Every adjudicating authority of Central Excise and Service Tax in the field will endeavour to adjudicate 100 cases in a year.

e) Further, in view of huge pendency of adjudication of Service Tax cases at the level of Commissioner, the Service Tax cases will be earmarked to Commissioners of Central Excise and Commissioners (Audit) of Central Excise also, depending upon the pendency level in the Zone.

f) In all cases where the personal hearing has been completed, orders will be passed by the adjudicating authority before which the hearing has been held. Such orders should normally be issued within a month of the date of completion of the personal hearing.

g) Cases which have been remanded back for de novo adjudication will be decided by an authority of the rank which passed the said remanded order.

The Chief Commissioners concerned are directed to ensure that once the Show Cause Notices pending for adjudication are re-distributed and reassigned, the pending cases are to be disposed by March 31, 2017.

(Circular No. 1049/37/2016-CX, Dated: September 29, 2016)

Annual Return under CE/ST are not required to be filed for FY 2015-16

Central Government vide Notification No. 8/2016-Central Excise (N.T.) & 13/2016-Central Excise (N.T.), both Dated: March 1, 2016 amended Rule 12 of Central Excise Rules, 2002 and Rule 9A of CENVAT Credit Rules, 2004 to replace existing Central Excise Forms ER-4 to ER-7 with an Annual Return form. Further, Notification No. 19/2016-ST dated March 1, 2016, amended Rule 7 of the Service Tax Rules, 1994 to prescribe an Annual Return.

Now, Central Government vide Circular No. 1050/38/2016-CX dated November 8, 2016 has provided that in view of impending implementation of Goods and Services Tax (GST) the aforesaid Annual Return(s) which were due to be filed for Financial Year 2015-16 by 30th November 2016 are not required to be filed.

It has further been clarified that after implementation of GST, Annual Return for non-GST goods only may be required.

(Circular No. 1050/38/2016-CX dated November 8, 2016)

Export warehousing-Extension of facility in Ahmedabad District of Gujarat

Central Government vide Circular No. 581/18/2001-CX Dated: June 29, 2001 has specified places where warehouses may be established to store excisable goods for export.

Central Government vide Circular No. 1051/39/2016-CX dated December 15, 2016 has amended the said circular to include Ahmedabad district in the state of Gujarat to the list of places warehouses may be established to store excisable goods for export.

(Circular No. 1051/39/2016-CX dated December 15, 2016)

NOTIFICATION

Amendment in CENVAT Credit Rules, 2004 towards In.

An amendment has been made to Rule 6(3) of CENVAT Credit Rules w.e.f. 01-04-2016 to provide that the cap on the reversal required will be subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period. Thereby reversal under this rule cannot exceed the total credit available during that period including the opening balance.

Further Rule 7B of CENVAT Credit Rules has also been amended to provide that for distribution of credit on inputs by warehouse of manufacturer, the manufacturer must receive inputs under cover of "Documents specified in Rule 9" instead of under cover of invoice. With this amendment, credit can be passed even on imported inputs and inputs received from dealers.

(Notification No. 23/2016-Central Excise (N.T) dated 01-04-2016.)

Amendment in Conditions for allowing CENVAT Credit

As per this Notification CBEC has provided the following amendments in Rule 4(7) of CENVAT Credit Rules, 2004:

- The manufacturer or the service provider shall not take CENVAT credit after 1 year of the date of issuance of invoice/bill/challan except in case of services provided by Government, local authority or any other person by way of assignment of right to use any natural resource.
- CENVAT Credit of service tax shall be spread evenly over a period of 3 years on the one-time charges payable in full up front or in installments for the service of assignment of the right to use any natural resource by the Government, local authority or any other person. Earlier vide Notification No. 13/2016-Central Excise (N.T.) dated, March 01, 2016, the CENVAT Credit had to be spread over the period for which the right to use was assigned.

(Notification No. 24/2016-Central Excise (N.T) dated 13-04-2016)

CENVAT CREDIT of Krishi Kalyan Cess (KKC) to service providers.

Rule 3 of CENVAT Credit Rules, 2004 has been amended to provide the following:

- Provider of 'output services' will be eligible to avail credit of KKC paid
- Cenvat credit availed (other than KKC) shall not be utilised towards payment of KKC (10th proviso to rule 3(4)) i.e. CENVAT credit in respect of KKC shall be utilised only towards payment of KKC. Thus, unlike SBC, CENVAT credit of KKC paid on input services will be allowed to be used for payment of the KKC on taxable services provided by a service provider. Further, CENVAT credit of Service Tax or Excise duty can neither be utilised for payment of KKC nor vice versa would be allowed.

(Notification No. 28/2016-Central Excise (N.T) dated 26-05-2016.)

Indirect Tax Dispute Resolution Scheme, 2016.

The Indirect Tax Dispute resolution Scheme has been introduced vide Union Budget 2016-17, which would be effective from 1st June 2016, which provides for manner of operation of the scheme and the forms to be used for making the scheme operational.

(Notification No. 29/2016-Central Excise (N.T) dated 31-05-2016.)

Specifies that a person who is registered as a FSD shall not be required to take registration as an importer, and vice versa.

Under this Notification CBEC has notified that a person who is registered as FSD shall not be required to take registration as an importer or a person who is registered as an importer shall not required to take registration as first stage dealer.

(Notification No. 30/2016-Central Excise (N.T) dated 28-06-2016.)

Amendment of notification no. 17/2004-CE (NT) dated 04.09.2004 for supply of exempted bunker fuel to the specified Indian Ships / Vessels from the warehouse.

Central Government vide Circular No. 1034/22/2016- CX, Dated: July 01, 2016 has prescribed procedure for clearance of indigenous bunker fuels (i) IFO 180 CST (ii) IFO 380 CST without payment of Central Excise duty for use in ships or vessels from bonded stocks of bunker fuel being maintained by the Oil Manufacturing Companies (OMCs) at the ports located in the coastal areas where the specified ships/vessels operate. Procedures are prescribed for availing exemption, Submission of utilization certificate, Reconciliation and recovery in the aforesaid clearance. The same facility has also been extended the facility of removal of specified excisable goods from the factory of production to a warehouse or from one warehouse to another warehouse without payment of duty to bunker fuels for use in ships or vessels.

(Notification No. 31/2016-Central Excise (N.T) dated 04-07-2016)

Seeks to notify the tariff values for articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

As per this Notification the CBEC fixes the tariff value in respect of excisable goods falling under heading 7113 of the First schedule to CETA 1985, mentioned the description of goods and tariff value.

For the purposes of this notification, the registered premises or the centrally registered premises or branches of such centrally registered premises, of the manufacturer or principal manufacturer, as the case may be, of articles of jewelry or parts of articles of jewelry or both, from where the goods are sold for the first time shall be the place of removal for such articles of jewelry or parts of articles of jewelry or both, and the time of removal shall be construed accordingly.

(Notification No. 33/2016-Central Excise (N.T) dated 11-07-2016.)

Seeks to notify the Articles of jewelry (Collection of Duty) Rules, 2016, applicable to articles of jewelry or parts of articles of jewelry or both falling under heading 7113 of the Central Excise Tariff Act, 1985 (5 of 1986).

With jewellery falling under Excise, Article of Jewelry (Collection of Duty) Rules, 2016 has been prescribed which would apply to the articles of jewelry or parts of articles of Jewelry or both falling under

the Heading 7113 of the Central Excise Tariff Act, 1985 wherein the method of determination of duty, collection of duty etc. has been prescribed. The basic exemption limit of Rs. 15 crores has been prescribed as against Rs. 4 crores in other cases.

(Notification No. 34/2016-Central Excise (N.T) dated 11-07-2016.)

Seeks to amend the CENVAT Credit Rules, 2004 in relation to articles of jewellery or parts of articles of jewellery or both

Since Jewellery has been brought to tax for the first time it has been notified that those assessee who are engaged in the manufacture of articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the First Schedule of the Excise Tariff Act, shall be eligible for credit even if their aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, computed in the manner specified in the said notification, did not exceed Rs. 15 crore.

(Notification No. 36/2016-Central Excise (N.T) dated 26-07-2016.)

Exemption from filing of annual return of Jewellery Manufacturers

As per this Notification the CBEC has exempted a manufacturer or principal manufacturer of articles of jewellery or parts of articles of jewellery or both, falling under heading 7113 of the Central Excise Tariff Act, 1985 (5 of 1986) from filing of annual return.

(Notification No. 39/2016-Central Excise (N.T) dated 26-07-2016.)

Seeks to amend Form ARE-2

Under this Notification the CBEC has amended the conditions and procedure for rebate of duty on excisable goods used in manufacture/processing of export goods (Notification No. 21/2004- CE (N.T.) dated September 6, 2004) thereby amending Form A.R.E 2. From now on there can be made a combined application for removal of goods for export under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods and removal of dutiable excisable goods for export under claim for rebate of finished stage Central Excise Duty or under bond without payment of finished stage Central Excise Duty leviable on export goods.

(Notification No. 44/2016-Central Excise (N.T) dated 16-09-2016.)

Amendment in Notification No. 20/2016-CE (NT) dated 01.03.2016

Under this Notification Central Excise (Removal of Goods at Concessional Rate of Duty for manufacture of Excisable and other Goods) Rules, 2016 in rule 4 in sub rule (5), after the words “surety” the words or security shall be inserted.

(Notification No. 46/2016-Central Excise (N.T) dated 20-09-2016.)

Amendment in Notification No. 30/2014-CE (NT) dated 14th October, 2014.

Under this notification CBEC has vested the specified Central Excise Audit Officers with powers of Central Excise Officers for the purpose of adjudication in addition to their existing powers for the purpose of Audit and issue of Show Cause Notices conferred vide Notification No. 30/2014-CENT, dated 14.10.2014.

(Notification No. 47/2016-Central Excise (N.T) dated 28-09-2016)

Notification under Section 11C of the Central Excise Act on Plain (un-modified) Tamarind Kernel Powder falling under heading 1302.

Under this Notification the Sec 3 of Central Excise Ac, 1944 , Explain regarding the Plain (Un-modified) Tamarind Kernal Powder falling under heading 1302 of the first scheduled to the central Excise tariff Act 1985, and duty was not levied for a period 19-07-2011 to 18-07-2016.

Now the CBEC has directs the Whole of the duty of Excise payable under sec 3 of the said Act on above mentioned goods, the duty of excise not levied during the period aforesaid in accordance with the said practice.

(Notification No. 01/2017-Central Excise (N.T) dated 31-12-2016.)

INDUSTRY SPECIFIC ANALYSIS

FINANCE SECTOR

Introduction

India has a diversified financial sector undergoing rapid expansion, both in terms of strong growth of existing financial services firms and new entities entering the market. The sector comprises banks, insurance companies, non-banking financial companies, pension funds, mutual funds and other smaller financial entities. The banking regulator has allowed new entities such as payments banks to be created recently thereby adding to the types of entities operating in the sector.

Indian banking industry has recently witnessed the roll out of innovative banking models like payments and micro finance company. RBI's new measures may go a long way in helping the restructuring of the domestic banking industry.

Demonetization - spark a new digital economy in India and effect

Digital transaction have been increased due to demonetization. Paytm, an e-wallet firm, has seen a huge surge in transactions, for example—even a roadside stall has started to accept payments through e-wallet.

The Reserve Bank of India has also been encouraging citizens to make use of internet and mobile banking as it works to "alleviate the pressure on the physical currency."

An aggressive RBI can now further reduce base rate that would lead to a reduction in interest burden on farm loans, mudra loans, housing loans and corporate loans thereby benefiting farmers, SME, middle class and Corporates.

Demonetisation has the potential to generate long-term benefits in terms of reduced corruption, greater digitalization of the economy, increased flows of financial savings, and greater formalization of the economy, all of which could eventually lead to higher GDP growth, better tax compliance and greater tax revenues.

Gujrat International Finance Tec - City (GIFT) – A Financial Global Hub

An emergent India represents a bright beacon on the shores of financial growth. GIFT (Gujarat International Finance Tec-City), India's first International Financial Services Centre, embodies this vision with conducive multi-service SEZ and an exclusive domestic zone. A Fully integrated city with a walk to work culture, it has the next-in-class infrastructure, connectivity, people, technology and legal framework – emerging as a platform for businesses across the world.

GIFT City is emerging as the new financial capital of the world's financial capitals.

BHIM vs UPI

BHIM (Bharat Interface for Money): Prime Minister Narendra Modi on Friday launched a new mobile app called BHIM to enable fast, secure and reliable payments system that uses smartphones for cashless transactions.

BHIM can be used with other Unified Payment Interface (UPI) applications and bank accounts. To use it, one needs to download the app from an App store and register their bank accounts and set up a UPI pin

for the account. The mobile number is the payment address and one can start transactions immediately. Today BHIM app is the most popular UPI app. Within 10 days of its launch, 1.1 crore people have downloaded this app. Indeed, it is the easiest way of money transfer.

UPI (Unified Payment Interface): UPI is a payment system which facilitates the fund transfer between two bank accounts. This payment system works on the mobile platform. Sending money through the UPI app is as easy as sending a message. You are not required to give bank account details for the fund transfer through the UPI payment system. UPI is one of the most advanced methods among all the digital payments.

Merchant charges (service charges) for using Paytm or any other mobile wallet

Merchant charges: As of now there are no charges for Paytm or Oxigen Wallet, since banks and mobile wallets firms have waived off merchant discounted rate (MDR) charges completely. Mobile transactions nowadays are being operated as P2P money transfer, so there is no distinction if a user is a customer or a merchant and there is no separate merchant app. Banks & NBFCs would start charging the payment gateway charges which they are incurring as cost. Most likely these charges would be more than 1.25% of the transaction amount.

Market Size

Total outstanding credit by scheduled commercial banks of India stood at Rs 72,606.11 billion (US$ 1.08 trillion). The Association of Mutual Funds in India (AMFI) data show that assets of the mutual fund industry have reached a size of Rs14.21 trillion (US$ 210 billion).

India’s life insurance sector is the biggest in the world with about 360 million policies, which are expected to increase at a Compounded Annual Growth Rate (CAGR) of 12-15 per cent over the next five years. The insurance industry is planning to hike penetration levels to five per cent by 2020, and could top the US$ 1 trillion mark in the next seven years. The total market size of India's insurance sector is projected to touch US$ 350-400 billion by 2020.

India's digital payments industry is expected to grow by 10 times to reach US$ 500 billion by 2020 and contribute 15 per cent of Gross Domestic Product (GDP).

Investments/Developments

- The first ever rupee-denominated bond in the world by an Indian company, termed as Masala bond, has been listed on the London stock exchange by the Housing Development Finance Corporation Limited (HDFC Ltd). The issue raised US$ 450 million, with a maturity of three years and an annual yield of 8.33 per cent.
- India bulls Housing Finance has raised over Rs 1,300 crore (US$ 200 million) by selling Masala bonds to foreign investors, which would be used partly for its affordable housing segment.
- International Finance Corporation (IFC) plans to invest around Rs 135 crore (US$ 20.3 million) via non-convertible debentures (NCD) in Grameen Koota, a Bangalore-based microfinance company.
- Synchrony Financial, a US-based consumer financial services company, plans to expand its operations in India by investing US$ 12 million to set up centres of excellence, which can develop finance, analytics and information technology solutions.
- Thomas Cook India, an integrated travel and travel related financial services company, has entered into a partnership with Western Union Business Solutions, with a view to assist Small and Medium-sized Enterprises (SMEs) in India with their trade payments across borders.

- Tata Capital, the financial services arm of Tata Group, plans to raise Rs 2,000 crore (US$ 293.4 million) for its real estate fund, from State General Reserve Fund (SGRF), the sovereign wealth fund of Oman.
- The Reserve Bank of India (RBI) has granted in-principle licenses to 10 applicants to open small finance banks, which will help expanding access to financial services in rural and semi-urban areas, thereby giving fillip to Prime Minister's financial inclusion initiative.
- Canada Pension Plan Investment Board (CPPIB), an investment management company, has bought a large stake in Kotak Mahindra Bank Ltd from Japan-based Sumitomo Mitsui Banking Corporation.

Government Initiatives

- Government of India aims to extend insurance, pension and credit facilities to those excluded from these benefits under the Pradhan Mantri Jan Dhan Yojana (PMJDY). The Union Cabinet Minister has also approved the Pradhan Mantri Suraksha Bima Yojana which will provide affordable personal accident and life cover to a vast population.
- Under Pradhan Mantri Jan Dhan Yojna (PMJDY), 250.5 million accounts! have been opened and 192.2 million RuPay debit cards have been issued as of October 12, 2016. These new accounts have mustered deposits worth almost Rs 44,480 crore (US$ 6.67 billion).
- In July 2016, the government allocated Rs 22,915 crore (US$ 3.41 billion) as capital infusion in 13 public sector banks, which is expected to improve their liquidity and lending operations, and shore up economic growth in the country.
- The Reserve Bank of India (RBI) has allowed additional reserves to be part of tier-1 or core capital of banks, such as revaluation reserves linked to property holdings, foreign currency translation reserves and deferred tax assets, which is expected to shore up the capital of state-run banks and privately owned banks by up to Rs 35,000 crore (US$ 5.14 billion) and Rs 5,000 crore (US$ 734 million) respectively.
- To provide relief to the state electricity distribution companies, Government of India has proposed to their lenders that 75 per cent of their loans be converted to state government bonds in two phases by March 2017.
- Pradhan Mantri Garib Kalyan Yojana (PMGKY), 2016, has been started from 17th December, 2016 and remain open until 31st March, 2017. Those who declare unaccounted cash deposits under this will be levied a charge of 50%, which breaks down into 30% tax, 33% surcharge and 10% penalty. In addition to this, 25% of the amount declared will go into the noninterest-bearing Pradhan Mantri Garib Kalyan Deposit Scheme, 2016, for four years.
- Launch of Aadhar Merchant Pay, aimed at the 350 million who do not have phones. This enables anyone with just an Aadhar number and a bank account to make a merchant payment using his biometric identification. Aadhar Merchant Pay will soon be integrated into BHIM and the necessary POS devices will soon be rolled out

Budget Proposals

- Foreign Investment Promotion Board to be abolished in 2017-18 and further liberalisation of FDI policy is under consideration.
- An expert committee will be constituted to study and promote creation of an operational and legal framework to integrate spot market and derivatives market in the agricultural sector, for commodities trading. e- NAM to be an integral part of the framework.
- Bill relating to curtail the menace of illicit deposit schemes will be introduced. A bill relating to resolution of financial firms will be introduced in the current Budget Session of Parliament. This will contribute to stability and resilience of our financial system
- A mechanism to streamline institutional arrangements for resolution of disputes in infrastructure related construction contracts, PPP and public utility contracts will be introduced as an amendment to the Arbitration and Conciliation Act 1996.

- A Computer Emergency Response Team for our Financial Sector (CERT-Fin) will be established.
- Government will put in place a revised mechanism and procedure to ensure time bound listing of identified CPSEs on stock exchanges. The shares of Railway PSEs like IRCTC, IRFC and IRCON will be listed in stock exchanges.
- Propose to create an integrated public sector 'oil major' which will be able to match the performance of international and domestic private sector oil and gas companies.
- A new ETF with diversified CPSE stocks and other Government holdings will be launched in 2017-18.
- In line with the 'Indradhanush' roadmap, Rs.10,000 crores for recapitalisation of Banks provided in 2017-18
- Lending target under Pradhan Mantri Mudra Yojana to be set at Rs.2.44 lakh crores. Priority will be given to Dalits, Tribal's, Backward Classes and Women.
- Rs.125 lakh people have adopted the BHIM app so far. The Government will launch two new schemes to promote the usage of BHIM; these are, Referral Bonus Scheme for individuals and a Cash back Scheme for merchants.
- Aadhar Pay, a merchant version of Aadhar Enabled Payment System, will be launched shortly.
- A Mission will be set up with a target of 2,500 crore digital transactions for 2017-18 through UPI, USSD, Aadhar Pay, IMPS and debit cards.
- A proposal to mandate all Government receipts through digital means, beyond a prescribed limit, is under consideration.
- Banks have targeted to introduce additional 10 lakh new POS terminals by March 2017. They will be encouraged to introduce 20 lakh Aadhar based POS by September 2017.
- Proposed to create a Payments Regulatory Board in the Reserve Bank of India by replacing the existing Board for Regulation and Supervision of Payment and Settlement Systems.
- FRBM Committee has recommended 3% fiscal deficit for the next three years, keeping in mind the sustainable debt target and need for public investment, fiscal deficit for 2017-18 is targeted at 3.2% of GDP and Government remains committed to achieve 3% in the following year.
- National Housing Bank will refinance individual housing loans of about Rs.20, 000crore in 2017-18.

- The commodities and securities derivative markets will be further integrated by integrating the participants, brokers, and operational frameworks.
- The process of registration of financial market intermediaries like mutual funds, brokers, portfolio managers, etc. will be made fully online by SEBI. This will improve ease of doing business.
- A common application form for registration, opening of bank and demat accounts, and issue of PAN will be introduced for Foreign Portfolio Investors (FPIs). SEBI, RBI and CBDT will jointly put in place the necessary systems and procedures. This will greatly enhance operational flexibility and ease of access to Indian capital markets.
- Steps will be taken for linking of individual demat accounts with Aadhar.
- Presently institutions such as banks and insurance companies are categorised as Qualified Institutional Buyers (QIBs) by SEBI. They are eligible for participation in IPOs with specifically earmarked allocations. It is now proposed to allow systemically important NBFCs regulated by RBI and above a certain net worth, to be categorised as QIBs. This will strengthen the IPO market and channelize more investments.
- Listing and trading of Security Receipts issued by a securitisation company or a reconstruction company under the SARFAESI Act will be permitted in SEBI registered stock exchanges. This will enhance capital flows in to the securitisation industry and will particularly be helpful to deal with bank NPAs.

TAX PROPOSALS

Direct Tax

- Concessional withholding rate of 5% charged on interest earned by foreign entities in external commercial borrowings or in bonds and Government securities is extended to 30.6.2020. This benefit is also extended to Rupee Denominated (Masala) Bonds.
- Allowable provision for Non-Performing Asset of Banks increased from 7.5% to 8.5%. Interest taxable on actual receipt instead of accrual basis in respect of NPA accounts of all non-scheduled cooperative banks also to be treated at par with scheduled banks.
- Foreign Portfolio Investor (FPI) Category I & II exempted from indirect transfer provision. Indirect transfer provision shall not apply in case of redemption of shares or interests outside India as a result of or arising out of redemption or sale of investment in India which is chargeable to tax in India.
- Commission payable to individual insurance agents exempt from the requirement of TDS subject to their filing a self-declaration that their income is below taxable limit
- It is proposed to provide that in case of transfer of unquoted equity shares, where the fair market value, determined in the prescribed manner is less than the consideration received, such fair market value shall be the deemed value of consideration for the purpose of computation of capital gains.
- It is proposed to restrict the exemption from long term capital gains in case of transfer of listed shares by providing that the exemption, subject to notification of certain exceptions, shall be available if security transaction tax has been paid at the time of acquisition of such shares where they have been acquired after 1st October, 2004.

Indirect Tax

- Miniaturised POS card reader for m-POS (other than mobile phones or tablet computers), micro ATM standards version 1.5.1, Finger Print Readers/ Scanners and Iris Scanners and on their parts and components for manufacture of such devices to be exempt from BCD, Excise/CV duty and SAD.

Road Ahead

The Indian economy is on the brink of a major transformation, with several policy initiatives set to be implemented shortly. Positive business sentiments, improved consumer confidence and more controlled inflation are likely to prop-up the country's the economic growth. Enhanced spending on infrastructure, speedy implementation of projects and continuation of reforms are expected to provide further impetus to growth. All these factors suggest that India's banking sector is also poised for robust growth as the rapidly growing business would turn to banks for their credit needs.

Also, the advancements in technology have brought the mobile and internet banking services to the fore. The banking sector is laying greater emphasis on providing improved services to their clients and also upgrading their technology infrastructure, in order to enhance the customer's overall experience as well as give banks a competitive edge.

Many banks, including HDFC, ICICI and AXIS are exploring the option to launch contact-less credit and debit cards in the market shortly. The cards, which use near field communication (NFC) mechanism, will allow customers to transact without having to insert or swipe

INFORMATION TECHNOLOGY IN INDIA

Introduction

IT industry in India has been one of the most significant growth contributors for the Indian economy. The industry has helped India transform from a rural and agriculture-based economy to a knowledge based economy.

During the Financial Year (FY) 2016, the Indian ITBPO sector contributed nearly 9.3% of India's GDP with revenues of USD 143 billion. During FY2016, the industry's exports were valued at USD 108 billion, which was nearly 76% of the total revenue and contributed more than 45% share in India services exports. This sector is India's largest and most diverse private sector employer, with a direct workforce nearing 3.7 million.

As the demonetization initiative encourages the use of plastic and electronic money, India is already witnessing a massive shift to digitization. Further, the 'Digital India' and 'Make in India' initiatives immensely rely on the IT sector for its continued success.

Market Size

- Growth of software exports was 1.4 per cent in 2015-16 and 0.1 per cent in H1 of 2016-17.
- India's software services industry will grow at a slower pace than estimated earlier as events such as Donald Trump's victory in the US election and Brexit weigh on exports as per Nasscom Reports.
- Strangulating work-visa programmes, including the H1B and L1 visas used by Indian IT professionals to work on customer projects at US may hit the Indian IT sector.
- Nasscom now expects information technology (IT) exports to grow between 8% and 10% in the year ending 31 March, 2017 slower than the 10-12% range it had predicted in February, the industry lobby group said. Indian IT exports are likely to be $116-118 billion instead of the earlier estimate of $119-121 billion.
- The UK's decision to exit the European Union and the accompanying currency volatility, along with a slowdown in discretionary spending among overseas clients, has also hurt growth in the sector.
- Indian IT companies have struggled for growth for quite some time now. They reported among the weakest set of results in the September quarter, traditionally a seasonally strong period for the sector. TCS and Wipro Ltd reported either flat revenue or a decline from the preceding quarter.

Employment Information

The pace of hiring in the information technology industry, one of India's largest job creators, is set to slow in the coming years. The $150 billion Indian information technology sector, once India's largest organized job creator, is now reluctant to hire.

For the first time in over two decades, two of India's five largest software services firms, Wipro Ltd and HCL Technologies Ltd, reported a net decline in direct hiring. Meanwhile, Tech Mahindra Ltd saw a decline in its existing workforce in the January-March 2016.

However the concept of Online startups is reshaping the informal jobs sector in India. The people registered on these platforms are a generation of new entrepreneurs, not the typical people who started their business in a garage with life savings.

Investments

Computer hardware and software sector is among the various sectors which have attracted highest FDI equity inflows.

Some of the major developments in the Indian IT and ITeS sector are as follows:

- Druva Incorporation, a data protection firm, has received US$ 51 million in a funding round led by its existing investor Sequoia Capital India along with new investor EDBI which is the investment arm of the Singapore Economic Development Board (EDB).
- Google, the American technology giant, has launched a new Wi-Fi platform called Google station, under which the company will install Wi-Fi hot spots in places frequented by a large number of people like malls, cafes, universities.
- Reliance Industries Ltd (RIL) plans to set up entrepreneurship hubs in key cities and towns, and a Rs 5,000 crore (US$ 748 million) fund, under the name of Jio Digital India Startup Fund, to invest in technology based start-ups.
- Gurgaon-based digital wallet start-up MobiKwik, which is owned and operated by One MobiKwik Systems Private Limited, has raised US$ 40 million from Nasdaq-listed firm Net1, a South African payments technology company.

Government Initiatives

Digital India is aimed at transforming the country into a digitally empowered society and a knowledge economy. The major developments under the plan are

- MyGov app was launched during the year. The app basically replicates the MyGov website into a mobile format and offers a neat interface.
- The government has launched a massive effort to ensure India starts using more of digital payments and less of cash. Some of the initiatives are
    - i. Unified Payment Interface
    - ii. E-wallet
    - iii. Aadhar enabled payment system
    - iv. Unstructured Supplementary service data (USSD)
- The Government of India has begun to install free high speed Wi-Fi under its plan of covering 2500 cities and towns

Over the years, a large number of initiatives have been undertaken by various State Governments and Central Ministries to usher in an era of e-Government.

- West Bengal government's labour department is all set to introduce a web based technology to help unorganised sector workers in availing benefits for their social security, given by the state government, without facing any inconvenience.
- Ministry of Communication and Information Technology, announced plan to increase the number of common service centres or e-Seva centres to 250,000 from 150,000 currently to enable village level entrepreneurs to interact with national experts for guidance, besides serving as a e-services distribution point.
- The Railway Ministry plans to give a digital push to the India Railways by introducing bar-coded tickets, Global Positioning System (GPS) based information systems inside coaches, integration of all facilities dealing with ticketing issues, Wi-Fi facilities at the stations, super-fast long-route

train service for unreserved passengers among other developments, which will help to increase the passenger traffic.

Effects of Demonetisation

India's information technology sector is one that has escaped the depressing impact that demonetisation has had on economic activity in the country. With ATMs witnessing the longest queues ever, people have no option but to take refuge in the convenience of cashless payments. E-Commerce start-ups have seen a huge surge in registrations and usage. It's refreshing for them to get paid in advance as against cash on delivery. Most of them are offering further incentives to pay online.

Online start-ups like Paytm and free charge has been benefited with this development. Demonetization opened the doors for banks, insurance companies and other financial service firms to further embrace innovation and new-age payment solutions. One click payments, near field communications, mobile wallets, banking on the move, telematics, and IoT related services came into prominence. The digital services and underlying application services that IT service firms offer will also undergo a major transformation.

Budget Proposals

Measures to promote Digital Economy for speed, accountability and transparency

- ☐ By the end of 2017-18, high speed broadband connectivity on optical fibre will be available in more than 1,50,000 gram panchayats, with wifi hot spots and access to digital services at low tariffs. An allocation of Rs.10, 000Crore for laying optic fibre cables has been made.
- ☐ A DigiGaon initiative will be launched to provide tele-medicine, education and skills through digital technology.
- ☐ A new Metro Rail Policy will be announced with focus on innovative models of implementation and financing, as well as standardisation and indigenisation of hardware and software
- ☐ SWAYAM platform, leveraging IT, to be launched with at least 350 online courses.
- ☐ Aadhar Pay, a merchant version of Aadhar Enabled Payment System, will be launched shortly
- ☐ A Mission will be set up with a target of 2,500 crore digital transactions for 2017-18 through UPI, USSD, Aadhar Pay, IMPS and debit cards
- ☐ Banks have targeted to introduce additional 10 lakh new POS terminals by March 2017. They will be encouraged to introduce 20 lakh Aadhar based POS by September 2017

TAX PROPOSALS

In order to make MSME companies more viable, income tax for companies with annual turnover upto Rs. 50 crore is reduced to 25%

With a measure to promote digital economy tax proposals has been laid

- ☐ Under scheme of presumptive income for small and medium tax payers whose turnover is upto 2 crores, the present, 8% of their total turnover which is counted as presumptive income is reduced to 6% in respect of turnover which is by non-cash means.
- ☐ Single transaction or transaction relating to one event from a person or in aggregate from a person in a day above Rs 3 lakh would be permitted in account payee cheque/draft or use of electronic clearing system
- ☐ In order to bring transparency in electoral funding, political parties shall receive donation more than Rs 2000 from one person by cheque or digital mode only

- Miniaturised POS card reader for m-POS (other than mobile phones or tablet computers), micro ATM standards version 1.5.1, Finger Print Readers / Scanners and Iris Scanners and on their parts and components for manufacture of such devices to be exempt from BCD, Excise/CV duty and SAD

Road Ahead

Clearly, automation is going to change India IT forever. It will create a new binary class structure where there will be a very highly paid IT elite.
Simultaneously, measures to promote digitization by government will broaden the scope and accessibility in this sector

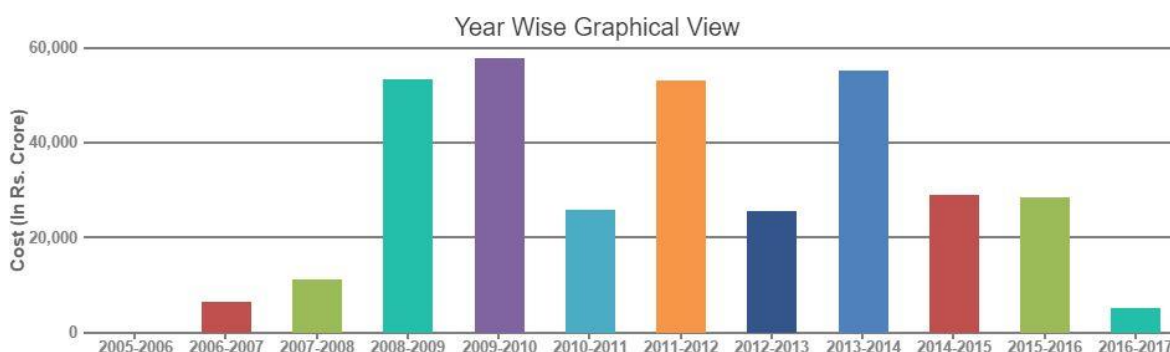
INFRASTRUCTURE

Background

Infrastructure sector is a key driver for the Indian economy. The sector is highly responsible for propelling India's overall development and enjoys intense focus from Government for initiating policies that would ensure time-bound creation of world class infrastructure in the country. Minister of Road Transport and Highways, and Shipping, has announced the government's target of Rs 25 trillion (US$ 376.53 billion) investment in infrastructure over a period of three years, which will include Rs 8 trillion (US$ 120.49 billion) for developing 27 industrial clusters and an additional Rs 5 trillion (US$ 75.30 billion) for road, railway and port connectivity projects.

Connectivity & Infrastructure development through Private-Public-Partnerships (PPPs) will be crucial for India's future growth and the Govt. had planned to award 100 highway projects under the PPP mode in 2016, with expectations that recent amendments in regulations would revive investor sentiments in PPP projects in the infrastructure sector.

Year wise information on PPP projects recommended by the Public Private Partnership Appraisal Committee (PPPAC) for central sector PPP projects:



In August 2016, India jumped 19 places in World Bank's Logistics Performance Index (LPI) 2016, to rank 35th amongst 160 countries.

Recent Developments/ Investments

- In September 2016, the Asian Development Bank (ADB) has approved US$ 631 million loan to develop the first coastal corridor, namely the Vishakhapatnam-Chennai industrial corridor, which is expected to bring manufacturing and export industries to the east coast.
- In October 2016, the Maharashtra government approved two major Metro projects — Thane-Bhiwandi-Kalyan Metro 5 and Swami Samarth (Lokhandwala)-Jogeshwari-Vikhroli-Kanjurmarg Metro 6 corridors, worth Rs 15,088 crore.
- In April 2016, Silver Spring Capital Management, a Hong Kong-based equity hedge fund, plans to invest over Rs 2,000 crore (US$ 306 million) in Hyderabad-based infrastructure developer Transitory India Ltd, for construction of highways in the country.
- In April 2016, Altico Capital, the non-banking finance company (NBFC) of Clearwater Capital Partners LLC, plans to invest around US$150 million in the commercial office properties and infrastructure sector over the next 12-18 months.

Government Initiatives

- The Union Ministry of Urban Development has approved an investment of Rs 495 crore (US$ 72 million) under the Atal Mission for Rejuvenation and Urban Transformation (AMRUT) for FY 2015-16 which will be used for water supply, sewerage networks and septage management, storm water drains, urban transport and provision of green spaces in 13 cities spread over six states.
- The Reserve Bank of India (RBI) has allowed companies in the infrastructure sector to raise External Commercial Borrowings (ECB) with a minimum maturity of five years and with an individual limit of US$ 750 million for borrowing under the automatic route.
- The Securities and Exchange Board of India (SEBI) has allowed Foreign Portfolio Investors (FPI) to invest in units of real estate investment trusts (REITs), infrastructure investment trusts (InvITs), category III alternative investment funds (AIFs), and also permitted them to acquire corporate bonds under default.
- Minister of Road Transport & Highways and Shipping, has launched various online platforms such as ePACE (project appraisals portal), INFRACON (portal for infrastructure consultancy firms and personnel) and INAM PRO (web-based application for infrastructure and material providers), while also inviting stakeholders in the infrastructure sector to consciously use global best practices in road construction sector.
- The Union Cabinet has approved several reforms such as allowing National Highways Authority of India (NHAI) to extend the concession period for current incomplete projects in build-operate-transfer (BOT) mode.
- The Government of India is planning to boost regional connectivity by setting up 50 new airports over the next three years, out of which at least 10 would be operational in next year.
- The government plans to invest over Rs 7,000 crore (US$ 1.04 billion) in FY2016-17 to develop its network in the north-eastern region for better connectivity.
- Department of Industrial Policy and Promotion (DIPP) has set up an online monitoring system for on-going projects under the Industrial Infrastructure Up gradation Scheme (IIUS).

- The Government of Japan, through Japan International Cooperation Agency (JICA), has committed to provide a soft loan of JPY 19.064 billion (US$ 161.2 million) to Government of India at an interest rate of 0.3 per cent per annum for the project of pollution abatement of Mula-Mutha river in Pune, Maharashtra under the National River Conservation Plan.
- The Government of India plans to upgrade India's airport infrastructure over a six-year period, starting with exploring alternative airports like Juhu to ease the pressure on current metro airports.
- Government of India plans to use the new hybrid-annuity model for allocating contracts under the Public Private Partnership (PPP) projects in highways, Namami Gange and Railway Projects, which will help overcome the challenges faced by private developers in the Build-Operate-Transfer (BOT) Toll and BOT-Annuity models.
- The Ministry of Road Transport and Highways plans to build five more greenfield expressways across the country, which are expected to reduce travel time and propel economic growth.
- The Ministry of Urban Development has decided to allow the use of construction & demolition waste up to 20 per cent in construction of load bearing items and up to 100 per cent for non-load bearing purposes. This provision is expected to significantly help in reuse of such waste, in line with ongoing efforts under Swachh Bharat Mission (SBM).
- Inland Waterways Authority of India (IWAI) has begun the preparatory works on converting 106 rivers into National Waterways (NWs) by making them navigable. 106 rivers across the country were declared national waterways by the government in April 2016. These rivers would be used to move freight cargo.
- Modi government sets target of construction of 30km of highways a day as against 13 km per day in earlier regime.

Budget Proposals

- The Budget proposes to facilitate higher investment in affordable housing. Affordable housing will now be given infrastructure status, which will enable these projects to avail the associated benefits.
- For transportation sector as a whole, including rail, roads, shipping, provision of Rs. 2, 41, 387 crores has been made in 2017-18.
- For 2017-18, the total capital and development expenditure of Railways has been pegged at Rs. 1, 31,000 crores. This includes Rs. 55,000 crores to be provided by the Government.
- For passenger safety, a Rashtriya Rail Sanraksha Kosh will be created with a corpus of Rs. 1 lakh crores over a period of 5 years.
- Unmanned level crossings on Broad Gauge lines will be eliminated by 2020.
- In the next 3 years, the throughput is proposed to be enhanced by 10%. This will be done through modernisation and upgradation of identified corridors.
- Railway lines of 3,500 kms will be commissioned in 2017-18. During 2017-18, at least 25 stations are expected to be awarded for station redevelopment.
- 500 stations will be made differently abled friendly by providing lifts and escalators.
- It is proposed to feed about 7,000 stations with solar power in the medium term.
- SMS based Clean My Coach Service has been started.
- 'Coach Mitra', a single window interface, to register all coach related complaints and requirements to be launched.

- By 2019, all coaches of Indian Railways will be fitted with bio toilets. Tariffs of Railways would be fixed, taking into consideration costs, quality of service and competition from other forms of transport.
- A new Metro Rail Policy will be announced with focus on innovative models of implementation and financing, as well as standardisation and indigenisation of hardware and software.
- A new Metro Rail Act will be enacted by rationalising the existing laws. This will facilitate greater private participation and investment in construction and operation.
- In the road sector, Budget allocation for highways increased from Rs. 57,976 crores in BE 2016-17 to Rs. 64,900 crores in 2017-18.
- 2,000 kms of coastal connectivity roads have been identified for construction and development.
- Total length of roads, including those under PMGSY, built from 2014-15 till the current year is about 1, 40,000 kms which is significantly higher than previous three years.
- Select airports in Tier 2 cities will be taken up for operation and maintenance in the PPP mode.
- By the end of 2017-18, high speed broadband connectivity on optical fibre will be available in more than 1, 50,000 gram panchayats, under BharatNet. A DigiGaon initiative will be launched to provide tale-medicine, education and skills through digital technology.
- Proposed to set up strategic crude oil reserves at 2 more locations, namely, Chandikhole in Odisha and Bikaner in Rajasthan. This will take our strategic reserve capacity to 15.33 MMT.
- Second phase of Solar Park development to be taken up for additional 20,000 MW capacity.
- For creating an eco-system to make India a global hub for electronics manufacturing a provision of Rs. 745 crores in 2017-18 in incentive schemes like M-SIPS and EDF.
- A new and restructured Central scheme with a focus on export infrastructure, namely, Trade Infrastructure for Export Scheme (TIES) will be launched in 2017-18.

Tax Proposal

- In order to make MSME companies more viable, income tax for companies with annual turnover upto Rs. 50 crore is proposed to be reduced to 25%.
- Clause 67 of the Bill seeks to amend section 194LC of the Income-tax Act relating to income by way of interest from Indian company. The existing provisions contained in sub-section (2) of the said section, specify the interest eligible for lower withholding tax at the rate of five per cent. It shall be the interest income payable by the specified company on borrowings made by it in foreign currency from sources outside India under a loan agreement or by way of issue of any long-term bonds including long-term infrastructure bonds subject to the approval by the Central Government.
- MAT credit is proposed to be carried forward up to a period of 15 years as against of 10 years at present for Corporate Assesse as well as Non Corporate Assesse (AMT).

Road Ahead

The Government of India had made a record allocation Rs 221,246 crore (US$ 33.07 billion) for several infrastructure projects in Union Budget 2016-17, which is expected to provide significant boost to Indian infrastructure sector.

Indian port sector is poised to mark great progress in the years to come. It is forecasted that by the end of 2017 port traffic will amount to 943.06 MT for India's major ports and 815.20 MT for its minor ports.

Along with that, Indian aviation market is expected to become the third largest across the globe by 2020, according to industry estimates. The sector is projected to handle 336 million domestic and 85 million international passengers with projected investment to the tune of US$ 120 billion. Indian Aviation Industry, which currently accounts for 1.5 per cent of the gross domestic product (GDP), has been instrumental in the overall economic development of the country. Given the huge gap between potential and current air travel penetration in India, the prospects and possibilities of growth of Indian aviation market are enormous.

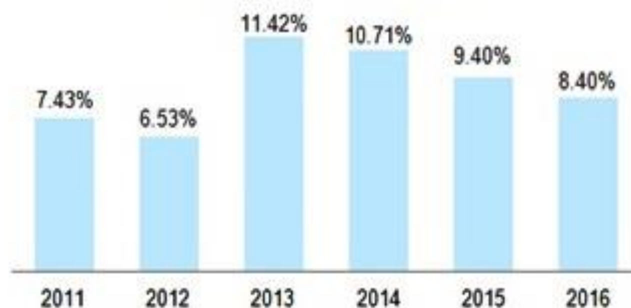
REAL ESTATE

Background

The real estate sector is one of the core sector. The real estate sector comprises four sub sectors - housing, hospitality, and commercial. The growth of this sector is well complemented by the growth of the corporate environment and the demand for office space as well as urban and semi-urban accommodations.

The real estate sector has been in the limelight of reforms over the last few years with the relaxation of Foreign Direct Investment (FDI) norms, introduction of the Real Estate Investment Trust (REIT) regulations, Real Estate (Regulation and Development) Act (RERA) and the government's mega housing mission 2022.

While one would have expected these reforms to have created significant momentum in the sector, the on-ground picture does not seem to reflect it thus far with not a single prospectus for REIT being filed and even the real estate FDI reflecting a declining trend during 2015-16 and 2016-17.



The demonetisation and Benami Transactions (Prohibition) Act came into force on November 1, 2016 seem to have added to the woes of the industry in the short term with the housing and office space demands having slacked though there are hopes of these yielding long term benefits with the falling interest rates and anticipated government thrust to the sector.

Recent Developments

Prime minister recently announced two housing schemes for the urban poor and lower middle class, From January 1, 2017, for housing loans up to Rs. 9 lakh, the government will provide 4% interest subsidy, while for housing loans of up to Rs. 12 lakh, a 3% interest subsidy will be given. Similarly, for the rural poor and lower middle class, those willing to construct houses or expand their existing houses will get an interest subsidy of 2% for loans up to Rs. 2 lakh

Demonetisation: The residential sector saw a marginal dip in secondary land transactions and Sales of luxury flats / units are likely to see a short-term dip for one or two quarters.

Real Estate (Regulation and Development) Act (RERA) come in to force on May 1, 2016: Although actual implementation can only be effective once all states notify the rules under the Act, an effective implementation can be a game-changer for the real estate and construction sector. It has been among the key measures which the government is trying to implement for the development and regulatory transparency of the real estate sector. In view of the slowdown in the housing sector, the Act is expected to be a significant sentiment booster for ultimate buyers and investors.

Goods and Services Tax (GST): The true impact of GST can only be assessed once the final tax rate is out. It must be considered that the sector has linkages with almost 250 ancillary industries such as cement, steel and concrete, among others. Any adverse impact on these key input industries may also have a negative impact on the real estate and construction sector and vice-a-versa.

Government Initiatives

The Government of India along with the governments of the respective states has taken several initiatives to encourage the development in the sector. The Smart City Project, where there is a plan to build 100 smart cities, is a prime opportunity for the real estate companies. Below are some of the other major Government Initiatives:

- The Government of India has been supportive to the real estate sector. In August 2015, the Union Cabinet approved 100 Smart City Projects in India. The Government has also raised FDI limits for townships and settlements development projects to 100 per cent. Real estate projects within the Special Economic Zone (SEZ) are also permitted 100 per cent FDI. The government has also released draft guidelines for investments by Real Estate Investment Trusts (REITs) in non-residential segment.
- Prime Minister Mr Narendra Modi aimed of Housing for All by 2022. Under the Sardar Patel Urban Housing Mission, 30 million houses will be built in India by 2022, mostly for the economically weaker sections and low-income groups, through public-private-partnership (PPP) and interest subsidy.
- The Make in India initiative has helped to accelerate leasing of commercial property by the manufacturing sector, which has outpaced the Information Technology (IT) sector by registering two-fold increase in office transacted space in the first six months of 2016.
- The Securities and Exchange Board of India (Sebi) has proposed easier regulations for real estate investment trusts (REITs), such as raising the cap of investment of REITs' assets in under-construction projects from 10 per cent to 20 per cent, in order to attract the interest of developers, and also plans to relax the rules for foreign fund managers to relocate to India.
- The Securities and Exchange Board of India (SEBI) has allowed Foreign Portfolio Investors (FPI) to invest in units of Real Estate Investment Trusts (REITs), infrastructure investment trusts (InvITs), and category III alternative investment funds (AIFs), and also permitted them to acquire corporate bonds under default.
- Brihanmumbai Municipal Corporation (BMC) has introduced a single-window clearance for construction which will cut the time taken for getting approvals for a building project and will reduce corruption which may lead to rationalisation of prices of residential property, thereby giving a fillip to Mumbai realty.
- Various affordable housing schemes by state governments bring booster to the real estate sector.

Budget Proposals

Tax Proposal

Direct Tax

- ☐ Affordable housing will now be given infrastructure status, which will enable these projects to avail the associated benefits.
- ☐ Under the scheme for profit-linked income tax deduction for promotion of affordable housing, carpet area instead of built up area of 30 and 60 Sq.mtr will be counted.
- ☐ The 30 Sq.mtr. limit will apply only in case of municipal limits of 4 metropolitan cities while for the rest of the country including in the peripheral areas of metros, limit of 60 Sqmtr will apply.
- ☐ For Joint Development Agreement signed for development of property, the liability to pay capital gain tax will arise in the year the project is completed.
- ☐ Reduction in the holding period for computing long term capital gains from transfer of immovable property from 3 years to 2 years. Also, the base year for indexation is proposed to be shifted from 1.4.1981 to 1.4.2001 for all classes of assets including immovable property.
- ☐ For builders for whom constructed buildings are stock-in-trade, tax on notional rental income will only apply after one year of the end of the year in which completion certificate is received.
- ☐ It is proposed to widen the scope of section 56 of the Income-tax Act to provide that any money, immovable property or specified movable property received without consideration or with inadequate consideration, by any person, subject to certain exemption and exceptions, shall be taxable if its value exceeds rupees fifty thousand.

Road Ahead

Responding to an increasingly well-informed consumer base and, bearing in mind the aspect of globalisation, Indian real estate developers have shifted gears and accepted fresh challenges. Real estate developers, in meeting the growing need for managing multiple projects across cities, are also investing in centralised processes to source material and organise manpower and hiring qualified professionals in areas like project management, architecture and engineering.

The growing flow of FDI into Indian real estate is encouraging increased transparency. Developers, in order to attract funding, have revamped their accounting and management systems to meet due diligence and reporting standards.

In the coming few months, the real estate sector is set to undergo a revolutionary transformation with the onset of Goods and Services Tax (GST) and the Real Estate Regulation Act (RERA), both of which are expected to be significant game changers. It is anticipated that these changes will result in significant consolidation in the industry and the larger organised players taking greater market share and transformation from unorganised market to well organised industry.

ENGINEERING

Introduction

Engineering Sector has witnessed a remarkable growth over the last few years, driven by increased investments in infrastructure and industrial production, also play vital role for the development of other industrial sectors of the economy. The engineering is a diverse sector, which being closely associated with the manufacturing and infrastructure sectors, is of strategic importance to India’s economy.

India on its quest to become a global superpower has made significant strides towards the development of its engineering sector. The Government of India plays a crucial role in developing the engineering sector of the economy; it has appointed the Engineering Export Promotion Council (EEPC) as the apex body in charge of promotion of engineering goods, products and services from India. India exports transport equipment, capital goods, other machinery/equipment and light engineering products such as castings, forgings and fasteners to various countries of the world.

Market size

The capital goods & engineering turnover in India is expected to reach US$ 125.4 billion by FY17.

India exports its engineering goods mostly to the US and Europe, which accounts for over 60 per cent of the total exports. Recently, India's engineering exports to Sri Lanka, Nepal and Bangladesh have also emerged as the major destinations for India's engineering exports during April-February 2015-16, together accounting for a sizeable chunk of US$ 5.17 billion.

Investments

The engineering sector in India attracts immense interest from foreign players as it enjoys a comparative advantage in terms of manufacturing costs, technology and innovation. The above, coupled with favourable regulatory policies and growth in the manufacturing sector has enabled several foreign players to invest in India.

In the recent past there have been many major investments and developments in the Indian engineering and design sector:

- India's Texmaco Rail & Engineering has signed a memorandum of understanding (MoU) with Russia's ROSOBORONEXPORT (ROE) for modernisation of Armoured Vehicles operated by the Indian Army.
- Volvo Penta, a marine and industrial power system manufacturer, plans to produce five and eight litre industrial engines at the VE Power train (VEPT) plant in Pithampura near Indore from 2017.
- Rolta, an Information Technology (IT), engineering and geospatial services provider, has been awarded a seven-year, multi-million pound contract by a UK based major utility company UK Power Networks, to manage and update the firm's spatially-enabled network asset information.
- L&T Hydrocarbon Engineering (LTHE), a subsidiary of Larsen & Toubro, has bagged an onshore EPC contract of over Rs 650 crore (US$ 96.25 million) from Gujarat State Fertilisers and Chemicals (GSFC) for setting up 40,000 million tonnes per annum (mtpa) Melamine Plant at Fertiliser Nagar, Vadodara.
- Toshiba Group's water services company UEM India bagged Rs 220 crore (US$ 32.55 million) design, builds and operate (DBO) contract for a wastewater treatment and recycling plant in Oman.
- Toshiba Transmission and Distribution Systems (India) Pvt Ltd has bagged Rs 226 crore (US$ 33.46 million) contract from Kenya Power and Lighting Company for around 8,000 distribution transformers.
- Leading aircraft maker Airbus announced it has begun sourcing components for almost all its jets from India and it aims to take its cumulative sourcing from India to US$ 2 billion by 2020.
- Larsen & Toubro bagged construction orders worth Rs 1,099 crore (US$ 165.6 million) which included jobs from power transmission and distribution sector worth Rs 517 crore (US$ 77.9 million) and a rural electrification project under the Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) scheme at Gorakhpur in Uttar Pradesh.

Government Initiative

Mr Narendra Modi government's `Make in India' and " Skill India" campaign has got the attention of several in infrastructure and engineering multi nationals including GE and ThyssenKrupp, which are considering investing in the country.

The Indian engineering sector is of strategic importance to the economy owing to its intense integration with other industry segments. The sector has been de-licensed and enjoys 100 per cent FDI. With the aim to boost the manufacturing sector, the government has relaxed the excise duties on capital goods, consumer durables and vehicles. It has also reduced the basic customs duty from 10 per cent to 5 per cent on forged steel rings used in the manufacture of bearings of wind operated electricity generators.

Steps have also been taken to encourage companies to perform and grow better. For instance, EIL was conferred the Navaratna status after it fulfilled the criteria set by the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Government of India. The conferred status would give the state-owned firm more financial and operational autonomy.

Defence Sector: Government of India has also taken initiatives to provide a level playing field to domestic and foreign private players bidding for the government contracts in defence sector. The government has withdrawn excise and customs duty exemptions granted to goods manufactured and supplied to the defence ministry by state-owned defence firms. These steps will also encourage participation of foreign Original Equipment Manufacturers such as Boeing, Airbus, Lockheed Martin, BAE Systems, etc.,

To capitalize on the emerging opportunities and for providing a thrust to the defence sector in Gujarat, the state government is planning to set up an exclusive SEZ for defence supply industries. Government of Gujarat has sanctioned to establish Siemens Center of Excellence in Aerospace & Defence at L D College of Engineering, Ahmedabad by signing a MoU in 2013. Gujarat has a significant presence across the entire value chain in the engineering industry with major players such as Thermax, L&T, Tata Motors, Ford, General Motors, Maruti Suzuki, Essar, etc.

Demonetisation: “PMI data for December indicated that the rupee demonetisation took a toll on manufacturing performance,” the report by Nikkei said. “Companies saw new work and output dip for the first time in 2016. In turn, quantities of purchases were scaled back and employment lowered. Meanwhile, input costs increased at a quicker rate, whereas output charge inflation eased.” The respondents said that the withdrawal of high-value rupee notes caused the downturn in December since shortage of cash had resulted in a lower number of new orders.

Due to demonetisation, in the automobile sector which is sub sector of Engineering sector, there was some cushion at wholesale level for Maruti Suzuki, Toyota Kirloskar Motor and Tata Motors, from dealer demand for new models or new variants like Baleno, Brezza, Fortuner, Innova and Tiago. Hyundai India, Honda Cars India and Mahindra & Mahindra have seen some short-term impact on sales. At the retail level, sales for cars without waiting period is down 30-50%. Two-wheeler and commercial vehicles have been hit harder. Sixty to 65% of entry level motorcycle sales.

TAX PROPOSALS:

Direct Tax

- ☐ In order to make MSME companies more viable, income tax for companies with annual turnover upto Rs. 50 crore is proposed to be reduced to 25%.
- ☐ MAT credit is allowed to be carried forward up to a period of 15 years instead of 10 years at present for Corporate Assesse as well as Non Corporate Assesse (AMT).
- ☐ Clause 7 of the Bill seeks to amend section 10AA of the Income-tax Act relating to special provisions in respect of newly established Units in Special Economic Zones. Under the existing provisions of the said section, deduction for fifteen consecutive years is provided from the total income of an assessee in respect of profits and gains from his Unit operating in Special Economic Zone which are engaged in manufacturing or production of articles or things or providing any services, subject to fulfilment of the conditions mentioned in that section. It is proposed to insert a new Explanation after sub-section (1) of the said section so as to provide that the amount of deduction referred to in that section shall be allowed from the total income of the assessee computed in accordance with the provisions of the Income-tax Act, before giving effect to the provisions of the said section and the deduction under the said section shall not exceed such total income of the assessee. This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-2019 and subsequent years.

Indirect Tax

- ☐ Miniaturised POS card reader for m-POS (other than mobile phones or tablet computers), micro ATM standards version 1.5.1, Finger Print Readers / Scanners and Iris Scanners and on their parts and components for manufacture of such devices to be exempt from BCD, Excise/CV dutyand SAD.

Budget Proposal

- ☐ For creating an eco-system to make India a global hub for electronics manufacturing a provision of Rs. 745 crores in 2017-18 in incentive schemes like M-SIPS and EDF. Over 250 investment proposals for electronics manufacturing have been received in the last 2 years, totalling an investment of Rs. 1.26 lakh crores.
- ☐ A number of global leaders and mobile manufacturers have set up production facilities in India. In the Budget, therefore exponentially increased the allocation for incentive schemes like M-SIPS and EDF to Rs. 745 crores in 2017-18. This is an all-time high.

Road Ahead

The engineering sector is a rapidly growing market. Spending on engineering services is projected to increase to US$ 1.1 trillion by 2020.

AGRICULTURE

Introduction

Agriculture sector is the base and backbone of the economy. After two back to back years of drought, India's rural economy benefited in 2016-17 from a normal monsoon and helped raise demand for boosting the GDP. India ranks second globally in agricultural production.

Indian agriculture in the 21st century is structurally dissimilar, diverse, stronger and superior to the one that existed during the Green Revolution. The country's small sized, family farms practice a unique kind of mixed agri-hortilivestock farming, which is a cost-effective model ideal for other developing nations with small farms. Indian farmers multitask, and shift with ease from crop cultivation to animal husbandry, thereby remaining engaged throughout the year. By and large, this versatility has transformed the Indian agricultural sector into a global leader. Also this sector approximately employs 50% of labour out of total workforce.

Over the years, several factors have contributed to the growth of the Indian agriculture industry despite rapid urbanization. Rising private participation in Indian agriculture industry, growing organic farming and use of information technology are some of the key trends in the agriculture industry's rapid development.

Contrary to early fears, as of January 15, 2017 aggregate sowing of the two major Rabi crops—wheat and pulses (gram)—exceeded last year's planting by 7.1 percent and 10.7 percent

Market Size

Agriculture in India is a $370 billion sector. As per industry estimates, the share of agriculture and allied sectors including livestock, forestry and fishery was 15.35 per cent of the Gross Value Added (GVA) during 2015–16.

Agricultural export constitutes 10 per cent of the country's exports and is the fourth largest exported principal commodity. India is the largest producer, consumer and exporter of spices and spice products.

India's fruit production has increased making it the second largest fruit producer in the world. India's horticulture output, comprising fruits, vegetables and spices for year 2015 was a record high of 283.5 million tonnes (MT).

Investments

Some major investments and developments in agriculture in the recent past are as follows:

- Intertek Group, a UK-based total quality assurance provider, has launched an agricultural technology (Agritech) Laboratory in Hyderabad, which will perform high-tech deoxyribonucleic acid (DNA) analyses for the agri-biotech, plant seeds.
- ITC Ltd, one of India's leading fast-moving consumer goods (FMCG) company, plans to make Andhra Pradesh a hub for its agricultural business operations.
- Mahindra and Mahindra Ltd has acquired 35 per cent stake in a Finnish combine harvesters manufacturer, Sampo Roselnew Oy, for US$ 20.46 million and will jointly focus on the combine harvester business in Asia, Africa and Eurasian Economic Union countries.

  One of the major recent development is the emerging investment by start-ups in the agriculture sector to improve storage facilities, dairy management and weather tracking services. Startups

seek opportunities in areas which are critical for the user group that they seek to cater. There is real potential to transfer lessons from the startup culture to our agricultural sector.

- Japanese entrepreneurs are bringing their startup ideas forward, for agriculture in India. Agribuddy is one Japanese startup that has applications for agriculture and has invested $1 million with the Indian banks in a tie-up.

.Government Initiatives

The government of India is investing in two initiatives to boost the economy: supporting the agricultural sector—which employs half of India's workforce—and bolstering startup technology companies. There is real potential to transfer lessons from the startup culture to our agricultural sector.

An initial funding of Rs.2,000 Crore has been made from the allocation of Rs 19,000 crore in the budget 2016-17 for PMGSY (Pradhan Mantri Gram Sadak Yojna) to provide road connectivity to 65,000 habitations.

E-Market Initiative -The National Agriculture Market (NAM), a recent policy initiative of the Narendra Modi government, is expected to bring about greater security for farmers and better returns for their produce. NAM is a game changer for agricultural marketing in India and forms a key component of the Modi government's agenda to reform the farm sector corresponding to the introduction of the new Fasal Bima Yojana and Soil Health Card scheme in the last budget in order to realise its goal of more crop per drop.

- Kisan Suvidha mobile app has been launched by Hon'ble Prime Minister on March 19, 2016. This mobile app is useful for farmers as it provides information on weather, Plant Protection, Input dealers, Agro advisories and market price.

- Crop Insurance Portal for all stakeholders including Farmers, States, Insurance companies and Banks. Information to Farmers on Premium, Cut Off Dates & Company Contacts for their Crop & Location on Web and through mobile app.

- The Cabinet Committee on Economic Affairs (CCEA) has approved 'Blue Revolution', an umbrella scheme for integrated development and management of fisheries by Government of India, with total financial outlay of Rs 3,000 crore (US$ 440.15 million) for a period of five years.

- Under the Make in India Plan, eight mega food parks are functional as on 31.05.2016 viz Patanjali Food and Herbal Park, Haridwar, Srini Food Park, Chittoor etc.

On account of the volatility of prices of pulses, a Committee on 'Incentivising Pulses Production Through Minimum Support Price (MSP) and Related Policies' was set up under the Chairmanship of Dr. Arvind Subramanian, Chief Economic Adviser, which submitted its report on 16th September, 2016.

Effects of demonetisation

Demonetisation impacted the agriculture marketing system where payments are largely made in cash by intermediaries. In the short term, the sector has to brave several storms before it realises the true fruits of demonetization. However, with banking system glowing with liquidity, there can be increase in investments in farm sector.

Demonetization will empower India's farming communities and bring them at par with city dwellers. Access to institutional credit has the potential to change the very nature of Indian agriculture, post successful implementation of demonetization.

Budget Proposals

A total allocation for Rural, Agriculture and Allied sectors of Rs 18,7223 crores has been made.

Major Steps proposed by the Finance Minister in Budget 2017-18 for Agriculture & Farmer's welfare

- ☐ Target for agricultural credit in 2017-18 has been fixed at a record level of Rs.10 lakh crores.
- ☐ 60 days interest waiver announced on 31st Dec, 2016 will benefit farmers.
- ☐ Government to support NABARD for computerisation and integration of all 63,000 functional Primary Agriculture Credit Societies with the Core Banking System of District Central Cooperative Banks to ensure flow of credit to small farmers. This will be done in 3 years at an estimated cost of Rs. 1,900 crores.
- ☐ Coverage under Fasal Bima Yojana scheme will be increased from 30% of cropped area in 2016-17 to 40% in 2017-18 and 50% in 2018-19 for which a budget provision of Rs. 9000 crore has been made.
- ☐ New mini labs in Krishi Vigyan Kendras (KVKs) and ensure 100% coverage of all 648 KVKs in the country for soil sample testing
- ☐ Dedicated Micro Irrigation Fund in NABARD to achieve 'per drop more crop' with an initial corpus of Rs. 5,000 crores
- ☐ Coverage of National Agricultural Market (e-NAM) to be expanded from 250 markets to 585 APMCs. Assistance up to Rs. 75 lakhs will be provided to every e-NAM
- ☐ Dairy Processing and Infrastructure Development Fund to be set up in NABARD with a corpus of Rs. 2000 crores and will be increased to Rs. 8000 crores over 3 years for availability of milk processing facility and other infrastructure to farmers through value addition.
- ☐ A model law on contract farming to be prepared and circulated among the States for adoption
- ☐ An expert committee will be constituted to study and promote creation of an operational and legal framework to integrate spot market and derivatives market in the agricultural sector, for commodities trading. e- NAM to be an integral part of the framework.

Road Ahead

Digital Infrastructure in villages will help catalyse linkages through this system to wider financial markets and last mile connectivity needs to be ensured.

The Indus Water Treaty addressing the sharing of waters of the Indus between India and Pakistan assumes a crucial role due to proposed efficient storage and use of water flowing to neighbouring country.

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