INDIA BUDGET 2016

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CHARTERED ACCOUNTANTS

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FOREWORD….

The third Budget of the NDA (National Democratic Alliance) government lead by Narendra Modi was presented today by Finance Minister Arun Jaitley in the backdrop of slowing down global economy. With the recessionary trends visible worldwide and financial markets being battered in the past one year (which is also reflected at India in a 25% stock market correction in the two month preceding this Budget), Mr Jaitley had to deal with lot of expectations of Industry leaders and *aam aadmi* (common people)

The Economic Survey tabled before the Budget outlined the prevailing economic scenario, particularly positive indicators like growth rate of 7.6%, fiscal deficit at 3.9%, highest ever level of foreign exchange reserve of around USD 350 billion, fall to the crude oil prices resulting into huge foreign exchange savings, etc. offers the government desired maneuverability to conclude bold policy direction. India stands out as a bright spot (promising of sustainable economic growth) when almost all the developed economies are in the midst of financial & economic difficulties. At the same time, the RBI's mandate to the banks to clean up their books, had cast a gloom in the industry circles.

The Finance Minister, under the circumstances, seems to have met the expectations of high public spending on creating infrastructure aimed to give a big push to the Indian economy. He has presented a budget which scores high on improving macro-fundamentals for reaping demographic dividends and is low on populism. He has outlined agriculture, rural sector, education, skill and job creation, infrastructure, financial sector reforms, ease of doing business, fiscal discipline & tax reforms as the nine pillars for transforming India and has tried to address each of these in a judicious manner and with liberal budgetary allocations. He has resisted the temptation to waver from the path of fiscal consolidation and has stuck to the goal of 3.5% fiscal deficit; despite the tough global environment. "Make In India", "Start–up India", "Stand-up India", "Infrastructure", "Kirshi kalyan", "Ease of doing business", "Skill India" & "Swachh Bharat" have clearly been the drivers of the tax & fiscal policy of this Budget.

He has also been bold to introduce an Income Disclosure Scheme for domestic tax payers & a Dispute Resolution Scheme to settle pending litigations at the first appellate level. He has also made a sincere attempt to simplify the relevant tax provisions dealing with the penalty, interest & other procedures under the Income Tax Act. As expected, many changes have been also proposed in the direction of implementation of the Action Plans suggested by OECD under BEPS project.

Under Indirect Tax regime, having regard to the inability of the government to muster the required support to pass the much needed GST bill, the Budget proposals outlines various measures to support the budget strategy. The budget proposals are aimed to boost the growth as well as incentivize domestic value addition to support Make In India. Whilst there is no increase to the prevailing rate of service tax, the introduction of new levy (Krishi Kalyan cess under service tax & Infrastructure cess under Excise Law) shall enable the government to mobilize additional revenue.

Despite electoral setbacks and an aggressive opposition, the Budget unambiguously signals the commitment of the government towards continued economic reforms and fiscal discipline. It contains announcements, with positive intentions juggling between social & economic reforms at the same time. All in all, a well steered budget in this turbulent time to boost the growth trajectory of the country….

Monday, February 29, 2016

Mumbai

INDIA

EXECUTIVE SUMMARY

DIRECT TAX PROPOSALS

- ☐ Raising the ceiling of tax rebate under section 87A from Rs 2000 to Rs 5000 to lessen tax burden on individuals with income up to Rs 5 Lakhs.
- ☐ Increase the limit of deduction of rent paid under section 80GG from Rs 24000 per annum to Rs 60000, to provide relief to those who live in rented houses.
- ☐ Increase the turnover limit under Presumptive taxation scheme under section 44AD of the Income Tax Act to Rs 2 crores to bring big relief to a large number of assessees in the MSME category.
- ☐ Extend the presumptive taxation scheme with profit deemed to be 50%, to professionals with gross receipts up to Rs 50 lakh.
- ☐ Phasing out deduction under Income Tax:
  - Accelerated depreciation wherever provided in IT Act will be limited to maximum 40% from 1.4.2017
  - Benefit of deductions for Research would be limited to 150% from 1.4.2017 and 100% from 1.4.2020
  - Benefit of section 10AA to new SEZ units will be available to those units which commence activity before 31.3.2020.
  - The weighted deduction under section 35CCD for skill development will continue up to 1.4.2020
- ☐ New manufacturing companies incorporated on or after 1.3.2016 to be given an option to be taxed at 25% + surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.
- ☐ Lower the corporate tax rate for the next financial year for relatively small enterprises i.e. companies with turnover not exceeding Rs 5 crore (in the financial year ending March 2015), to 29% plus surcharge and cess.
- ☐ 100% deduction of profits for 3 out of 5 years for startups setup during April, 2016 to March, 2019. MAT will apply in such cases.
- ☐ 10% rate of tax on income from worldwide exploitation of patents developed and registered in India by a resident.
- ☐ Complete pass through of income-tax to securitization trusts including trusts of ARCs. Securitisation trusts required to deduct tax at source.
- ☐ Period for getting benefit of long term capital gain regime in case of unlisted companies is proposed to be reduced from three to two years.
- ☐ Non-banking financial companies shall be eligible for deduction to the extent of 5% of its income in respect of provision for bad and doubtful debts.
- ☐ Commitment to implement General Anti Avoidance Rules (GAAR) from 1.4.2017.
- ☐ Withdrawal up to 40% of the corpus at the time of retirement to be tax exempt in the case of National Pension Scheme (NPS). Annuity fund which goes to legal heir will not be taxable.

- In case of superannuation funds and recognized provident funds, including EPF, the same norm of 40% of corpus to be tax free will apply in respect of corpus created out of contributions made on or from 1.4.2016.
- Limit for contribution of employer in recognized Provident and Superannuation Fund of Rs 1.5 lakh per annum for taking tax benefit. Exemption from service tax for Annuity services provided by NPS and Services provided by EPFO to employees.
- 100% deduction for profits to an undertaking in housing project for flats up to 30 sq. metres in four metro cities and 60 sq. metres in other cities approved during June 2016 to March 2019 and completed in three years. MAT to apply.
- Deduction for additional interest of Rs 50,000 per annum for loans up to Rs 35 lakh sanctioned in 2016-17 for first time home buyers, where house cost does not exceed Rs 50 lakh. 12
- Distribution made out of income of SPV to the REITs and INVITs having specified shareholding will not be subjected to Dividend Distribution Tax, in respect of dividend distributed after the specified date.
- Additional tax at the rate of 10% of gross amount of dividend will be payable by the recipients receiving dividend in excess of Rs 10 lakh per annum.
- Surcharge to be raised from 12% to 15% on persons, other than companies, firms and cooperative societies having income above Rs 1 crore.
- Tax to be deducted at source at the rate of 1 % on purchase of luxury cars exceeding value of Rs ten lakh and purchase of goods and services in cash exceeding Rs two lakh.
- Securities Transaction tax in case of 'Options' is proposed to be increased from .017% to .05%.
- Equalization levy of 6% of gross amount for payment made to non-residents exceeding Rs 1 lakh a year in case of B2B transactions.
- Committed to providing a stable and predictable taxation regime and reduce black money.
- Domestic taxpayers can declare undisclosed income or such income represented in the form of any asset by paying tax at 30%, and surcharge at 7.5% and penalty at 7.5%, which is a total of 45% of the undisclosed income. Declarants will have immunity from prosecution.
- Surcharge levied at 7.5% of undisclosed income will be called Krishi Kalyan surcharge to be used for agriculture and rural economy.
- New Dispute Resolution Scheme to be introduced. No penalty in respect of cases with disputed tax up to Rs 10 lakh. Cases with disputed tax exceeding Rs 10 lakh to be subjected to 25% of the minimum of the imposable penalty. Any pending appeal against a penalty order can also 14 be settled by paying 25% of the minimum of the imposable penalty and tax interest on quantum addition.
- High Level Committee chaired by Revenue Secretary to oversee fresh cases where assessing officer applies the retrospective amendment.
- One-time scheme of Dispute Resolution for ongoing cases under retrospective amendment.

- ☐ Penalty rates to be 50% of tax in case of underreporting of income and 200% of tax where there is misreporting of facts.
- ☐ Disallowance will be limited to 1% of the average monthly value of investments yielding exempt income, but not exceeding the actual expenditure claimed under rule 8D of Section 14A of Income Tax Act.
- ☐ Time limit of one year for disposing petitions of the tax payers seeking waiver of interest and penalty.
- ☐ Mandatory for the assessing officer to grant stay of demand once the assesse pays 15% of the disputed demand, while the appeal is pending before Commissioner of Income-tax (Appeals).
- ☐ Monetary limit for deciding an appeal by a single member Bench of ITAT enhanced from Rs 15 lakhs to Rs 50 lakhs.
- ☐ Additional options to banking companies and financial institutions, including NBFCs, for reversal of input tax credits with respect to nontaxable services.
- ☐ Expansion in the scope of e-assessments to all assessees in 7 mega cities in the coming years.
- ☐ Interest at the rate of 9% p.a against normal rate of 6% p.a for delay in giving effect to Appellate order beyond ninety days.
- ☐ 'e-Sahyog' to be expanded to reduce compliance cost, especially for small taxpayers.

INTERNATIONAL TAXATION

- ☐ Determination of residency of foreign company on the basis of Place of Effective Management (POEM) is proposed to be deferred by one year.
- ☐ For non-residents providing alternative documents to PAN card, higher TDS not to apply.
- ☐ Continue with the ongoing reform programme and ensure passage of the Goods and Service Tax bill and Insolvency and Bankruptcy law
- ☐ Undertake important banking sector reforms and public listing of general insurance companies undertake significant changes in FDI policy.
- ☐ Reforms in FDI policy in the areas of Insurance and Pension, Asset Reconstruction Companies, Stock Exchanges.
- ☐ 100% FDI to be allowed through FIPB route in marketing of food products produced and manufactured in India.
- ☐ A new policy for management of Government investment in Public Sector Enterprises, including disinvestment and strategic sale,

INDIRECT TAX PROPOSALS

SERVICE TAX

- ☐ Exemption of service tax on services provided under Deen Dayal Upadhyay Grameen Kaushalya Yojana and services provided by Assessing Bodies empanelled by Ministry of Skill Development & Entrepreneurship.
- ☐ Exemption of Service tax on general insurance services provided under 'Niramaya' Health Insurance Scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability.
- ☐ Reduce service tax on Single premium Annuity (Insurance) Policies from 3.5% to 1.4% of the premium paid in certain cases.
- ☐ Exemption from service tax on construction of affordable houses up to 60 square metres under any scheme of the Central or State Government including PPP Schemes.
- ☐ Krishi Kalyan Cess, @ 0.5% on all taxable services, w.e.f. 1 June 2016. Proceeds would be exclusively used for financing initiatives for improvement of agriculture and welfare of farmers. Input tax credit of this cess will be available for payment of this cess.
- ☐ Infrastructure cess, of 1% on small petrol, LPG, CNG cars, 2.5% on diesel cars of certain capacity and 4% on other higher engine capacity vehicles 13 and SUVs. No credit of this cess will be available nor credit of any other tax or duty be utilized for paying this cess.
- ☐ 'Clean Energy Cess' levied on coal, lignite and peat renamed to 'Clean Environment Cess' and rate increased from Rs 200 per tonne to Rs 400 per tonne.
- ☐ Assignment of right to use the spectrum and its transfers has been deducted as a service leviable to service tax and not sale of intangible goods.
- ☐ 11 new benches of Customs, Excise and Service Tax Appellate Tribunal (CESTAT).
- ☐ 13 cesses, levied by various Ministries in which revenue collection is less than ` 50 crore in a year to be abolished.

EXCISE DUTY

- ☐ Basic custom and excise duty on refrigerated containers reduced to 5% and 6%.
- ☐ Extend excise duty exemption, presently available to Concrete Mix manufactured at site for use in construction work to Ready Mix Concrete.
- ☐ Excise duty of '1% without input tax credit or 12.5% with input tax credit' on articles of jewellery [excluding silver jewellery, other than studded with diamonds and some other precious stones], with a higher exemption and eligibility limits of Rs 6 crores and Rs 12 crores respectively.
- ☐ Excise on readymade garments with retail price of Rs 1000 or more rose to 2% without input tax credit or 12.5% with input tax credit.
- ☐ Excise duties on various tobacco products other than beedi raised by about 10 to 15%.
- ☐ Revision of return extended to Central Excise assesses.

MAKE IN INDIA

- Changes in customs and excise duty rates on certain inputs to reduce costs and improve competitiveness of domestic industry in sectors like Information technology hardware, capital goods, defence production, textiles, mineral fuels & mineral oils, chemicals & petrochemicals, paper, paperboard & newsprint, Maintenance repair and overhauling [MRO] of aircrafts and ship repair.

BACKDROP TO THE BUDGET AND RECENT DEVELOPMENTS

INCOME TAX

Domestic Taxation

Circulars/ Notifications/Press Release

Cost Inflation Index for F.Y. 2015-16

S.O. 2031 (E) - In exercise of the powers conferred by clause (v) of the Explanation to section 48 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, published in the Gazette of India, Extraordinary, vide number S.O. 709(E), dated the 20th August, 1998.

In the said notification, in the Table, after serial number 34 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

Sl. No.	Financial Year	Cost Inflation Index
(1)	(2)	(3)
"35	2015-2016	1081"

[Notification No. 60 /2015/F.No.142/10/2015-TPL]

Within one month of the signing of the Inter-Governmental Agreement with the U.S., the Central Board of Direct Tax prescribed Rules 114F to 114H under the Income-tax Rules, 1962 ('the Rules') with respect to the information exchange mandate cast on Financial Institutions ('FI'). The prescribed Rules provide further clarification for operationalisation of FATCA and CRS.

- The Rules provided clarity on the reporting timelines for reportable accounts. The reporting with respect to accounts held in 2014 is required to be reported on or before August 31, 2015. However, this timeline was extended to September 10, 2015 owing to the challenges faced by the FI's.
- The FI's will have to register themselves with the Director of Income Tax. Post registration, the FI shall be allotted an Income Tax Department Reporting Entity Identification Number (ITDREIN). Followed by the registration process, the FI's, based on the conclusion of the due diligence procedures and identification of reportable accounts shall furnish the required details in Form 61B. The FI will have to identify a responsible person (i.e. a designated director) for the purpose of such reporting and Form 61B needs to be submitted by such person from his own income-tax account on the e-filing website. Such reporting form is required to be digitally signed by the designated director.
- However, in situations where the due diligence process is unlikely to conclude before due date of filing of the FATCA return, the FI's may, in accordance with the rules, file a Nil return for accounts held as on December 31, 2014. Once the reportable accounts are identified within the timelines stipulated in the rules, it will have to be reported in the return to be filed in 2016. This effectively provides for extension to comply with the regulations, however, one would need to take an effective decision in relation to time extension.

[Notification 62/2015 dated August 7, 2015, Guidance Note dated August 31, 2015 and Notification 4/2015 dated September 4, 2015]

Extension of due date:

The due date for e-filing of tax return and tax audit report [mandatory where sales, turnover or gross receipts exceed INR 10Mn (for business) or INR 2.5Mn (for profession)] has been extended from September 30 to October 31, 2015 for all the taxpayers.

[Press Release dated October 1, 2015]

S.O. 2965(E).— In exercise of the powers conferred by section 1 18 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, published in the Gazette of India, Extraordinary, P art-II, Section 3, Sub-section (ii), vide number S. O. 14(E), dated the 1stJanuary, 2015 (No. 1/2015, dated the 1 St January, 2015),the Central Board of Direct Taxes hereby directs that the Income-tax authorities specified in column (2) of t he Table below shall, for the purposes of the functions under section 144C of the said Act, be subordinate to the Income- tax authority specified in column (1) of the said T able, namely:—

Income-tax Authority	Income-tax Authorities
(1)	(2)
Principal Chief Commissioner of Income-tax(International Taxation)	Commissioners of Income-tax being Members of Dispute Resolution Panel-1, Delhi and Dispute Resolution Panel - 2, Delhi
Chief Commissioner of Income Tax(International Taxation)(West Zone), Mumbai	Commissioners of Income Tax being Members of Dispute Resolution Panel -1, Mumbai, Dispute Resolution Panel -2, Mumbai and Dispute Resolution Panel 3, Mumbai
Chief Commissioner of Income-tax(International Taxation)(South Zone), Bengaluru	Commissioners of Income-tax being Members of Dispute Resolution Panel-1, Bengaluru and Dispute Resolution Panel -2, Bengaluru

[Notification No. 87/ 2015/ F.No. 500/25/2014-SO/FTnTR-2(1)]

Relaxation in claiming expenditure on treatment of specialist ailments (Sec. 80DDB)

Section 80DDB allows a deduction for expenditure incurred on treatment of specified ailments. Central Board of Direct Taxes (CBDT) has issued a Notification vide S.O. No.2791 (E) on 12th October 2015 amending Rule 11DD, whereby the condition of obtaining the certificate for claiming expenditure under this sec□on in respect of specified ailments, only from a specialist working in a Government hospital is done away with. Going forward the prescription can be issued by any specialist and not only the one working in government hospitals.

[Notification 78 dated 12.10.2015]

Section 12AA of the income-tax act, 1961 - charitable or religious trust - registration procedure - strict adherence of prescribed time limit in passing order under section 12AA.

Sub-section (2) of section 12AA of the Income-tax Act, 1961 prescribes that every order granting or refusing registration under clause (b) of sub-section (1) of that section shall be passed before the expiry

of six months from the end of the month in which the application was received under clause (a) or clause (aa) of the sub-section (1) thereof. Thus while processing the application under section 12AA of the Act, the time limit of six months has to be adhered to by the Commissioner of Income Tax (Exemptions). However, it has been brought to the notice of the Board that the said time limit has not been observed in some cases.

The undersigned is directed to convey that the aforesaid time limit of six months is to be strictly followed by the Commissioner of Income Tax (Exemptions) while passing order under section 12AA. The CCIT (Exemptions) may monitor the adherence of prescribed time limit and initiate suitable administrative action in case any laxity in adhering to the same is noticed.

New PAN activity monitoring tool

Government is set to unveil an ambitious PAN activity monitoring and analysis software tool that will enable Income Tax department to check transactions history of a person country-wide and help sleuths in effective tracking of black money trail. The digital and smart platform is called the Income Tax Business Application-Permanent Account Number (ITBA-PAN) and is currently being put to final tests.

The new software tool will enable the taxman to view, in a chronological order, the entire "PAN life cycle summary" or to simply say transactions history of an individual or entity where a PAN number has been quoted, in any part of the country. The new platform, according to an official proposal accessed by PTI, will also allow the taxman to view and capture various events of an assessee like "death, liquidation, dissolution, de-merger, merger, acquisition, fake PAN or amalgamation of PAN" in a specific or general case in an event of any investigation to be carried out in a case of black money or tax evasion.

Revision of monetary limits for filing departmental appeals before the Tribunal, High Court or Supreme Court

- For the purpose of filing appeals before the Tribunal, High Court or Supreme Court by the department, an appeal can now be filed on merit provided the “tax effect” exceeds the monetary limits specified as under:

Sr. no	Authority before whom the appeal is pending	Monetary Limit
1	Before Appellate Tribunal	10,00,000/-
2	Before High Court	20,00,000/-
3	Before Supreme Court	25,00,000/-

- “Tax effect” for this purpose shall be as under:

Particulars	Appeal
Issues other than penalty and interest	Tax on litigated issues excluding interest and penalty
Penalty	Penalty Amount
Interest levied under the Act	Interest amount

- The aforesaid limits shall be checked for every assessment year to determine the eligibility to file an appeal. In case the disputed issue is a recurring one, an appeal shall be filed in the year(s) in which the tax effect exceeds the monetary limit.

- In case of composite order of any High Court or appellate authority (involves commons issues), the following:

Grounds	Tax effect means
Tax effect is less than prescribed limit for each year	Appeal cannot be filed for any year
Tax effect is more than prescribed limit for any one year	Appeal can be filed for all the year, if appeal is sought to be filed in which tax effect is more than prescribed limit

  However, where more than one assessee's are involved in Composite order, each assessee shall be dealt with separately.

- The above changes shall not apply to the following issues:
  i. where the issue challenges the constitutional validity of the provisions of the Act or the Rules,
  ii. where the Board's notification/ circular/ instructions are held to be ultra vires,
  iii. where Revenue Audit objection has been accepted by the Department,
  iv. where addition pertains to undisclosed foreign assets/ bank accounts.
- The above changes shall be applied to appeals to be filed henceforth as well as retrospectively to pending appeals, which may be withdrawn or not pressed. However, appeal before the Supreme Court will be governed by the instruction operative at the time when the appeal was filed.

[Circular No. 21 dated 10.12.2015]

S.O. 127 (E).- In exercise of the powers conferred by section 11 read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

- These rules may be called the Income-tax **(1st Amendment) Rules, 2016.**
- They shall come into force from the **1st day of April, 2016.**

[Notification no. 03/2016]

In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), for rule 17, the following rule shall be substituted, namely:-

"17. Exercise of option etc under section 11

- The option to be exercised in accordance with the provisions of the Explanation to sub-section (1) of section 11 in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income of the relevant assessment year.
- The statement to be furnished to the Assessing Officer or the prescribed authority under sub-section (2) of section 11 or under the said provision as applicable under clause (21) of section 10 shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income.
- The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No.10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.
- The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-
  i. Specify the procedure for filing of Forms referred to in sub-rule (3);

ii. Specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(3), for purpose of verification of the person furnishing the said Forms; and

iii. Be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished."

[Notification no. 03/2016]

In the said rules, in Appendix II,-

After Form No.9, the following Form shall be inserted, namely FORM 9A [refer rule 17(1)]

[Notification no. 03/2016]

INCOME TAX – DOMESTIC TAXATION

SUPREME COURT DECISION

TAPARIA TOOLS LTD. VS. JCIT

UPFRONT DEBENTURE INTEREST IN LIEU OF PERIODICAL PAYMENTS IS ALLOWABLE IN FULL IN THE YEAR OF PAYMENT

The Supreme Court had to consider the issue whether the upfront debenture interest in lieu of periodical payments is allowable in full in the year of payment. The Apex court held as under while allowing the deduction of upfront debenture interest in the year of payment:

- Section 36(1)(iii) of the Act provides for deduction of interest if the interest was paid on the capital borrowed by the assessee and if the borrowing was for the purpose of business or profession. In the instant case, the AO has not disputed the facts that the money raised by issuance of debentures would be capital borrowed and the debentures were issued for the purpose of the business of the assessee. In such a case, the interest has to be allowed in the year in which such interest has been incurred. Merely by giving contradictory treatment in books of accounts, the assessee cannot be stopped from claiming the deduction of the entire interest in the year in which it was incurred.
- The High Court has also wrongly applied the "Matching Concept" to deny the deduction of the upfront interest payment in the first year. As per the terms of issue, the interest can also be paid upfront in the first year of the issue itself. By this, the assessee was benefited by making payment of a lesser amount of interest in comparison with the interest which would be payable over a period of five years under the first option. Therefore, the only aspect which has to examined for allowance of such deductions is whether the provisions of section 36(1)(iii) read with section 43(ii) of the Act were satisfied or not. Once these are satisfied, there is no question of denying the benefit of entire deduction in the year in which such an amount was actually paid or incurred.
- Also, there is no concept of deferred revenue expenditure under the provisions of the Act for such expenditure. The moment the debenture holders exercised the second option of upfront interest, the liability to make the payment of interest in that very year has arisen. In Bharat Earth Movers vs. CIT [SC], it was held that if a business liability has arisen in the accounting year, the deduction should be allowed even if such a liability may have to be quantified and discharged at a future date. In the present case, the liability had arisen in the same year in which it was quantified and discharged. Thus, the deduction can be allowed in that very accounting year.
- The principle that generally emerges is that normally the revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims such expenditure in the year of incurrence, the same cannot be denied. However, in cases where the assessee himself wants to spread the expenditure over a period of subsequent years, it can be allowed only if the 'Matching Principle' is satisfied. In the instant case, the assessee did not want the debenture interest to be spread over a period of five years and had claimed the entire interest paid upfront as deductible expenditure in the same year. In such a situation, the assessee has to be permitted to claim it in the year in which it was incurred.

CHENNAI PROPERTIES AND INVESTMENTS LTD. VS. CIT

RENTAL INCOME FROM LETTING OF PROPERTY IS ASSESSABLE AS BUSINESS INCOME AND NOT INCOME FROM HOUSE PROPERTY.

The main objective of the assessee company, as stated in the Memorandum of Association (MOA), was to acquire the properties and to let out those properties. Assessing Officer (AO) taxed the rental income under the head Income from House Property as against Business Income.

The Supreme Court decided the issue in favour of the assessee by holding that:

- Main object of the assessee company as per MOA, was to acquire and hold properties and to let out those properties.
- Entire income was out of letting out of aforesaid properties and no other income was earned.
- It distinguished the case of East India Housing and Land Development Trust Ltd. relied by the High Court, on the ground that the main object of the company was buying and developing properties. It further observed that letting out of the property was not the objective of the company at all. Accordingly, rental income from shops and stalls developed by the company was rightly taxed under the head House Property.
- Reliance was also placed on the decision of Karanpura Development Co. Ltd., wherein it was held that deciding factor is not the ownership of the land or leases but the nature of activity of the company and the nature of operations in relation to them. It was highlighted that the objects of the company must also be kept in view to interpret the activities.
- Court also considered the ratio laid down in the case of Sultan Brothers (P) Ltd., wherein it was held that merely an entry in the object clause showing a particular object would not be the determinative factor to arrive at a conclusion whether the income is to be treated as business income. Therefore, such a question would depend upon the circumstances of each case i.e. whether a particular business is letting or not.
- Considering the object clause of the company and relying on the Principle laid down in case of Karanpura Development Co. Ltd., the court held that income had to be treated as income from business and not as income from House Property.

CIT VS. BANK OF NOVA SCOTIA

Section 271C: Penalty for failure to deduct TDS cannot be levied if Department is unable to show contumacious conduct on the part of the assessee

Amounts were already paid by the assessee to end dispute with Revenue. It was held by the apex Court that for levy of penalty u/s 271C, it is necessary to establish that there was contumacious conduct on the part of the assessee. Hence, penalty for failure to deduct TDS cannot be levied in absence of contumacious conduct

M/S GANAPATHY & CO VS. CIT

Section 256: While findings of fact found by the Tribunal are final and the High Court cannot reappraise the same, the High Court can take note of facts on record which are lost sight of by the Tribunal and also construe certain facts to be of significance as against the different view of the Tribunal

Apex Court held that it is well settled that issues of fact determined by the Tribunal are final and the High Court in exercise of its reference jurisdiction should not act as an appellate Court to review such findings of fact arrived at by the Tribunal by a process of reappreciation and reappraisal of the evidence on record. High Court can take into account certain additional facts, already on record, which were however not taken note of by the Tribunal to arrive at its findings

HERO CYCLES (P) LTD VS. CIT

Section 36(1)(iii): Law on when interest expenditure on loans diverted to sister concerns and directors can be allowed as business expenditure explained

- Supreme Court held that once it is established that there is nexus between the expenditure and the purpose of business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case.
- It further held that no businessman can be compelled to maximize his profit and that the income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. In this case, the advance to M/s. Hero Fibres Limited became imperative as a business expediency in view of the undertaking given to the financial institutions by the assessee to the effect that it would provide additional margin to M/s. Hero Fibres Limited to meet the working capital for meeting any cash loses. Subsequently, the assessee company had off-loaded its share holding in the said M/s. Hero Fibres Limited to various companies of Oswal Group and at that time, the assessee company not only refunded back the entire loan given to M/s. Hero Fibres Limited by the assessee but this was refunded with interest. In the year in which the aforesaid interest was received, same was shown as income and offered for tax.

JAPAN AIRLINES CO. LTD VS. CIT

Section 194I: In deciding whether a payment is for "use of land", the substance of the transaction has to be seen. If the payment is for a variety of services and the use of land is minor, the payment cannot be treated as "rent"

- The expression 'rent' is given much wider meaning under this provision than what is normally known in common parlance. It means any payment which is made under any lease, sub-lease, and tenancy. Once the payment is made under lease, sub-lease or tenancy, the nomenclature which is given is inconsequential. Such payment under lease, sub-lease and/or tenancy would be treated as 'rent'. Secondly, such a payment made even under any other 'agreement or arrangement for the use of any land or any building' would also be treated as 'rent'. Whether or not such building is owned by the payee is not relevant. The expressions 'any payment', by whatever name called and 'any other agreement or arrangement' have the widest import. Likewise, payment made for the 'use of any land or any building' widens the scope of the proviso;

- The charges which are fixed by the Airport Authority of India (AAI) for landing and take-off services as well as for parking of aircrafts are not for the 'use of the land'. These charges are for services and facilities offered in connection with the aircraft operation at the airport. There are various international protocols which mandate all such authorities manning and managing these airports to construct the airports of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as on safe landing and parking of the aircrafts. Therefore, it is not mere 'use of the land'. On the contrary, it is the facilities, that are to be compulsarily offered by the AAI in tune with the requirements of the protocol, which is the primary focus;
- Hence, it was held by the Apex Court that use of land, in the process, become incidental. Landing/ parking charges paid by an airline company to the AAI were payments for a contract of work under Section 194-C and not in the nature of 'rent' as defined in Section 194-I.

CIT VS. SARKAR BUILDERS

Section 80-IB(10): Restriction on extent of commercial area in "housing project" imposed with effect from 1.4.2005 does not apply to housing projects approved before 1.4.2005 even though completed after 1.4.2005

In case of the assessee, in order to avail the benefit in the assessment years after 1.4.2005, how can balconies be removed though these were permitted earlier. It was held by the Apex Court that holding so would lead to absurd results as one cannot expect an assessee to comply with a condition that was not a part of the statute when the housing project was approved. Clause (d) of Section 80IB (10) is to be treated as inextricably linked with the approval and construction of the housing project and an assessee cannot be called upon to comply with the said condition when it was not in contemplation either of the assessee or even the Legislature, when the housing project was accorded approval by the local authorities

SESHASAYEE PAPER & BOARDS LTD VS. CIT

Section 32: The assessee has the right to disclaim depreciation in its entirety. However, it cannot claim depreciation for the current year and disclaim unabsorbed depreciation

- The Apex Court held that once the unabsorbed carried forward depreciation has become a part of the depreciation of the current year, it is not open to the assessee to bifurcate the two again and exercising its choice to claim the depreciation of the current year under Section 32(1) of the Act and take a position that since unabsorbed depreciation of the previous years is not claimed, it cannot be thrusted upon the assessee.
- The Court observed that the position would have been different if the assessee had not claimed any depreciation at all. However, once the depreciation is claimed and while giving deductions the depreciation is to be set off against the profits of the current year prior to the unabsorbed carried forward investment allowance, it is the entire depreciation, namely, the depreciation of the current year as well as the unabsorbed carried forward depreciation, which is to be taken into account as by virtue of the fiction created under Section 32(2) of the Income Tax Act, 1961

HIGH COURT DECISIONS

CIT VS. M/S. GRINDWELL NORTON LTD

PREMIUM PAID ON PREMATURE REDEMPTION OF DEBENTURES BY MUTUAL ARRANGEMENT IS REVENUE EXPENDITURE

The issue before Bombay High Court was whether premium paid on premature redemption of debentures is revenue expenditure?

The High Court of Bombay in consonance with ITAT Mumbai has held as under:

- Premium paid on premature redemption of debentures were done by the mutual arrangement between the company and its debenture holders. Hence premium cannot be said to be capital expenditure.
- Contract was the brought to an end by premature redemption and thereafter there was no obligation on the assessee to redeem it.
- Therefore, the said premium is considered as revenue expenditure.

IRCON INTERNATIONAL LTD. VS. DCIT

Issue before Delhi High Court was whether Loss suffered on assignment of right to receive debt can be claimed as capital loss

The High Court upheld the order of Tribunal with the findings as under:

- It is the nature of debt assigned which is relevant.
- In the given case, the amounts were payable for services provided by way of projects executed by the assessee in Iraq. The Iraqi Governments inability to pay the debts and the assignment of debts by assessee in favour of Central Government in lieu of bonds did not in any way alter their character or convert them into capital assets.
- The irrecoverable portion of debt receivable can be claimed as deduction u/s 36(1) (vii) while computing Income from business and profession.

CIT V. M.VENKATESWARA RAO

CAN CAPITAL CONTRIBUTION OF THE INDIVIDUAL PARTNERS CREDITED TO THEIR ACCOUNTS IN THE BOOKS OF THE FIRM BE TAXED AS CASH CREDIT IN THE HANDS OF THE FIRM, WHERE THE PARTNERS HAVE ADMITTED THEIR CAPITAL CONTRIBUTION BUT FAILED TO EXPLAIN SATISFACTORILY THE SOURCE OF RECEIPT IN THEIR INDIVIDUAL HANDS?

The issue before Telangana & Andhra Pradesh High Court (T & AP) was whether the Assessing Officer was justified in treating the capital contribution of partners as income of the firm by invoking section 68

T & AP High court observed as under:

- Section 68 directs that if an assessee fails to explain the nature of credit entered in the books of account of any previous year, the same can be treated as income.

- In this case, the amount sought to be treated as income of the firm is the contribution made by the partners to the capital. In a way, the amount so contributed constitutes the very substratum for the business of the firm and it is difficult to treat the pooling of such capital as credit.
- It is only when the entries are made during the course of business, they can be subjected to scrutiny under section 68.Where the firm explains that the partners have contributed capital; section 68 cannot be pressed into service.
- At the most, the Assessing Officer can make an enquiry against the individual partners and not the firm when the partners have also admitted their capital contribution in the firm.
- The High Court made reference to decision in the case of CIT v. Anupam Udyog 142 ITR 130(Patna) where it was held if there are cash credits in the books of the firm in the accounts of the individual partners and it is found as a fact that cash was received by the firm from its partner, then, in the absence of any material to indicate that they are the profits of the firm, the cash credits cannot be assessed in the hands of the firm, though they may be assessed in the hands of individual partners.
- The High Court, accordingly, held that the view taken by the Assessing Officer that the partnership firm has to explain the source of income of the partners as regards the amount contributed by them towards capital of the firm, in the absence of which the same would be treated as the income of the firm, was not tenable.

COMMISSIONER OF INCOME-TAX V. KBD SUGARS & DISTILLERIES LIMITED

The issue before Karnataka High Court whether accumulated losses and unabsorbed depreciation of amalgamating company relating to a particular division can be set off by amalgamated company if amalgamating company was engaged in business but did not commence production of that division 3 years prior to amalgamation?

The Hon'ble High Court affirmed the order of Tribunal with the findings as under:

- Section 72A(2)(a)(i) of the Act uses the phrase 'engaged in business' and not 'commencement of business' and since the assesse was engaged in activities such as obtaining licence, loans, construction of building and purchase of machinery from the year 2000 itself, it cannot be disputed that the assessee was engaged in the business of generation of power for more than three years.
- Section 72A(2) of the Act states that it is the amalgamating company which should be in business for more than 3 years and not a particular unit or division. It is also stated that it is the loss of the amalgamating company as a whole, which is set off or carried forward, and not of a particular division or unit.
- Section 72A of the Act is a beneficial provision and thus it should be construed liberally. Therefore, when two views are possible, one in favor of assessee should be adopted.

CIT VS. HIRALAL DOSHI

SECTION 271(1)(c): Penalty is not leviable on income declared during survey and offered in return. A mere change of head of income does not attract penalty

- The facts in the present case as found by the Commissioner of Income Tax (Appeals)(CIT(A) and the Tribunal is that the Respondent assessee had disclosed in the original return by crediting the

same to its capital account being Long Term Capital Gain on the sale of share. Thus, the Appellant was under bonafide belief that the income from long term capital gain was exempt from tax. On examination, the CIT(A) reached a prima facie conclusion that the income could be regarded as long term capital gain.

- Based on the above facts, Bombay High Court held that once the aforesaid conclusion has been reached coupled with two further facts viz. the authorities have rendered a finding of fact that the Respondent-assessee had not concealed its income nor filed inaccurate particulars attributable to capital gains in its regular return of income, the view taken to delete the penalty is a possible view. Nothing was shown to hold that the findings of the CIT(A) and Tribunal was perverse and/or arbitrary warranting any interference by this Court. Even in the Memo of Appeal, it was not urged by the Revenue that the finding of the CIT(A) and Tribunal were in any manner perverse.

HINDUJA GLOBAL SOLUTIONS LTD VS. UOI

Action of the ITAT in disregarding its own order without reason and remanding matter to AO for fresh consideration is "arbitrary" and "failure to perform basic judicial function" and a "lapse" which should not occur again.

Bombay High Court observed and held as under:

The issue before the Tribunal was regarding disallowance made on account of claim for deduction under Section 10A of the Act. This very issue was covered in favour of the Petitioner by the decision of the Tribunal for A.Y. 2005-2006 in the Petitioner's own case. The departmental representative before the Tribunal also accepted the position. Inspite of the agreed position between the parties, the Tribunal by the impugned order yet remands this very issue to the Assessing Officer for fresh examination/determination. This is without in any manner even attempting to indicate why and how its earlier decision will not apply to the facts for the subsequent Assessment year. The Tribunal should not completely disregard its earlier order without some reason. This is the minimum expected of any quasi judicial / judicial authority. If the Tribunal has failed to perform its basic judicial functions in such arbitrary manner, the approach of the Tribunal must be corrected, so as to ensure that such lapses do not occur again.

TATA BUSINESS SUPPORT SERVICES LTD VS. DCIT

Section 147/ 148: The notice should not be in a standard format but indicate why Section 147 has been resorted to. The term "failure to disclose material facts" has a specific legal connotation. The non-disclosure has to be of a "material fact" to attract Section 147

Bombay High Court held that when the Revenue alleges failure to make full and true disclosure of material facts, then, the term failure has some specific legal connotation. Here, material facts are pertaining to the expenses under the head "management fees". It is apparent that the words employed are material facts. It is not just facts but material facts. The word "material" in the context means "important, essential, relevant, concerned with the matter, not the form of reasoning". Just as disclosure of every fact would not suffice but for proceeding under section 147 non disclosure ought to be of a material fact. The Assessee disclosed that loss under this head is derived from the acquisition of two centers. If that is known to the Revenue in this case, then, what further facts were expected to be disclosed so as to make the assessment has not been indicated.

CIT VS. I. P. SUPPORT SERVICES INDIA (P) LTD

Section 14A/ Rule 8D cannot be automatically invoked. It cannot be invoked if the Assessing Officer does not record satisfaction as to why the assessee's voluntary disallowance is not proper

Delhi High Court held that the Assessing Officer had proceeded on the erroneous premise that the invocation of Section 14A is automatic and comes into operation as soon as the dividend income is claimed exempt. The Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the said Act. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. The recording of satisfaction as to why "the voluntary disallowance made by the assessee was unreasonable and unsatisfactory" is a mandatory requirement of the law

CIT VS. VIJAY SINGH KADAN

Section 2(14)(iii)(b): To determine whether the "agricultural land" is situated within 8 km of the municipal limits so as to constitute a "capital asset", the distance has to be measured in terms of the approach road and not by the straight line distance on horizontal plane or as per crow's flight

- Delhi High Court held that the presumption of the Assessing Officer as well as Commissioner of Income Tax (Appeals) that the 'area' means the village in which such land is situated is without any basis. The correct interpretation of the word 'in any area within such distance not being more than 8 Kms. from the local limits of any municipality' would mean the land should be within such area which is not more than 8 Kms. from the local limit of the municipality.
- The Court is of the view that for the purposes of Section 2 (14) (iii) (b) of the Income-tax Act, the distance had to be measured from the agricultural land in question to the outer limit of the municipality by road and not by the straight line or the aerial route. The distance has to be measured from the land in question itself and not from the village in which the land is situated.

CHEMINVEST LTD. V. CIT

No disallowance under section 14A can be made in a year in which no exempt income has been earned or received by the assessee. Section 14A also does not apply to shares bought for strategic purposes

Delhi High court observed and held that the expression "does not form part of the total income" in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. Section 14A will not apply if no exempt income is received or receivable during the relevant previous year. The investment by the Assessee in the shares made by the assessee company is in the form of a strategic investment.

Since the business of the Assessee is of holding investments, the interest expenditure must be held to have been incurred for holding and maintaining such investment. The interest expenditure incurred by the Assessee is in relation to such investments which give rise to income which does not form part of total income.

CIT VS. KABUL CHAWLA

Section 153A/ 153C: Entire law on the scope of additions that can be made in a pending assessment and in a completed assessment pursuant to a search u/s. 132 explained

Delhi High Court explained the law on scope of assessments pursuant to search as under:

i. Assessments and reassessments pending on the date of the search shall abate. The total income for such Assessment Years will have to be computed by the Assessing Officers as a fresh exercise.
ii. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Assessing Officer which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."
iii. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.
iv. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.
v. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

CIT VS. FOREVER DIAMONDS PVT. LTD

Section 115JB: Department's grievance that if amount is not credited to Profit &Loss A/c, accounts are not correctly prepared as per Schedule VI to the Companies Act, 1956 and adjustment to book profits can be made is not acceptable if auditors and Registrar of Companies have not found fault with Accounts

Bombay High court held that the Assessing Officer does not have power to conduct fresh enquiry for the entries made in the books of accounts of the Company when the accounts of an assessee Company is prepared in terms of Part II Schedule VI of the Companies Act, scrutinized and certified by the statutory auditors, approved by the Company in general meeting and thereafter filed before the Registrar of Companies who has a statutory obligation also to examine and be

satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act.

CIT VS. PVS MEMORIAL HOSPITAL LTD

Section 40(a)(ia)/ 194C/ 194J: Deduction u/s 194C instead of u/s 194J renders the shortfall liable for disallowance u/s 40(a)(ia)

Kerala High Court that the expression "tax deductible at source under Chapter XVII-B" occurring in Section 40(a)(ia) has to be understood as tax deductible at source under the appropriate provision of Chapter XVII-B. Therefore, if tax is deductible under Section 194J but is deducted under Section 194C, such a deduction would not satisfy the requirements of Section 40(a)(ia). The latter part of this Section that such tax has not been deducted, again refers to the tax deducted under the appropriate provision of Chapter XVII-B. Thus, a cumulative reading of this provision, therefore, shows that deduction under a wrong provision of law will not save an assessee from Section 40(a)(ia)

R. W. PROMOTIONS P. LTD VS. ACIT

Reliance on statements of third party without giving the assessee the right of cross-examination results in breach of principles of natural justice

Bombay High Court held that there has been a breach of principles of natural justice in as much as the Assessing Officer has in his order placed reliance upon the statements of representatives third parties to come to the conclusion that claim for expenditure made by the appellant is not genuine. The appellant was entitled to cross examine them before any reliance could be placed upon them to the extent it is adverse to the appellant. This right to cross examine can be denied only on strong reason to be recorded and communicated.

DCIT VS. VODAFONE ESSAR GUJARAT LIMITED

Seciton 254(2A) third proviso cannot be interpreted to mean that extension of stay of demand should be denied beyond 365 days even when the assesseee is not at fault. Tribunal should make efforts to decide stay granted appeals expeditiously

Gujarat High Court held that there may be number of reasons due to which the learned Tribunal is not in a position to decide and dispose of the appeals within the maximum period of 365 days despite their best efforts. While disposing of the application for extension of stay granted earlier, the Tribunal is required to pass a speaking / reasoned order. The Tribunal can extend the stay granted earlier beyond the period of 365 days from the date of grant of initial stay, however, on being subjectively satisfied by the Tribunal and on an application made by the assessee / appellant to extend stay and that the delay in disposing of the appeal within a period of 365 days from the date of grant of initial stay, is not attributable to the appellant / assessee and that the assessee is not at fault. Tribunal has to give an opportunity to the representative of the revenue and record its satisfaction. If the revenue is aggrieved by such extension in a particular case having of the view that in a particular case the assessee has not cooperated and/or has tried to take undue advantage of stay and despite the same the Tribunal has extended stay order, revenue can challenge the same before the higher forum / High Court.

KIRIT DAYABHAI PATEL VS. ACIT

Section 271(1)(c): Immunity against penalty under Explanation 5 is available even if return is not filed provided a statement is made during the search, explaining the manner of deriving the income and due tax & interest thereon is paid

Gujarat High Court held that in order to get the benefit of immunity under clause(2) of explanation 5 to Section 271(1)(c) of the Income Tax Act,1961, it is not necessary to file the return before the due date provided that the assessee had made a statement, during the search and explained the manner in which the surrendered amount was derived, and paid tax as well as interest on the surrendered amount. It is not relevant whether any return of income was filed by the assessee prior to the date of search and whether any income was undisclosed in that return of income. In view of specific provision of Section 153A of the I.T. Act, the return of income filed in response to notice under Section 153(a) of the I.T. Act is to be considered as return filed under Section 139 of the Act, as the Assessing Officer has made assessment on the said return and therefore, the return is to be considered for the purpose of penalty under Section 271(1)(c) of the I.T. Act and the penalty is to be levied on the income assessed over and above the income returned under Section 153A, if any.

BINANI CEMENT LTD VS. CIT

Section 37(1): Expenditure on an aborted capital project is revenue in nature & can be claimed as deduction in year of abandoning the project

- Calcutta High court observed and held that expenditure made for construction/acquisition of new facility subsequently abandoned at the work-in-progress stage is allowable as incurred wholly or exclusively for the purpose of assessee's business. It is revenue expenditure as it does not result in the acquisition of an asset or an advantage of an enduring nature;
- The Court further observed that the expenditure has to be claimed in the year in which the decision is taken to abandon the project. There would have been no occasion to claim the deduction if the work-in-progress had completed its course. Because the project was abandoned the work-in-progress did not proceed any further. The decision to abandon the project was the cause for claiming the deduction. The decision was taken in the relevant year and It can be safely concluded that the expenditure arose in the relevant year.

TRIBUNAL DECISIONS

MINDA SAI LIMITED VS. ITO

IN ABSENCE OF EXEMPT INCOME, NO ADDITIONS CAN BE MADE U/S. 14A WHILE COMPUTING BOOK PROFIT UNDER SECTION 115JB

- Delhi Tribunal held that the mere fact that the assessee has suo-moto considered the disallowance u/s 14A in computing income under normal provisions does not itself invite any similar adjustment to book profits computed u/s 115JB of the Act.

- Tribunal further held that reliance was placed on the Delhi High Court decision in case of CIT vs. Holcim India Pvt. Ltd. wherein it was held that there cannot be any disallowance under section 14A unless there is corresponding exempt income and as the assessee has no such exempt income, adjustment for disallowance u/s 14A cannot be made. Therefore, in view of above, the ITAT allowed the issue in favour of the assessee.

TANVIR COLLECTIONS PVT. LTD. VS ACIT

RECORDING OF SATISFACTION BY THE ASSESSING OFFICER (AO) OF PERSON SEARCHED WITH REGARDS TO DISCOVERY OF INFORMATION OF ANOTHER PERSON, IS PREREQUISITE CONDITION TO INITIATE PROCEEDING UNDER SECTION 153C ON ANOTHER PERSON

Delhi Tribunal held as under:

- Recording of satisfaction by the AO having jurisdiction over the person searched is an essential and prerequisite condition for bestowing jurisdiction to the AO of the "another person".
- AO of persons searched did not record any satisfaction that some money, bullion, jewellery or books of accounts or other documents found from these persons belonged to the assessee.
- In absence of such satisfaction, it was unlawful on part of AO to proceed with the matter of the assessment u/s 153C of the Act. Accordingly the assessment of the assessee is held void ab initio.

DCIT VS. M/S TEJAS NETWORKS LIMITED

Bangalore Tribunal restored the matter back to Assessing Officer and held that the allowability of carry forward of scientific research expenditure has to be examined as under:

- If the scientific research expenditure has been accounted as revenue expenditure, there is no case to claim it as unabsorbed depreciation for purpose of carry forward of losses.
- If the same is treated as capital expenditure then the carry forward of scientific research expenditure will be allowed.

PREMA GOPAL RAO VS. DCIT

Mumbai Tribunal deleted penalty on additional Long Term capital Gains and held that even though the assessee filed the revised return of income after the receipt of notice u/s 143(2) of the Act, yet the admitted fact remains that the Assessing Officer did not seek any type of particulars in that notice. Hence the mistake in the Long term Capital gain could not have come to the notice of the Assessing Officer at that point of time and the assessee had declared the higher amount of Long term capital gain voluntarily upon its detection. Therefore, the argument of the tax authorities that the revised return of income was not voluntary one but only upon the receipt of notice u/s 143(2) of the Act cannot be accepted.

MR. FARDEEN KHAN VS ACIT

Mumbai tribunal explained as under to know the intention of the assessee to hold the land as stock in trade based on series of activities undertaken by the assessee:

i. In order to exploit the land commercially the assessee had filed an application to Bangalore Development Authority (BDA) on 12.04.2005 to convert the 'agricultural land' into 'Non Agricultural land".

ii. Assessee also incurred expenditure for construction of compound wall on the said land.

iii. On receipt of the conversion order from BDA, the assessee submitted lay out plan to BDA for proposed villa which was approved in March 2007.

Tribunal held that the land ceased to be a capital asset from the date when the assessee filed application before the BDA for conversion of agricultural land into non-agricultural.

i. Referring to DA the tribunal also observed that GPL was only granted 'license' to enter upon the property; which should not be construed as part performance of an agreement under section 53A of TOPA or u/s 2(47)(v) of the Act

i. Tribunal also rejected the decision of Chaturbhaj Dwarkadas on the ground that the decision was for A.Y 1996-97 and thereafter provision of section 53A of TOPA was amended in year 2001, whereby registration of documents was made essential. However, in the given case the registration was not done.

ii. Based on the above facts, tribunal held that there is no transfer under section 2(47) (v) of the Act.

SHIVALIK VENTURE (P.) LTD. VS. DCIT

GAINS NOT CHARGEABLE TO TAX AND NOT IN NATURE OF 'INCOME' TO BE EXCLUDED FOR MINIMUM ALTERNATE TAX (MAT) PROVISIONS

- ☐ Mumbai Tribunal held that the net profit shown in Profit & Loss account should be adjusted with the items given in notes to accounts. Accordingly, profits arising on sale of capital asset to its wholly owned subsidiary company should be excluded from net profit to be considered for computing book profits under Minimum Alternate Tax (MAT) provisions.
- ☐ Alternatively, since this profit does not fall under the definition of "income" at all and since it does not enter into the computation provisions at all, there is no question of including the same in book profit for MAT provisions. The Tribunal referred to specific clause in MAT provisions excluding certain categories of incomes specifically exempted under section 10 of the IT Act while computing taxable income.
- ☐ The Tribunal observed that the legislature seeks to maintain parity between the computation of income under normal provisions and book profit in respect of exempted category of income.
- ☐ Extending the same logic, an item of receipt which does not fall under the definition of income at all and hence falls outside the purview of the computation provisions of IT Act, cannot also be included in book profit for MAT provisions. In view of above, the Tribunal directed that tax officer to exclude such profit from the computation of book profit.

Kolkata Tribunal held as under:

- ☐ The definition as defined by the Act clearly shows that the transaction does not fall in the category of the work because here the material was not supplied by the assessee for the printing of packaging materials.
- ☐ The Tribunal relied on some cases of different tribunals wherein such transactions had been held as contract for sale within the purview of Section 194C such.

i. Case law of ITO Vs S.T. Printing Presswhere Hon'ble ITAT Bench, Kolkata has held that the materials were not supplied by the assessee, hence there is no contract with reference to any work to attract the provision of section 194C.

ii. Case of BDA Ltd. vs. ITO (281 ITR 99 (Bom) wherein the Hon'ble Bombay High Court held as under:

"That when the printing work was being carried out in the premises of M, though as per the specifications of the assessee, the supply was limited to the quantity specified in the purchase order, there was nothing on record to show that, all other ancillary costs like the labels, ink, papers, screen-printing, screens, etc., were being supplied by the assessee to M. In the facts of this case, the supply of printed labels by M to the assessee was a 'contract of sale' and it could not be termed as "work contract". Hence, the provisions of section 194C were not applicable."

iii. Hon.ble Delhi High Court in the case of Dabur India Limited wherein it was held as under:-

"Deduction of Tax At Source – Deduction from payment to contractor – Sale or Works Contract – Agreement for supply of corrugated boxes with labels printed on them – agreement for sale – Section 194C Not Applicable – Income Tax Act, 1961."

iv. Case of Tuareg Marketing Pvt. Ltd. vs. ACIT (122 TTJ 343) (Delhi) wherein it was held by the Hon'ble ITAT has held as under:-

"In the case of Tuareg marketing Pvt. Ltd. Vs. ACIT reported in 122 TTJ 343 (Delhi) it was held by the Hon'ble ITAT, Delhi that where the manufacturing activity was carried out at the risk of contract manufacturer or supplier, the manufacturer purchased required raw material on his own and purchases the goods as per specifications of the assessee buyer, the ownership of the goods passes from the manufacturer to the assessee when the goods were supplied or delivered to the assessee, the manufacturer was forbidden from affixing the assessee's trade mark on the goods supplied to the outsider, and the supplier was also liable to Assessment Year sales tax and other taxes on the goods supplied by it to the assessee purchaser. The combined effect of these conditions would go to show that it is a case of simple purchase of goods and not a contract for works. Supply of outsourced manufactured goods by the contract manufactured constitutes an outright sale and cannot be treated as contract of works within the scope of section 194C and, therefore, consequently the assessee was not liable to deduct tax at source from the purchase price of goods paid by the assessee to the contract manufacturers or the suppliers."

v. Case of ITO vs. Ambica Agencies (ITA No. 2055/Kol/2008) dated 12.06.2009 where it was held by the Hon'ble ITAT 'B' Bench which reads as under:-

"that provisions of section 194C would apply only in relation to work contacts and labour contracts and would not cover contracts for sale of goods. If a manufacturer purchases material on his own and manufacturer a product as per the requirement of a specific customer, it is a case of sale and not a contract for carrying out any work. The fact that the goods manufactured were according to

the requirement of the customer does not mean or imply that any work was carried out on behalf of that customer."

- In the light of the above judicial pronouncements, the Tribunal held that it is clear that a work does not include cases where supply of a product according to requirements or specification of a customer by using materials purchased from a person other than the customers. Hence, the provision of Section 194C does not attract to the present case. The case cited by the Learned Departmental representative is not applicable as it was decided in the context of the provisions of Bombay Sales Tax Act 1959 and it has no nexus with the provisions of section 194C of the Act and consequently there was no application of provisions of section 40(a)(ia) of the Act. Hence, the Tribunal dismissed the Revenue's Appeal.

RELIANCE GEMS & JEWELS LTD VS DCIT

- The assesse had filed its return declaring loss and during scrutiny the Assessing Officer came to know that the business had not been started by the assesse so the disallowed all the revenue expenses claimed by the assesse and made addition to the income as he was of the view that expense could only be allowed as deduction only and only after the commencement of business not after setting up of the business.
- Mumbai Tribunal relied on the case decision given by High Court of Bombay in the case of Western India Vegetable Products Ltd. Vs CIT 26 itr 151 (Bombay). Further reliance was placed on the decision in the case of CIT Vs E-Funds International India (2007) 162 Taxman 01 (Del) in which it was held that the moment employees were recruited the business was set up so the expenditure which assesse had claimed should be allowed.
- Appeal of the assesse was allowed

MAHINDRA & MAHINDRA EMPLOYEES' STOCK OPTION TRUST V. ADCIT

Mahindra & Mahindra Employees' Stock Option Trust ("assessee") is a trust established by Mahindra & Mahindra Ltd (settler), to administer its ESOP scheme for the benefit of the eligible employees.The core activities of the trust were to invest the general corpus in the equity shares of the Company and to administer the ESOP scheme under the instruction of Compensation Committee.

Issue before Mumbai Tribunal was that whether the Assessing Officer is justified in classifying the shares as business assets in the hands of the trust and the corresponding income as business income

The Tribunal held the appeal in favour of the assessee that gain is to be taxed as capital gains, quoting the following reasons:

- The share was held by the trust under fiduciary capacity for the benefit of the employees and ownership of these shares, in the hands of the trust, was merely circumscribed by the ESOP scheme.
- The assessee trust is like a Special Purpose Vehicle (SPV) of the settler company, which has been formed for the special purpose of holding the shares of the settler company and issuing the same to the eligible employees, inter-alia, for the benefit of settler and its employees.
- Tribunal also held that if the settler company would have issued these shares directly in the name of the employees at a value higher than their face value, then the difference amount would have

been share premium in the hands of Settler Company, and undisputedly, the same would be treated as capital receipt in its hands. In that case, the difference amount would certainly be not treated as profit earned from business activities of the settler company.

- Tribunal also noted that since inception of the assesse trust, these shares were shown as capital assets in the balance sheet and the resultant gain has been shown under the head income from capital gains and has been accepted as such by the Revenue in all the earlier years. The tribunal rebutted the revenue's argument that earlier year's assessment was framed u/s 143(1), on the ground that revenue does not have unfettered powers under the law to disturb such a consistent stand, without there being any change in facts or law.

LATE SH. JAGAT SINGH VS. ITO

Chandigarh Tribunal observed as under:

- For claiming deduction of interest under section 36(i)(iii) of the Act , the following conditions have to be satisfied :

a. There should be borrowed capital.

b. Interest must be paid on the borrowed capital

c. The borrowed capital must be for the purpose of business and profession.

- Tribunal observes that in the case of S.A. Builders Ltd., the Hon'ble Supreme Court the expression "used for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby.
- In the instant case the advance given to Shri Gurjit Singh by the assessee was partly utilized to purchase a property Sector -14, Panchkula in the name of Shri Gurjit Singh and his brother Shri Harinder Singh. Balance amount was utilized by Shri Gurjit Singh, by introducing capital in his partnership concern M/s Thukral Regal Shoes.
- None of the investments were made in the name of the assesse, nor it was demonstrated before as to how these investments benefited the assesse. Commercial expediency includes such expenditure as a prudent business man incurs for the purpose of business. Some benefit must directly or indirectly accrue to assessee which did not so accrue in the present case.
- Therefore such an advance does not qualify as advance for commercial expediency of the assessee and, therefore, interest relating to the same does not qualify for deduct ion under sect ion 36(i)(iii) of the Act.
- In result appeal filed by assessee was dismissed.

WIPRO LTD VS. ITO

Section 206AA: Section 90(2) overrides Section 206AA and so the assessee is required to deduct TDS as per the Double tax avoidance Agreement (DTAA) and not as per Section 206AA. The issue is debatable and so cannot be rectified by the Assessing Officer under section 200A

Bangalore Tribunal held that where the tax has been deducted on the strength of the beneficial provisions of section DTAAs, the provisions of section 206AA of the Act cannot be invoked by the Assessing Officer to insist on the tax deduction @ 20%, having regard to the overriding nature of the provisions of section 90(2) of the Act. Section 206AA of the Act does not override the

provisions of section 90(2) of the Act and in the payments made to non-residents, the assessee correctly applied the rate of tax prescribed under the DTAAs and not as per section 206AA of the Act because the provisions of the DTAAs was more beneficial

ACIT VS. RUPAM IMPEX

Section 154: Pedantic stand of Assessing Officer in refusing to rectify a mistake on the ground that the assessee is responsible for it is appalling and makes a mockery of the assessment proceedings. A sense of fair play by the field officers towards the taxpayers is not an act of benevolence by the field officers but it is call of duty in socially accountable governance

Rajkot Tribunal held that a lot of emphasis is placed on the fact that the mistake was committed by the assessee himself which has resulted in the error creeping in the assessment order as well. As to who is responsible for the mistake is not material for the purpose of proceedings under section 154; what is material is that there is a mistake- a mistake which is clear, glaring and which is incapable of two views being taken. The fact that it is attributed to the error of the assessee does not obliterate the fact of mistake or legal remedies for a mistake having crept in. It is only elementary that the income liable to be taxed has to be worked out in accordance with the law as in force. In this process, it is not open to the Revenue authorities to take advantage of mistakes committed by the assessee. Tax cannot be levied on an assessee at a higher amount or at a higher rate merely because the assessee, under a mistaken belief or due to an error, offered the income for taxation at that amount or that rate. It can only be levied when it is authorised by the law.

MANGALAM DRUGS & ORGANICS LTD VS. DCIT

Section 271(1)(c): Penalty cannot be levied on all issues in a "wholesale" manner. The Assessing Officer has to give findings for each issue separately. He has to apply mind meticulously and carefully for each issue separately and establish precisely whether there was concealment of income or furnishing of inaccurate particulars of income. The Assessee cannot be fastened with the liability of penalty without there being a clear or specific charge. Fixing a charge in a vague and casual manner is not permitted under the law. Fixing twin charges is also not permitted under the law

Mumbai Tribunal observed penalty order in this case and held that the penalty has been levied, on all the additions/disallowances, in a 'whole sale' manner. The AO has not given his findings, for levying the penalty, for each issue separately, with respect to the satisfaction of the AO for each of the issue respectively, nor has he given a finding for each issue separately as to whether there was a concealment of income or furnishing of inaccurate particulars of income. The AO has held in the penalty order that various disallowance made by the AO have been confirmed by the Ld CIT(A) and therefore, it is automatically established that the assessee has concealed its income and furnished inaccurate particulars, which has led into concealment of income within the meaning of section 271(1)(c) of the Act. Penal provisions are quite harsh, these can make the assessee liable for prosecution, as well. Therefore, the AO is obliged, under the law, to make application of his mind meticulously and carefully for each issue separately and to show and establish precisely and specifically whether there was concealment of income or there was furnishing of inaccurate particulars of income on the part of the assessee, at the stage of filing of

return of income. The Assessee cannot be fastened with the liability of penalty without there being a clear or specific charge. Fixing a charge in a vague and casual manner is not permitted under the law. Fixing the twin charges is also not permitted under the law.

CROMPTON GREAVES LTD VS. CIT

Explanation 2 to section 263 (which supersedes the law that there is a difference between "lack of inquiry" and "inadequate inquiry") is "declaratory & clarificatory" in nature and is inserted to provide clarity on the issue as to which orders passed by the Assessing Officer shall constitute erroneous and prejudicial to the interests of Revenue

Mumbai Tribunal held that the amendment to section 263 of the Act by insertion of Explanation 2 to Section 263 of the Act is declaratory & clarificatory in nature and is inserted to provide clarity on the issue as to which orders passed by the Assessing Officer shall constitute erroneous and prejudicial to the interest of Revenue, it is, inter-alia, provided that if the order is passed without making inquiries or verifications by Assessing Officer which, should have been made or the order is passed allowing any relief without inquiring into the claim; the order shall be deemed to be erroneous and prejudicial to the interest of Revenue.

MANGAL KESHAV SECURITIES LIMITED VS. ACIT

Explanation to Section 37(1): Penalties and fines paid to SEBI, BSE etc for breach of regulatory/ procedural requirements are "compensatory" in nature and not for any purpose which is an 'offense' prohibited by the law

It has been observed and held by Mumbai Tribunal that an 'offence' would be the one which will arise as a result to commission of an action which is prohibited by law, and, in all the given situations, no element of any consent of the parties involved can bring any change in its legal consequences. Similarly, any amount paid by the assessee, in the form of compensation, as a consequence of breach of contract between the two parties, cannot be said to be amount paid for any purpose which is an 'offence', prohibited by the law. Under the income tax law, one is required to go into the real nature of the transactions and not to the nomenclature that may have been assigned by the parties. Thus, only those payments, which have been made by the assessee for any purpose which is an 'offence' or which is 'prohibited by law', shall alone would be hit by the explanation to section 37

MULTI ACT REALTY ENTERPRISES PVT. LTD VS. ACIT

There is a distinction between "setting up" and "commencement" of a business. A business is "set up" and expenditure is deductible even if assessee has no customers and no income

It was observed by Mumbai Tribunal that the assessee has already purchased residential flat for the purpose of resale/lease, and therefore assessee was apparently ready to do its business. Under these circumstances, it can be said that the business is set up by the assessee during the year under consideration. Tribunal held that for the deductibility of expenses incurred after this stage, earning of the business income is not a mandatory condition under the law. The assessee

may not have been successful in getting customers or earning the business income, but if the assessee has done requisite preparations and if the assessee can be said to be in a position to cater to its customers, then it can be said that business is set up and it would amount to carrying on the business and accordingly the expenses would stand allowable to the assessee, irrespective of the fact whether actually assessee got any customer and earned any business income during the year or not

GOLDMAN SACHS (INDIA) SECURITIES PVT. LTD VS. ITO

Section 2(22)(d)/ 46A: A buyback of shares u/s 77A of the Companies Act is not a reduction of capital under Section 100 - 104 of that Act. A buyback cannot be regarded as a "colourable transaction" and cannot be assessed as "deemed dividend" u/s 2(22)(d). The capital gains on buy-back are exempt under the India-Mauritius DTAA

Section 100-105 read with Section 391of the Companies Act deal with reduction of capital and obtaining permission of the Court. Clearly, both deal with different situations. Mumbai Tribunal held that transaction in question would not fall under the category of colourable device. If an assessee enters into a deal which does not violate any provision of the Act of applicable to a particular Assessment Year, the deal cannot be termed a colourable device, if it result in non-payment or lesser payment of taxes in that year. Non-payment of taxes by an assessee in given circumstances could be a moral or ethical issue. But, for that the assessee cannot be penalised.

HIRALAL CHUNILAL JAIN VS. ITO

Bogus Sales/ Purchases: Addition solely on the basis of information received from the sales-tax department is not sustainable. Suspicion of the highest degree cannot take the place of evidence

It was held by Mumbai Tribunal that Assessing Officer had made the addition as one of the supplier was declared a hawala dealer by the VAT Department. It was a good starting point for making further investigation and take it to logical end. Suspicion of highest degree cannot take place of evidence. The Assessing Officer could have called for the details of the bank accounts of the suppliers to find out as whether there was any immediate cash withdrawal from their account. No such exercise was done. Hence, addition solely on the basis of information received from the sales-tax department is not sustainable

MUNAF IBRAHIM MEMON VS. ITO

Section 43B/ 145A: Taxes collected by the assessee, which remain unpaid, have to be added to the income even if the same are not debited to the Profit &Loss A/c and claimed as a deduction

- Pune Tribunal explained and held that in view of the provisions of the Act i.e. section 145A of the Act, there is no merit in the plea of the assessee in not recognizing the VAT attributable to its sales as part of the sale consideration of the goods while computing its Profit & Loss Account. The mandatory provisions of Central Act i.e. section 145A of the Act supersedes the provisions of any State Act i.e. Maharashtra Value Added Tax Act, 2002. Once the assessee recognized the

VAT amount as part of the sale consideration, it tantamount to the said entry being routed through the Profit & Loss Account, especially in the cases where the assessee is following mercantile system of accounting

- Section 43B was introduced in order to provide the deduction on account of statutory liabilities to be allowed only on payment basis, irrespective of the year to which it relates. The said section starts with a non-obstacle clause that notwithstanding anything contained in the Act, where the deduction which is otherwise allowable under the Act in respect of any amount payable by an assessee, by way of tax, duties, cess or fees, by whatever name called, under any law for the time being in force, shall be allowed as a deduction in the year of payment, irrespective of previous year to which said liability relates and this is also irrespective of method of accounting regularly employed by the assessee. In view of the cumulative provisions of sections 145A and 43B of the Act, the assessee is entitled to claim the deduction on account of such tax, duties, cess or fees, by whatever name called and the same is to be allowed only on payments and once the payment has not been made in the year to which said liability relates, then said amount is to be added back as income of the assessee for the relevant year.

UNIQUE METAL INDUSTRIES VS. ITO

Section 147: Reopening solely on the basis of information received from another AO that the assessee has booked bogus bills but without independent application of mind to the information renders the reopening void

Letter was received by Assessing Officer from the ACIT on the basis of which the Assessing Officer made a view that the purchase bills provided by the persons or their family members was bogus purchase bills. At the time of recording of the reasons the Assessing Officer apparently was not having any idea about the nature of the transactions entered into by the assessee. In the reasons recorded there is no mention about the nature of the transactions. As per provision of section 147 the reasons to believe has to be that of the Assessing Officer and further there have to be application of mind by the Assessing Officer. The Assessing Officer was also not aware of the nature of the accommodation entries. In the reasons recorded he has simply mentioned the names of the party and the amount and nowhere has stated the nature of such entry. This also shows that the Assessing Officer has made no effort to look into the return of the assessee which was available with him. Hence, Delhi Tribunal held that such reopening was void

VENUS FINANCIAL SERVICES LTD VS. ACIT

Section 48: In computing "capital gains" the AO is not entitled to substitute the "market value" for the actual "consideration" received by the assessee. He also cannot disregard the valuation report without cogent material

Delhi tribunal held that in the case of sale, the Assessing Officer has no power to replace the value of the consideration agreed between the parties. A report of a valuer is an important piece of evidence and the same cannot be discarded without there being any cogent material on record showing that the report of the valuer is not correct .As the expression “full value of consideration” in section 48 of the Income-tax Act, 1961 does not have any reference to market value, the Assessing Officer was having no power to replace the value of the consideration agreed between the parties with any fair market value or estimation.

ACIT VS. M/S VENUS JEWEL

Section 29/37(1): Loss on account of forward contract entered into by the assessee to hedge against the loss arising on account of fluctuations in foreign exchange is an allowable deduction.

Mumbai Tribunal held that the assessee was exposed to the risk arising in fluctuation out of exchange rate and as a prudent business man it would like to hedge its risk. Accordingly, the assessee had booked the forward contracts and utilised the same during the year or in the succeeding years. The pattern of the assessee reflected that it entered into forward contracts during the normal course of business and utilised the same for business allowing them to run upto the date of contract. The assessee was engaged in the export of diamonds and the forwards contract was entered into in respect of foreign exchange to be received as a result of export and the same was done to avoid the risk of loss due to foreign exchange fluctuations. The claim has to allowed after taking note of the claim of forward contracts and the accounting policies.

DCIT VS. GARWARE POLYESTER LTD

Section 115JB: Amount towards waiver of loan under OTSS, credited to "General Reserves" and not to the P&L Account cannot be added to "book profits"

- Mumbai Tribunal considered whether the Assessing Officer could have made adjustment to the book profits which was on account of waiver of principal amount of loan, which has been credited by the assessee directly in the Balance Sheet in 'General Reserve' account, which according to the Assessing Officer should have been routed through profit and loss account and thus, would have been part of the book profit.
- Tribunal held that the provisions relating to book profit u/s 115JB are absolutely clear that same is to be computed on the basis of profit and loss account prepared in accordance with the provision of Part-II and Part-III of Schedule-VI of the Companies Act and to such profit only certain adjustments as provided in Explanation 1 can be made. The Assessing Officer does not have the power to tinker with such accounts prepared as per Schedule VI and certified by the Auditors. Assessing Officer has also not specified categorically that as to how the Part II & III of Schedule VI has not been followed or is against the prescribed accounting standard there is a requirement of law that waiver of loan taken for utilizing capital expansion is to be routed only through profit and loss account and cannot be credited to the 'General Reserve', i.e. directly in the Balance sheet. Accounts prepared under the Companies Act and certified by the authorities under the said "Act" have to be accepted.

GLEN WILLIAMS VS. ACIT

Section 41(1)/ 68: Old unclaimed liabilities which are not written back by the assessee can neither be assessed as "cash credits" under section 68 nor assessed u/s 41(1) as "remission or cessation of liability"

Bangalore Tribunal held that on the applicability of section 68, we are of the view that those provisions will not apply as the balances shown in the creditors account do not arise out of any transaction during the previous year relevant to assessment year in question. The provisions of Section 68 are clear inasmuch as they refer to "sum found credited in the books of account of an

assessee maintained for any previous year". Since the credit entries in question do not relate to relevant previous year relevant, the same cannot be brought to tax u/s. 68 of the Act. The proper course in such cases for the Revenue would be to find out the year in which the credits in question were credited in the books of account and thereafter make an enquiry in that year and make an addition in that year, if other conditions for applicability of section 68 are satisfied

ROLLATAINERS LTD VS. ACIT

Section 147: The revenue audit cannot perform functions of judicial supervision and a reopening based on the interpretation of the audit cannot be sustained. However, a reopening based on communication of the law or factual inaccuracy by the audit is valid

Delhi Tribunal held that the logic in not sustaining the initiation of reassessment on the basis of interpretation of law by the audit party is that the internal auditor cannot be allowed to perform functions of judicial supervision over the Income-tax authorities by suggesting to the Assessing Officer (AO) about how a provision should be interpreted and whether the interpretation so given by the AO to a particular provision of the Act is right or wrong. An interpretation to a provision given by the internal audit party cannot be construed as a declaration of law binding on the AO. Where the audit party interprets the provision of law in a manner contrary to what the AO had done, it does not lay down a valid foundation for the initiation of re-assessment proceedings. If however, the audit party does not offer its own interpretation to the provisions and simply communicates the existence of law to the AO or any other factual inaccuracy, then the initiation of reassessment proceedings on such basis cannot be faulted with. If the audit party merely draws the attention of the AO to the existence of law, the opinion of the audit party can be regarded as 'information' leading to a valid initiation of reassessment. In a nutshell, whereas the initiation of re-assessment proceedings on the basis of an interpretation to the provisions of law by the audit party is forbidden, the communication of law or the factual inconsistencies by the internal audit party, do not operate as a hindrance in the initiation of re-assessment proceedings.

DISHNET WIRELESS LIMITED VS. DCIT

Section 194C/ 194J: No obligation to deduct TDS at stage of making provision for expenditure if payee cannot be identified. No obligation to deduct TDS if services (roaming charges) are rendered without human intervention and are not "technical services"

- Provision for site restoration expenses was made but TDS was not deducted. The provision was made for dismantling the towers and restoration of site to its original position after termination of the lease period. The lease period is normally 20 years and above. The assessee by placing reliance on the Accounting Standard – 29 claims that a provision would be made in respect of an obligation. In other words, the assessee had an obligation to incur the expenditure after termination of the lease period. The payment was not made to anyone and it is not credited to the account of any party or individual. The account does not disclose the person to whom the amount is to be paid. The contractor who is supposed to be engaged for dismantling the tower and restore the site in its original position is not identified. Therefore, even if the assessee deducts tax, it cannot be paid to the credit of any individual. The assessee has to issue Form 16A prescribed under Rule 31(1)(b) of the Income-tax Rules, 1962 for the tax deducted at source. The assessee has to necessarily give the details of name and address of deductee, the PAN of deductee and amount or credited. In this case, the assessee could not identify the name and

address of deductee and his PAN. The assessee also may not be in a position to quantify the amount required for incurring the expenditure for dismantling and restoration of site to its original position. In those circumstances, the provision which requires deduction of tax at source fails. In this case, Chennai Tribunal held that the assessee cannot be faulted for non-deduction of tax at source while making a provision.

- As regards the year-end provisions, the assessee made arrangement with other service provides for providing value added services. There may be justification with regard to the expenditure for availing the services of identification and verification for the last month of financial year, since the assessee may not have the exact details on verification done by the concerned persons and the amount required to be paid. However, in respect of the downloads and value added service, etc. the entire details may be available in the system. Therefore, wherever the particulars and details available and amount payable could be quantified, the assessee has to necessarily deduct tax. After necessary configuration for providing roaming services, human intervention is not required. Once human intervention is not required, the service provided by the other service provider cannot be considered to be a technical service. Therefore, TDS is not required to be made in respect of roaming charges paid to the other service providers.

PERFECT PARADISE EMPORIUM PVT. LTD VS. ITO

Section 41(1)/ 68: Unclaimed liabilities to creditors, even if fictitious and bogus, cannot be assessed u/s 41(1) in the absence of a write-back. The bogus credits can be assessed u/s 68 only in the year the credits were made and not in the year they are found to be not payable

Delhi Tribunal held that the amount cannot be brought to tax in the year under appeal under the provisions of Section 41(1) of the Act. It is trite law that an addition under Section 68 can be made only in the year in which credit was made to the account of the creditors in the books of account maintained. In this case the credit to the account of creditors was made in the earlier years and therefore, the amount even cannot be brought to tax under Section 68 in the year under appeal. Tribunal further held that the Department can levy tax on such amount by resorting to the remedies available under the provisions of Act by duly following the procedure known to the law

CHEIL INDIA PVT. LTD VS. ITO

Section 40(a)(ia): In an appeal against an order passed by the Assessing Officer(AO) to give effect to the Tribunal's(ITAT) order, the Commissioner of Income Tax (Appeals) CIT(A) has no jurisdiction to enhance the assessment with respect to a new source of income or disallowance of expenditure

Delhi Tribunal held that the direction to the AO by the CIT(A) to disallow payments made by the assessee under section 40(a)(ia) of the Act was a question of taxability of income from a new source of income which has not been considered by the AO, hence it was exceeding of jurisdiction by the CIT(A) in a set aside matter by the ITAT in the present case. Though the CIT(A) has co-terminus powers as of the AO and is empowered to do what an AO can do for the assessment, the directed disallowance was new source of income, which was not the subject matter of setting aside order by the ITAT

BARJINDER SINGH BHATTI VS. ITO

Section 55A: If the Assessing Officer is not satisfied with the valuation made by the assessee's valuer, he must refer the issue to the Departmental Valuaiton Officer. He cannot reject the assessee's valuation without any basis

It was held by Chandigarh Tribunal that if the Assessing Officer was not satisfied with the report of the Registered Valuer, he could have made a reference to the Departmental Valuation Officer under section 55A of the Act for the purpose of computing income from capital gains. The Assessing Officer has thus, not acted in accordance with law and without any basis or evidence in his possession, did not accept report of the Registered Valuer. In the absence of any material on record, Assessing Officer should not have made his own calculation for the purpose of computing the capital gains

ITO VS. LATE SOM NATH MALHOTRA

Section 148/ 292BB: Issue of notice in the name of the deceased person renders the assessment order null and void even if the order is passed in the name of the legal heir. The fact that the legal heir attended the proceedings does not make it a curable defect u/s 292BB.

The Assessing Officer (AO) issued notice u/s 148 of the Act in the name of the deceased assessee and also mentioned in the body of the assessment order that the notice u/s 148 of the Act was issued and served upon the assessee by Post within the statutory time period prescribed. Though the legal heir of the deceased assessee informed the AO that the assessee had expired and the return in the name of deceased assessee was filed by the legal heir, the AO did not issue any notice u/s 148 of the Act or 143(2) of the Act in the name of the legal heir. Delhi Tribunal held that the assessment framed by the AO on the basis of the notice issued u/s 148 of the Act in the name of the deceased assessee was invalid and void ab initio

PANNA S. KHATAU VS. ITO

Section 56(2)/ 68: Old liabilities, even if treated as genuine in earlier years and even if on capital account, are liable to be assessed as "income" in year of write-back if assessee is unable to provide confirmations and substantiate genuineness of liabilities

It was held by Mumbai Tribunal that when an amount, which is stated, claimed and accepted as a payable, is no longer so, the assessee gains to that extent. There is nothing unreal or notional about this gain. It can show that, even so, the same is not chargeable as income or no tax liability is attracted in-as-much as the benefit is not in the nature of income. The assessee in this case, offers no such explanation. There has been remission/cessation of liability in-as-much as these are no longer payable. No reason is advanced. Hence, under these circumstances that the law permits the A.O. to draw an adverse inference of it as representing the assessee's income.

RAPTAKOS BRETT & CO. LTD VS. DCIT

Section 10(38), 70(3): Though the Long Term Capital Gains (LTCG) on sale of equity shares (subject to Securities Transaction Tax) is exempt from tax under section 10(38), the long-

term capital loss on sale of such shares can be set-off against the taxable LTCG on sale of another asset

It was held by Mumbai Tribunal that Section 10(38) excludes in expressed terms only the income arising from transfer of Long term capital asset being equity share or equity fund which is chargeable to STT and not entire source of income from capital gains arising from transfer of shares. It does not lead to exclusion of computation of capital gain of Long term capital asset or Short term capital asset being shares. Accordingly, Long term capital loss on sale of shares would be allowed to be set off against Long term capital gain on sale of land in accordance with section 70(3)

ISHWAR CHAND JINDAL VS. ACIT

Section 2(22)(e): loans and advances given for business transaction between the parties does not fall within the definition of "deemed dividend"

Delhi Tribunal held that the payments made by a company through a running account in discharge of its existing debts or against purchases or for availing services, such payments made in the ordinary course of business carried on by both the parties could not be treated as deemed dividend for the purpose of section 2(22)(e). The deeming provisions of law contained in section 2(22)(e) apply in such cases where the company pays to a related person an amount as advance or a loan as such and not in any other context. The law does not prohibit business transactions between related concerns, and, therefore, payments made in the ordinary course of business cannot be treated as loans and advances

COMPUTER ENGINEERING SERVICES INDIA (P) LTD VS. ACIT

Section 143(2) and 153C notices issued in the name of the non-existent amalgamating company are void and render the assessment order null and void

Delhi Tribunal held that for making the assessment, it is absolutely essential that the person so to be assessed should be in existence at the time of making the assessment. In this case the assessment has been framed by the Assessing Officer (AO) on a date when the present assessee was not in existence therefore, the assessment framed by the AO was not valid

HERANBA INDUSTRIES LTD VS. DCIT

Section 271(1)(c): Surrender of income after questionnaire does not mean it is not voluntary. If surrender is on condition of no penalty and assessment is based only on surrender and not on evidence, penalty cannot be levied

Mumbai Tribunal held that in the case of the assessee, at the time of surrender itself contention of not initiating any penalty proceedings was there. No additional matter was discovered to prove that there was concealment of income. The Assessing Officer (AO) has included the amount of share capital in the total income of assessee merely on the basis of assessee's declaration/surrender. The AO did not point out or refer any evidence or material to show that the amount of share capital received by the assessee was bogus. It is also not the case of the revenue that material was found at the assessee's premises to indicate that share application

money received was an arranged affair to accommodate assessee's unaccounted money. Thus there was no detection by the AO that share capital was not genuine. The surrender of share capital after issue of the notice under section 143(2) could not lead to any inference that it was not voluntary.

ACIT VS. RAMILA PRAVIN SHAH

Bogus purchases: Fact that suppliers names appear in the list of hawala dealers of the sales-tax dept and that assessee is unable to produce them does not mean that the purchases are bogus if the payment is through banking channels and Gross Profit ratio (G.P.ratio) becomes abnormally high

Mumbai Tribunal observed that in the case of assessee, if the addition made by the Assessing Officer (AO) is accepted, then G.P. Ratio of the appellant during the present Assessment Year will become abnormally high and therefore that is not acceptable because it onus of the A.O. by bringing adequate material on record to prove that such a high G.P. ratio exists in the nature of business carried out by the appellant. The Tribunal further observed that it has to be appreciated that:

i. Payments were through banking channel and by Cheque,
ii. Notices coming back, does not mean, those parties are bogus, they are just denying their business to avoid sales tax/VAT etc,
iii. Statement by third parties cannot be concluded adversely in isolation and without corroborating evidences against appellant
iv. No cross examination has been offered by AO to the appellant to cross examine the relevant parties (who are deemed to be witness or approver being used by AO against the appellant) whose name appear in the website www.mahavat.gov.in and
v. Failure to produce parties cannot be treated adversely against appellant

INCOME TAX

International Taxation

Circulars/ Notifications/Press Release

Inter Governmental Agreement to implement Foreign Account Tax Compliance Act (FATCA):

India and USA signed an agreement to implement FATCA to promote transparency between two nations on tax matters. Under this agreement, each party (India and US) shall obtain specified information with respect to Reportable Accounts and shall annually exchange this information with other party on automatic basis. It is an important step towards achieving tax transparency and to address offshore tax evasion and avoidance. The FATCA compliance would require every Financial Institution to report a Reportable Account, unless specifically exempted.

[Press Release dated July 9, 2015]

Minimum Alternate Tax (MAT) Provisions not applicable to Foreign Institutional Investors /Foreign Portfolio Investors (FIIs/FPIs):

The Government has accepted recommendations of the designated AP Shah Committee with regards to non-applicability of MAT provisions (tax on book profits) to FIIs/FPIs. The Government proposes to bring an amendment to Income-tax Act, 1961 (the IT Act) to clarify that MAT provisions will not be applicable to FIIs/FPIs not having a place of business/permanent establishment in India even in relation to the period prior to April 1, 2015.

[Press release dated September 1, 2015]

Minimum Alternate Tax (MAT) Provisions not applicable to foreign companies:

The Government has clarified that MAT provisions shall not be applicable to a foreign company (F Co) with effect from April 1, 2001 if:

- ☐ Foreign Company is a resident of a country having Tax Treaty with India and such F Co does not have a Permanent Establishment (PE) in India as defined in such Tax Treaty or
- ☐ Foreign Company is a resident of a country with which India does not have a Tax Treaty and such F Co is not required to seek registration under relevant provisions of the Companies Act with respect to place of business in India.

[Press Release dated September 24, 2015]

Income tax (twenty first amendment) rules, 2015 - furnishing of information in respect of payments made to non-resident

Section 195 of the Income Tax Act ('the Act')empowers the Central Board of Direct Taxes to capture information in respect of payments made to non□residents, whether chargeable to tax\ or not. Rule 37 BB of the Income□tax Rules has been amended to strike a balance between reducing the burden of compliance and collection of information under section 195 of the Act.

The significant changes under the amended Rules are:

- No Form 15CA and 15CB will be required to be furnished by an individual for remittance which do not requiring RBI approval under its Liberalised Remittance Scheme (LRS)
- Further the list of payments of specified nature mentioned in Rule 37 BB which do not require submission of Forms 15CA and 15CB has been expanded from 28 to 33 including payments for imports.
- A CA certificate in Form No. 15CB will be required to be furnished only in respect of such payments made to non residents which are chargeable to tax and the amount of payment during the year exceeds Rs. 5 lakh.

The amended Rules will become applicable from 1.4.2016.

[Notification No. G.S.R. 978(E)]

CBDT rolls-out the final rules for 'range' concept and multiple year data prescribed under Transfer pricing regulations.

On 21 May 2015, the Central Board of Direct Taxes (CBDT) issued the draft scheme of the proposed rules for computation of the Arm's Length Price of international transactions or Specified Domestic Transactions undertaken on or after 1 April 2014. The proposed rules were relating to the availability of range and use of multiple years versus single year data. Comments and suggestions from stakeholders and the general public were sought, which was a very inclusive and transparent move of the government. On 19 October 2015, the CBDT published a notification releasing the final rules for the use of range and multiple year data (the Rules). These Rules have provided clarifications on various areas as well as bring into play, areas that may result into disputes.

Transfer pricing has been a major area of litigation over the years. Many TP adjustments take place in India on account of a comparability analysis, undertaken using the arithmetic mean and single year or current year data. The introduction of range concept and the use of multiple year analysis are expected to have a significant impact on TP compliance and litigations. These rules may help in reducing litigation and in closing Advance Pricing Agreement going forward. The CBDT has broadened the range from the proposed fortieth to sixtieth percentile to thirty fifth to sixty fifth percentile and reduced the minimum number of comparable from nine to six, which is a positive move in aligning with the international standards. In cases, where the arithmetic mean is to be used, an allowance of a deviation up to three percent is also a welcome move.

The illustrations provided in the notification are self-explanatory and crisp with respect to the methodology for application of range and multiple year data.

[Notification 83 dated 19.10.2015]

Rule 37BB of the Income-tax Rules, 1962 has been amended by the CBDT vide. This amended rule is applicable w.e.f. 01.04.2016.

- An individual need not furnish any Form No. 15CA and 15CB for remittances which do not require RBI approval under its Liberalized Remittance Scheme.
- The following 5 payments have been included in addition to the existing payments for which no Form No. 15CA and 15CB are required to be submitted:
  i. Advances payments against imports
  ii. Payments towards imports-settlement of invoice
  iii. Imports by diplomatic missions
  iv. Intermediary trade
  v. Imports below Rs.5,00,000/- (For use by ECD1 offices)

- A CA certificate in Form No. 15CB will be required to be furnished only in respect of such payments made to non-residents which are chargeable to tax and the amount of payment during the year exceeds Rs. 5,00,000/-.

[Press Release dated 17.12.2015]

International Taxation Case Laws

SUPREME COURT DECISION

OIL & NATURAL GAS CORPORATION LIMITED VS. CIT (SUPREME COURT)

SERVICE PROVIDED BY FOREIGN COMPANIES IN CONNECTION WITH PROSPECTING, EXTRACTING OR PRODUCTION OF MINERAL OILS ARE TAXABLE ON A PRESUMPTIVE BASIS.

Facts:

- Oil & Natural Gas Corporation Limited ('Assessee') entered into agreement with various foreign companies for availing services in connection with prospecting, extraction, or production of mineral oil by the assessee. These services comprises of seismic surveys, drilling for oil & gas, imparting training, services for prospecting for exploration of oil and/or gas, etc.
- The assessee was considered as 'representative assessee' on behalf of foreign companies. The Assessing Officer (AO) held that payment for such services should be taxable @ 20% as Fees for Technical Services (FTS) u/s. 44D of the Act and not at 10% on presumptive basis u/s. 44BB of the Act.
- Aggrieved by the order of AO, assessee filed an appeal before the CIT (A). CIT (A) coincided the view of assessee that such services should be taxable on presumptive basis. Aggrieved by the order of CIT (A), revenue filed an appeal before ITAT and ITAT endorsed the finding of CIT (A).
- The Revenue then moved before the High Court, who disregarded the finding of ITAT and held that payment for such services should be taxable as FTS u/s. 44D of the Act. Aggrieved by the order of the High Court, the assessee filed an appeal before the Supreme Court.

Issue:

- Whether services provided by foreign companies in connection with prospecting, extraction or production of mineral oil are taxable as FTS u/s. 44D of the Act or u/s. 44BB on presumptive basis?

Held:

The Supreme Court decided the issue in the favour of the assessee by holding that:

- Sub-section (1) of Section 44BB stipulates taxability of payment made to non-resident for providing services in connection with prospecting, extracting or production of mineral oils.
- Such payments cannot be considered as FTS, as explanation 2 to Section 9(1) (vii), specifically excludes payment in relation to 'mining project' or 'like projects' from FTS. Drilling operations would amount to a mining activity or mining operation.
- Court relying upon the instruction issued by Central Board of Direct Taxes (CDBT) has concluded that rendering of service like imparting of training and carrying out drilling operation would amount to a mining activity or mining operation.
- Court also observed that the work or services mentioned under the agreement was directly associated and inextricably connected with prospecting, extraction or production of mineral oil.
- Thus the payment made to foreign company would be chargeable to tax on presumptive basis u/s. 44BB of the Act and not as FTS u/s. 44D of the Act.

HIGH COURT DECISION

VODAFONE SOUTH LTD. VS. DDIT (TS-789-ITAT-2014)

Facts:

- Taxpayer, an Indian company, was engaged in providing international long distance services to its subscribers. For such services Taxpayer availed the assistance of non-resident (NR) telecom operators (NTO) located in different jurisdictions and payments were made to NTOs without withholding taxes on the same.
- The Tax Authority contended that the payments made to NTO's are in the nature of royalty/Fee for Technical services (FTS) under the provisions of the Act as also the relevant Double Taxation Avoidance Agreement (DTAA) and hence held the Taxpayer to be an assessee in default for failure to withhold taxes at source.
- On appeal, the First Appellate Authority upheld the Tax Authorities contention. Aggrieved, the Taxpayer appealed before the Tribunal.

Held:

Under the Act

- Under the Act, the term "royalty" includes any payment for the use of a process. The term process has also been defined under the Act to include transmission through cable, optic fiber etc., whether or not such process is secret. Further, the Act provides that royalty shall include consideration in respect of a right or property whether or not the possession or control of the right is with the payer and whether or not the right or property is used directly by the payer.
- On a combined reading of the above, it can be understood that there is no requirement to 'transfer' a right to use. The condition of use or right to use would be satisfied even without having a direct control or a physical possession on the activity. Any other interpretation would lead to defeating the intention of the provision.
- Thus in the present case, Taxpayer made payment to NTO for the use of a "process," and hence, the payment qualifies as "process royalty" under the Act.

Under the DTAA

- The "royalty" definition under the DTAAs includes use of, or the right to use, any copyright, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. However, the term "process" has not been defined under DTAAs.
- The Madras HC in Verizon Singapore Pte Ltd1 dealt with an identical issue and held that the definition of the term "process" under the Act should be read into DTAA while evaluating royalty taxation under the provisions of DTAA. The facts in the case of Taxpayer are identical to the facts before the Madras HC. Various other decisions such as Viacom 18 Media (P) Ltd2 and Cognizant Technology Solution3 have followed the Madras HC ruling while dealing on a similar issue.
- Thus, the decision of the Madras High Court is accordingly followed and any process, whether secret or not, falls under the ambit of royalty even under the DTAA. Therefore payment for inter connect charges amounts to royalty for the use of process.

SONY ERICSSON MOBILE COMMUNICATIONS INDIA PVT. LTD. VS. CIT (DELHI HIGH COURT)

AMP EXPENSES ARE TO BE TREATED AS AN INTERNATIONAL TRANSACTION AND HAVE TO BE APPROPRIATELY BENCHMARKED.

Facts:

- Sony Ericsson Mobile Communications India Pvt. Ltd ('Assessee') is engaged in distribution and marketing of mobile handsets manufactured by it foreign Associate Enterprises ('AE') under the brand name "Sony Ericsson" which is owned by its foreign AE.
- In order to perform the terms of the agreement entered into with the AE the assessee carried out extensive expenditure on advertising, marketing and sales promotion ('AMP') for its AEs products.
- During the course of transfer pricing assessment proceedings, the Transfer Pricing Officer ('TPO ') observed that the assessee has incurred excessive AMP expenditure during the Assessment Year (A.Y) 2008-09 as compared to its comparable companies and thus relying on the decision of Delhi Tribunal Special Bench in case of L.G Electronics India Private Limited proceeded to treat average mean of AMP to sales ratio of the comparable companies as "bright line".
- Accordingly TPO considered additional AMP expenses as non-routine expenditure, which are incurred to promote the brand owned by its foreign AE and thus by considering the same as international transaction, disallowed AMP expenses incurred by the assessee in excess of bright line.

Issue:

- Whether the adjustment on account of AMP is considered as bad in law as the AO has not given specific reference to the TPO for an international transaction having regards to the retrospective amendment u/s 92CA of the Act?
- Whether AMP expenses can be treated as an international transaction and needs to be appropriately benchmarked by the assessee?
- Whether Transaction Net Margin Method (TNMM) can be adopted to benchmark, the said transaction by aggregating all the international transaction including the AMP expenditure?
- Whether the assessee can be called economic owner of the brand and whether expenditure incurred towards AMP will lead to brand building of the foreign AE?
- Whether bright line test can be adopted to benchmark the AMP transactions?

Held:

Honorable Delhi High Court has held as under:

- **Specific reference to TPO for AMP transaction**
  The High Court has held that the retrospective amendment in section 92CA has empowered TPO to adjudicate an international transaction even though the same is not reported in Form 3CEB. Further post amendment to the said section no specific reference is required from the AO to adjudicate an international transaction.
- **AMP as an International Transaction**
  The High Court upheld the ratio of Special Bench Decision in case of LG, of treating AMP as international transaction. It further held that Chapter X of the Income Tax Act, is not concerned with disallowance of expenditure but relates to determination of arm's length price/cost of an international transaction between the two AEs.
  While rejecting the assessee's claim that the AMP expenses is not an international transaction, Court held that the assessee itself has submitted that the international transactions entered with its AE included the cost/value of AMP expenses which is incurred in India.
- **Adopting TNMM by aggregating all the international transactions**
  The High Court has held that the TNMM can be equally effective and reliable when it is applied to closely linked or continuous transaction. In fact, when transactions are inter-connected, combined consideration may be the most reliable means of determining the arm's length price. There are often situations where closely linked and connected transactions cannot be evaluated adequately

on separate basis. In such case the assessee can aggregate the controlled transactions if the transactions meet the specified common portfolio or package parameters.

However, in the given case the High Court addressed the department's contention that distribution and marketing functions cannot be benchmarked on a composite basis in TNMM as several factors affect the net margins making the results unreliable.

- **Economic ownership and AMP expenses as brand building**

  The Court has held that the economic ownership would only arise in case of long-term contracts and where there is no stipulation denying economic ownership. However burden of proof of economic ownership is on the assessee.

  Further the High Court rejected department's contention that incurring AMP expenses leads to enhancement or development of brand value. It held that, brand creation depends upon a great number of facts relevant for a particular business. A "brand" reflects the reputation the brand owner has earned over a period of time due to the nature and quality of goods and services provided.

  Quality control is the most important elements that can mar or enhance the value of a brand and thus it would be incorrect to conclude that AMP expenses enhance the value of the brand

M/S PVS MEMORIAL HOSPITAL LTD. ITA 2/12 AND 16/2014 (KERALA HIGH COURT)

SHORT DEDUCTION OF WITHHOLDING TAX LIABLE FOR DISALLOWANCE

Facts:

- Section 40(a) (IA) of the IT Act does not allow deduction of related expenses to taxpayer if WHT is not deducted or paid. This provision takes into account a transaction on which tax is deductible at source (WHT) under Chapter XVII-B (dealing with WHT provisions) and such WHT is not deducted or after deduction such WHT is not paid within stipulated time. In a case before Kerala High Court, the taxpayer hospital had entered into an agreement with third party for performing various professional services in its hospital. The taxpayer deducted WHT at 2% under section 194C of IT Act (applicable for payment to contractors for work). The tax officer held that WHT was deductible at 5% under section 194J of IT Act (applicable to payment for professional and technical services). Entire amount of tax was disallowed under section 40(a) (ia). The first appellate authority and Tax Tribunal ruled in favour of the tax authorities.

Held:

- On further appeal, the High Court, on reference to the agreement between the parties, held that WHT was deductible under section 194J for professional services. The High Court further noted that the expression 'tax deductible at source under Chapter XVII-B' occurring in section 40(a)(ia) has to be understood as tax deductible at source under appropriate provision. Therefore, if tax is deductible under section 194J but is deducted under section 194C, such a deduction would not satisfy requirements of section 40(a) (ia). The deduction under a wrong provision of law will not save taxpayer from disallowance under section 40(a)(ia)

COLUMBIA SPORTSWEAR COMPANY VS. DIT (KARNATAKA HIGH COURT)

A LIAISON OFFICE OF A FOREIGN CO IDENTIFYING SUPPLIERS/ MATERIAL IS NOT A PERMANENT ESTABLISHMENT UNDER ARTICLE 5 OF INDIA-USA DTAA

Facts:

- The petitioner is a company incorporated in the United State of America (USA) and is a tax resident of the USA and it is a multinational company engaged in the business of designing, developing, marketing and distributing outdoor apparel with operations in North America, Europe and Asia.
- The petitioner's centralized sourcing group located outside India is responsible for all key purchase functions including (a) choosing the producing country; (b) Vendor Selection (c) Co-ordination of global production management and planning and (d) global quality assurance and strategy and policy development.
- With the permission of the Reserve Bank of India, the petitioner established a liaison office in Chennai in 1995 for undertaking liaison activities in connection with purchase of goods from India.
- The Indian liaison office is involved only in activities relating to purchase coordination for the petitioner. It does not supervise, direct or control the production facilities of the Indian Vendors. Consistent with the RBI approval, accorded to it, the India liaison office does not undertake any activity of trading, commercial or Industrial nature. It has no revenue streams and it does not source products to be sold locally in India.

Issue:

- Whether the Indian liaison office involves a permanent arrangement for the application under Article 5.1 of the DTAA?
- Whether any portion of the income attributable to the liaison office on account of the activity of vendors co-operation of global production management and planning and equitable quality assurance strategy, quality development and is liable to tax?

Held:

- Explanation 1(b) to the Section 9 carves out an exception. It provides that in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.
- Therefore, it is clear that when a non-resident purchases goods in India for the purpose of export, no income accrues or arises in India for such non-resident for it to be taxed.
- If a permanent establishment carries on business of sales in India or other business activities of the same or similar kind through that permanent establishment, then only, the profits of the enterprise will be taxed.
- The term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. It is an inclusive definition of what is included in the term 'permanent establishment' which is clearly set out in sub-article (2).
- It makes it clear that the term 'permanent establishment' shall be deemed not to include any one or more of the following as set out in sub-article (3).
- If the permanent establishment is established for the purpose of purchasing goods or merchandise for the purpose of collecting information for the enterprise, it is not a permanent establishment as defined under Article 5(1) read with Article 7.
- The impugned order is unsustainable.
- The substantial question of law framed is answered in favor of the assessee/petitioner and against the Revenue/respondent.

MARUTI SUZUKI INDIA LTD. V. COMMISSIONER OF INCOME TAX (DELHI HIGH COURT)

Facts:

- Maruti Suzuki India Ltd ('assessee'), a subsidiary of Suzuki Motor Corporation (Japan) ('AE'), is engaged in the manufacture and sale of passenger cars under the co- branded trademark "Maruti Suzuki". During the year under consideration, the assessee incurred expenditure on advertising, marketing and sales promotion ('AMP') for the products sold under the aforesaid trademark.
- During the course of transfer pricing assessment proceedings, the Transfer Pricing Officer ('TPO'), proposed an adjustment of Rs.252.60 crores, out of which amount of Rs.98.14 crores was towards royalty paid for use of foreign trademark on the ground that the brand had no value. The balance adjustment of Rs.154.12 crores was towards AMP expenses upon application of "Bright Line Test" observing that the assessee has incurred excessive AMP expenditure as compared to its comparable companies.
- Accordingly, TPO concluded that the trademark owned by the AE had piggybacked on the trademark "Maruti", without any compensation being paid to the AE. The TPO concluded that the AMP expenses resulted in promotion of the trademark of the AE considered additional AMP expenses as expenditure incurred to promote the brand owned by its AE, use of trademark of assessee by the AE, reinforcement of AE's branch in India which was a weak brand and impairment of value of trademark "Maruti" due to cobranding process. By considering AMP spend as an international transaction, the TPO disallowed excess AMP expenses incurred by the assessee based on the difference in the "bright line".
- The application filed by the assessee against the adjustment on account of AMP expenses was upheld by the Dispute Resolution Panel against which the assessee preferred an appeal before the Tribunal.
- The Tribunal remanded the issue to the file of the TPO for determining AMP in light of the decision in case of Sony Ericsson wherein the Hon'ble Tribunal held that incurring of AMP expenses is an international transaction and the TPO could overrule the method adopted by the assessee and could adopt the most appropriate method. Against the decision of the Tribunal, the assessee filed an appeal before the High Court.

Issue:

- Whether AMP expenditure incurred by assessee in India gives rise to an international transaction u/s 92B of the Act?
- Whether ITAT was right in directing that fresh benchmarking/ comparability analysis should be undertaken by TPO by applying principles paid down in Special Bench decision in the case of L G Electronics?
- Whether Tribunal was right in holding that TP adjustments in respect of AMP spend can be made by applying cost plus method and whether bright line test can be adopted to benchmark the AMP spend?

Held:

Honorable Delhi High Court has held as under:

Identification of an International Transaction

- The High Court observed that there is no agreement/arrangement between the assessee and the AE as regards AMP spend for brand promotion.
- The High Court identified that the assessee had already built a huge reputation in the Indian Markets even before it was acquired by its AE. The result of incurring excessive AMP expenditure has made it the market leader and benefited the assessee itself and in no way it's AE. Further,

the observation that the AE incurs a substantially higher % of AMP expenditure than the assessee strengthens the position that the assessee is not obliged to incur such expenditure on behalf of the AE.

Suitability of the Bright Line Test

- The main objective of the revenue in applying the "Bright Line Test" was to quantify the adjustment in respect of an international transaction. Upon ascertaining that the AMP expenditure does not qualify to be an international transaction, the question of correctness of the "Bright Line Test" ceases to exist.
- The High Court rejected application of the "Bright line test" held that it has not been prescribed in any statute governing the determination of ALP and an assumed price cannot form the basis of making an adjustment.

DIT (IT) VS. M/S. B4U INTERNATIONAL HOLDINGS LTD. (BOMBAY HIGH COURT)

INDIAN AGENT OF FOREIGN COMPANY CANNOT BE REGARDED AS "DEPENDENT AGENT PE" IF IT HAS NO POWER TO CONCLUDE CONTRACTS.

Facts:

- The assessee, a Mauritius based company, is 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 agent B4U India.
- The assessee claimed that it did not have a permanent establishment (PE) in India and thus is not liable to pay taxes in India under Article 7 of the India Mauritius Treaty. Further, the assessee submitted that the agents of the assessee have marked the ad-time slots of the channels broadcasted by the assessee for which they have received remuneration on arm's length basis. Thus, conditions of CBDT Circular 23 of 1969 are fulfilled and the income of the assessee is not taxable in India. Therefore, Explanation (a) to section 9(1) (i) of the Act which calls for taxation on attribution basis will have no application.
- The Assessing Officer (AO) did not accept the assessee's contention and held that the affiliated entities are basically an extension of the assessee in India and thus constitute a PE of the assessee in India within Article 5 of the India-Mauritius Treaty.
- In appeal, the CIT (A) partly allowed the assessee's appeal to held that the Indian affiliates cannot be treated as independent agent of the assessee. Alternatively, even if assuming that it could be treated as a dependent agent, but if it is paid remuneration at arm's length, further profits cannot be taxed in India.
- The Tribunal dismissed the revenue's appeal on the following grounds:

  d. The Paragraph 5 of Article 5 (Permanent Establishment) of the India-Mauritius Treaty indicates an enterprise shall not be deemed to have a PE merely because it carries on business in another state through a broker, general commission agent, or any other agent of independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted exclusively or almost exclusively on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

  e. In the present case, the assessee carries out the entire activities from Mauritius and concluded all the contracts in Mauritius. The only activity which is carried out in India is incidental or auxiliary/ preparatory in nature which is carried out in a routine manner as per the direction of the principal without application of mind and hence B4U India is not a

dependent agent. Nearly 4.69% of the total income of B4U India is commission/ service income received from the assessee and, therefore, it cannot be termed as a dependent agent. As far as the alternate contentions are concerned, it was held that the assessee and B4U India were dealing with each other on arm's length basis. 15% fee is supported by Circular No.742. Thus, it was held that no further profits should be taxed in the hands of the assessee in view of Supreme Court judgment in case of Morgan Stanley & Co. where it was held that there is no need for attribution of further profits to the PE of the foreign company where the transaction between the two is at arm's length.

- Aggrieved by the order of ITAT, Revenue had preferred an appeal before the High Court.

Issue:

- Whether B4U India can be treated as the dependent agent of the assessee under Article 5 of India-Mauritius Treaty?
- Whether any further profit can be attributable to the PE of the assessee, if the dependent agent is remunerated at arm's length?

Held:

The Hon'ble Bombay High Court upheld the Tribunal's order to hold as under:

- As per the agreement between the assessee and B4U India, B4U India is neither a decision maker nor does it have the authority to conclude contracts in India. Further, the revenue has not brought anything on record to prove that agent has such powers. The Indo-Mauritius DTAA requires that the enterprise must exercise an authority to conclude contracts in the name of the enterprise unless his activities are limited to the purchase of goods or merchandise for the enterprise. This condition is not satisfied and hence this is not a case of B4U India being an agent with an independent status.
- Further, relying upon the Supreme Court judgment in case of Morgan Stanley & Co. and assuming B4U India a dependent agent of the assessee, no additional profits can be attributed to the assessee as B4U India is remunerated at arm's length.
- Circular 742 (Taxation of foreign telecasting companies—Guidelines for computation of income-tax, etc.) has considered 15% to be the commission rate payable to the Indian agents. The Tribunal had therefore considered the transaction to be at arm's length. Nothing contrary against it has been brought on record by the Revenue.
- Reliance was also placed on the Bombay High Court decision in case of Set Satellite (Singapore) Pte. Ltd. vs. DDIT (IT) & Anr. Where it was held that in view of Article 7 (1) of the DTAA and Circular No. 23 dated 23.7.1969, the income of a non-resident which is neither directly nor indirectly attributable to the PE cannot be brought to tax.

SERCO BPO VS HARYANA HC

Facts:

- Blackstone GPV Capital Partners Mauritius VB Ltd ("Blackstone") had subscribed to 80% of the equity share capital in an Indian company, SKR BPO Services Pvt. Ltd. (Serco Services) in the year 2007 after applying for and obtaining the necessary regulatory approvals.
- It had transferred part of its shareholding amounting to 12.75% of the total shareholding to Barclays H&B Mauritius Limited ("Barclays"), incorporated in Mauritius.
- Serco BPO Private Limited ("Serco BPO or taxpayer") incorporated in Mauritius, entered into a share purchase agreement for acquiring shares from Blackstone and Barclays (sellers) in Serco Services in the year 2011.

- Serco BPO applied for a ruling from the Authority of Advance Rulings (AAR) for determining the tax implications arising to the non-resident shareholders and its own withholding tax liability under the provisions of the Act read with the provisions of the India-Mauritius tax treaty.
- The AAR declined to give its ruling on the basis of a prima facie finding that the sale transaction had been designed for the purpose of tax avoidance. The AAR further directed the tax authorities to find out the true nature of the transaction by investigating and examining fund flows, commercial purpose of the Mauritius entities, commercial expediency of the transaction etc.
- Serco BPO filed a writ petition before the Punjab and Haryana High Court.

Issue:

- The Punjab and Haryana High Court (High Court) dealt with the question as to whether a non-resident would be required to withhold tax on the payments being made to another non-residents (based out of Mauritius) for acquiring their shares in an Indian company.

Held:

The High Court held that:

- The validity of the TRCs have not been challenged by the tax authorities. Consequently the sellers holding the TRCs, are to be regarded as the tax residents of Mauritius and eligible to claim the benefits of the India-Mauritius tax treaty.
- Consequently the income arising to the sellers from the sale of shares in Serco Services would not be taxable in India and the taxpayer would not be required to withhold tax thereon.
- The relevant observations of the Punjab and Haryana High Court on the validity of TRC issued by the Mauritius tax authorities are as follows:
- In view of the Circular No. 789 and the Supreme Court decision in case of Azadi Bachao Andolan, it is incumbent upon the tax authorities in India to accept the TRCs issued by the Mauritian authorities. Once it is established that it has been issued by the contracting State i.e. Mauritius, a failure to accept the TRCs issued by the Mauritian authorities would be an indication of break down in the faith reposed by the Government of India in the Government of Mauritius and the Mauritian authorities reiterated in and evidenced by statutory Circulars issued under section 119 of the Act
- The entire sequence of events namely the Finance Bill, 2013, the clarification issued by the Finance Ministry regarding the TRC dated 1 March, 2013 and the Finance Act, 2013 establish beyond doubt that the TRCs issued by the Mauritius authorities must be accepted provided of course it is established that it has been issued by the appropriate Mauritius Authorities. Either ways the Indian tax authorities did not raise any question regards the genuineness or validity of the TRC issued by Mauritius tax authorities.
- It is also relevant to note the decision of the High Court with respect to tax authorities' contentions on treaty shopping and investments made for purposes of availing India-Mauritius tax treaty benefits:
- The High Court accepted tax payer's contention that in absence of limitation clause, there is no disabling or disentitling conditions in the India-Mauritius tax treaty prohibiting the resident of a third nation from deriving benefits thereunder. Further it took cognizance of the observation of Hon'ble Supreme Court decision in case of Azadi Bachao Andolan (supra) 9 and held that entering into a treaty and terms/conditions thereof are sovereign functions involving important aspects of the policy and should be left to policy makers.
- The High Court examined the following facts of the transaction and concluded that there is nothing to suggest that investment was made with an intention to earn profits from sale of Serco

Service's shares or that the sale of shares in the year 2011 was conceived at the time of investment in 2007:

- The sellers had acquired the shares in Serco Services almost since its inception and had managed its business over six years by employing about 1,000 personnel.
- The tax payer had made detailed submissions including all relevant aspects of the transaction (such as, flow of funds, commercial purpose of Mauritius entities, commercial expediency of transactions, etc.) which were crucial for determining the nature of transaction

COTTON NATURALS VS DELHI HC

Facts:

- The taxpayer was engaged in the business of manufacture and exports of rider apparels. The taxpayer selected the Comparable Uncontrolled Price (CUP) method to benchmark the interest received on loan advanced to the associated enterprise (AE). In the TP documentation maintained by the taxpayer, it declared that the interest received at the rate of 4 per cent was comparable with the export packing credit rate obtained from independent banks in India.
- The Transfer Pricing Officer (TPO) observed that lending or borrowing is not one of the main businesses of the taxpayer and London Inter Bank Offered Rate (LIBOR) is not a proper reference to calculate the corresponding interest on loan. He/she also stated that the interest rates for outbound loans from an Indian company to its foreign AE would be benchmarked against interest rates prevailing in India for investing in corporate bonds or other investment avenues.
- Although, the TPO determined the arm's length interest rate to be 14 per cent p.a., the Dispute Resolution Panel (DRP) granted partial relief in the form of reduction of rate of interest to 12.20 per cent. Both, the TPO and the DRP referred to domestic rates only by way of analogy, however while applying CUP method for comparability, the LIBOR rate was referred to, along with a mark-up of 700 points on account of low credit rating of the AE and the cost of transaction.

Issue:

- Whether the Tribunal was right in following their earlier order for AY 2008-09 and in holding that the interest at 4 per cent p.a. charged by the taxpayer from its subsidiary was arm's length rate of interest?

Held:

- TP determination is not primarily undertaken to re- write the character and nature of the transaction, though this is permissible under two exceptions (Paragraphs 1.36 to 1.38 of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2010 published by the Organization for Economic Cooperation and Development). Chapter X and TP rules do not permit the Revenue authorities to step into the shoes of the taxpayer and decide whether or not a transaction should have been entered into. Actual business transactions that are legitimate cannot be restructured. In support of the above, the High Court referred to the ruling by the Delhi High Court in EKL Appliances Limited. The High Court also referred to the judgment delivered by the Delhi High Court in the case of Sony Ericsson Mobile Communication India Pvt. Ltd wherein the above principle, based on the EKL ruling, was upheld. A reliance was also placed by the High Court on the UN Model Double Taxation Convention between Developed and Developing Countries (OECD Model Convention Commentary on Paragraph 6 of Article 11).

- TP rules treat the domestic AE and the foreign AE as two separate entities but do not ignore that the two entities have a business and a commercial relationship. The terms and conditions of the commercial business relationship as agreed and undertaken between the two entities are not to be rewritten or obliterated.
- The High Court referred to the OECD Guidelines, the United Nations Practical Manual of TP for Developing Countries as well as Rules 10B and 10C of the Income Tax Rules, 1962 (Rules) to reject the reasoning given by the TPO that TP adjustment could restructure the transaction. The High Court held that Chapter X of the Act and the Rules neither curtail commercial freedom nor prohibit a legitimate transaction. The subject matter of the inter-company transaction should be arm's length determination of the rate of interest and not its re-classification.
- The comparison for application of the CUP method has to be with comparables and not with the options or choices which were available to the taxpayer for earning income or maximising returns.
- The High Court rejected the finding of the TPO that the comparable test to be applied is to ascertain what interest would have been earned by advancing a loan to an unrelated party in India. Since the loan to the AE in the instant case is not granted in India and is not to be repaid in the Indian Rupee, it is not a comparable transaction.
- As regards to the transaction cost, the High Court held that transaction or hedging cost is borne and paid by the borrower. Since, in the instant case, the taxpayer is the lender and not the borrower, the transaction cost is not applicable. Also, comparison drawn between the taxpayer and banks on account of risk borne on loan advanced to the AE, is unsound. It ignores aspects such as the close relationship between the two AEs, the funds being shareholder funds and not borrowed money, etc.
- The High Court held that interest rate should be market determined interest rate applicable to the currency of loan. It should not be computed on the basis of legal tender of the place or the country of residence of the parties involved in the transaction.
- Drawing reference to Klaus Vogel's recommendation on the Double Taxation Conventions, the High Court held that the currency in which the loan is to be re- paid normally determines the rate of return on the money lent. Klaus Vogel, on Double Taxation Conventions (Third Edition) under Article 11 in paragraph 115 states that the existing differences in the levels of interest rates do not depend on any place but rather on the currency concerned. A differentiation between debt-claims or debts in national currency and those in foreign currency is normally no use. Moreover, a difference in interest levels frequently reflects no more than different expectations in regard to rates of exchange, rates of inflation and other aspects. Hence, the choice of one particular currency can be just as reasonable as that of another, despite different levels of interest rates.
- With regard to Revenue's, reference to Chapter 10 of the UN's TP Manual, the High Court disagreed with the position set out and held that the reasoning given therein is contrary to accepted international tax jurisprudence. The High Court held that the said Chapter sets out an individual country's view point and its experiences for the information of the readers and does not reflect the view of the Manual.
- Based on the above, High Court ruled in favour of the taxpayer.

TRIBUNAL DECISIONS

AGENCE FRANCE PRESSE VS. ADIT (IT)

PAYMENT TOWARDS DISTRIBUTION AND CIRCULATION OF NEWS REPORTS AND PHOTOGRAPHS IS TAXABLE AS ROYALTY

Facts:

- Agence France Presse (Assessee) is an international news agency (owned by the government of France). Assessee distributes its text news and photos connected with news in India through various news agencies viz., Press Trust of India (PTI) and IANS India Pvt. Ltd. (IANS) and had entered into agreements with Indian news agencies to distribute its daily reports of international events of interest which occur in various fields such as politics, sports, economic, etc. Assessee also provided news on the web directly to the subscribers in India on its web site. It received payments from transmission of its news items as well as from transmission of news photos.
- In assessee's assessment for FY 2005-06, the AO held that there existed an element of copyright on the news reports and photographs circulated by the assessee in terms of Copyright Act, 1957.
- According to the assessee, news per se are not property hence they are not copyrightable. As per the terms of agreement between assessee and news agencies, predominant or primary intention between the contracting parties involves consideration for transmission of photos, reporting of current events etc. and does not secure any copyright in the expression of such news report. Accordingly the consideration received by the assessee does not partake the nature of "royalty" as defined in Expiation 2 of Section 9(1)(vi) of the Income-tax Act, 1961 ('Act') or Article 13 of the DTAA between India and France ('Indo French DTAA').
- The AO held that assessee's receipts are for use or right to use copyright of a literary, artistic or scientific work and thus, would fall in the purview of "Royalties" u/s 9(1)(vi) of Act or Article 13 of the DTAA. Accordingly, the AO taxed the assessee's receipts both from transmission of news and news photos @ 15% on gross basis.
- The CIT (A) upheld the order of the AO and against the CIT (A) order; the assessee filed the current appeal before the Hon'ble Tribunal.

Issue:

- Whether Payment towards distribution and circulation of news reports and photographs is taxable as Royalty?

Held:

- Firstly, as regards news, the ITAT held that news constitutes merely reporting of the facts, current events, etc. and thus, cannot be copyrighted as it does not fulfil the requirements of the Copyright Act and thus, assessee's receipts towards transmission of news would not be treated as royalty.
- Secondly, as regards news story including archived news, the ITAT held that even if as observed above that copyright does not exist in news, the news item or story produced by someone cannot be reproduced by anyone without proper authentication. By giving an example of a reporting, the ITAT observed that even if the news (i.e. fact or event) remains the same, the headline (i.e. its reporting or form) remains unique and thus, it can be concluded that the news-reports as well as archived data being in the nature of 'originally literary work', copyright subsists in them.
- Thirdly, in case of photographs taken by the assessee from freelancers, it cannot be said that it has an intrinsic value of its own but when used for news items, it assists in conveying the message in the news story. Thus, photographs would be deemed as 'artistic works' under the Copyright Act and thus, would be treated as 'Royalty'.
- Thus, in view of the above, the ITAT concluded that since the assessee is providing a gamut of services covering all the three categories without any split and all the three services are

interlinked, the receipts of the assessee would qualify as 'Royalty' under the Act and under Indo-French DTAA.

AITHENT TECHNOLOGIES PVT. LTD VS. DCIT TS-38-ITAT-2015)

Facts:

- Taxpayer, an Indian Head office, rendered software development and consultancy services to its branch situated in Canada. The taxpayer contended that the transactions with branch office were not in the nature of transactions with associated enterprises (AEs) as branch cannot be treated as a separate entity and hence should not be treated as international transaction under the Act.
- However the Tax authority treated this transaction as international transaction and proceeded to calculate the arm's length price. Aggrieved the taxpayer appealed before the Tribunal.

Held:

- Section 92B (1) of the Act provides that an International transaction means a transaction between two or more AEs. Thus for treating any transaction as an international transaction, it is sine qua non that there should be two or more separate AEs.
- From a bare reading of section 92B (1) and section 92A of the Act which provides the meaning of AEs it clearly transpires that in order to describe a transaction as an 'international transaction', there must be two or more separate entities.
- The Taxpayer has consolidated the financial results of the head office as well as the Canada branch and offered the aggregated income to tax. The fact that the office in Canada is Taxpayers branch office and not a distinct entity was specifically argued before the Tax Authority which was not negated by the Tax Authority. Thus it is clear that the branch office is not a separate entity.
- As per the principle of mutuality, no person can transact with himself in common parlance. As such, one cannot earn any profit or suffer loss from oneself. Even if Tax authority's contention that the Taxpayer has earned an income from his branch is accepted then such profit earned would constitute additional cost to the Branch. On the aggregation of the annual accounts of the HO and branch, such income of the head office would be set off with the equal amount of expense of the Branch, leaving thereby no separately identifiable income.
- Inter se dealings between HO and branch cease to be commercial transactions in the primary sense. In such a case it cannot be contended that such transaction should be treated as an international transaction.

DDIT VS. SERUM INSTITUTE OF INDIA LIMITED (ITAT, PUNE)

EVEN IN THE ABSENCE OF PAN, THE PAYER IS NOT REQUIRED TO DEDUCT TDS AT 20% IF THE CASE IS COVERED BY DTAA

Facts:

- The assessee is engaged in the business of manufacture and sale of vaccines. In the course of its business activities, the assessee had made certain payments to non-residents on account of interest, royalty and fees for technical fees. These payments were subject to withholding tax u/s 195 of the Act. The assessee has deducted taxes on such payments as per the rates specified in respective Double Taxation Avoidance Agreements (DTAAs) as these rates were lower than the rate prescribed under the Act.
- The Revenue found that some of the non-residents to whom such payments were made did not have Permanent Account Number in India and hence treated the same as a case of short deductions. The contention of the Revenue was that in absence of a PAN, the provisions of

section 206AA of the Act were applicable and the assessee should have deducted taxes at the higher rate of 20% prescribed in the section. As a consequence, the difference between 20% and the rate actually adopted for tax deduction was treated as default on the part of assessee.

- Aggrieved by the above, the filed an appeal before CIT(A) who allowed the issue in favour of assessee the assessee on the ground that DTAA shall prevail over provisions of section 206AA of the Act.
- The Revenue then moved before the ITAT against the order of CIT (A) with the contention that in the absence of furnishing of PAN, the assessee was under an obligation to deduct tax @ 20% following the provisions of section 206AA of the Act.

Issue:

- Whether DTAA prevails over section 206AA of the Act i.e. whether the assessee is required to withhold taxes at rates prescribed under the DTAA as against 20% in case payee does not have PAN.

Held:

The ITAT dismissed the appeal of the Revenue and decided the issue in favour of the assessee by holding that:

- The Supreme Court in Azadi Bachao Andolan and others vs. UOI (263 ITR 706) has upheld the proposition that the provisions made in the DTAAs will prevail over the general provisions contained in the Act to the extent they are beneficial to the tax payer. Also, Section 90(2) provides that the provisions of the DTAAs would override the provisions of the Domestic Act in cases where the provisions of DTAAs are more beneficial to the assessee.
- Tax liability in India is determined in accordance with the provisions of charging sections of the Act or the tax treaty whichever is more beneficial to the taxpayer in view of section 90(2) of the Act. However, It would be quite incorrect to say that though the charging sections of the Act i. e. section 4 and section 5 dealing with ascertainment of total income are subordinate to the principle enshrined in section 90(2) of the Act but the provisions of Chapter XVII-B governing tax deduction at source are not subordinate to section 90(2) of the Act.
- Supreme Court in the case of GE India Technology Centre Pvt. Ltd. vs. CIT, (327 ITR 456) held that the provisions of DTAAs along with the sections 4, 5, 9, 90 & 91 of the Act are relevant while applying the provisions of tax deduction at source. Therefore, section 206AA of the Act cannot be understood to override the charging sections 4 and 5 of the Act. Thus, section 90(2) of the Act overrides the charging sections 4 and 5 of the Act and also the section 206AA of the Act.
- Further, section 206AA of the Act is not a charging section but is just a part of a procedural provisions dealing with collection and deduction of tax at source. Therefore, where the tax has been deducted in view of the beneficial provisions of DTAAs, the provisions of section 206AA of the Act cannot be invoked by the AO to insist on the tax deduction @ 20%, having regard to the overriding nature of the provisions of section 90(2) of the Act.
- Bright line test

  The High Court rejecting the concept of bright line test has held that bright line test has no statutory mandate and a broad-brush approach is not mandated or prescribed and thus use of bright line test on the basis of Special Bench decision is unwarranted.

  The High Court has also observed that it is difficult to compartmentalize promotion of product or promotion of brand expenses and record them as separate from each other and thus stated that the issue is merely whether or not the taxpayer is adequately compensated by its foreign AE.

MCKINSEY BUSINESS CONSULTANTS SOLE PARTNER LLC VS. DDIT (IT) (MUMBAI-TRIB.)

ARTICLE 3, 17 OF INDIA – GREECE DTAA – WHERE DTAA DOES NOT HAVE A SPECIFIC ARTICLE ON FTS THE SERVICES WOULD BE TAXABLE AS BUSINESS PROFITS AND NOT AS OTHER INCOME UNDER THE DTAA.

Facts:

- The Taxpayer, a company incorporated in Greece entered into a transaction of providing certain services to an Indian branch of one of its associate entity. The Taxpayer did not offer to tax income received in respect of such services in India. The Taxpayer was of the view that income for services would fall under business income article of the DTAA. In absence of a PE in India, such business profits would not be liable to tax in India.
- However, the Tax Authority contended that the services were in the nature of FTS under S. 9(1)(vi) of the Act as well as the DTAA.
- On appeal before the dispute resolution panel (DRP), it was held that if DTAA is silent on certain source of income the same should be taxable as per the provisions of the Act. Aggrieved the taxpayer appealed before the Tribunal.

Held:

- A bare reading of Article 17 (other income article) of India- Greece DTAA indicates that it deals with residual items of income which are not covered by any of the articles of the DTAA.
- However, in this case the assessee has earned income by rendering the services in the course of its business and therefore, it is nothing but business profit which is covered under business profits article viz, Article 3 of the treaty. Admittedly the assessee does not have PE in India and hence, as per the express provision of Article 3 of the DTAA, business profit cannot be taxed in India.

MOTORCYCLE & SCOOTER INDIA (P.) LTD. VS. ACIT (ITAT DELHI)

ROYALTY PAID FOR USING TECHNOLOGICAL KNOW-HOW OF FOREIGN HOLDING COMPANY CANNOT BE DISALLOWED BY HOLDING THAT THE ASSESSEE IS A 'CONTRACT MANUFACTURER'. HONDA

Facts:

- The assessee is a wholly owned subsidiary company of M/s. Honda Motors Company Ltd. (HMCL), Japan, engaged in manufacturing, sale and service of two wheelers, parts and accessories thereof.
- The assessee entered into a technology know-how agreement with its holding company for manufacture and sale of two wheelers and parts and was liable to pay royalty on the goods manufactured whether the same is sold within India or outside India.
- Transfer Pricing Officer (TPO) has accepted that payment of royalty in respect of domestic sales and export sales to non-Associated Enterprises (AE's) is at Arm's Length Price (ALP). However, TPO has disputed the payment of royalty in respect of exports made to AE's by holding that the assessee is a 'contract manufacturer'.
- The TPO opined that since the assessee is making a part of its sales to its related parties and benefit of producing components is reaped by the AE's, the payment of royalty did not conform to the arm's length principle. Thus, the TPO determined the ALP of royalty on exports to AE's at "nil".
- On appeal, the Dispute Resolution Panel (DRP) rejected the assessee's plea and confirmed the draft assessment order with regard to the Transfer Pricing adjustment.
- Aggrieved by the order of the DRP, the assessee filed an appeal before the ITAT.

Issue:

- Whether the assessee was rightly considered as a 'contract manufacturer' and disallowance in respect of payment of royalty on exports to AE's is justified?

Held:

The ITAT decided the issue in favour of the assessee by holding that:

- It is not in dispute that the goods which were exported by the assessee were manufactured by using the technical know-how provided by the holding company HMCL under the relevant technology know-how agreement. The raw materials have been purchased by the assessee in its own right and were not supplied by the AE. Thus, the finding of the TPO that the assessee is a 'contract manufacturer' is without any basis and contrary to the facts on record.
- The assessee has exported goods to the AE on a principal to principal basis and the price at which export were made is higher than the domestic price. It was noted that the assessee has been benefited by export to AE's and is not at loss.
- Since there was no reasonable justification for disallowance of royalty on the export made to the AE's, the addition made by the AO/TPO is therefore deleted.

DCIT V. TATA CONSULTANCY SERVICES LIMITED

Facts:

- The Assessment Year (AY) under consideration was 2005-06. The AO following the Central Board of Direct Taxes (CBDT) Instruction No. 3/2003 dated 20 May 2003 (requiring a mandatory reference to the TPO to determine the ALP, where the aggregate value of international transaction(s) exceeded INR 5 crores) and after taking the approval of Commissioner of Income-tax (CIT) as per Section 92CA(1) of the Act, referred the ALP determination of the taxpayer's international transactions to the TPO.
- The TPO made a TP adjustment on the international transaction(s) which was mechanically incorporated by the AO in his order.
- The taxpayer aggrieved by the AO's order filed an appeal with the Commissioner of Income-tax (Appeals) [CIT(A)], wherein it deleted the TP adjustments.

Issue:

- In cases where the AO does not discharge this judicial function of forming an opinion on the conditions (a)to (d) prescribed under Section 92C(3) of the Act, no TP adjustment could be made.
- Where the taxpayers enjoy the benefit of a tax holiday under the Act, or in a case where the tax rate in the country of the AE is higher than that in India, whether a TP adjustment could be made?

Held:

- The Tribunal held that the taxpayer was correct in supporting the order of the CIT(A) on both of its arguments.
    f. where the AO does not discharge this judicial function of forming an opinion on the conditions (a) to (d) prescribed by Section 92C(3) of the Act, no TP adjustment could be made.
    g. where the taxpayer enjoys the benefit of a tax holiday under the Act, or in a case where the tax rate in the country of the AE is higher than that in India, whether a TP adjustment could be made.
- The Tribunal appreciated the taxpayer's contention that the Bombay High Court in the case of Vodafone had overruled the decisions in the case of Sony and Aztec. Also, the Tribunal noted that the issue sought to be argued in the case at hand were never argued in the decisions relied by the Department. Hence even on that count, the decisions relied on by the department were of

no help to them. Having come to this conclusion, the Tribunal proceeded to decide the points argued by the taxpayer.

- The Tribunal agreed with the contention of the taxpayer that it was a condition precedent for the AO to have a prima facie belief upon the application of his mind to the material or information or document in his possession that it was necessary or expedient to make a reference to the TPO. Such prima facie belief was a condition precedent and mandatory. The absence of such a belief would vitiate the entire TP proceedings.
- It was held that even the CIT erred in not applying his mind to the TP report filed or any other material or information or document furnished by the taxpayer before granting approval for reference to the TPO under Section 92CA(1) of the Act. This failure on the part of the CIT would also vitiate the entire TP proceedings.
- It was also held that no TP adjustment could be made in a case where the taxpayer enjoyed the benefit of a tax holiday, or where the tax rate in the country of the AE was higher than the rate of tax in India and where the establishment of tax avoidance or manipulation of prices or shifting of profits out of India was not possible.

Advance Authority Rulings

SKILLSOFT IRELAND LIMITED AAR NO.985 OF 2010 (AUTHORITY FOR ADVANCE RULING)

PAYMENT RECEIVED ON SALE OF E-LEARNING COURSE OFFERINGS, ONLINE INFORMATION RESOURCES AMOUNTS TO ROYALTY.

Facts:

- The taxpayer, an Ireland Company, is engaged in business of providing on demand e-learning course offerings, online information resources, flexible learning technologies and performance support solutions ('products'). The product consisted of two components – course content and the software through which course is delivered to the customer. The taxpayer had developed copyrighted products, electronically stored on server outside India.
- A reseller agreement was entered into with Indian Company ('reseller'). The reseller bought products from taxpayer on principal-to-principal basis and sold them to Indian end users/customers in its own name. The reseller had a right to license, market, promote, demonstrate and distribute products by providing online access to products in India. The products were licensed to Indian customers under Master License Agreement between reseller and customer.
- The reseller granted a non-exclusive, non-transferable license to use and access the products i.e. e-learning platform and educational content. The reseller provided access code or web-link to customers to access the products.

Held:

- One of the questions raised before Authority for Advance Ruling (AAR) was whether payment received by taxpayer constitutes royalty under the India-Ireland Tax Treaty.
- The AAR noted that admittedly the products of taxpayer are software. It referred to earlier AAR ruling in the case of FactSet Research System Inc., In re (317 ITR 169) to hold that software and computer database created by taxpayer fall within the scope of literary work of Article 12(3)(a) of the Tax Treaty. The AAR refuted analogy drawn to on-line banking facility or e-library (book) by stating that the customer gains access to specially designed software for understanding the content.
- As regards argument that payment received is for copyrighted article and no rights in copyright are granted, this AAR agreed with findings of earlier ruling in the case of Citrix Systems Asia Pacific Limited (343 ITR 1). AAR in case of Citrix had noted that when a copyrighted article is permitted or licensed to be used for a fee, the permission involves not only the physical or electronic manifestation of a programme, but also the use of or the right to use copyright embedded therein. Further, the Copyright Act or the IT Act or Tax Treaty does not use the expression 'copyrighted article', which could have been used if the intention was otherwise. Further, irrespective of use of words like non-exclusive and non-transferable in reseller and master license agreement, there is definitely transfer of certain rights owned by taxpayer.
- It relied upon Delhi High Court ruling in case of Synopsis International Old Ltd (212 Taxman 454) which noted that even if it is not transfer of exclusive right in the copyright, right to use the confidential information embedded in the software in terms of license makes it clear that there is transfer of certain rights which owner of copyright possess in such computer software/programme.
- As regards definition of royalty under Tax Treaty, AAR agreed with findings of Delhi High Court to the effect that if definition of royalty in the Tax Treaty is taken into consideration, it is not necessary that there should be a transfer of any exclusive right. In terms of Tax Treaty,

consideration paid for the use or right to use confidential information in the form of computer programme software itself constitutes royalty.

- Accordingly, AAR held that payment received by taxpayer constitutes royalty as per Article 12(3)(a) of the Tax Treaty.

M/S. AGILA SPECIALTIES PVT. LTD VS. THE DCIT (ITAT BANGALORE)

Facts:

- The assessee company is engaged in the business of manufacture and marketing of pharmaceutical products, besides product development and has a well-diversified portfolio of products across product group. For the AY 2010-11 the assessee filed its return of income on 14.10.2010 declaring a loss of Rs. 376,181,078, claiming a refund of Rs 1,025,499. During the course of assessment proceedings, the international transactions entered into by the Assessee were referred by the Assessing Officer to the Transfer Pricing Officer [TPO] for determination of arm's length price [ALP] under section 92CA of the Income-tax Act, 1961.
- Simultaneously, the assessment proceedings were initiated under section 143(2) . The AO issued a draft assessment order dated 28.02.2014 u/s. 143(3) r.w.s. 144C(1), wherein the total income of the assessee was proposed to be computed at a loss of Rs 256,046,157 under normal provisions of the Act, after making various additions /disallowances to the returned income. The AO make addition of Rs. 105,063,004 on account of adjustment following the order passed by TPO and disallowance of Rs. 15,064,297 on account of sec.40(a)(i).

Issue:

- Internal comparability is a preferred method in transfer pricing study where within company profit margin data with third parties available

Held:

- The TPO had applied external TNMM on entity level and on this issue, the Third Member decision of the Mumbai Bench of the Tribunal in the case of M/s. Technimont ICB Pvt. Ltd. v. Addl. CIT in ITA No.4608/Mum/2010 for AY 2005-06, order dated 17.7.2012 is relevant. In this decision it was held that the underlying object behind computing ALP of an international transaction is to find out the profits which such enterprise would have earned if the transaction had been with some third party instead of related party. When the data is available showing profit margin of that enterprise itself from a third party, it is always safe and advisable to have recourse to such internal comparable case. The reason is patent that the various factors having bearing on the quality of output. Assets employed, input cost etc. continue to remain by and large same in case of an internal comparable. The effect of difference due to such inherent factors on comparison made with the third parties, gets neutralized when comparison is made with internal comparable.
- Following the above decision, we are of the opinion that TPO had erred in choosing an external comparable, when there was an internal comparable uncontrolled transaction which the assessee had taken in its TP study.
- Accordingly appeal of the assessee allowed

DCIT VS. M/S AT & S INDIA PVT. LTD. (ITAT KOLKATA

Facts:

- The assessee is a private limited company and engaged into business of manufacture and sale of professional grade printed circuit boards. The assessee-company is a subsidiary of AT&S Austria. AT&S Austria has entered into global arrangements with various companies located in different part of world for various facilities and services, which are to be used by AT&S Austria and its group companies located in different countries, including India.
- During the year under consideration, assessee company has claimed an expense of Rs.1,59,95,287/- towards share technology services paid to its Austria based holding co.- AT&S Austria towards reimbursement of its share paid by the holding co.
- AO found that assessee has failed to deduct TDS of such expenses and after considering assessee's explanation added the same to the total income of assessee for violating the provision of Sec. 40(a) (ia) of the Act.
- On appeal to CIT (A), it was held by him that the expenses are out of the purview of TDS being reimbursed and also not chargeable of tax in India. Therefore, the addition made by AO stands deleted.
- Aggrieved revenue is in appeal before ITAT

Held:

The Kolkata ITAT Kolkata held:

- The tribunal relied on its own decision in assessee's own case in 2005-06- ITA 1262-186/Kol/2010, 2006-07-ITA 2071/Kol/2010 & 2007-08 – ITA 779/Kol/ 2012 vide order dated 29-01- 2015, wherein this Tribunal has deleted the addition made by AO on account of TDS share technology services.
- Tribunal followed the judgment of Hon'ble Calcutta HC in the case of Dunlop Rubber Co. Ltd. and held that where the assessee paid its share of expenses to its holding co in the nature of reimbursement of expenditure incurred by holding company for procuring services for the group , then the reimbursement cost incurred by the assessee is out of the purview of the TDS provision as it does not generate any income in the hands of the recipient and consequently the provisions of section 40(a)(ia) could not be invoked.
- The above decision of Hon'ble Calcutta HC was also relied upon by the Authority for Advance Rulings in the case of Cholamandalam Ms Generai insurance Co. Ltd.
- In result appeal of revenue was dismissed.

IDEA CELLULAR LTD. MUMBAI V. ASST. DIT (ITAT MUMBAI)

LOAN ARRANGER'S FEES ARE NEITHER 'INTEREST' NOR 'FTS' AND NOT LIABLE FOR TDS U/S 195

Facts:

- Idea Cellular ('Assessee' or 'borrower') had entered into a "Term Loan Facility Agreement" with Finnish Export Credit Limited ('FECL' or 'lender'). The Hongkong & Shanghai Banking Corporation limited, Hong Kong ('HSBC HK') arranged for the loan as "Arranger".
- The role of HSBC HK was to liaise with the lender and to procure the loan for the assessee as well as to negotiate the terms and conditions of the facility with the lender on behalf of the

borrower. In lieu of this, the assessee was liable to pay an amount of INR 26.47 million to HSBC, HK towards arranger fees.

- Out of abundant caution, the assessee remitted the said amount of arranger fees after deducting tax @ 21.12% u/s 195 of the Act (characterizing the arranger fees as 'interest'). Subsequently, filed an appeal with the Commissioner of Income-tax (Appeals) ['CIT (A)'] denying its liability to deduct tax on such arranger fees as the same amount did not constitute 'Interest's u/s 2(28A) of the Act.
- The CIT (A) called for a remand report from Additional Director of Income-tax (International Taxation) ['ADIT (IT)'] wherein the ADIT (IT) admitted that the arranger fees cannot be considered as 'interest'. However, he opined that the said fees would be of the nature of 'managerial' or 'consultancy' services and hence, by applying Explanation 2 to Section 9(1) (vii) of the Act, the said fees would be liable to withholding tax.
- The learned CIT(A) held that arranger fees is not only 'interest' but also 'fees for technical services' ('FTS') as under:

    h. Interest - The arranger fees is in the nature of 'interest' as it is paid as per terms of agreement between the lender, borrower, arranger and the agent. Further, the fee is charged on account of utilization of loan and funds by the assessee.

    i. FTS - Arranger fee is in the nature of service fee for managing and arranging the finance for the assessee from various lenders.

- Aggrieved by the order of CIT (A), the assessee preferred an appeal before ITAT.

Issue:

- Whether arranger's fees pursuant to loan agreement fall within the scope of 'Interest' or 'FTS' and consequently is liable to tax withholding u/s 195?

Held:

- HSBC HK facilitated the transaction credit facility between FECL and the assessee. Thus, HSBC HK acted as a broker or a middleman for arranging the loan for the assessee.
- As regards contention whether the fee can be construed as 'interest', the ITAT held that sum payable in respect of any money borrowed or debt incurred including service fee of charge in respect of money borrowed or debt incurred, shall be construed as 'interest' u/s 2(28A) of the Act. In the given case fees paid to HSBC HK is not in respect of any money borrowed or debt incurred, but was paid as arranger fees. Thus, the fees paid to HSBC HK cannot be taxed as 'interest'.
- As regards, the contention that the arranger fees are liable to TDS as 'fees for technical services', the ITAT relied on the decision of Credit Lyonnais vs. ADIT (IT) (35 taxmann.com 583) (Mum) wherein the arranger fees paid to SBI for mobilizing deposits from eligible depositors, receiving and handling applications forms cannot be brought within the ambit of FTS, and hence, not liable to TDS u/s 195. Similar proposition was upheld in the case of Abu Dhabi Commercial Bank Ltd.
- It also held that arranging a loan cannot be equated with provision of managerial services, as HSBC HK did not provide any services implying control, administration and guidance for the business's day-to-day functioning. It is also not in the nature of 'consultancy services' as HSBC HK did not provide any advisory or counselling services. Hence, arranger fees does not fall under the purview of FTS u/s 9(1) (vii) of the Act.
- On the basis of the above, the ITAT held that the Arranger fee is not liable to withholding tax u/s 9(1) (vii) of the Act.

FIRST BLUE HOME FINANCE LTD. VS. DCIT (ITAT DELHI)

NO TRANSFER PRICING ADJUSTMENT OF INTEREST ON DEEMED LOAN ARISING OUT OF ISSUE OF SHARES AT A PRICE LESS THAN ITS FAIR MARKET VALUE.

Facts:

- The assessee is a 100% subsidiary of BHW Holding AG, Germany ("AE"). During the year, assessee issued 53,309,640 equity shares of INR 10 each at Par to its AE.
- During the course of assessment, Transfer pricing Officer (TPO) had observed that the opening book value of shares was INR 11.98/- per share.
- Since the book value of shares issued was higher than issue price, the TPO considered the difference of INR 105.55 million as deemed loan (i.e. INR 1.98/- per share X 53,309,640 shares) given by the assessee to its AE without any consideration.
- The TPO by applying interest rate of 17.26% on such deemed loan, worked out arm's length interest at INR 1.52 million.
- Since no interest was received by the assessee on such deemed loan, the TPO proposed the addition of INR 1.52 million. The assessing officer made this addition which has been confirmed by the CIT (A).
- Aggrieved by the order of CIT (A), assessee is in appeal before Hon'ble ITAT Delhi.

Issue:

- Whether Transfer pricing adjustment can be made on account of interest on deemed loan?

Held:

The Hon'ble ITAT held as under:

- Firstly there should be an international transaction and secondly, such international transaction should result into income. When both the conditions are satisfied then the income so arising from an international transaction is computed having regards to its ALP.
- The issue of shares is an international transaction under section 92B of the Act as the same has bearing on the assets of the assessee.
- It is apparent that if an international transaction with its determined ALP does not lead to the generation of any income chargeable to tax, then provision of section 92(1) are not attracted.
- The Hon'ble Bombay High Court in Vodafone India Services Pvt. Ltd. Vs. ACIT (368 ITR 1) has held that chapter- X of the act does not contain any charging provision but it is a machinery provision to arrive at ALP of a transaction between two or more associated enterprise. It has further been held that this chapter does not change the character of the receipt but only permits re-quantification of income had there been no relationship exist between the associates.
- The Hon'ble Bombay High Court in Shell India Markets Pvt. Ltd. vs. ACIT and Others, (369 ITR 516) has held that there can be no addition by applying the provision under Chapter-X on account of less share premium received and also the consequential interest on the resultant deemed loan.
- Therefore, following the precedent, the addition of INR 1.52 million on account of interest on the deemed loan due to under-receipt of share premium, cannot be sustained. Accordingly, the addition is deleted.

MICRO INK LIMITED VS. ACIT

RECENTLY, THE AHMEDABAD INCOME-TAX APPELLATE TRIBUNAL IN THE CASE OF MICRO INK LIMITED HELD THAT ISSUANCE OF CORPORATE GUARANTEE BY PARENT COMPANY TO SUBSIDIARY WAS NOT IN THE NATURE OF 'PROVISION FOR SERVICE' AND WAS NOT TO BE INCLUDED IN THE DEFINITION OF 'INTERNATIONAL TRANSACTION' UNDER SECTION 92B OF THE INCOME-TAX ACT, 1961 (THE ACT).

Facts:

- During Assessment Year (AY) 2006-07, the taxpayer issued various corporate guarantees on behalf of its subsidiaries, without charging them any consideration.
- The stand of the taxpayer was that these guarantees did not cost the taxpayer anything, nor any charges were recovered for the same, and that the 'said guarantees were in the form of corporate guarantees/quasi capital and not in the nature of any services'.
- The Transfer Pricing Officer (TPO) had made an adjustment by computing the arm's length price (ALP) of the corporate guarantee at two per cent on the basis of following reasoning:

    j. Guarantees are chances that someone will have to pay for them, if chance is 100 per cent, i.e. in all cases one has to pay for it, guarantee fees will be simply equal to the guarantee amount. However, if it is only a probability, and only in few cases it will have to be paid, its charges are just a percentage of it. Banks normally compute guarantee charges on the basis of their experience in handling such situations.

    k. Guarantees given by the taxpayer makes its own borrowing costlier; as its assets get used in guaranteeing, it has to raise costlier capital without being able to use its own those very assets. There cannot be a direct link to the guarantees given for the purpose of computing cost, but the fact remains that there was cost to the guarantor. In view of the above discussions, guarantee fees is calculated at two per cent, which is the prevalent market rate for guarantee fees.

- Aggrieved by the TPO order, the taxpayer filed objections before the Dispute Resolution Panel (DRP). The DRP rejected the objection raised by the taxpayer, referred to and relied upon the 'OECD Transfer Pricing Guidelines for Multinational Permanent Establishments' and the decision of the Tax Court of Canada in the case of G E Capital Canada. The Assessing Officer (AO) thus proceeded to make the ALP adjustment in respect of corporate guarantee at INR2.32 crores.

Issue:

- Whether the adjustment of INR2.32 crores on account of corporate guarantee given by the taxpayer to its subsidiaries is justified?

Held:

- The Tribunal observed that similar issues have already been covered by the decision in the case of Micro Inks Ltd. Wherein the Ahmedabad Tribunal observed that similar products are not sold to any other concern, at the same price or even any other price, and interest is levied on the similar credit period allowed to those independent parties, but not to Micro USA.
- The question of excess credit period arises only when there is a standard credit period for the product sold at the same price and the credit period allowed to the AEs is more than the credit period allowed to independent enterprises. That is not the case here. The credit period for finished goods cannot be compared with credit period for unfinished goods and raw materials, and in any case, when products are not the same, there cannot be any question of prices being the same.

- The Tribunal held that issuance of corporate guarantee was in the nature of 'shareholder activities'/'quasi capital' and thus could not be included within the ambit of 'provision of services' under the definition of 'international transaction' under Section 92B of the Act.
- It distinguished the revenue's reliance on Bombay High Court judgment in Everest Kanto wherein guarantee commission was actually charged by the taxpayer, unlike in the present case. The grievance against the issuance of corporate guarantee being held to be an international transaction could not have come up for consideration.
- In the case of Vodafone India Services, applicability of retrospective amendment to Section 92B of the Act had been considered in context of 'transfer' and not 'international transaction'. The amendment clarifies the two aspects of transfer - the asset itself and the manner in which it is dealt with. The issue considered by the High Court was prior to the amendment, whereas in the present case, it is the amended definition which would have to be considered. In the present case, we do not find either necessary or proper to indicate the application of Section 2(47) of the Act as amended to the present proceedings. In view of the above discussions, the decision is equally misplaced and devoid of legally sustainable merits.
- The Tribunal held that revenue cannot seek to widen the net of transfer pricing legislation by taking refuge of the best practices recognised by the OECD work.
- It is only elementary that the determination of arm's length price, under the scheme of the international transfer pricing set out in the Income Tax Act, 1961, can only be done in respect of an 'international transaction'. Section 92(1) provides that, "any income arising from an international transaction shall be computed having regard to the arm's length price". In order to attract the arm's length price adjustment, therefore, a transaction has to be an 'international transaction' first. The expression 'international transaction' is a defined expression.
- In the present case, we have held that the issuance of corporate guarantees were in the nature of shareholder activities- as was the uncontroverted claim of the assessee, and, as such, could not be included in the 'provision for services' under the definition of 'international transaction' under section 92 B of the Act. We have also held, taking note of the insertion of Explanation to Section 92B of the Act, that the issuance of corporate guarantees is covered by the residuary clause of the definition under section 92 B of the Act but since such issuance of corporate guarantees, on the facts of the present case, did not have "bearing on profits, income, losses or assets", it did not constitute an international transaction, under section 92B, in respect of which an arm's length price adjustment can be made. In this view of the matter, and for both these independent reasons, we have to delete the impugned ALP adjustment.

DCIT VS. INFOSYS BPO LIMITED

Facts:

- Infosys BPO Limited ('the assessee') is a company engaged in business of business process outsourcing (BPO)
- Assessee made payment to non-resident on account of royalty and fees for technical services and deducted tax at the rate of 10%/ 10.506% in accordance with the provisions of section 115(A)(1)(b) of the Act.
- The assessee filed statement of deduction of tax at source for various quarters of financial year 2010-11 and 2012-13 in respect of payments made to non-resident.
- The Assessing officer processed the said statement and issued Intimation under section 200A of the Act, stating short deduction of tax on the ground that assessee has not furnished PAN (i.e. tax identification number) of the non-resident and should have withheld tax at the rate of 20% under section 206AA. Further, interest was also charged on such short deduction.

- The Commissioner of Income-tax (Appeals) rejected the objection regarding scope of 200A of the Act, however decided the matter in favour of the assessee by holding that non-resident recipient of the payment is eligible to the beneficial provisions of DTAA and accordingly, withholding tax cannot be more than the tax liability as per DTAA
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- The Commissioner of Income-tax (Appeals) rejected the objection regarding scope of 200A of the Act, however decided the matter in favour of the assessee by holding that non-resident recipient of the payment is eligible to the beneficial provisions of DTAA and accordingly, withholding tax cannot be more than the tax liability as per DTAA

Issue:

- Whether section 206AA (1) of the Act will be applicable in cases where tax is to be deducted in accordance with the provisions of section 115A of the Act and under the DTAA?
- Whether higher rate of withholding tax as per section 206AA of the Act is warranted if the rates for income chargeable to tax are already prescribed under the Act or DTAA?

Held:

Applicability of section 206AA when DTAA benefit is available

- The Bangalore Tribunal has held that the tax liability of the recipients could not be more than the rate prescribed under the DTAA or the Act, whichever is lower. The Tribunal in this regard has relied on the decisions of the Pune Tribunal in the case of M/s Serum Institute of India1 Ltd and Bangalore Tribunal in the case of Bosch Ltd2.
- The Tribunal also relied on the Karnataka High Court ruling in Bharti Airtel Ltd3 in which it is held that the obligation of deducting tax at source arises only when there is a sum chargeable under the Act. Withholding tax provisions have to be read with the machinery provisions for computing the tax liability.
- In view of the above, the Tribunal has held that there is no scope of deduction of tax at the rate of 20% as per section 206AA when the benefit under DTAA is available.

Processing of Intimation under section 200A of the Act and applying 20% rate

- The Tribunal has held that the issue of applying the rate of tax at 20% and ignoring the provisions of DTAA is a debatable issue and does not fall in the category of any arithmetical error or incorrect claim apparent from any information in the statement, as per the provisions of section 200A(1) of the Act.
- The Tribunal also noted that explanation below sub-section 1 of section 200A which clarifies that in respect of the deduction of tax at source where such rate is not in accordance with the provisions of the Act can be considered as an incorrect claim apparent from the statement. However, it is not a simple case of deduction of tax at source by applying the rate only as per

provisions of the Act, when the benefit of DTAA is available to the recipient of the amount in question. Therefore, the question of applying the rate of 20% as provided under section 206AA of the Act requires a long drawn reasoning and finding. Thus, applying the rate of 20% without considering the provisions of DTAA and consequent adjustment while framing the intimation u/s 200A was beyond the scope of the said provision.

- Thus, the Tribunal held that the Assessing Officer has travelled beyond the jurisdiction of making an adjustment in accordance with the provisions of section 200A of the Act.

HONDA MOTORCYCLE & SCOOTERS INDIA PVT. LTD. VS. ACIT

Facts:

- The taxpayer had acquired technical know-how in respect of certain automobile models, which was capitalized as an intangible asset and depreciation was claimed thereon
- At the time of acquisition, the taxpayer translated the invoice value from Japanese Yen into Indian Rupee at the rate prevailing at that time and credited the converted amount of Rs.141.47 crores to the account of the foreign supplier. Tax was duly deducted by the taxpayer on the said amount of Rs. 141.47 crores.
- On the date of actual payment due to fluctuation in exchange rate, the acquisition price increased to Rs.146.70 crores. The taxpayer accordingly suffered foreign exchange loss of Rs.5.22 crores.
- Depreciation was claimed by the taxpayer on the increased acquisition price of Rs.146.70 crores. No tax was deducted by the taxpayer on the additional liability of Rs. 5.22 crores arisen on account of foreign exchange fluctuation.
- As no tax was deducted by the taxpayer on the additional liability, the Assessing Officer ("AO") invoked the provisions of section 40(a)(i) of the Income-tax Act, 1961 ("ITA") to disallow the depreciation of Rs.1.31 crores on the corresponding amount of Rs.5.22 crores.
- The order of the AO was upheld by the Commissioner of Income-tax (Appeals).

Issue:

- Whether depreciation on the foreign exchange loss arising at the time of payment of model fees, should be disallowed as no tax was deducted on the said foreign exchange loss.

Held:

- The Tribunal observed that the stage of deduction of tax at source has been set out by section 195 of the ITA, which clearly provides that the deduction should be made at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.
- The Tribunal held that deduction of tax at source is contemplated at the earlier of the dates of credit or payment to the payee and not on both the occasions. Once deduction of tax at source has been made at the time of credit, which event occurs first, and then no deduction of tax at source is required at the time of payment.
- The ITA does not require two phased deduction of tax at source on the same transaction, one at the time of credit and second at the time of actual payment.
- Whether there is a foreign exchange loss or gain, deduction of tax at source under section 195 is contemplated only at the first stage of the credit of income to the account of the payee and the higher or lower liability due to foreign exchange loss or foreign exchange gain is inconsequential for deduction of tax at source under section 195.

- The Tribunal thus held that once there is no default on the part of the taxpayer in making deduction of tax at source, there can be no question of making any disallowance under section 40(a) (i).
- The non-obstante clause in the operating part of section 43A of the ITA makes it explicitly clear that it is this provision which shall apply in supersession of any other contrary provision in so far as the computation of actual cost of an asset due to change in the rate of foreign currency, is concerned.
- The Tribunal stated that the interpretation as suggested by the Revenue in not considering the adjusted cost as the cost of acquisition of capital asset for allowing depreciation, results into distortion of the provisions of section 43A, which is impermissible. The Tribunal held that there can be no question of adopting unadjusted

Inbound Investment and Outbound Investment

RECENT CHANGES IN FDI SECTORWISE CAP

I. FOREIGN DIRECT INVESTMENT REGULATIONS:

Notification No. FEMA 362/2016-RB dated February 15, 2016 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2016

In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable laws, regulations and other conditions. There is no change in the existing limits for the sectors not listed hereunder; changes in conditions are listed below the table:

SECTOR / ACTIVITY	2016 REVISED POLICY		2015 POLICY	
	INVESTMENT CAP	APPROVAL ROUTE	INVESTMENT CAP	APPROVAL ROUTE
Manufacturing	100 %	Automatic	-	-
Civil Aviation 1) Air Transport service (Foreign Airlines in the capital of the Indian companies, operating schedule and non-scheduled air transport services)	49% (100% for NRIs)	Automatic	-	-
2) Air transport service Non-scheduled air transport services	100%*	Automatic	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
3) Other Services under Civil Aviation sector Ground Handling Services subject to sectoral regulations and security clearance	100%*	Automatic	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
Satellites- establishment and operation, Satellites Establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100 %	Government	74%	Government
Trading 1) Duty Free Shops	100%	Automatic	100%	Automatic

Financial Services 1) Asset Reconstruction Company (ARC)	100 %*	Automatic up to 49 % Government route beyond 49 %	100 % (FDI+FII/FPI)	Automatic up to 49 % Government route beyond 49 %
2) Banking- Private Sector	74 %*	Automatic up to 49 % Government route beyond 49 % up to 74 %	74 % including investment by FIIs/FPIs	Automatic up to 49 % Government route beyond 49 % up to 74 %
3) Banking- Public Sector	20 %*	Government	20% (FDI and FPI)	Government
4) Commodity Exchange	49 %*	Automatic	49 % (FDI + FII/FPI) [Investment by Registered FII / FPI under Portfolio Investment Scheme (PIS) will be limited to 23 % and Investment under FDI Scheme limited to 26 %]	Automatic
5) Credit Information Companies (CIC)	100%*	Automatic	74 % (FDI+FII/FPI)	Automatic
6) Infrastructure Company in the Securities Market	49 %*	Automatic	49 % (FDI + FII/RFPI) [FDI limit of 26 per cent and FII/FPI limit of 23 per cent of the paid-up capital]	Automatic
7) Insurance	49 %*	Automatic up to 26%,; Government route beyond 26% and up to 49%	26 % (FDI+FII/FPI+ NRI)	Automatic

8) White Label ATM Operations	100 %	Automatic	-	-
9) Power Exchanges	49 % *	Automatic	49 % FDI+FII/FPI)	Automatic
10) Pension Sector	49 %	Automatic up to 26%; Government route beyond 26% and up to 49 %	-	-

* Restriction on type of investment viz FII, FPI etc are removed.

Changes in Conditions with respect to SECTOR specific Investments

1) Sector: Agriculture & Animal Husbandry

No change in sectoral cap, however following conditions has been omitted for companies dealing with development of transgenic seeds/vegetables,

- When dealing with genetically modified seeds or planting material the company shall comply with safety requirements in accordance with laws enacted under the Environment (Protection) Act on the genetically modified organisms.
- Any import of genetically modified materials if required shall be subject to the conditions laid down vide Notifications issued under Foreign Trade (Development and Regulation) Act, 1992.
- The company shall comply with any other Law, Regulation or Policy governing genetically modified material in force from time to time.
- Undertaking of business activities involving the use of genetically engineered cells and material shall be subject to the receipt of approvals from Genetic Engineering Approval Committee (GEAC) and Review Committee on Genetic Manipulation (RCGM).
- Import of materials shall be in accordance with National Seeds Policy

2) Sector: Plantation

Tea Plantation now include plantation of Coffee, Rubber, Cardamom, Palm oil tree and Olive oil tree.

3) Sector: Manufacturing

- A manufacturer is permitted to sell its products manufactured in India through wholesale and/or retail, including through e-commerce without Government approval.
- Specific conditions to MSE's have been relaxed.

4) Sector: Defence

The new conditions are as follows:

- Infusion of fresh foreign investment within the permitted automatic route level, in a company not seeking industrial license, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, will require Government approval.
- Foreign investment in the sector is subject to security clearance and guidelines of the Ministry of defence.

Following conditions have been carried forward,

- Licence applications will be considered and licences given by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.
- Investee Company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company along with manufacturing facility should also have maintenance and life cycle support facility of the product being manufactured in India.

Remaining conditions have been removed

5) Sector: Construction Development- Townships, Housing, Built-up infrastructure

No change in sectoral cap, however some of the conditions have been replaced by the following new conditions

- Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy. Investment will be subject to the following conditions:
- The investor will be permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage.
- A foreign investor will be permitted to exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in-period of three years, calculated with reference to each tranche' of foreign investment has been completed.
- Further, transfer of stake from one non-resident to another non-resident, without repatriation of investment will neither be subject to any lock-in period nor to any government approval.

The clarifications notes are changed as under:

- It is clarified that FDI is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs).
- "Real estate business" means dealing in land and immovable property with a view to earning profit there from and does not include development of townships, construction of residential commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships. Further, earning of rent income on lease of the property, not amounting to transfer, will not amount to real estate business.
- Condition of lock-in period at (A) above will not apply to Hotels &Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs.

- Completion of the project will be determined as per the local bye-laws/rules and other regulations of State Governments.
- It is clarified that 100 % FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres.
- Consequent to foreign investment, transfer of ownership and/or control of the investee company from residents to non-residents is also permitted. However, there would be a lock-in-period of three years, calculated with reference to each tranche of FDI, and transfer of immovable property or part thereof is not permitted during this period.
- "Transfer", in relation to FDI policy on the sector, includes,-

  a. the sale, exchange or relinquishment of the asset; or
  b. the extinguishment of any rights therein; or
  c. the compulsory acquisition thereof under any law; or
  d. 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
  e. 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.

6) Sector: 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.

Single Brand Retail Trading:

Following new conditions have been provided:

- Conditions mentioned at Para (2) (b) & (2) (d) will not be applicable for undertaking SBRT of Indian brands.
- 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 who 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

Duty Free Shops:

- (i) Duty Free Shops would mean shops set up in custom bonded area at International Airports/

- International Seaports and Land Custom Stations where there is transit of international passengers.
- (ii) Foreign investment in Duty Free Shops is subject to compliance of conditions stipulated under the Customs Act, 1962 and other laws, rules and regulations.
- (iii) Duty Free Shop entity shall not engage into any retail trading activity in the Domestic Tariff Area of the country.

7. Sector: Financial services

White Label ATM Operations

Following Conditions are given:

- i. Any non-bank entity intending to set up a WLAs should have a minimum net worth of Rs. 100 crore as per the latest financial year's audited balance sheet, which is to be maintained at all times.
- ii. In case the entity is also engaged in any other 18 NBFC activities, then the foreign investment in the company setting up WLA, shall have to comply with the minimum capitalisation norms for foreign investment in NBFC activities, as provided in para F.8.2.
- iii. FDI in the WLAO will be subject to the specific criteria and guidelines issued by RBI vide Circular No. DPSS,CO.PD.No.2298/02.10.002/2011-12, as amended from time to time

Notification No. FEMA. 338/2015-RB dated Mar 02, 2015 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2015

A Non-resident Indian may, without limit and on non- repatriation basis, subscribe to the chit funds authorised by the Registrar of Chits or an officer authorised by the State Government in this behalf, provided such subscriptions are made through normal banking channels

A. P. (DIR Series) Circular No.94 dated Apr 08, 2015 Foreign Direct Investment (FDI) in India – Review of FDI policy –Sector Specific conditions- Insurance sector

Insurance sector shall be permitted up to 49% subject to the revised conditions. Also, a new activity viz. "Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)" has been included within the definition of 'Insurance'.

Other Conditions:

- Foreign investment in Indian insurance company shall be limited up to forty-nine percent of the paid up equity capital;
- Foreign direct investment up to 26 percent shall be under automatic route and beyond 26 percent and up to 49 percent shall be with Government approval;
- Foreign investment in the sector is subject to compliance of the provisions of the Insurance Act, 1938 and the condition that companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority of India for undertaking insurance activities.

- An Indian insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities;
- Foreign portfolio investment in an Indian insurance company shall be governed by the provisions of Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 and provisions of the Securities Exchange Board of India (Foreign Portfolio Investors) Regulations.
- Any increase of foreign investment of an Indian insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the Foreign Exchange Management Act, 1999.
- Terms 'Control', 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Indian Control of an Indian Insurance Company', 'Indian Ownership', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as provided in Notification No. G.S.R 115 (E), dated 19th February, 2015.

A.P. (DIR Series) Circular No.2 dated July 3, 2015 Investment in companies engaged in tobacco related activities

FDI is prohibited in manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
It is clarified that the prohibition applies only to manufacturing of the products mentioned therein and foreign direct investment in other activities relating to these products including wholesale cash and carry, retail trading etc. shall be governed by the sectoral restrictions laid down in the FDI policy framed by the Department Of Industrial Policy & Promotion, Ministry of Commerce and Industry, Government of India and RBI.

A.P. (DIR Series) Circular No.4 dated July 16, 2015 Issue of shares under Employees Stock Options Scheme and/or sweat equity shares to persons resident outside India

An Indian company can issue shares under Employees' Stock Option (ESOP) Scheme, by whatever name called, to its employees or employees of its Joint venture or Wholly owned overseas subsidiary/subsidiaries who are resident outside India, directly or through a Trust, provided that the scheme has been drawn in terms of regulations issued under the SEBI Act, 1992 and face value of the shares to be allotted under the scheme to non-resident employees does not exceed 5 per cent of the paid up capital of the issuing company. The Trust or Indian company has to ensure compliance with the above conditions and comply with the reporting requirement.
Indian company may issue "employees' stock option" and/or "sweat equity shares" to its employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries that are resident outside India, subject to conditions
Issuing company shall furnish to the RO concerned of the Reserve Bank of India under whose jurisdiction the registered office of the company operates, within 30 days from the date of issue of employees' stock option or sweat equity shares, a return as per the Form-ESOP

A.P. (DIR Series) Circular No.6 dated July 16, 2015 Foreign Investment in India by Foreign Portfolio Investors

All future investments by an FPI within the limit for investment in corporate bonds shall be required to be made in corporate bonds with a minimum residual maturity of three years. (Schedule 5)

Clarification:

It is clarified that the restriction on investments with less than three years residual maturity shall not be applicable to investment by FPIs in security receipts (SRs) issued by the Asset Reconstruction Companies (ARCs). However, investment in SRs shall be within the overall limit prescribed for corporate debt.

Notification No. FEMA.351/2015 RB dated September 30, 2015 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2015

All LLPs which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time"

A.P. (DIR Series) Circular No 19 dated Oct 06, 2015 Investment by Foreign Portfolio Investors (FPI) in Government Securities

A Medium Term Framework (MTF) for FPI limits in Government securities was announced by RBI to provide a more predictable regime. The features of the MTF are as under:

- The limits for FPI investment in debt securities will henceforth be announced/ fixed in Rupee terms.
- The limits for FPI investment in the Central Government securities will be increased in phases to reach 5 per cent of the outstanding stock by March 2018.
- There will be a separate limit for investment by all FPIs in the State Development Loans (SDLs), to be increased in phases to reach 2 per cent of the outstanding stock by March 2018.
- Aggregate FPI investments in any Central Government security would be capped at 20% of the outstanding stock of the security. Investments at existing levels in the securities over this limit may continue but not get replenished through fresh purchases by FPIs till these falls below 20%.

For the current financial year, it has been decided to enhance the limit for investment by FPIs in Government Securities in two tranches from October 12, 2015 and January 1, 2016 respectively as under:

(Rs in billions)

	Central Government securities			State Development Loans	Aggregate
	For all FPIs	Additional for Long Term FPIs	Total	For all FPIs (including Long Term FPIs)	
Existing Limits	1244	291	1535	Nil	1535
Revised limits with effect from October 12, 2015	1299	366	1665	35	1700
Revised limits with effect	1354	441	1795	70	1865

from January 1, 2016					

The security-wise limit for FPI investments will be monitored on a day-end basis and those Central Government securities in which aggregate investment by FPIs exceeds the prescribed threshold of 20% will be put in a negative investment list. No fresh investments by FPIs in these securities will be permitted till they are removed from the negative list.

A.P. (DIR Series) Circular No.31 dated Nov 26, 2015 Investment by Foreign Portfolio Investors (FPI) in Corporate Bonds

It has been decided to permit FPI to acquire NCDs/bonds, which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in the case of amortising bond. The revised maturity period of such NCDs/bonds, restructured based on negotiations with the issuing Indian company, should be three years or more.

FPI which propose to acquire such NCDs/bonds under default should disclose to the Debenture Trustees the terms of their offer to the existing debenture holders / beneficial owners from whom they are acquiring. Such investment should be within the overall limit prescribed for corporate debt from time to time (currently Rs. 2443.23 billion).

A.P. (DIR Series) Circular No. 24 dated Oct 29, 2015 Subscription to National Pension System by Non-Resident Indians (NRIs)

NRIs now be allowed to subscribe to the National Pension System (NPS) governed and administered by the Pension Fund Regulatory and Development Authority (PFRDA), provided such subscriptions are made through normal banking channels or out of funds held in NRE/ FCNR/ NRO A/c and the person is eligible to invest as per the provisions of the PFRDA Act.

There shall be no restriction on repatriation of the annuity/ accumulated savings.

Notification No. FEMA.354/2015-RB dated Oct 30, 2015 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2015

- Calculation of total Foreign Investment will now include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under any Schedule of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.
- Foreign Currency Convertible Bonds (FCCB) and Depository Receipts (DR) having underlying of instruments issued under these regulations, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from any conversion of any debt instrument under any arrangement shall be reckoned as foreign investment.
- Further, for the purpose of counting indirect foreign investment all types of investments are now to be included made under any of the schedules of these regulations. FCCBs and DRs having underlying of instruments issued under these regulations, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment."

Notification No. FEMA. 355/2015-RB dated Nov 16, 2015 Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2015

Permission for purchase of shares by certain person resident outside India

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) may acquire, purchase, hold, sell or transfer units of an Investment Vehicle, in the manner and subject to the terms and conditions specified in Schedule 11. where
'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."
"Unit' shall mean beneficial interest of an investor in the Investment Vehicle and shall include shares or partnership interests
Units of an Investment Vehicle shall be added to instruments

Notification No.FEMA.359/2015-RB dated December 02, 2015 Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2015

Investments in Foreign Securities other than by way of Direct Investment

There is Prohibition on issue of foreign security by a person resident in India as per regulation 21(1). However, A person resident in India, being an Indian Company or a Body Corporate created by an Act of Parliament is allowed to issue FCCBs not exceeding USD 500 million to a person resident outside India (subject to the conditions) under automatic route and FCCBs beyond US $ 500 million with the specific approval of the Reserve Bank.
Now by this amendment RBI has specified that It (RBI) may, in consultation with the Government of India, change / prescribe for the automatic as well as the approval route of FCCBs, any provision or proviso for issuance of FCCBs and FCEBs
[Regulation 21 (2)]

II. FOREIGN EXCHANGE DERIVATIVE CONTRACTS REGULATIONS

A.P. (DIR Series) Circular No. 90 dated March 31, 2015 Revised Guidelines relating to participation of Residents in the Exchange Traded Currency Derivatives (ETCD) market

- The limit (for long as well as short positions) for domestic participants in USD-INR pair up to USD 15 million per exchange has been increased.
- Domestic participants shall be allowed to take long as well as short positions in EUR-INR, GBP-INR and JPY-INR pairs, all put together, up to USD 5 million equivalent per exchange.
- Instead of the statutory auditor's certificate (to the effect that during the preceding six months, the derivative contracts entered into by the participant in the OTC and the ETCD markets put together did not exceed the actual exposure) now a signed undertaking to the same effect from the Chief Financial Officer (CFO) or the senior most functionary responsible for company's finance and accounts and the Company Secretary (CS) may be produced. In the absence of a CS, the Chief Executive Officer (CEO) or the Chief Operating Officer (COO) shall co-sign the undertaking along with the CFO.
- Now importers are allowed to take appropriate hedging positions up to 100 per cent of the eligible limit.

A.P. (DIR Series) Circular No. 91 dated March 31, 2015 Revised Position Limits for Foreign Portfolio Investors (FPIs) in the Exchange Traded Currency Derivatives (ETCD) market

- The limit (for long as well as short positions) for FPIs in USD-INR pair up to USD 15 million per exchange has been increased. In addition, FPIs shall be allowed to take long (bought) as well as short (sold) positions in EUR-INR, GBP-INR and JPY-INR pairs, all put together, up to USD 5 million equivalent per exchange.
- Presently, FPIs can take position – both long (bought) as well as short(sold) – in foreign currency up to USD 10 million or equivalent per exchange . As a measure of further liberalisation, it has now been decided to increase the limit (long as well as short) for FPIs in USD-INR pair up to USD 15 million per exchange. In addition, FPIs shall be allowed to take long (bought) as well as short (sold) positions in EUR-INR, GBP-INR and JPY-INR pairs, all put together, up to USD 5 million equivalent per exchange. These limits shall be monitored by the exchanges and breaches, if any, may be reported. For the convenience of monitoring, exchanges may prescribe fixed limits for the contracts in currencies other than USD such that these limits are within the equivalent of USD 5 million.

A. P. (DIR Series) Circular No. 103 dated May 21, 2015 External Commercial Borrowings (ECB) denominated in Indian Rupees (INR) – Mobilisation of INR

Non-resident ECB lenders are now allowed to enter into swap transactions with their overseas bank which shall, in turn, enter into a back-to-back swap transaction with any AD Cat-I bank in India as per the given procedure

A.P. (DIR Series) Circular No. 112 dated June 25, 2015: Overseas Foreign Currency Borrowings by Authorised Dealer Bank

- AD Category - I banks are permitted to borrow from international / multilateral financial institutions without approaching Reserve Bank for a case by case approval. These shall include International / Multilateral Financial Institutions.
- Such borrowings should be used only for the purpose of general banking business and not for capital augmentation subject to the applicable prudential conditions.

A. P. (DIR Series) Circular No. 20 dated Oct 08, 2015 Risk Management & Inter-Bank Dealings: Booking of Forward Contracts - Liberalisation

- All resident individuals, firms and companies, who have actual or anticipated foreign exchange exposures, are now allowed, to book foreign exchange forward and FCY-INR options contracts up to USD 1,000,000 (USD one million) without any requirement of documentation on the basis of a simple declaration.
- While the contracts booked under this facility are on a deliverable basis, cancellation and rebooking of contracts are permitted.

A.P. (DIR Series) Circular No. 28 dated Nov 05, 2015 Risk Management & Inter-Bank Dealings: Relaxation of facilities for residents for hedging of foreign currency borrowings

It has been decided to permit residents to enter in to FCY-INR swaps with Multilateral or International Financial Institutions (MFI/IFI) in which Government of India is a shareholding member (subject to conditions)

A.P. (DIR Series) Circular No. 35 dated December 10, 2015 Guidelines on trading of Currency Futures and Exchange Traded Currency Options in Recognized Stock Exchanges – Introduction of Cross-Currency Futures and Exchange Traded Option Contracts

- In order to enable direct hedging of exposures in foreign currencies and facilitate execution of cross-currency strategies by market participants, the recognized stock exchanges are now permitted to offer cross-currency futures contracts and exchange traded option contracts in the currency pairs of EUR-USD, GBP-USD and USD-JPY.
- Recognised stock exchanges are also permitted to offer exchange traded currency option contracts in EUR-INR, GBP-INR and JPY-INR in addition to the existing USD-INR option contract, with immediate effect.
- Residents and FPIs are allowed to take positions in the cross-currency futures and exchange traded cross-currency option contracts without having to establish underlying exposure subject to the position limits as prescribed by the exchanges.
- AD Category-I banks may undertake trading in all permitted exchange traded currency derivatives within their Net Open Position Limit (NOPL) subject to limits stipulated by the exchanges (for the purpose of risk management and preserving market integrity)
- Any synthetic USD-INR position created using a combination of exchange traded FCY-INR and cross-currency contracts shall have to be within the position limit prescribed by the exchange for the USD-INR contract.
- Position limits: USD 15 million for USD-INR pair and USD 5 million for EUR-INR, GBP-INR and JPY-INR, for all pairs put together, per exchange, across all contracts for positions taken without establishing underlying exposure.
- For hedging underlying exposures, participants may take positions in either FCY-INR contracts or in combination with cross-currency contracts up to the underlying exposure as per existing guidelines.

Currency Futures

- All Foreign Currency-INR contracts shall be quoted an Indian Rupees.
- EUR-USD and GBP-USD cross currency contracts shall be quoted in USD and USD-JPY contract shall be quoted in JPY.
- All cross currency contracts shall be settled in Indian Rupees as per the method approved by Reserve Bank
- The size of the USD-INR and USD-JPY contracts shall be USD 1000, of EUR-INR and EUR-USD contracts shall be EUR 1000, of GBP-INR and GBP-USD contracts shall be GBP 1000 and JPY-INR contract shall be JPY 100,000
- The settlement price for USD-INR shall be the Reserve Bank's Reference Rate and for Euro-INR, GBP-INR and JPY-INR contracts shall be the exchange rates published by the Reserve Bank in its press release on the last trading day

Exchange Traded Currency Options

- The underlying for the currency option shall be the spot rate of the corresponding permitted currency pair.
- The size of the USD-INR and USD-JPY contracts shall be USD 1000, of EUR-INR and EUR-USD contracts shall be EUR 1000, of GBP-INR and GBP-USD contracts shall be GBP 1000 and JPY-INR contract shall be JPY 100,000
- The premium for all contracts involving the Indian Rupee shall be quoted in Indian Rupees. The premium for EUR-USD and GBP-USD contracts shall be quoted in USD and for USD-JPY contract shall be quoted in JPY. For cross currency contracts the premium shall be payable in Indian Rupees based on the USD-INR Reference Rate or the corresponding exchange rates published by Reserve Bank.
- The outstanding position shall be in USD for USD-INR and USD-JPY contracts, in Euro for EUR-INR and EUR-USD contracts and in GBP for GBP-INR and GBP-USD contracts.
- The settlement price for USD-INR option contract shall be the Reserve Bank's Reference Rate and for Euro-INR, GBP-INR and JPY-INR contracts shall be the exchange rates published by the Reserve Bank in its press release on the expiry date of the contract. The settlement price in Indian Rupees of the cross-currency contracts shall be computed using the Reserve Bank's USD-INR Reference Rate and the corresponding exchange rate published by Reserve Bank for EUR-INR, GBP-INR and JPY-INR on the expiry date of the contract

III. REGULATORY RELAXATIONS FOR START-UPS

A.P. (DIR Series) Circular No. 51 dated February 11, 2016 Regulatory relaxations for start-ups

- A start-up in India with an overseas subsidiary is permitted to open foreign currency account abroad to pool the foreign exchange earnings out of the exports/sales made by the concerned start-up;
- The overseas subsidiary of the start-up is also permitted to pool its receivables arising from the transactions with the residents in India as well as the transactions with the non-residents abroad into the said foreign currency account opened abroad in the name of the start-up;
- The balances in the said foreign currency account as due to the Indian start-up should be repatriated to India within nine months;
- A start-up is also permitted to avail of the facility for realising the receivables of its overseas subsidiary or making the above repatriation through Online Payment Gateway Service Providers (OPGSPs) for value not exceeding USD 10,000 (US Dollar ten thousand) or up to such limit as may be permitted by the Reserve Bank of India and
- To facilitate the above arrangement, an appropriate contractual arrangement between the start-up, its overseas subsidiary and the customers concerned should be in place

A.P. (DIR Series) Circular No. 52 dated February 11, 2016 Regulatory Relaxations for Start-ups- Clarifications relating to Issue of Shares

Certain permissible transactions under the existing regulatory framework are clarified

- Reserve Bank of India has permitted Indian companies to issue sweat equity, subject to conditions, inter-alia, that the scheme has been drawn either in terms of regulations issued

under the SEBI in respect of listed companies or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013 in respect of other companies

- Reserve Bank of India has permitted Indian companies to issue equity shares against any other funds payable by the investee company (e.g. payments for use or acquisition of intellectual property rights, for import of goods, payment of dividends, interest payments, consultancy fees, etc.), remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 subject to conditions relating to adherence to FDI policy including sectoral caps, pricing guidelines, etc. and applicable tax laws (cf. paragraph 3 of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2015)

IV. MANNER OF RECEIPT AND PAYMENT

Notification No.FEMA.358/2015-RB dated December 07, 2015 Foreign Exchange Management (Manner of Receipt and Payment) (Amendment) Regulations, 2015

Manner of payment in foreign exchange in respect of import into India will now include
'Any other mode of payment in accordance with the directions issued by the Reserve Bank of India to authorised dealers from time to time.'**[Regulation 5 (2) (c)]**
This is in addition to the two given methods under' **[Regulation 5 (2) (b)]**
where Asian Clearing Union member is shipping the good

- Eligible transaction - Credit to the Asian Clearing Union dollar A/c in India
- payment in any permitted currency in other cases

Other Cases

- payment in rupees to the account of a resident any country other than a member country of ACU or Nepal or Bhutan
- payment in any permitted currency

Notification No. FEMA 15 (R)/2015 – RB dated December 29, 2015 Definition of "Currency"

The Reserve Bank has notified debit cards, ATM cards or any other instrument by whatever name called that can be used to create a financial liability, as 'currency'.

A.P. (DIR Series) Circular No. 42 dated February 04, 2016 Settlement of Export/ Import transactions in currencies not having a direct exchange rate

To facilitate settlement of export and import transactions where the invoicing is in a freely convertible currency and the settlement takes place in the currency of the beneficiary, which though convertible, does not have a direct exchange rate, it has been decided that AD Category-I banks may permit settlement of such export and import transactions (excluding those put through the ACU mechanism), subject to conditions as under:

- Exporter/ Importer shall be a customer of the AD Bank,
- Signed contract / invoice is in a freely convertible currency

- ☐ The beneficiary is willing to receive the payment in the currency of beneficiary instead of the original (freely convertible) currency of the invoice/ contract/ Letter of Credit as full and final settlement,
- ☐ AD bank is satisfied with the bonafides of the transactions, and;
- ☐ The counterparty to the exporter / importer of the AD bank is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non Co-operative Jurisdictions on which FATF has called for counter measures.

V. FOREIGN CURRENCY ACCOUNTS BY A PERSON RESIDENT IN INDIA

A.P. (DIR Series) Circular No.15 dated September 24, 2015 Opening of foreign currency accounts in India by ship-manning / crew-management agencies

General permission is available to ship-manning / crew managing agencies that are rendering services to shipping/airline companies incorporated outside India, to open, hold and maintain non-interest bearing foreign currency account with an AD Category – I bank in India for meeting the local expenses in India of such shipping or airline company. to ensuring strict compliance, following guidelines issued by RBI:

- ☐ Credits to such foreign currency accounts would be only by way of freight or passage fare
- ☐ Collections in India or inward remittances through normal banking channels from the overseas principal.
- ☐ Debits will be towards various local expenses in connection with the management of the ships / crew in the ordinary course of business.
- ☐ No credit facility (fund based or non-fund based) should be granted against security of funds held in such accounts.
- ☐ The bank should meet the prescribed 'reserve requirements' in respect of balances in such accounts.
- ☐ No EEFC facility should be allowed in respect of the remittances received in these accounts.
- ☐ These foreign currency accounts will be maintained only during the validity period of the agreement.

Notification No. FEMA 10 (R) /2015-RB dated Jan 21, 2016 Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2015

A. Opening, holding and maintaining Foreign Currency Accounts in India

1. **Exchange Earners' Foreign Currency Account (EEFC) – NO Change**
2. **Resident Foreign Currency Account**

- ☐ In addition to the existing permissible streams now a person resident in India is allowed open, hold and maintain with an AD in India a Foreign Currency Account, to be known as a Resident Foreign Currency (RFC) Account, out of foreign exchange received as the proceeds of life insurance policy claims/ maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.
- ☐ Resident individuals are now permitted to include resident relative(s) as joint holder(s) in their Resident Foreign Currency account on 'former or survivor' basis. However, such

resident Indian relative joint account holder shall not be eligible to operate the account during the life time of the resident account holder

3. **Resident Foreign Currency Domestic Account (Non- Business proceeds like honorarium)**
   A resident Individual may open, hold and maintain with an Authorised Dealer in India a foreign currency account, to be known as **Resident Foreign Currency (Domestic) Account**, out of foreign exchange acquired in the form of currency notes, bank notes and travellers' cheques as under:

- ☐ (a) by way of payment for services not arising from any business in or anything done in India while on a visit to any place outside India; or
- ☐ (b) from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or
- ☐ (c) by way of honorarium or gift while on a visit to any place outside India; or
- ☐ (d) in the form of unspent amount of foreign exchange acquired by him from an authorised person for travel abroad; or
- ☐ (e) as gift from a relative
- ☐ (f)by way of earning through export of goods/ services, or as royalty, honorarium or by any other lawful means;
- ☐ (g) representing the disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/ GDRs under the DR Scheme, 2014 approved by the Government of India.
- ☐ (h) by way of earnings received as the proceeds of life insurance policy claims/ maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority

  - ‘relative’ shall have the same meaning as assigned to it under section 2(77) of the Companies Act, 2013
  - Debits to this account shall be for payments towards permissible current account and capital account transaction
  - The account shall be maintained in the form of Current Account and shall not bear any interest.
  - There shall be no ceiling on the balances in the account.

4. **A Unit in a Special Economic Zone (SEZ)**
   A unit located in a Special Economic Zone is allowed to open hold and maintain a Foreign Currency Account with an AD in India provided that,

- ☐ (a) all foreign exchange funds received by the unit in the Special Economic Zone (SEZ) are credited to such account,
- ☐ (b) no foreign exchange purchased in India against rupees shall be credited to the account without prior permission from the Reserve Bank,
- ☐ (c) the funds held in the account shall be used for bona fide trade transactions of the unit in the SEZ with the person resident in India or otherwise,

- Provided that the funds held in these accounts shall not be lent or made available in any manner to any person or entity resident in India not being a unit in Special Economic Zones.

5. **Diamond Dollar Accounts (DDAs)**
   An AD Category-I bank in India may open DDA A/c of firms and companies who comply with the eligibility criteria stipulated in the Foreign Trade Policy of Government of India subject to the terms and conditions of the DDA Scheme as specified.
   Exporters

   A person resident in India, being an exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms is allowed to open, hold and maintain a Foreign Currency Account with a bank in India, provided that -

- (a) approval as required under the Foreign Exchange Management (Export of goods and services) Regulations, 2015 has been obtained for undertaking the contract/ project/ export of goods or services, and
- (b) the terms and conditions stipulated in the letter of approval have been duly complied with.

Other Cases

a) **Ship Manning /crewing :** May open non-interest bearing FC A/c of ship-manning/ crew managing agencies in India for the purpose of undertaking transactions in the ordinary course of their business
b) **Project Office:** An authorized dealer in India may, subject to the directions as may be issued by the Reserve Bank, allow Project Offices set up in India by foreign companies in terms of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 dated May 3, 2000, as amended from time to time to open, hold and maintain non-interest bearing one or more foreign currency accounts in India for the projects to be executed in India.
c) An Indian company receiving foreign investment under FDI route in terms of Foreign Exchange Management (Transfer or Issue of security by a Person Resident outside India) Regulations, 2000 dated May 3, 2000, may open and maintain a foreign currency account with an Authorized Dealer in India.
d) **Event / Conventions etc :** Organisers of international seminars, conferences, conventions etc. are allowed to open temporary FC A/c for the receipt of the delegate fees and payment towards expenses including payment to special invitees from abroad

B. Opening, holding and maintaining a Foreign Currency Account outside India:-

A firm or a company or a body corporate registered or incorporated in are allowed to open, hold and maintain in the name of its office (trading or non-trading) or its branch set up outside India or its representative posted outside India (subject to conditions prescribed)

For Making ODI: An Indian party may open, hold and maintain Foreign Currency Account abroad for the purpose of making overseas direct investments (subject to conditions)
Other Cases

- In regard to raising of External Commercial Borrowings (ECB) or raising of resources through American Depository Receipts (ADRs) or Global Depository Receipts (GDRs), the funds so raised may, pending their utilisation or repatriation to India, be held in deposits in foreign currency accounts with a bank outside India.
- A person resident in India who is on a visit to a foreign country is allowed to open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India, provided that on his return to India, the balance in the account is repatriated to India
- Resident individuals are allowed to open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the Liberalised Remittance Scheme (hereinafter referred to as the "Scheme").
- A citizen of a foreign State, resident in India, being an employee of a foreign company or a citizen of India, employed by a foreign company outside India and in either case on deputation to the office/ branch/ subsidiary/ joint venture/ group company in India of such foreign company may open, hold and maintain a foreign currency account with a bank outside India and receive the whole salary payable to him for the services rendered to the office/ branch/ subsidiary/ joint venture/ group company in India of such foreign company, by credit to such account, subject to payment of taxes, as applicable in India.
- A citizen of a foreign State resident in India being in employment with a company/LLP incorporated in India is allowed to open, hold and maintain a foreign currency account with a bank outside India and remit the whole salary received in India in Indian Rupees, to such account, for the services rendered to such an Indian company/LLP, subject to payment of taxes, as applicable in India

Also,

e) Account opened outside India for the purpose of study is deemed to be converted into account for the purpose LRS.

f) On the death of a foreign currency account holder resident nominee of an account held outside India in accordance with Regulation 5 shall close the account and bring back the proceeds to India through banking channels

VI. VI. ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA

A.P. (DIR Series) Circular No.83 dated Mar 11, 2015 Acquisition/transfer of immovable property – Prohibition on citizens of certain countries

Macau and Hong Kong will also be included in the list of countries citizen which are prohibited to acquire/transfer immovable property in India in terms of Regulation 7 of FEMA ibid.

Notification No. FEMA 7(R)/ 2015-RB dated Jan 21, 2016 Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015

In accordance with this new regulation

- A person resident in India is allowed to acquire immovable property outside India jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;
- A company incorporated in India having overseas offices, is allowed to acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India in this regard.

A.P. (DIR Series) Circular No. 43/2015-16 [(1)/7(R)] dated February 04, 2016 Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015

Automatic route is now made available for cases where

- Property acquired by way of gift or inheritance from:
- a person who has acquired property on or before 8th July, 1947 and held with the permission of Reserve Bank;
- a person who has acquired the property he was resident outside India or inherited from a person who was resident outside India.
- Property purchased out of funds held in Resident Foreign Currency (RFC) account held in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015;
- Property acquired jointly with a relative who is a person resident outside India provided there is no outflow of funds from India;
- Property acquired by way of inheritance or gift from a person resident in India who acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition

An Indian company having overseas offices may acquire immovable property outside India for its business and residential purposes provided total remittances do not exceed the limits prescribed for initial and recurring expenses, respectively as under:

- 15 per cent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher;
- 10 per cent of the average annual sales/ income or turnover during the last two financial years.
- For the purpose of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

VII. EXPORT OF GOODS & SERVICES

A.P. (DIR Series) Circular No.81 dated Mar 03, 2015 Trade Credits for Imports into India — Review of all-in-cost ceiling

Review done of existing limits and with no change in existing limits or rules till 31st march 2015

A.P. (DIR Series) Circular No.93 dated Apr 01, 2015 Export of Goods and Services – Project Exports

The limit of USD 20 million for Buyer's credit which may be extended to foreign buyers in connection with export of goods on deferred payment terms and turn key projects from India is withdrawn

A. P. (DIR Series) Circular No. 102 dated May 21, 2015 Rupee Drawing Arrangement - Increase in trade related remittance limit

It has been decided to increase the limit of trade transactions permitted under the Rupee Drawing Arrangements (RDAs) from the existing Rs. 5,00,000/- (Rupees Five Lakh only) per transaction to Rs. 15,00,000/- (Rupees Fifteen Lakh only) per transaction.
AD banks may regularise payments exceeding the prescribed limit under RDA provided that they are satisfied with the bonafide of the transaction (subject to conditions)

A.P. (DIR Series) Circular No.1 dated July 02, 2015 Clarifications

- It is clarified that the unsold rough diamonds, when re-exported from Special Notified Zone (SNZ) (being an area within the Customs) without entering the Domestic Tariff Area (DTA), do not require any submission of declaration in EDF.
- Entry of consignment containing different lots of rough diamonds into the SNZ should be accompanied by a declaration of notional value by way of an invoice and a packing list indicating the free cost nature of the consignment. Under no circumstance, entry of such rough diamonds is permitted into DTA.
- For the lot/ lots cleared at the Precious Cargo Customs Clearance Centre, Mumbai, Bill of Entry shall be filed by the buyer. AD bank may permit such import payments after being satisfied with the bona-fides of the transaction. Further, AD bank shall also maintain a record of such transactions

A.P. (DIR Series) Circular No.5 dated July 16, 2015 Export factoring on non-recourse basis

In order to facilitate exports and to enable the exporters improve their cash flow and meet their working capital requirements, Authorised Dealer Category – I (AD Category –I) banks have been permitted to provide 'export factoring' services to exporters on 'with recourse' basis by entering into arrangements with overseas institutions for this purpose without prior approval from the Reserve Bank of India subject to compliance with guidelines issued by the Department of Banking Regulation in this regard.

Notification No. FEMA.347/2015-RB dated Jul 24, 2015 Foreign Exchange Management (Export of Goods & Services) (Second Amendment) Regulations, 2015

Exemptions available for export of goods or services without furnishing the declaration for Export of goods not exceeding U.S.$ 1000 or its equivalent in value per transaction exported to Myanmar under the Barter Trade Agreement between the Central Government and the Government of Myanmar being withdrawn;

A.P. (DIR Series) Circular No.13 dated September 10, 2015 Trade Credit Policy - Rupee (INR) Denominated trade credit

To providing greater flexibility for structuring of trade credit arrangements, it has been decided that the resident importer are allowed to raise trade credit in Rupees (INR) within the following framework after entering into a loan agreement with the overseas lender:

- Trade credit can be raised for import of all items (except gold) permissible under the extant Foreign Trade Policy
- Trade credit period for import of non-capital goods can be up to one year from the date of shipment or up to the operating cycle whichever is lower
- Trade credit period for import of capital goods can be up to five years from the date of shipment
- No roll-over / extension can be permitted by the AD Category - I bank beyond the permissible period
- AD Category - I banks can permit trade credit up to USD 20 mn equivalent per import transaction

- AD Category - I banks are permitted to give guarantee, Letter of Undertaking or Letter of Comfort in respect of trade credit for a maximum period of three years from the date of shipment
- The all-in-cost of such Rupee (INR) denominated trade credit should be commensurate with prevailing market conditions
- All other guidelines for trade credit will be applicable for such Rupee (INR) denominated trade credits

Overseas lenders of Rupee (INR) denominated trade credits will be eligible to hedge their exposure in Rupees through permitted derivative products in the on-shore market with an AD Category - I bank in India.

A.P. (DIR Series) Circular No.16 dated September 24, 2015 Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers

It has been decided to permit AD Category-I banks to offer facility to repatriate export related remittances of payment for imports by entering into standing arrangements with the Online Payment Gateway Service Providers (OPGSPs)
Guidelines are enclosed with the circular

A.P. (DIR Series) Circular No.27 dated Nov 05, 2015 Software Export – Filing of bulk SOFTEX- further liberalisation

Presently a software exporter, whose annual turnover is at least Rs.1000 crore or who files at least 600 SOFTEX forms annually on an all India basis, is eligible to declare all the off-site software exports in bulk in the form of a statement in excel format, to the competent authority for certification on monthly basis.
Now, In order to provide benefits to small exporters also, it has been decided to extend this facility to all software exporters. Accordingly, all software exporters can now file single as well as bulk SOFTEX form in excel format to the competent authority for certification.
(Form and procedure attached with the circular)

A.P. (DIR Series) Circular No. 29 dated Nov 26, 2015 Import of Goods into India – Evidence of Import

AD banks are advised by RBI to consider the Bill of Entry issued by Customs Authorities named as Ex-Bond Bill of Entry or by any other similar nomenclature, as evidence for physical import of goods.
Further, in cases where goods have been imported through couriers, the Courier Bill of Entry, as declared by the courier companies to the Customs Authorities, may also be considered as evidence of import of goods

A.P. (DIR Series) Circular No. 39 dated Jan 14, 2016 on Export of Goods and Services – Project Exports

- The 'Overseas Construction Council of India' (OCCI) be renamed as 'Project Export Promotion Council' (PEPC) and
- Civil construction contracts may include turnkey engineering contracts, process and engineering consultancy services and Project construction items (excluding steel & Cement) along with civil construction contracts,
- It has been decided to make the necessary changes in Memorandum of Instructions on Project and Service Exports (PEM) accordingly.

VIII. PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS

Notification No. FEMA. 337/2015-RB dated Mar 02, 2015 Foreign Exchange Management (Permissible Capital Account Transactions) (Second Amendment) Regulations, 2015

It is now provided that
The Registrar of Chits or an officer authorised by the state government in this behalf, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Non-resident Indians. Non- resident Indians shall be eligible to subscribe, through banking channel and on non-repatriation basis, to such chit funds , without limit subject to the conditions stipulated by the Reserve Bank of India from time to time
(Regulation 4(b) (1))

Notification No. FEMA. 341/2015-RB dated May 26, 2015 Foreign Exchange Management (Permissible Capital Account Transactions) (Third Amendment) Regulations, 2015

A resident individual may, draw from an authorized person foreign exchange not exceeding USD 250,000 per financial year or such amount as decided by Reserve Bank from time to time for a capital account transaction specified in Schedule I.
Amount drawn cannot be used for remittance directly or indirectly to countries notified as non-co-operative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by the Reserve Bank of India."

A.P. (DIR Series) Circular No. 106 dated Jun 01, 2015 Rationalisation under LRS for Current and Capital Account Transactions

Liberalised Remittance Scheme (LRS) for resident individuals- increase in the limit from USD 125,000 to USD 250,000 for any permitted Current Account Transactions all the facilities (including private/business visits) for release of exchange/remittances for current account transactions available to resident individuals under Para 1 of Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time, shall now be subsumed under the overall limit of USD 250,000. in Indian Rupees by resident individuals to NRI relatives as defined in the Companies Act, 2013 shall also be subsumed under the LRS limit individuals may avail of exchange facility for an amount in excess of the overall limit prescribed under the LRS, if it is so required by a country of emigration, medical institute offering treatment or the university respectively

A. P. (DIR Series) Circular No.107 dated Jun 11, 2015 Subscription to chit funds by Non-Resident Indian on non-repatriation basis

Until now no person resident outside India is allowed to make investment in India, in any form, or in any entity, whether incorporated or not, which is engaged or proposes to engage “in the business of chit fund”. However it has been now decided to permit Non-Resident Indians (NRIs) to subscribe to the chit funds, without limit, on non-repatriation basis subject to the following conditions:

- The Registrar of Chits or an officer authorised by the State Government in accordance with the provisions of the Chit Fund Act in consultation with the State Government concerned, may permit any chit fund to accept subscription from Non-Resident Indians on non-repatriation basis;
- The subscription to the chit funds shall be brought in through normal banking channel, including through an account maintained with a bank in India.

Notification No. FEMA. 345/2015-RB dated Nov 16, 2015 Foreign Exchange Management (Permissible Capital Account Transactions) (Fourth Amendment) Regulations, 2015

- Capital account transactions are prohibited real estate business, However now "real estate business" shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014"

IX. REGULARIZATION OF ASSETS HELD ABROAD BY A PERSON RESIDENT IN INDIA

Notification No. FEMA. 348/2015-RB dated September 25, 2015 Foreign Exchange Management (Regularization of assets held abroad by a person resident in India) Regulations, 2015

- No person resident in India should continue to hold an asset located outside India for which a declaration has been made under section 59 of the Black Money Act, 2015.
- No proceedings shall lie under the provisions of the Act, against a person resident in India who has made a declaration under section 59 of the Black Money Act, in respect of any undisclosed asset located outside India and has paid the tax and penalty in accordance with the provisions of Chapter VI of the Black Money Act.

Provided that where the declarant intends to continue to hold the asset so declared, he shall apply to the Reserve Bank within 180 days from the date of declaration, for permission under the relevant provisions of the Act, or rules and regulations framed there under, if such permission is necessary as on the date of application.
Provided further that where the declarant does not intend to hold the asset so declared or the permission to hold such asset is refused by the Reserve Bank, as the case may be, the declarant shall dispose of the said asset within 180 days from the date of making such declaration or the date of receipt of the communication from the Reserve Bank conveying refusal of permission or within such extended period as may be permitted by the Reserve Bank and bring back the proceeds to India immediately through the banking channel.

X. EXTERNAL COMMERCIAL BORROWINGS (ECB) POLICY

A.P. (DIR Series) Circular No.80 dated Mar 03, 2015 External Commercial Borrowing (ECB) Policy — Review of all-in-cost ceiling

Review done and with no change in existing limits or rules 31st march 2015

A. P. (DIR Series) Circular No. 103 dated May 21, 2015 External Commercial Borrowings (ECB) denominated in Indian Rupees (INR) – Mobilisation of INR

To facilitate ECB lending denominated in INR by overseas lenders, it has now decided that such lenders may enter into swap transactions with their overseas bank which shall, in turn, enter into a back-to-back swap transaction with any AD Cat-I bank in India as per the procedure given below:

- (i) The recognised non-resident lender approaches his overseas bank with appropriate documentation as evidence of an underlying ECB denominated in INR with a request for a swap rate for mobilising INR for onward lending to the Indian borrower.
- (ii) The overseas bank, in turn, approaches an AD Cat-I bank for a swap rate along with documentation furnished by the customer that will enable the AD bank in India to satisfy itself that there is an underlying ECB in INR (scanned copies would be acceptable).
- (iii) A KYC certification on the end client shall also be taken by the AD bank in India as a one-time document from the overseas bank.

- (iv) Based on the documents received from the overseas bank, the AD bank in India should satisfy itself about the existence of the underlying ECB in INR and offer an indicative swap rate to the overseas bank which, in turn, will offer the same to the non-resident lender on a back-to-back basis.
- (v) The continuation of the swap shall be subject to the existence of the underlying ECB at all times.
- (vi) On the due date, settlement may be done through the Vostro account of the overseas bank maintained with its correspondent bank in India.

A. P. (DIR Series) Circular No.108 dated Jun 11, 2015 External Commercial Borrowings (ECB) for low cost affordable housing projects

External Commercial Borrowings (ECB) can be raised by eligible borrowers, for low cost affordable housing projects, under the approval route. It has been decided that the existing scheme of raising ECB for low cost affordable housing projects will continue for the financial year 2015-16.

A.P. (DIR Series) Circular No.109 dated Jun 11, 2015 External Commercial Borrowings (ECB) for Civil Aviation Sector

External Commercial Borrowings (ECB) can be raised by airline companies for working capital as a permissible end-use, under the approval route, subject to the conditions stipulated in the said Circular. The scheme was allowed initially till December 31, 2013. Now the same has been extended till March 31, 2016

A.P. (DIR Series) Circular No. 112 dated Jun 25, 2015 Overseas Foreign Currency Borrowings by Authorised Dealer Bank

AD Category - I banks are now allowed to borrow from international / multilateral financial institutions without approaching Reserve Bank for a case by case approval. These shall include International / Multilateral Financial Institutions of which Government of India is a shareholding member or which have been established by more than one government or have shareholding by more than one government and other international organizations.

RBI/2015-16/255 A.P. (DIR Series) Circular No.32 dated Nov 30, 2015 External Commercial Borrowings (ECB) Policy – Revised framework

It has been decided to liberalise/modify the ECB policy as indicated below:

- ECB with minimum average maturity of 5 years by non-banking financial companies (NBFCs) from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects would be considered by the Reserve Bank under the Approval Route;
- Foreign Currency Convertible Bonds (FCCB) by housing finance companies satisfying specific criteria would be considered by the Reserve Bank under the Approval Route;
- Minimum holding of equity by the foreign equity holder in the borrower's company (which would qualify the foreign equity holder as a recognised lender for ECB) has been clarified;
- Prepayment of ECB up to USD 200 million (as against the existing limit up to USD 100 million) may be allowed by Authorised Dealers without prior approval of RBI subject to

compliance of applicable minimum average maturity period for the loan. Pre-payment of ECB for amounts exceeding USD 200 million would be considered by the Reserve Bank under the Approval Route.

Currently, domestic rupee denominated structured obligations are permitted by the Government of India to be credit enhanced by international banks/international financial institutions/joint venture partners. Such applications would henceforth be considered by the Reserve Bank under the Approval Route.

XI. INSURANCE REGULATIONS

Notification No. FEMA. 12(R)/2015-RB dated December 29, 2015 Foreign Exchange Management (Insurance) Regulations, 2015

Permission to take or hold a general insurance policy issued by an insurer outside India

- (i) A person resident in India is allowed to hold a health insurance policy issued by an insurer outside India if amount of remittance including amount of premium is subject to Liberalised Remittance Scheme limit.
- (ii) Prior permission of IRDA is required to take or renew any insurance policy in respect of any property in India or any ship or other vessel or aircraft registered in India from an insurer whose place of business is outside India
- (iv) A person resident in India can continue to hold any general insurance policy issued by an insurer outside India when he/she was resident outside India.
- Where the premium due on an insurance policy has been paid by making remittance from India, the policy holder shall repatriate to India, the maturity proceeds or amount of any claim due on the policy, within a period of seven days from the receipt.

XII. POSSESSION AND RETENTION OF FOREIGN CURRENCY REGULATIONS, 2015

Notification No. FEMA 11(R)/2015-RB dated December 29, 2015 Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015

For the purpose of clause (a) and clause (e) of Section 9 of the Act, the Reserve Bank specifies the following limits for possession or retention of foreign currency or foreign coins, namely :-

- i) Possession without limit of foreign currency and coins by an authorized person within his authority;
- ii) Possession without limit of foreign coins by any person;
- iii) Retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding US$ 2000 or its equivalent in aggregate

When such amount:

- was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or
- was acquired by him, any Non-resident in India on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or
- was acquired by him by way of honorarium or gift while on a visit to any place outside India; or

- Represents unspent amount of foreign exchange acquired by him from an authorized person for travel abroad.

Possession of foreign exchange by a person resident In India but not permanently resident therein:-

A person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travellers cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the regulations made under the Act.

XIII. EXPORT AND IMPORT OF CURRENCY

Notification No. FEMA 6 (R)/RB-2015 dated December 29, 2015 Foreign Exchange Management (Export and import of currency) Regulations, 2015

Export and Import of Indian currency and currency notes :-

- Limit of amount allowed to be taken outside India is revised from Rs. 5000/- to Rs. 25,000/-.
  - Also, limit increased for bringing into India Government of India and RBI currency notes to Rs. 25,000/- subject to conditions as notified by RBI.
  - Higher amount is allowed to be taken out or to be brought in subject to conditions by RBI.
- Save as otherwise provided in these regulations, any person resident outside India, not being a citizen of Pakistan or Bangladesh, and visiting India,
  - May take outside India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.
  - May bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25000 (Rupees Twenty Five Thousand Only) per person or such other amount and subject to such conditions as notified by Reserve Bank of India from time to time.

XIV. REPORTING UNDER VARIOUS REGULATIONS

A.P (DIR Series) Circular No.85 dated Mar 18, 2015 Non-Resident Deposits - Stat 5 and Stat 8 Returns – Discontinuation

It has been decided to discontinue the manual submission of Stat 5 and Stat 8 Returns (NRO-CSR data) from March 2015. Accordingly banks, dealing in foreign exchange may stop sending Stat 5 and Stat 8 Returns (both hard and soft copies) to the Department of Statistics and Information Management, Reserve Bank of India

A.P. (DIR Series) Circular No. 95 dated Apr 17, 2015 Foreign Direct Investment (FDI) – Reporting under FDI Scheme on the e-Biz platform

Reporting of Advanced Remittance Form and FCGPR Form under the FDI scheme on the e-Biz platform of the Government of India

All aspects of using the Virtual Private Network (VPN) accounts obtained from National Informatics Centre (NIC) for accessing the e-Biz portal have now been finalised in consultation with Government of India, Department of Industrial Policy and Promotion (DIPP) and NIC. The details are as follows:

- The VPN account will be in the name of the individual users and will be for the lifetime of the Digital Signing (Class 2) certificates (which is for a maximum period of two years) issued by Institute for Development and Research in Banking Technology (IDRBT), Hyderabad
- D Category-I banks will be required to credit (through NEFT/RTGS) the payment in advance for the VPN accounts (@ Rs.9,654/- per account for a block of two years) directly to National Informatics Centre Services Inc's (NICSI) bank account
- After making the payment, the AD bank may fill up the details in the 'Payment Reference Form' and mailto:Vpnrbi-dipp@gov.in

A.P. (DIR Series) Circular No. 98 dated May 14, 2015 Clarifications regarding Form A2

- It is clarified that A2 form is to be filed at the time of purchase of foreign exchange using rupee funds and hence is not applicable while remitting FCNR (B) funds.
- Further, banks, with the help of technology, will have to devise better alternatives/ methods for ensuring bonafide of the transaction rather than insisting on physical presence of the account holder, in order to ensure hassle free remittance of funds to the account holder.

A.P. (DIR Series) Circular No.101 dated May 14, 2015 Export of Goods and Services-Declaration of Exports of Goods/Software

Requirement of declaring the export of Goods /Software in the SDF in case of exports taking place through the EDI ports, as the mandatory statutory requirements contained in the SDF have been subsumed in the Shipping Bill format.

A.P.(DIR Series) Circular No. 110 dated Jun 25, 2015 BEF statement - Submission under XBRL

It has been decided to move from manual reporting of BEF Statement (**Statement showing the details of remittances affected towards import in respect of which documentary evidence has not been received despite reminders** to extensible Business Reporting Language (XBRL) system from half year ended June 2015

A.P. (DIR Series) Circular No.11 dated September 10, 2015 Exchange Earners' Foreign Currency (EEFC) Account-Discontinuation of Statement pertaining to trade related loans and advances

Presently, Transactions relating to loans/ advances from EEFC account are required to be reported by the AD banks on a quarterly basis to the Regional Office of Reserve Bank. With a view to liberalizing the procedure, it has now been decided to dispense with the above-mentioned quarterly statement with immediate effect.

A. P. (DIR Series) Circular No. 22 dated Oct 21, 2015 Annual Return on Foreign Liabilities and Assets (FLA Return) – Reporting by Limited Liability Partnerships

- All LLPs that have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) as well as in the current year, shall submit the FLA return to the Reserve Bank of India by July 15 every year, in the format as prescribed.

- Since, LLPs do not have21-Digit CIN (Corporate Identity Number), they are advised to enter 'A99999AA9999LLP999999' against CIN in the FLA Return.

A.P. (DIR Series) Circular No. 40 dated Feb 01, 2016 Foreign Direct Investment –Reporting under FDI Scheme, Mandatory filing of form ARF, FCGPR and FCTRS on e-Biz platform and discontinuation of physical filing from February 8, 2016

With a view to promoting the ease of reporting of transactions related to Foreign Direct Investment (FDI), the Reserve Bank of India, under the aegis of the e-Biz project of the Government of India has enabled online filing of the following returns with the Reserve Bank of India

- Advance Remittance Form (ARF) which is used by the companies to report the FDI inflows to RBI
- FCGPR Form which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow; and
- FCTRS Form which is submitted to RBI for transfer of securities between resident and person outside India.

Beginning February 8, 2016 the physical filing of forms ARF, FCGPR and FC-TRS will be discontinued and forms submitted in online mode only through e-Biz portal will be accepted

A.P. (DIR Series) Circular No. 50 dated February 11, 2016 Compilation of R-Returns: Reporting under FETERS

Email based Submission

The present email-based submission replaced by web-portal based data submission. However, there are no changes in periodicity, file-layout, delimiter, consistency checks. Nodal offices of banks have to access the web-portal https://bop.rbi.org.in with the RBI-provided login-name and password, to submit data

Changes in A2 form

- Transactions relating to LRS may be reported under respective FETERS purpose codes (e.g. travel - S0301 to S0306, medical treatment S1108, purchase of immovable property S0005, studies abroad S1107, etc.) instead of reporting collectively under the purpose code S0023.
- Purpose Code S0023 will now enable reporting of "Opening of foreign currency account abroad with a bank" as against a common description "Remittances made under Liberalised Remittance Scheme (LRS) for Individuals" earlier
- Application cum Declaration for purchase of foreign exchange under the Liberalised Remittance Scheme of USD 250,000' has been clubbed with Form A2 in order to reduce multiplicity of forms to be filled in by the customers
- Remittances that do not require any documentation (e.g. certain transactions under the LRS) may be put through on the basis of the Form A2 alone.
- To start with, remittances on the basis of online submission alone will be available for transactions with an upper limit of USD 25,000 (or its equivalent) for individuals and USD 100,000 (or its equivalent) for corporate

XV. OTHER MISCLENEOUS UPDATES

A.P. (DIR Series) Circular No.12 dated September 10, 2015 Guidelines for Grant of Authorisation for Additional Branches of FFMC/AD Cat. II

RBI has provided Memorandum of Instructions governing money changing activities, wherein guidelines for grant of authorization for additional branches had been given. Fort further simplification

- Instead of certificate from Statutory Auditors regarding position of NOF as on date of application. Only a certificate from Proprietor/Partner/Director /CFO of the entity as regards the position of NOF is required to be submitted
- No Confidential Report from applicant's banker is now required
- Instead of copy of KYC/AML/CFT policy framework now only a declaration to be submitted that there is no change in the KYC/AML/CFT policy framework since its last submission to RBI.

Instead of Brief write-up on the internal control systems, including internal and external audit. Only a declaration of that there is no change in the internal control systems including internal and external audit since submission of the last write-up to RBI.

A. P. (DIR Series) Circular No. 23 dated Oct 29, 2015 No fresh permission/ renewal of permission to LOs of foreign law firms- Supreme Court's directions

Supreme Court vide its interim orders dated July 4, 2012 and September 14, 2015, passed in the case of the Bar Council of India vs. A.K. Balaji & Ors., has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of Liaison Office (LO) in India.
Hence, by this notification RBI has stated that no foreign law firm shall be permitted to open any LO in India till further orders/notification in this regard.
However, foreign law firms which have been granted permission prior to the date of interim order for opening LOs in India may be allowed to continue provided such permission is still in force.
No fresh permission/ renewal of permission shall be granted by RBI/AD banks respectively till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.

A. P. (DIR Series) Circular No. 21 dated Oct 08, 2015 Memorandum of Procedure for channelling transactions through Asian Clearing Union (ACU)

It has been decided to permit the use of the Nostro accounts of the commercial banks of the Asian Clearing Union (ACU) member countries, i.e., the ACU Dollar and ACU Euro accounts, for settling the payments of both exports and imports of goods and services among the ACU countries.

- Consequently, payments for all eligible export transactions may be made by debit to the ACU Dollar / ACU Euro account in India of a bank of the member country in which the other party to the transaction is resident or by credit to the ACU Dollar / ACU Euro account of the authorised dealer maintained with the correspondent bank in the other member country; and
- Payments for all eligible import transactions may be made by credit to the ACU Dollar / ACU Euro account in India of a bank of the member country in which the other party to the transaction is resident or by debit to the ACU Dollar / ACU Euro account of an authorised dealer with the correspondent bank in the other member country.

- All eligible export/import transactions with other ACU member countries (except in the case of certain countries where specific exemptions have been provided by the Reserve Bank of India) shall invariably be settled through the ACU mechanism.

A.P. (DIR Series) Circular No.30 dated Nov 26, 2015 Advance Remittance for Import of aircrafts /helicopters / other aviation related purchases

Clarification

AD bank while allowing advance remittance without bank guarantee or an unconditional, irrevocable standby letter of credit up to USD 50 million, ensure that only the requisite approval of DGCA for import of aircrafts/helicopters in terms of the extant Foreign Trade Policy has been obtained by the company for operating Scheduled or Non-Scheduled Air Transport Services (including Air Taxi Services). In other words, the approval from MoCA will not be required.

A.P. (DIR Series) Circular No.26 dated Nov 05, 2015 Switching from Barter Trade to Normal Trade at the Indo-Myanmar Border

It has been decided to do away with the barter system of trade at the Indo-Myanmar border and switch over completely to normal trade with effect from December 1, 2015

Accordingly, all trade transactions with Myanmar, including those at the Indo-Myanmar border with effect from December 1, 2015 would be settled in any permitted currency in addition to the Asian Clearing Union mechanism.

A.P. (DIR Series) Circular No.49/2015-16 [(1)/18(R)] dated February 04, 2016 Post Office (Postal Orders/Money Orders), 2015

General permission has been given to any person to buy foreign exchange from any post office in India in the form of postal order or money order

A.P. (DIR Series) Circular No. 88 dated March 25, 2015 Know Your Customer (KYC) Norms / Anti Money Laundering (AML) Standards/ Combating of Financing of Terrorism (CFT) / Obligations under Prevention of Money-laundering Act (PMLA), 2002 - Money Transfer Service Scheme (MTSS)

Clarification

Henceforth, Foreign Exchange Department shall not issue the instructions to the APs who are Indian Agents under Money Transfer Service Scheme, on the KYC/AMC/CFT separately and the instructions issued by Department of Banking Regulation, Central Office, and Reserve Bank of India in this regard so far and from time to time in future, will, be applicable to all APs.

These guidelines will also be applicable, to all Sub-Agents of the Indian Agents under MTSS and it will be the sole responsibility of the APs (Indian Agents) to ensure that their Sub-agents adhere to these guidelines.

Notification No. FEMA. 339/2015-RB dated Mar 02, 2015 Foreign Exchange Management (International Financial Services Centre) Regulations, 2015

Where any financial institution or branch of a financial institution set up in the IFSC and permitted/recognised as such by the Government of India or a Regulatory Authority shall be treated as a person resident outside India

"International Financial Services Centre" means an International Financial Services Centre (IFSC) which has been approved by the Central Government under Special Economic Zones Act, 2005

Nothing contained in any other regulations shall apply to a financial institution or branch of a financial institution set up in an IFSC unless specifically provided.

A.P.(DIR Series) Circular No. 97 dated Apr 30, 2015 Merchanting Trade to Nepal and Bhutan

As Nepal and Bhutan are landlocked countries, there is a facility of transit trade whereby goods are imported from third countries by Nepal and Bhutan through India under the cover of Customs Transit Declarations in terms of the Government of India Treaty of Transit with these two countries.
In consultation with Government of India, it is clarified herein that goods consigned to the importers of Nepal and Bhutan from third countries under merchanting trade from India would qualify as traffic-in-transit, if the goods are otherwise compliant with the provisions of the India-Nepal Treaty of Transit and Indo-Bhutan Treaty of Transit respectively.

OVERVIEW OF ECONOMIC SURVEY

This year's Economic Survey comes at a time of unusual volatility in the international economic environment. Markets have begun to swing on fears that the global recovery may be faltering, while risks of extreme events are rising. Amidst this gloomy landscape, India stands out as a haven of stability and an outpost of opportunity. Its macro-economy is stable, founded on the government's commitment to fiscal consolidation and low inflation. Its economic growth is amongst the highest in the world, helped by a reorientation of government spending toward needed public infrastructure. These achievements are remarkable not least because they have been accomplished in the face of global headwinds and a second successive season of poor rainfall.
The economic survey pointed out that the India would stand-out in the midst of the poor global economic backdrop. The quick highlights of the Economic survey for 2016 are as follows:

FISCAL DEFICIT

- ☐ 2016/17 expected to be challenging from fiscal point of view; time is right for a review of medium-term fiscal framework;
- ☐ GDP projected at in range of 7-7.75% for FY 2016.
- ☐ FY 2016 fiscal deficit target of 3.9 per cent likely to be achieved;
- ☐ Credibility and optimality argue for adhering to 3.5 percent of GDP fiscal deficit target;
- ☐ 7th Pay Panel, OROP to put extra burden on FY17 spending;
- ☐ Long run GDP potential at 8-10 per cent.

INFLATION

- ☐ CPI inflation seen around 4.5 to 5 percent in 2016/17;
- ☐ Low inflation has taken hold, confidence in price stability has improved;
- ☐ Expect RBI to meet 5 percent inflation target by March 2017;
- ☐ Prospect of lower oil prices over medium term likely to dampen inflationary expectations.

CURRENT ACCOUNT DEFICIT

- ☐ Current Account Deficit as a proportion of GDP likely to be in the low range of 1 to1.5%.

CURRENCY

- ☐ Rupee's value must be fair, avoid strengthening; fair value can be achieved through monetary relaxation;
- ☐ India needs to prepare itself for a major currency readjustment in Asia in wake of a similar adjustment in China;
- ☐ Rupee's gradual depreciation can be allowed if capital inflows are weak.

BANKING & CORPORATE SECTOR

- ☐ Estimated capital requirement for banks around 1.8 lakh crores rupees by 2018/19;
- ☐ Proposes to make 700 bln rupees available via budgetary allocations during current and succeeding years in banks;

- ☐ Government could sell off certain non-financial companies to infuse capital in state-run banks;
- ☐ Corporate, bank balance sheets remain stretched, affecting prospects for reviving private investments;
- ☐ Underlying stressed assets in corporate sector must be sold or rehabilitated.

TAXES

- ☐ Tax revenue expected to be higher than budgeted levels in 2015/16;
- ☐ Proposes widening tax net from 5.5 percent of earning individuals to more than 20 percent;
- ☐ Favours review and phasing out of tax exemptions; easiest way to widen the tax base not to raise exemption thresholds.

OTHERS

- ☐ India likely to be fastest growing economy in 2016-17;
- ☐ Services sector will continue to be the key driver for India.

The Economic Survey highlights were more or less on expected lines with regards to the current account deficit, challenging international environment, inflation etc.

KEY BUDGET PROPOSALS

INCOME TAX RATES

TDS

TDS RATES FOR ASSESSMENT YEAR 2017-18 (FINANCIAL YEAR 2016-17)

(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	Other Interest (Note 3)	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	**Payment in excess of Rs. 15,000**	194D	**10**	**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 u/s 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 is directly paid to REITs no TDS is required)	194I	10	10	10
	Rent for Plant & machinery, Equipments			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	Professional Fees / Royalties / FTS (Note 5)	Payment in excess of Rs. 30,000 p.a.	194J	10	10	10
14	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

15	Income by way of Interest from SPV distributed by Business Trusts i.e. REITs & Invits	No Threshold Limit	194LBA	10	10	10
16	Income other than business income distributed by an Alternate Investment Fund (Category I & II)	No Threshold Limit	194LBB	10	10	10
17	Income in respect of Investment in Securitization Trust	**No Threshold Limit**	**194LBC**	**30**	**25**	**25**
18	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 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.
5. Any payments to a director of a company other than those which are "salaries" are specifically covered u/s 194J
6. With effect from 1st April, 2010, the rate of TDS will be 20% in all cases other than Sec 192A, if PAN is not quoted by the deductee.
7. 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.
8. 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.
9. Certificate for nil rate of tax deduction can be applied for sections 194, 194EE, 192A, 193, 194A, 194DA, 194K, 194-I

(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 u/s 112(1)(c)(iii)	112	20
		on income by way of long-term capital gains from unlisted securities u/s 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
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	Note - 7
9	Income other than business income distributed by an Alternate Investment Fund (Category I & II)	No Threshold Limit	194LBB	**Note - 7**
10	**Income in respect of Investment in Securitization Trust**	**No Threshold Limit**	**194LBC**	Note - 7
11	Income by way of interest to FII or QFI	On Rupee denominated Bonds of Indian Company and Government Securities.	194LD	5

Sr No	Payments to Non-Resident Payee	Criteria for Deduction	Section	Rate (%)
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 @ 3% 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. The rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee. However this condition is not applicable in respect of Interest covered u/s 194LC. Also, it is proposed to amend this provision in case if alternative documents are available.
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. Equalization 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. Certificate for deduction at lower rate can be applied for sections 194LBB, 194LBC and 195.
8. Surcharge on tax deducted applicable as below:

Assessee	Residential Status	Deduction Threshold	Rate of Surcharge
Individual, HUF, AOP, BOI or Artificial Jurisdictional Person	Non-Resident	Exceeding Rs 1 crore	15%
Co-operative Society	Non-Resident	Exceeding Rs 1 crore	12%
Foreign Company	Any	Exceeding Rs 1 crore up to 10 crores	2%
Foreign Company	Any	Exceeding 10 crores	5%

TCS

TCS RATES FOR ASSESSMENT YEAR 2017-18 (FINANCIAL YEAR 2016-17)

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

Sr No	Nature of Goods/Contract/License /Lease	Criteria for Collection	Percentage*
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
10	Cash Sale of Jewellery	Payment in excess of Rs. 5,00,000/-	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

Notes:

Surcharge on tax collected applicable as below:

Assessee	Residential Status	Collection Threshold	Rate of Surcharge
Individual, HUF, AOP, BOI or Artificial Jurisdictional Person	Non-Resident	Exceeding Rs 1 crore	15%
Co-operative Society	Non-Resident	Exceeding Rs 1 crore	12%
Foreign Company	Any	Exceeding Rs 1 crore up to 10 crores	2%
Foreign Company	Any	Exceeding 10 crores	5%

FOREIGN POLICY ANNOUNCEMENTS

1. Foreign Exchange Regulations

- ☐ Foreign investment will be allowed in the insurance and pension sectors in the automatic route up to 49% subject to the extant guidelines on Indian management and control to be verified by the Regulators.
- ☐ 100% FDI in Asset Reconstruction Companies (ARCs) will be permitted through automatic route.
- ☐ Foreign Portfolio Investors (FPIs) will be allowed up to 100% of each tranche in securities receipts issued by ARCs subject to sectoral caps.
- ☐ 100% FDI will be allowed through FIPB route in marketing of food products produced and manufactured in India
- ☐ Investment limit for foreign entities in Indian stock exchanges will be enhanced from 5 to 15% on par with domestic institutions. This will enhance global competitiveness of Indian stock exchanges and accelerate adoption of best-in-class technology and global market practices.
- ☐ The existing 24% limit for investment by FPIs in Central Public Sector Enterprises, other than Banks, listed in stock exchanges, will be increased to 49% to obviate the need for prior approval of Government for increasing the FPI investment.
- ☐ FDI instruments will be expanded to include hybrid instruments subject to certain conditions.
- ☐ FDI will be allowed beyond the 18 specified NBFC activities in the automatic route in other activities which are regulated by financial sector regulators.
- ☐ With a view to promote Make in India and following the practices in advanced countries, foreign investors will be accorded Residency Status subject to certain conditions
- ☐ In order to ensure effective implementation of Bilateral Investment Treaties signed by India with other countries, it is proposed to introduce a Centre State Investment Agreement.

DIRECT TAX PROPOSALS

DOMESTIC TAXATION

Personal Tax

- No changes have been proposed in the tax rate for individuals.

Corporate Tax

- It is proposed to reduce corporate tax rate from 30 percent to 29 percent in the case of domestic company if the total turnover or gross receipts of the company in the previous year 2014-15 does not exceed 5 crore rupees. In all other cases, the rate of corporate tax has been kept unchanged i.e. at 30 percent.

A. Provisions Affecting Individuals

- **Tax on certain dividends received from domestic companies:**
  Where the total income of a resident individual, HUF or firm includes income by way of dividends exceeding Rs 10 lakhs which is received from a domestic company, then such dividends shall be taxable at the rate of 10%. For the purposes of this section, dividend shall have the meaning as defined under section 2(22) but shall not include clause (e) thereof.

- **Simplification and rationalization of provisions relating to taxation of unrealized rent and arrears of rent:**
  Any amount of arrears of rent or unrealized rent received subsequently from a tenant shall be charged to income-tax in the financial year in which such rent is received or realised irrespective of whether the assessee is the owner of the property or not in that financial year. Further, sum equal to thirty per cent of the arrears of rent or unrealized rent which is received shall be allowed as a deduction.

- Time period for acquisition or completion of construction of self occupied house property for claiming deduction under section 24(b) of interest on capital borrowed is proposed to be increased from three years to five years.

- **Deduction in respect of interest on housing loan:**
  Section 80EE has been substituted so as to provide that first time home buyers shall be allowed a deduction of Rs 50,000/- for loans sanctioned during financial year 2016-17 for an amount not exceeding Rs 35,00,000/- and the value of the residential house property does not exceed Rs 50,00,000/-. The deduction under the proposed section is over and above the limit of Rs 2,00,000 provided for a self-occupied property under section 24.

- **Section 56 to exclude shares received as a consequence of certain business re-organisation, amalgamation or demerger:**

It is proposed that any shares received by an individual or HUF as a consequence of demerger or amalgamation of a company or business re-organisation of co-operative bank shall not attract the provisions of section 56(2)(vii).

- Limit of deduction allowable in section 80GG with respect to rent paid is proposed to be increased from Rs. 2000 per month to Rs. 5,000 per month.

- **Withdrawal from Recognised provident Fund:**
  Withdrawal of any amount of accumulated balance, attributable to any contribution made on or after 1st day of April 2016 by an employee, to the extent of forty per cent, of such accumulated balance shall be exempt.

- **Withdrawal from National pension System trust:**
  Any payment from the National pension System trust to an employee on closure of account or his option out of the pension scheme referred to in Section 80CCD, to the extent it does not exceed forty percent of the total amount payable to him at the time of closure or his opting out of the scheme, shall be exempt from tax.

- Any payment in commutation of an annuity purchased out of contributions made on or after the 1st day of April, 2016, which exceeds forty percent of the annuity shall be chargeable to tax. Any payment from approved superannuation fund by way of transfer to the account of the employee under a pension scheme referred to in Section 80CCD notified by the Central Government shall also be exempt from tax

- **Amounts received by nominee on demise of taxpayer not taxable:**
  Any payment from National Pension System Trust to a nominee of the assessee on account of closure or his opting out of the pension scheme referred to in Section 80CCD on account of his demise shall be exempt from tax.

- An amount of contribution in excess of one lakh fifty thousand rupees to an approved superannuation fund by the employer in respect of the employee, is to be considered as a perquisite, taxable in the hands of the employee.

B. Provisions affecting Corporates

- **Section 28: Profits and gains of business or profession**
  It is proposed to amend clause (va) w.e.f. 1st April, 2016 (i.e. AY 2017-18) so to bring the non-compete fee received or receivable, in cash or kind, under an agreement for not carrying out any activity in relation to any profession (so far only business), within the scope of section 28 of the Act.

- **Section 44ADA and 44AB**
  It is proposed to insert a new section 44ADA, which is similar to existing section 44AD of the ITA to provide benefit of presumptive tax to person carrying on profession.

Section 44AB of the ITA is propose to be amended to mandate the audit of book of accounts in case of professional if he claims to have earned income less than the deemed income under section 44ADA and his exceeds the maximum amount which is not chargeable to tax.

- **Amendment to Section 44AB –** increase in threshold limit of audit for professionals from Rs. 25 lakhs to Rs. 50 lakhs.

- **Amendment to Section 44AD**

  The threshold limit of Rs. 1 crore specified in the definition of "eligible business" is increased to Rs. 2 crore.

  It is proposed to withdraw deduction of interest and salary paid to partner w.e.f. AY 2017-18.

  It is also proposed that where an eligible assessee declares profit for any previous year in accordance with the provisions of section 44AD and he declares profit for any of the five consecutive assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of section 44AD, he shall not be eligible to claim the benefit of the provisions of section 44AD for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of section 44AD.

  Further, provisions of section 44AA are amended to include sub-section 2(iv) to provide for maintenance of books in the above cases.

  It is also proposed that advance tax may be paid by 15th March of the financial year.

- **Section 47 and 48**

  Existing provisions of clause (xiiib) of section 47 provides that conversion of a private limited or unlisted public company into Limited Liability Partnership (LLP) shall not be regarded as transfer subject to certain conditions. It is proposed to amend the said section to provide additional condition that, the value of the total assets in the books of accounts of the company in any of the 3 previous years proceeding the previous year in which the conversion takes place, should not exceed Rs. 5 crore.

  It is proposed to amend section 47 of the ITA, to exempt any redemption of Sovereign Gold Bond under the Scheme, by an individual.

  It is also proposed to amend section 48 of the ITA, to provide indexation benefits to long terms capital gains arising on transfer of Sovereign Gold Bond to all cases of assessee.

  The capital gains arising in case of appreciation of rupee against the foreign currency in which the investment is made at the time of redemption of a rupee denominated bonds shall be exempt from tax on capital gains.

☐ **Section 50C**

It is proposed to amend the provisions of section 50C so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration.

It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.

☐ **New section 54EE - Tax incentives for start-ups**

With a view to increase investment for start-up, it is proposed to insert new section 54EE to provide exemption from capital gains if the capital gains are invested in the units of specified fund, as may be notified by the Central Government in this behalf, subject to certain conditions similar to section 54EC.

☐ **Section 54GB**

It is proposed to amend section 54GB to extent the benefit of exemption if the net consideration is invested in subscription of shares of a company which qualifies to be an eligible start-up subject to other specified conditions.

☐ **Section 55**

Existing section 55 of the ITA provides that cost of improvement in relation to a capital asset, being goodwill of a business or a right to manufacture, produce or process any article or thing or right to carry on any business, shall be taken to be nil. It further provides that cost of goodwill or other rights shall be taken to be the amount of the purchase price in case the asset is purchased by the assessee

It is proposed to amend section 55 to include right to carry on profession under its scope.

☐ **Section 115BA**

Tax on income of certain domestic companies: A domestic company can exercise an option, on or before the due date of filing return of income, to pay income-tax at the rate of 25% on its total income subject to the following conditions:
the company has been set up and registered on or after 1st March 2016;
it is engaged in the business of manufacturing or production or any article or thing; and
total income is computed without availing any deduction under specified sections, without set off of loss carried forward from earlier assessment year, if such loss is due to specified deductions availed and depreciation is determined in the manner as prescribed.
No further deduction of any loss shall be allowed in subsequent years.

☐ **Section 115BBF – Tax on income from patent**

Where the total income of a resident assessee, being a patentee, includes income by way of royalty in respect of a patent developed and registered in India then such royalty shall be taxed at the rate of 10%. No deduction of expenditure or allowance shall be allowed in computing such royalty income. The Explanation to the section defines certain expressions like developed, royalty, invention, patentee, royalty, etc. used in the section.

☐ **Section 115-O – Tax on distributed profits of domestic companies**

If any amount is distributed by a specified domestic company, being a company in which a business trust has become a holder of whole of the nominal value of equity share capital of the company, by way of dividend, to the business trust out of its current income on or after the date of acquisition of such holding by the business trust, no tax shall be payable by the specified domestic company on such dividend declared, distributed or paid. This amendment will take effect from 1st June, 2016.

Further, no tax on distributed profits shall be chargeable in respect of the total income of a company being a unit located in International Financial Services Centre, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2017 out of its current income, either in the hands of the company or the person receiving such dividend.

☐ **Section 115QA – Tax on distributed income to shareholders (upon buy-back of shares)**

It is proposed to clarify that the provisions of this section shall apply to any buy back of unlisted shares undertaken by the company in accordance with the provisions of the law relating to the companies and not necessarily restricted to Section 77A of the Companies Act, 1956. Vide this proposed provision, doubts regarding the effect of buybacks undertaken by the company under different provisions of the Companies Act, 1956 or the Companies Act, 2013 and applicability of provisions of section 115QA to such transactions have been clarified.

It is further proposed to provide that for the purpose of computing distributed income, the amount received by the Company in respect of the shares being bought back shall be determined in the prescribed manner vide specific rules to be framed for this purpose to provide for manner of determination of the amount in various circumstances including shares being issued under tax neutral reorganizations and in different tranches. These amendments will take effect from 1st June, 2016

☐ **Section 115TA – Tax on distributed income to investors by Securitisation Trust**

It is proposed to provide that the distribution tax shall cease to apply in case of distribution made by securitisation trusts with effect from 1st June, 2016.

☐ **Section 115TCA – Tax on income from Securitisation Trusts received by investor**

It is proposed to insert section 115TCA in order to rationalize the tax regime for securitisation trust and its investors and to provide tax pass through treatment, thereby substituting the extant special regime for securitisation trusts by a new regime. Under the new regime, the income of

securitisation trust shall continue to be exempt under Section 10(23DA) of the Act. However, exemption in respect of income of investor from securitisation trust would not be available (under Section 10(35A) of the Act) and any income accrued or received from securitisation trust would be taxable in the hands of investors in the same manner and to the same extent as it would have happened had investor made investment directly in the underlying assets and not through the trust.

Also, any income accruing or arising to, or received by, the securitisation trust, even if not paid or credited to the investor shall be deemed to have been credited to the account of the said investor on the last day of the previous year in the same proportion in which such the investor would have been entitled to receive the income had it been paid in the previous year.

- **New Chapter XII-EB - Tax on accreted income of certain trusts and institutions**

  It is proposed to insert a new section 115TD whereby a trust or institution registered under section 12AA shall have to pay additional income-tax at the maximum marginal rate on the accreted income as on the specified date upon occurring of certain eventualities mentioned in the proposed section. The accreted income shall mean the excess of aggregate fair market value of the assets over the total liability of such trust or institution on a specified date. It is further proposed to exclude the assets and liabilities, if any, related to such assets which have been transferred to the trust or institution registered under section 12AA or specified organization within a period of 12 months from the date of dissolution. Sub-section (3) of the proposed section provides for specific situations under which a trust or institution can be said to have converted into any form which is not eligible for grant of registration. Such tax shall be payable within 14 days of the date of specified event.

  Section 115TE shall be inserted to provide for interest payable at the rate of 1% for every month or part thereof for non-payments of tax by trust or institution. Section 115TF shall be inserted which shall provide that trust or institution shall be deemed to be assessee in default if such trust or institution does not pay tax on accreted income.

- **Section 115UA – Tax on income of unit holder and business trust including REITs**

  In light of the proposed amendment to Section 10(23FC) of the Act to also include the dividends declared by the specified domestic company to the business trust out of its current income, the scope of Section 115UA is proposed to not extend to the income distributed by a business trust to its unit holders which is in the nature of such dividends received by the business trusts.

- **Section 115JB: Special provision for payment of tax by certain companies**

  It is proposed to insert a new clause (fd) in Explanation 1 to sub-section (1) of the aforesaid section so as to provide that the book profit shall be increased by an amount or amounts of expenditure relatable to income, by way of royalty in respect of patent chargeable to tax in accordance with the provisions of section 115BBF.

  It is further proposed to insert a new clause (iig) in Explanation 1 so as to provide that the book profits shall be reduced by an amount of income, by way of royalty in respect of patent chargeable to tax in accordance with the provisions of section 115BBF, if any such amount is credited to the profit or loss account.

It is also proposed to insert an Explanation retrospectively from 1st April, 2000 (i.e. AY 2001-02), that the provisions of the section 115JB, shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, if—
(i) the assessee is a resident of a country or a specified territory with which India has an agreement referred to in subsection (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement; or
(ii) the assessee is a resident of a country with which India does not have an agreement referred to in clause (i) and the assessee is not required to seek registration under any law for the time being in force relating to companies.

It is also proposed to insert a new subsection (7) in the section 115JB so as to provide that in case of a company, being a unit of an International Financial Services Centre and deriving its income solely in convertible foreign exchange, the Minimum alternative Tax shall be chargeable at the rate of nine per cent.

- **Chapter VIII – Equalisation Levy**

  In order to address the income-tax challenges in digital domain, a new Chapter titled 'Equalisation levy' is proposed to be inserted. It is proposed to levy an 'equalisation levy' at the rate of 6% of the amount of consideration for any specified service received or receivable by a person, being a non-resident from:
  a person resident in India and carrying on business or profession; or
  a non-resident having a permanent establishment in India

  'Specified Service' has been defined as online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf. Further, no equalisation levy shall be charged if the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, does not exceed Rupees one lakh.

C. Deductions/Exemptions for Businesses

- **Section 10(38)**

  A transaction undertaken on a recognized stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency shall be considered as exempt from tax even if no STT is paid.

- **Section 10(48A)**

  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 there from to any person resident in India shall not be included in the total income on fulfillment of certain prescribed condition

☐ **Section 32(1)(iia) : Extending the benefit of initial additional depreciation for power sector**

Under the existing provisions of section 32(1)(iia) of the Act, additional depreciation of 20% is allowed in respect of the cost of new plant or machinery acquired and installed by certain assessees engaged in the business of generation and distribution of power now it is proposed to include assessee engaged in the business of transmission of power.

☐ **Section 32AC : Rationalisation of scope of tax incentive under section 32AC**

The existing provision of section 32AC (1A) provides for investment allowance at the rate of 15% on investment made in new assets (plant and machinery) exceeding Rs.25 crore in a previous year by a assessee company engaged in manufacturing or production of any article or thing subject to the condition that the acquisition and installation has to be done in the same previous year. This tax incentive is available up to 31.03.2017 (i.e. till AY 2017-18). The said section is proposed to amend for allowing depreciation in the year of installation if the acquisition and installation is not done in the same financial year.

☐ **Section 35: Phasing of deduction on Expenditure incurred on scientific research**

Sr. no.	Section	Incentive currently available	Proposed phase out measure / Amendment
1	35(1)(ii)- Expenditure on scientific research.	Weighted deduction is available to an assessee from the business income to the extent of 175% of any sum paid: a) to an approved scientific research association which has the object of undertaking scientific research and b) to an approved university, college or other institution, if such sum is used for scientific research.	Weighted deduction shall be restricted to 150 % from 01.04.2017 to 31.03.2020 (i.e. from financial year 2017-18 to financial year 2019-20) and deduction shall be restricted to 100 % from financial year 2020-21 onwards).
2	35(1)(iia)- Expenditure on Scientific research.	Weighted deduction is available to an assessee from the business income to the extent of 125% of any sum paid as contribution to an approved scientific research company.	Deduction shall be restricted to 100 % w.e.f. 01.04.2017 (i.e. from financial year 2017-18 and subsequent years).
3	35(1)(iii)- Expenditure on scientific research.	Weighted deduction is available to an assessee from the business income to the extent of 125 % of contribution to an approved research association or university or college or other	Deduction shall be restricted to 100 % w.e.f. 01.04.2017 (i.e. from financial year 2017-18 and subsequent years).

Sr. no.	Section	Incentive currently available	Proposed phase out measure / Amendment
		institution to be used for research in social science or statistical research.	
4	35(2AA)- Expenditure on scientific research.	Weighted deduction is available to an assessee from the business income to the extent of 200 % of any sum paid to a National Laboratory or a university or an Indian Institute of Technology or a specified person for the purpose of approved scientific research programme.	Weighted deduction shall be restricted to 150 % w.e.f. 01.04.2017 to 31.03.2020 (i.e. from financial year 2017-18 to financial year 2019-20) and deduction shall be restricted to 100 % from financial year 2020-21 onwards).
5	35(2AB)- Expenditure on scientific research.	Weighted deduction is available of 200 % of the expenditure (not being expenditure in the nature of cost of any land or building) incurred by a company, engaged in the business of bio-technology or in the business of manufacture or production of any article or thing except some items appearing in the negative list specified in Schedule-XI, on scientific research on approved in-house research and development facility.	Weighted deduction shall be restricted to 150 % w.e.f. 01.04.2017 to 31.03.2020 (i.e. from financial year 2017-18 to financial year 2019-20) and deduction shall be restricted to 100 % from financial year 2020-21 onwards).

☐ **Section 35ABA: Amortisation of spectrum fee for purchase of spectrum**

It is proposed to insert a new section 35ABA to provide that any capital expenditure incurred and actually paid by an assessee on the acquisition of any right to use spectrum for telecommunication services by paying spectrum fee will be allowed as a deduction in equal installments over the period starting from the year in which such payment has been made and ending in the year in which the useful life of spectrum comes to an end.

☐ **Section 35AC: Deduction in respect of expenditure incurred on eligible projects or schemes**

It is proposed that no deduction in section 35AC shall be available for expenditure incurred by way of payment of any sum to a public sector company or a local authority or to an approved association or institution, etc. on certain eligible social development project or a scheme. This amendment would be applicable from AY 2018-2019.

☐ **Section 35AD: Deduction in respect of expenditure incurred on specified business**

It is proposed to restrict a deduction to 100% of capital expenditure (other than expenditure on land, goodwill and financial assets) incurred by an assessee wholly and exclusively for the purposes of business as per section 35AD.

It is further proposed to amend section 35AD, so as to provide the deduction to an assessee engaged in developing, operating and maintaining or developing, operating and maintaining the infrastructure facility.

☐ **Section 35CCC: Deduction in respect of expenditure incurred on notified agricultural extension project**

It is proposed to restrict a deduction to 100% from 01.04.2017 (i.e. from financial year 2017-18 onwards)

☐ **Section 35CCD: Deduction in respect of expenditure incurred on notified skill development project**

It is proposed to restrict a deduction to 100% from 01.04.2020 (i.e. from financial year 2020-21 onwards)

☐ **Section 36(1)(viia): Deduction in respect of provision for bad and doubtful debt in the case of Non-Banking Financial companies**

It is proposed to amend the provision of section 36(1)(viia) by inserting new sub-clause so as to provide that any provision for bad and doubtful debts made by a non-banking financial company shall be allowed a deduction of an amount not exceeding 5% of the total income (computed before making any deduction under this clause and Chapter VI-A).

☐ **Amendment in Section 40 – Disallowance of expenses u/s 40(a)(ib) for non-deduction/ non-payment of Equalisation Levy**

A new sub-clause (ib) in clause (a) of section 40 will be inserted after sub clause (ia) to provide that any consideration paid or payable to a non-resident on which equalisation levy is deductible under Chapter VIII of the Finance Act, 2016, and such levy has not been deducted, or, after deduction, has not been paid on or before the due date specified in section 139(1). It is further proposed that where, the equalisation levy has been deducted in any subsequent year, or, has been deducted during the previous year but paid after the due date specified in section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid. A new sub-section is similar to existing section 40(a)(i) which provides for disallowance of expenses for non deduction of TDS on payment made to non-residents. This amendment shall become effective from 1st June, 2016.

☐ **Amendment to Section 43B**

Any sum payable to the Indian Railways for use of railway assets shall be allowed as deduction only on actual payment basis.

☐ **Section 80-IAC**

100% deduction from profits and gains derived by an eligible start-up (incorporated between 01.04.2016 to 31.03.2019 having turnover of less than Rs 25 crores from the date of incorporation to 31.03.2021) from an eligible business (meaning a business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property) can be claimed for any 3 out of 5 consecutive years, at the option of the assessee, beginning from the year of its incorporation subject to certain conditions as to its formation, asset employment, audit, transfer of asset between eligible and non eligible business at market value and arms length price. Minimum Alternative Taxes shall apply to the start-ups for the three years.

☐ **Section 115BBE – No set off of loss allowed while computing income under section 68 / 69 / 69A / 69B / 69C / 69D**

The existing section 115BBE provides for tax on income referred to in section 68 / 69 / 69A / 69B / 69C / 69D shall be at the rate of 30%. Further in computing income under these sections, no deduction in respect of any expenditure or allowance was allowed. It is proposed to amend the section with effect from 1st April, 2017 to provide that no deduction in respect of set of any loss shall be allowed while computing such income.

D. Procedural / Penalty

☐ **Section 92CA - Extension of time limit to Transfer Pricing Officer ('TPO') in certain cases**

It is proposed to insert new proviso to sub-section (3A) of section 92CA providing that the period shall be extended to sixty days where the time period left is less than sixty days after excluding the time for which assessment is stayed by Court or the time taken for receipt of information.

This amendment is proposed to take effect from 1st June 2016.

☐ **Section 92D - Maintenance and keeping of information and document by persons entering into an international transaction or specified domestic transaction**

It is proposed to amend section 92D by inserting new proviso that any person being a constituent entity of an international group referred to in clause (d) of sub-section (9) of section 286 shall also keep and maintain such information and document as may be prescribed. The Finance Bill 2016 also propose to insert sub-section (4) to section 92D wherein it is proposed that the Assessing Officer or Commissioner (Appeals), without prejudice to sub-section (3) of section 92D, can call for such information and document from person being constituent entity of an international group. Penalty shall be levied under section 271AA for failure to keep and maintain information and documents as prescribed above.

☐ **Section 119 – Instructions to subordinate authorities**

Section 119 has been amended to empower the CBDT to issue directions in respect of section 270A of the ITA which has been newly inserted vide Finance Bill, 2016 providing for levy of penalty for under-reporting and misreporting of income.

☐ **Section 124 – Jurisdiction of Assessing Officers**

Section 124(3) has been amended to specifically provide that where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, no person shall be entitled to call into question the jurisdiction of an AO after the expiry of one month from the date on which he was served with a notice under section 153A(1) or 153C(2) or after the completion of the assessment, whichever is earlier.

☐ **Section 139 – Filing of return of Income**

Sixth proviso to section 139(1) - A person whose income during the previous year is exempt under clause (38) of section 10 and income of such person without giving effect to the said clause of section 10 exceeds the basic exemption limit to file a return of income for the previous year in the prescribed form and verified in the prescribed manner.

Sub-section 4 to section 139 – A person who has not furnished a return of income within the due date under section 139(1), may furnish the return of income at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Sub-section 5 to section 139 – A person having furnished a return under section 139(1) or section 139(4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Accordingly, even a belated return filed under section 139(4) would be allowed to be revised.

Clause (aa) in Explanation to section 139(9) – It is proposed to omit clause (aa) in Explanation to section 139(9) to provide that a return which is otherwise valid would not be treated defective merely because self assessment tax and interest payable in accordance with the provisions of section 140A, has not been paid on or before the date of furnishing of the return.

☐ **Section 143(1) – Summary Assessment**

The scope of the adjustments under section 143(1) has been extended to include:–

(a) disallowance of loss claimed, if return of income for the previous year for which set off of loss is claimed is furnished beyond the due date specified under section 139(1);

(b) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return of income;

(c) disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return of income is furnished beyond the due date specified under section 139(1); or

(d) addition of income appearing in Form 26AS or Form 16A or Form 16 but not included in computing the total income in the return of income.

However, no such adjustment shall be made unless intimation is given to the assessee to explain and rectify the same within 30 days of issuance of such intimation.

Further, it is proposed to make an amendment mandating processing of return of income under section 143(1) before making an assessment under section 143(3).

☐ **Section 147 - Reassessment**

Explanation 2 to section 147 provide for reopening of cases by the AO on the basis of the information so received under section 133C(2).

☐ **Section 153 – Time Limit for completion of Assessment**

Section 153 is substituted to provide for the following time limits for completion assessments:

Sl. No.	Assessment / Reassessment	Time Limit
(a)	Assessment under section 143 or 144	21 months from the end of the assessment year
(b)	Reassessment or recompilation under section 147	9 months from the end of the financial year in which the notice under section 148 was served
(c)	Fresh assessment under section 254 or 263 or 264	9 months from the end of the financial year in which the order is received or passed by the Principal Commissioner or Commissioner
(d)	Assessment other than fresh assessment or reassessment under section 250 or 254 or 260 or 262 or 263 or 264	3 months from the end of the month in which order is received or passed by the Principal Commissioner or Commissioner
(e)	Assessment in pursuance of order passed under section 250 or 254 or 260 or 262 or 263 or 264 or any court in cases other than by way appeal or reference	12 months from the end of the month in which order is received or passed by the Principal Commissioner or Commissioner
(f)	Assessment of a partner in consequence of assessment of firm under section 147	12 months from the end of the end of the month in the order is passed under section 147 is passed in case of the firm

In cases where reference is made to Transfer Pricing Officer, the aforesaid time limit shall be extended by a further time period of 12 months.

☐ **Section 153B – Time Limit for completion of assessment of search cases**

Sl. No.	Assessment / Reassessment	Time Limit
(a)	Block of 6 assessment years as well as the previous year in which search referred to in section 153A(1)	21 months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.
(b)	Assessment of other persons referred to in section 153C	21 months from the end of the financial year in which the last of the authorisations for search under

Sl. No.	Assessment / Reassessment	Time Limit
		section 132 or for requisition under section 132A was executed OR 9 months from the end of the financial year in which books of account or documents or assets are handed over to the AO having jurisdiction over such other person whichever is later

In cases where reference is made to Transfer Pricing Officer, the aforesaid time limit shall be extended by a further time period of 12 months.

☐ **Section 197: Scope widened for certificate for deduction at lower/Nil rate**

It is proposed include payment made under the provision of section 194LBB and 194LBC under the ambit of section 197 where recipient of payment under the provision of these sections may apply to assessing officer for lower or nil rate of TDS.

This amendment will take effect from 1st June, 2016.

☐ **Section 197A: No deduction to be made in certain cases**

Under the current provision, no tax is required to be deducted if any resident individual furnishes to the person responsible for making certain payment a declaration in writing in prescribed form. It is now proposed to include payment in the nature of rent as referred in section 194-I to include under the ambit of this section so as to allow the recipient to receive the payment without deduction of tax.

This amendment will take effect from 1st June, 2016.

☐ **Section 206AA: Not applicable in respect of payment of interest on long-term bonds as referred to in section 194LC**

It is proposed to substitute sub-section (7) of the said section so as to provide that the provisions of the said section shall also not apply to a non-resident, not being a company, or to a foreign company, in respect of payment of interest on long-term bonds as referred to in section 194LC and any other payment subject to such conditions as may be prescribed.
This amendment will take effect from 1st June, 2016.

☐ **Section 206C: Collection at source**

It is proposed to amend the said section to provide that the seller shall collect the tax at the rate of one per cent (i) the sale of motor vehicle of the value exceeding ten lakh rupees in cash or by the issue of a cheque or draft or by any other mode or (ii) for sale of any other goods (other than

bullion and jewellery) or (iii) providing any service in cash exceeding two hundred thousand rupees.

It is further proposed to insert a proviso under sub-section (1D) of the said section so as to provide that no tax shall be collected at source on any amount on which tax has been deducted by the payer under Chapter XVII-B of the Act. It is also proposed to insert a new sub-section after sub-section (1D) so as to provide that nothing contained in sub-section (1D) in relation to sale of any goods (other than bullion or jewellery) or services shall apply to such classes of buyers who fulfils such conditions, as may be prescribed.

These amendments will take effect from 1st June, 2016.

☐ **Section 211: Installments of advance tax and due dates**

As per the existing provisions of sub-section (1) of the aforesaid section, the advance tax payment schedule for a company is fifteen per cent., forty-five per cent., and seventy-five per cent. and hundred per cent. of tax payable on the current income by 15th June, 15th September, 15th December and 15th March, respectively. For assessees (other than companies), the advance tax payment schedule is thirty per cent., sixty per cent. and hundred per cent. of tax payable on current income by 15th September, 15th December and 15th March, respectively.

It is proposed to amend the advance tax payment schedule for assessees (other than companies) and bring it in consonance with the existing advance tax payment schedule applicable for a company.

It is further proposed that an eligible assessee in respect of eligible business referred to in section 44AD opting for computation of profits or gains of business on presumptive basis, shall be required to pay advance tax of the whole amount in one installment on or before the 15th March of the financial year.

These amendments will take effect from 1st June, 2016.

☐ **Section 220 – Assessee deemed to be in default**

Section 220(2A) provides that an order accepting or rejecting the application of an assessee shall be passed by the concerned Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner within a period of 12 months from the end of the month in which such an application is received. It is further proposed to provide that no order shall be passed without giving the assessee an opportunity of being heard.

☐ **Section 234C – Interest for deferment of advance tax**

To accommodate the amendments made in section 211 with respect to the advance tax payment schedule, consequential changes have been proposed in section 234C so as to levy interest on deferment of advance tax, in the same manner as applicable to the company, to an assessee (other than company) also. Further, with regard to an eligible assessee referred to in section 44AD, it is proposed to provide that interest shall be levied, if the advance tax paid on or before the 15th day of March is less than the tax due on the returned income.

Further, it is also proposed that interest under section 234C shall not be chargeable in case of an assessee having income under the head "Profits and gains of business or profession" for the first time, subject to fulfillment of conditions specified therein.

☐ **Section 244A – Interest on Refunds**

In case where the return is filed after the due date, the period for grant of interest on refund shall begin from the date of filing of return of income and not from the first day of the assessment year. Further, an assessee shall be eligible to interest on refund of self-assessment tax also.

Where an order giving effect is delayed beyond the time prescribed under subsection (5) of section 153, the assessee shall be entitled to receive, in addition to the interest payable @ 6 p.m., an additional interest at the rate of three per cent p.a., for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted.

☐ **Section 254 -**

The Appellate Tribunal may rectify any mistake apparent from the record in its order at any time within six months from the end of the month in which the order was passed.

Section 281B: Provisional attachment to protect revenue in certain cases- The Assessing Officer shall revoke attachment of property made under section 281B in a case where the assessee furnishes a bank guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount lower than the fair market value of the property which is sufficient to protect the interests of the revenue.
These amendments will take effect from 1st day of June, 2016.

☐ **Section 282A : Authentication of notices and other documents.**

It is proposed to amend the said sub-section (1) so as to provide that notices and documents required to be issued by income-tax authority under the Act shall be issued by such authority either in paper form or in electronic form in accordance with such procedure as may be prescribed.

This amendment will take effect from 1st June, 2016.

☐ **Section 286 – Furnishing of a report in respect of an international group**

The OECD report on Action 13 of BEPS Action plan provides for revised standards for transfer pricing documentation and a template for country-by-country (CbC) reporting of income, earnings, taxes paid and certain measure of economic activity.
In accordance with BEPS, a new section 286 is proposed which provides for furnishing of a report in respect of an international group or MNEs.
Companies with consolidated revenue of more than EURO 750 Million are required to comply with CbC reporting

☐ **Section 288: Appearance by authorised representative.**

As per existing provision, authorised representative to represent an assessee before any income-tax authority or the Appellate Tribunal is barred if he has been convicted of an offence connected

with any income-tax proceedings or if a penalty has been imposed on him under the Income-tax Act other than a penalty imposed under clause (ii) of sub-section (1) of section 271.

It is proposed to amend clause (b) of sub-section (4) of section 288 so as to provide that a person on whom a penalty has been imposed under clause (d) of sub-section (1) of section 272A shall also not be barred to represent an assessee before any income-tax authority or the Appellate Tribunal.

The proposed amendment is consequential to the insertion of a new clause (d) in sub-section (1) of section 272A relating to penalty for failure to comply with the notices and directions specified therein.

E. DEFINITIONS

- **Section 2(14)**

  Clause (14)(a)(vi) of the aforesaid section is amended to provide that the following word "or deposit certificates issued under the Gold Monetisation Scheme, 2015" shall be inserted in the said section thereby excluding the aforesaid deposit certificate from the definition of capital asset.

- **Section 2(24)**

  Subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or State government shall not form part of income.

- **Section 10(15)**

  Interest on "Deposit Certificates issued under the Gold Monetisation Scheme, 2015", shall be exempt from income-tax.

- **Section 10(23)**

  A new sub clause has been inserted in clause 23 of section 10 w.e.f 1st day of April 2017 which widens the meaning of 'securitization' to as specified in clause (z) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

- **Section 112**

  To clarify that shares of a private company are "securities" the provisions of clause (c) of sub-section (1) of section 112 of the ITA are amended to provide that Long Term Capital Gains arising from the transfer of a capital asset being shares of a company not being a company in which the public are substantially interested, shall be chargeable to tax at the rate of 10%.

- **Section 6(3)**
  In the lieu of Finance Act, 2016, POEM is deferred by a year to A.Y. 2017-18.

- **Section 9(1)(i)**

  It is proposed to insert new sub clause (e) to Explanation 1 section 9(1)(i),to provide that foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are undertaken to display of uncut and un assorted diamonds in a Special Zone notified by the Central Government in the Official Gazette in this behalf.

- **Section 9A(3)**

  Sub-section 3 of Section 9A, describes the definition of an investment fund prescribing the condition to be fulfilled to be eligible investment to be declared as not a resident of India. It has been inserted that w.e.f 1st day of April, 2017 that the fund will be an eligible investment fund if it is established or incorporated or registered in a country or a specified territory notified by the Central Government in this behalf.

- **Explanation to Chapter XII-EA – Meaning of certain terms used in Sections 115TA to 115TC**

  Explanation (a) to Chapter XII-EA of the Act defines the term "investor" to mean a person who is holder of any securitised debt instrument or securities issued by the securitization trust.

  It is proposed to extend the scope of definition of "investor" under this Chapter to include a person who is a holder of a "security receipt" issued by the securitization trust.

  The aforementioned term "security receipt" is also proposed to be specifically defined under clause (e) of the Explanation, which provides that the term "security receipt" shall have the same meaning as assigned to it in clause (zg) of sub-section (1) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)).

  Further, the Finance Bill 2016 proposes to extend the scope of definition of "securitisation trust" to also include a trust set-up by a securitisation company or a reconstruction company formed, for the purposes of the SARFAESI Act, or in pursuance of any guidelines or directions issued for the said purposes by the Reserve Bank of India.
  .
  These amendments will take effect from 1st June, 2016.

F. PENALTIES

- **Section 270A: Penalty for under-reporting and misreporting of income**

  Section 271 is discontinued and in its place a new section 270A is to be inserted to levy penalty for under-reporting and misreporting of income.

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

- **Section 270AA: Immunity from imposition of penalty, etc.**

  An assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C, provided he pays the tax and interest payable as per the order of assessment or reassessment within the period specified in such notice of demand and does not prefer an appeal against such assessment order.

- **Section 271AAB: Penalty where search has been initiated.**

  It is proposed to amend clause (c) of sub-section (1) of section 271AAB to provide for levy of penalty on such undisclosed income at a flat rate of sixty per cent of such income.

- **Section 272A: Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.**

  It is proposed to insert new clause i.e. clause (d) to sub-section (1) of section 272A for imposing a penalty on the assessee:
  who fails to comply with a notice issued under section 142(1) or 143(2) or
  who fails to comply with a direction issued under section 142(2A).

- **Section 273AA: Power of Principal Commissioner or Commissioner to grant immunity from penalty**

  It is proposed to insert sub-section 3A, wherein it is stated that the Principal Commissioner or Commissioner should either accept or reject the application, made by any person for immunity of penalty where the penalty proceedings has been initiated under this Act, within a period of twelve months from the end of the month in which the application is received by Principal Commissioner or Commissioner.

- **Section 279 : No prosecution where penalty under new section 270A has been reduced or waived.**

  Under the current provision contained in section 279, prosecution proceeding shall not be proceeded against a person for offences under section 276C (willful attempt to evade tax, etc) or section 277 (false statement in verification, etc.) in respect of whom penalty under clause (iii) of sub-section (1) of section 271 has been reduced or waived under section 273A.

  The finance bill has introduced new section 270A relating to penalty for under reporting and mis-reporting of income. It is proposed to bring cases related to this new section 270A under the ambit of above provision to provide that the prosecution proceeding shall not be proceeded against a person for offences under section 276C or section 277 in respect of whom penalty under section 270A has also been reduced or waived under section 273A.

☐ **Reporting requirements under section 285A for implementation of the Common Reporting Standard (CRS) and the US Foreign Account Tax Compliance Act (FATCA) as introduced in the Finance Act 2015 and further the new rules inserted w.e.f. 7.8.2015**

On this basis, a guidance note on the implementation of reporting requirements under Rule 114F to 114H of Income tax rules, 1962 was issued on 31st December, 2015 on implementation of FATCA and CRS reporting requirements.

The brief summary of Income tax rules for compliance of maintaining and reporting of information under FATCA and CRS is as follows:

Rules 114F	Definitions of the various terms referred to in the rules: Financial account, Financial asset, Financial institution, Non-participating financial institution, Non-reporting financial institution, Financial institution with only low-value accounts, Reportable account, Controlling person, Passive non-financial entity, Reportable person, Specified U.S. person
Rules 114G	Information to be maintained and reported: The Reporting Financial institution (RFI) is expected to maintain and report the following information with respect to each reportable account: The name, address, taxpayer identification number [TIN (assigned in the country of residence)] and date and place of birth [DOB, POB (in the case of an individual)]; Where an entity has one or more controlling persons that are reportable persons: the name and address of the entity, TIN assigned to the entity by the country of its residence; and the name, address, DOB, POB of each such controlling person and TIN assigned to such controlling person by the country of his residence; Account number (or functional equivalent in the absence of an account number); Account balance or value (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) at the end of the relevant calendar year; In the case of any custodial account: the total gross amount of interest or dividends or other income generated with respect to the assets held in the account during the calendar year; and the total gross proceeds from the sale or redemption of financial assets during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder In the case of any depository account, the total gross amount of interest paid or credited to the account during the relevant calendar year; In the case of any account other than that referred above, the total gross amount paid or credited to the account holder with respect to the account during the relevant calendar year; and In case of any account held by a non-participating financial institution (NPFI), for the calendar years 2015 and 2016, the name of NPFI and aggregate amount of such payments.

	Further there are different reporting requirements for different calendar years. The above are reporting requirement for F.Y. 2015-16
Rules 114H	Due diligence procedures for identifying reportable accounts These rules provide for specific guidelines for conducting due diligence of reportable accounts, viz. US reportable accounts and other reportable accounts.

- **Due date for FATCA compliance:**

  The report in respect of US related accounts for the calendar year 2014 was required to be furnished by 10th September, 2015 and for the calendar year 2015 the report is required to be submitted by 31st May, 2016.

Income Declaration Scheme 2016

The Income Declaration Scheme, 2016 has been proposed to be introduced by Finance Minister Arun Jaitley vide India Budget 2016. This scheme has been introduced to provide an opportunity to assessees who have failed to declare the undisclosed income (relating to any financial year up to 2015-16) or income represented in form of any asset and pay tax, surcharge and penalty totaling to 45% of the amount of such undisclosed income. This is a limited period compliance window scheme which is proposed to be brought into effect from June 01, 2016 with an option to pay amount due within two months of declaration. No scrutiny proceedings are to be initiated on such assessees and they would be provided immunity from the Benami transactions law and prosecution under other Acts. It is proposed to provide that declarations made under the scheme shall be exempt from wealth-tax in respect of assets specified in declaration. It is also proposed that nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme. Where the income is declared in the form of an investment in any asset, the fair value of such asset as on 1st June, 2016 (in the manner as may be prescribed) shall be deemed to be the amount of undisclosed income. No deduction in respect of any expenditure or allowance shall be allowed against such income declared under the Scheme

This scheme would not apply to the following cases:

- For any assessment year prior to A.Y 2017-18, where notice has been issued under section 142(1) or 143(2) or 148 or 153A or 153C for such assessment year, or
- Where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired, or
- Where information is received under an agreement with foreign countries regarding such income or
- Cases covered under the Black Money Act, 2015, or
- Persons notified under section 3 of the Special Court (Trial of offences relating to transaction in securities) Act, 1992, or
- Cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988 or
- Any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (subject to certain exceptions)

In case of misrepresentation or suppression of facts by the declarant, the declaration so filed shall become void and such undisclosed income shall be liable to be offered for taxes in the year in which the

declaration is made. is further proposed that if any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty by an order not after the expiry of a period of two years from the date on which the provisions of this Scheme come into force and such order be laid before each House of Parliament.

Direct Tax Dispute Resolution Scheme, 2016

In order to reduce the huge backlog of cases and to enable the Government to collect the taxes expeditiously, it is proposed to bring the Direct Tax Dispute Resolution Scheme, 2016. A welcoming scheme which provides an option to settle specified tax disputes. It relates to tax arrears (matters before Appellate Commissioner) and specified tax (tax arising due to retrospective amendment and dispute pending as on 29 February 2016).

On filing of the declaration with the designated authorities, a certificate would be issued within 60 days. As stipulated, tax shall be paid within 30 days. Once the assessee files the declaration, all the appeals filed before the Appellate Commissioner would be deemed withdrawn. The declarant under the scheme shall be required to pay tax at the applicable rate plus interest up to the date of assessment. However, in case of disputed tax exceeding rupees ten lakh, twenty-five percent of the minimum penalties leviable shall also be required to be paid. The amount paid as taxes would not be refundable under any circumstances.

The Scheme is not available to taxpayers where prosecution has been initiated, search or survey cases, undisclosed foreign income and asset cases, exchange of information cases, etc.. In addition to the above, the scheme proposes that person may also make a declaration in respect of any tax determined in consequence of or is validated by an amendment made with retrospective effect in the Income-tax Act or Wealth-tax Act, as the case may be, for a period prior to the date of enactment of such amendment and a dispute in respect of which is pending as on 29 February 2016 (referred to as specified tax).

For availing the benefit of the Scheme, such declarant shall be required to withdraw any writ petition or any appeal filed against such specified tax before the Commissioner (Appeals) or the Tribunal or High Court or Supreme Court, before making the declaration and shall also be required to furnish a proof of such withdrawal. Further, if any proceeding for arbitration conciliation or mediation has been initiated by the declarant or he has given any notice under any law or agreement entered into by India, whether for protection of investment or otherwise, he shall be required to withdraw such notice or claim for availing benefit under this Scheme.

It is proposed that person making declaration in respect of specified tax shall be required to furnish an undertaking in the prescribed form and verified in the prescribed manner, waiving the right, whether direct or indirect, to seek or pursue any remedy or claim in relation to the specified tax which otherwise be available to them under any law, in equity, by statute or under an agreement, whether for protection of investment or otherwise, entered into by India with a country or territory outside India. It is proposed that no appellate authority or Arbitrator or Conciliator or Mediator shall proceed to decide an issue relating to the specified tax in the declaration in respect of which an order is made by the designated authority or in respect of the payment of the sum determined to be payable. It is proposed that where the declarant violates any of the conditions referred to in the scheme or any material particular furnished in the declaration is found to be false at any stage, it shall be presumed as if the declaration was never made under this Scheme and all the consequences under the Income-tax Act or Wealth-tax Act under which the proceedings against declarant were or are pending, shall be deemed to have been revived.

It is proposed that the Central Government may be given the power to issue such orders, instructions and directions for the proper administration of this Scheme to persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions of the Central Government.

In case any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may by order not inconsistent with the provisions of this Scheme remove the difficulty. However, no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force. Every such order, as soon as may be after it is made, is laid before each House of Parliament.

The Rules for this Scheme to be notified by the government and these provisions are effective from 1 June 2016.

INTERNATIONAL TAXATION

Some of the announcements concerning foreign investors are summarized below:

FOREIGN EXCHANGE REGULATIONS

Foreign Direct Investment (FDI)

- ☐ Foreign investment will be allowed in the insurance and pension sectors in the automatic route up to 49% subject to the extant guidelines on Indian management and control to be verified by the Regulators.
- ☐ 100% FDI in Asset Reconstruction Companies (ARCs) will be permitted through automatic route.
- ☐ Foreign Portfolio Investors (FPIs) will be allowed up to 100% of each tranche in securities receipts issued by ARCs subject to sectoral caps.
- ☐ 100% FDI will be allowed through FIPB route in marketing of food products produced and manufactured in India
- ☐ Investment limit for foreign entities in Indian stock exchanges will be enhanced from 5 to 15% on par with domestic institutions. This will enhance global competitiveness of Indian stock exchanges and accelerate adoption of best-in-class technology and global market practices.
- ☐ The existing 24% limit for investment by FPIs in Central Public Sector Enterprises, other than Banks, listed in stock exchanges, will be increased to 49% to obviate the need for prior approval of Government for increasing the FPI investment.
- ☐ FDI instruments will be expanded to include hybrid instruments subject to certain conditions.
- ☐ FDI will be allowed beyond the 18 specified NBFC activities in the automatic route in other activities which are regulated by financial sector regulators.
- ☐ With a view to promote Make in India and following the practices in advanced countries, foreign investors will be accorded Residency Status subject to certain conditions
- ☐ In order to ensure effective implementation of Bilateral Investment Treaties signed by India with other countries, it is proposed to introduce a Centre State Investment Agreement.

Foreign Contribution (Regulation) Act, 2010

- ☐ It is proposed to amend Foreign Contribution (Regulation) Act, 2010 to insert the provision that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made there under, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source.

DIRECT TAX PROPOSALS

- ☐ An increase of 3 per cent in Surcharge Rates in the case of a non-resident person (other than a company). Further no change to the existing income tax rates for foreign companies.
- ☐ Base Erosion and Profit Shifting (BEPS)
  - ○ For implementation of BEPS Action 13, which is the minimum standard to be followed by every member/partner country it is proposed to provide for furnishing of documents by the specified person. This amendment would take place w.e.f. 01st April 2017.

- Companies with consolidated revenue of more than Euro 750 million are required to comply with country by country reporting.
- Equalization Levy
  - In order to meet the tax challenges faced for implementation of BEPS Action 1, it is proposed to insert a new Chapter titled "Equalization Levy" @ 6 % of the amount of consideration for specified services received or receivable by a non-resident not having permanent establishment ('PE') in India, from a resident in India who carries out business or profession, or from a non-resident having permanent establishment in India.
  - It is proposed to provide for the procedure to be adopted for collection and recovery of equalization levy.
  - No such levy shall be made if the aggregate amount of consideration for specified services received or receivable by a non-resident from a person resident in India or from a non-resident having a permanent establishment in India does not exceed one lakh rupees in any previous year.
  - In order to ensure effective compliance, it also proposes to provide for interest; penalty and prosecution in case of defaults with sufficient safeguards.
  - In order to avoid double taxation, it is proposed to provide exemption under section 10 of the Act for any income arising from providing specified services on which equalization levy is chargeable.
  - It is further proposed to provide that the expenses incurred by the assessee towards specified services chargeable under this Chapter shall not be allowed as deduction in case of failure of the assessee to deduct and deposit the equalization levy to the credit of Central government.
  - This Chapter will take effect from the date appointed in the notification to be issued by the Central Government.
  - It is proposed to insert new section 115BBF where the total income of the eligible assessee income includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of ten per cent (plus applicable surcharge and cess) on the gross amount of royalty. No expenditure or allowance in respect of such royalty income shall be allowed under the Act. These amendments will take effect from 1st April, 2017.

☐ International Financial Services Centre.

- In order to incentivize the growth of International Financial Services Centers into a world class financial services hub in India; it is proposed to make necessary amendment to the relevant sections of the Income Tax Act, 1961 to provide the following tax benefits.
  - The companies located in international financial services centre shall not be liable to dividend distribution tax.

- Minimum Alternate Tax shall be charged at the rate of nine per cent from units located in international financial services centre.

- It is also proposed that the gains arising from transfer of such long term capital asset shall be exempt from tax.

- The above amendments would take place w.e.f. 01st April 2017.

- The transaction in foreign currency of sale of equity shares or units of equity oriented funds or units of a business trust taking place on a recognised stock exchange established in international financial services centre shall not be liable to securities transaction tax. This amendment would take place w.e.f. 01st June 2016.

- The transaction in foreign currency of sale of commodity derivatives taking place on a recognised association established in international financial services centre shall not be liable to commodity transaction tax. This amendment would take place w.e.f. 01st June 2016.

☐ Real Estate Investment Trusts (REITs)

- It is proposed that any distribution made out of current income of SPV to the REITs and INVITs having specified shareholding will not be subjected to Dividend Distribution Tax subject to conditions as prescribed. This amendment would take place w.e.f. 01st June 2016.

☐ Residential Status

- It has been proposed to defer the determination of residency of foreign company on the basis of Place of Effective Management (POEM) by one year.
- It has been proposed to amend the provisions of section 6 to provide that a person being a company shall be said to be a resident in India if its place of effective management (POEM) at any time, is in India. It is proposed to define the Place of Effective management 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. This amendment would be effective from 01st April 2017.
- It has been proposed to provide a transition mechanism for foreign companies which would be resident in India as per definition of POEM.

☐ Minimum Alternate Tax (MAT) Provisions for Foreign Companies for the period prior to 01st April 2015

- It has been proposed to amend the provisions of Section 115 JB to provide that Minimum Alternate Tax (MAT) shall not be applicable to a foreign company, w.e.f. 01.04.2001 if the foreign company does not have as a permanent establishment under relevant Double Taxation Avoidance Agreement (DTAA) or a place of business in India.
- It has also been proposed to extend DTAA benefits by allowing for rate in force being applicable for withholding tax purposes in respect of distribution by Category-I and II Alternate Investment Funds to the non-resident investors.
- It is also proposed to provide that the non-resident investors may seek certificate of lower deduction or nil deduction of tax. This amendment would take place w.e.f. 01st June 2016.

☐ Extension of time limit to pass orders by Transfer Pricing Officers

- It has been proposed to extend section 92 CA (3A) to provide extension up-to sixty days, if the period of limitation available to the Transfer Pricing Officer for making an order is less than sixty

days, to make an order where assessment proceedings are stayed by any court or where a reference for exchange of information has been made by the competent authority. This amendment would take place w.e.f. 01st June 2016.

- Dividend Distribution Tax (DDT)
  - It has been proposed , that in addition to DDT paid by the companies, tax at the rate of 10% of gross amount of dividend will be payable by the recipients, i.e., individuals, HUFs and firms receiving dividend in excess of Rs 10 lakh per annum. This amendment would take place w.e.f. 01st April 2017.
  - The companies located in international financial services centre shall not be liable to dividend distribution tax.
  - It is proposed that any distribution made out of income of SPV to the REITs and INVITs having specified shareholding will not be subjected to Dividend Distribution Tax. This amendment would take place w.e.f. 01st June 2016.
- Permanent Account Number (PAN)
  - In order to reduce the compliance burden, it has been proposed to amend section 206 AA, so as to provide that the provisions of this section shall also not apply to a non-resident, not being a company, or to a foreign company, in respect of any other payment, other than interest on bonds, subject to such conditions as may be prescribed.
  - This amendment would take place w.e.f. 01st June 2016.
- It is proposed to insert a new clause (e) in the Explanation 1 to clause (i) of Section 9 (1) so as to provide that in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India through or from the activities which are confined to the display of uncut and unassorted diamond in any special zone notified by the Central Government in the Official Gazette in this behalf. This amendment will take effect retrospectively from 1st April, 2016.
- It is proposed to amend the provisions of section 10 of the Act to provide 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 there from to any person resident in India shall not be included in the total income, on fulfillment of certain prescribed conditions. This amendment will be effective from 1st April, 2016.
- It is proposed to amend Section 194 LBB to provide that the person responsible for making the payment to the investor shall deduct income-tax 194LBB at the rate of ten per cent where the payee is a resident and at the rates in force where the payee is a non-resident (not being a company) or a foreign company. It is further proposed to obtain lower deduction tax certificate u/s. 194 LBB. This amendment will be effective from 01st June 2016.
- Rupee Denominated Bond
  - Indian corporate have been permitted by Reserve Bank of India , recently to issue rupee denominated bonds outside India as a measure to enable the Indian corporates to raise funds from outside India. In order to provide relief to the non-resident investor it is proposed to amend section 48 of the Act so as to provide that the capital gains, arising in case of appreciation of rupee between the date of issue and the date of redemption against the foreign currency in which the investment is made shall be exempt from tax on capital gains.
  - This amendment will be effective from 01st April 2017.
- Sovereign Gold Bond Scheme, 2015
  - It is proposed to amend Section 47 to exempt from tax on capital gains arising on redemption of Sovereign Gold Bond under the Sovereign Gold Bond Scheme, 2015.

- It is also proposed to Section 48 to provide indexation benefits to long terms capital gains arising on transfer of Sovereign Gold Bond to all cases of assessees.
- This amendment will be effective from 01st April 2017.

☐ Make in India Programme

- It is proposed to promote start ups through the following measures:
  - 100% deduction of profits for 3 years out of 5 years for those set up during April 2016 to March 2019. Minimum Alternate Taxes shall apply to the start-ups for the three years.
  - Capital gains will not be taxed if invested in regulated/notified Fund of Funds and by individuals in notified startups, in which they hold majority shares.
  - Foreign investors to be allotted residential status, subject to prescribed conditions.

☐ Deduction for Units Established in Special Economic Zones

- It is proposed to amend section 10AA of the Income-tax Act to provide for a sunset date of 31.03.2020 for commencement of activity of manufacture or production of any article or thing or providing services by a unit located in a Special Economic Zone for availing the deduction under said section. This amendment will be effective from 01st April 2017.

☐ It is proposed to reduce the period from three years to two years for getting benefit of long term capital gain regime in case of unlisted companies.

☐ It is proposed to amend Section 112 (1) (c) so as to provide that long-term capital gains arising from the transfer of a capital asset being shares of a company not being a company in which the public are substantially interested, shall be chargeable to tax at the rate of 10 per cent. This amendment will be effective from 01st April 2017.

☐ It is proposed to exempt any transfer of units in merger or consolidation of plans of a mutual fund scheme from capital gains. This amendment will be effective from 01st April 2017.

☐ It is proposed to provide that interest earned on Deposit Certificates issued under Gold Monetisation Scheme, 2015 and capital gains arising from them shall be exempt from tax. This amendment will be effective from 01st April 2017.

INDIRECT TAXES

Indirect Tax Dispute Resolution Scheme, 2016

- Indirect tax Dispute Resolution Scheme, 2016, is proposed to be introduced for cases pending before Commissioner (Appeals).
- The assessee shall be liable to pay tax / duty due along with applicable interest and penalty equivalent to 25% of penalty imposed in the impugned order which is under challenge before the Commissioner (Appeals). In such cases, the proceedings against the assessee will be closed and he will also get immunity from prosecution.
- The authority (not below rank of Assistant Commissioner) shall pass an order of discharge of dues and the appeal pending before the Commissioner (Appeals) shall stand disposed off and assessee shall get immunity from all proceedings (including prosecution) as prescribed under the Customs Act or the CE Act or the Act.
- Declaration under this Scheme shall become conclusive upon issuance of an order and no matter relating to the impugned order shall be reopened. An order passed under the Scheme shall not be deemed to be an order on merits and will have no binding effect.
- However, this scheme will not apply in cases:
    a) where prosecution has already been launched
    b) involving narcotics & psychotropic substances
    c) involving detention under COFEPOSA.

SERVICE TAX

Amendments effective from 1 June 2016:

- Services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance in India has been deleted from the negative list, however only aircraft has been inserted under the mega exemption notification. Hence transportation of goods by vessel is now taxable.
- An enabling provision is being made to levy Krishi Kalyan Cess at the rate of 0.5per cent on all taxable services. Thereby the effective rate of service tax would be 15per cent (including SBC).
- Indirect Tax Dispute Resolution Scheme has been proposed for declaration up to 31 December 2016 in respect of cases pending before the Commissioner (Appeals) as on 1 March 2016.

Effective from the date of enactment of Finance Bill:

- Since the exemption to educational services is provided by way of notification, the entry appearing in the Negative List entry covering these services is being omitted.
- Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof is being declared as a service under section 66E of the Finance Act, 1994 so as to make it clear that assignment of right to use the spectrum is a service leviable to Service Tax and not sale of intangible goods.
- The time period of limitation has been increased from eighteen months to thirty months.
- New rate of interest is proposed to be levied in case of Service Tax collected but not deposited by such persons at 24per cent.
- The minimum amount of cognizable offence has been increased to Rupees 2 crore from Rupees 50 lakhs.
- Exemptions on services of construction provided to the Government, a local authority or a governmental authority, in respect of construction of govt. schools, hospitals, ports, airports, [which were withdrawn with effect from 01.04.2015], are being restored in respect of services provided under contracts which had been entered into prior to 01.03.2015 on payment of applicable stamp duty, with retrospective effect from 01.04.2015 with consequential refunds if application made within six months.

NOTIFICATION

Notification No. 08/2016-ST: Amendment in Abatement Notification (Effective 1 April 2016)

- Abatement for transportation of goods by person other than Indian Railways has been reduced to 60per cent from 70per cent earlier.
- Service provider in relation of transportation of passengers and transport of goods in a vessel availing abatement can now avail Cenvat credit of Input service.
- Abatement of used household goods by a Goods Transport Agency would now be at the rate of 60per cent if Cenvat Credit on inputs, capital goods & input services has not been availed.
- The service of transportation of passengers by air-conditioned stage carriage is being taxed at the same level of abatement (60per cent) as applicable to the transportation of passengers by a contract carriage; with same conditions of non-availment of Cenvat credit effective 1 June 2016.
- Abatement in case of tour operator has been amended to provide separate rate in case of transactions involving only arranging or booking of accommodation of any person and others subject to specified conditions.
- Uniform abatement for construction complex has been prescribed at 70per cent.
- It has been clarified by way of inserting an explanation in the notification No. 26/2012-ST that the fair market value of all goods (including fuel) and services supplied by the recipient in relation to the

service should be included in the consideration charged for providing renting of motor-cab services for availing the abatement.

Notification No. 09/2016-ST: Amendments in mega exemption notification (Effective 1 April 2016)

- Exemption in respect of the services provided by a senior advocate to an advocate or partnership firm of advocates, and a person represented on an arbitral tribunal to an arbitral tribunal is being withdrawn and thereby service tax would be chargeable on such services.
- A service of assessing bodies empanelled centrally by Directorate General of Training under Skill Development Initiative (SDI) Scheme is now exempted (effective from 1 March 2016).
- Services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners are being exempted from service tax (effective from 1 March 2016).
- Restoration of certain exemptions withdrawn earlier in respect of projects, contracts etc. in case of services provided to the Government, a local authority or a governmental authority by way of construction, erection etc. of a residential complex predominantly meant for self-use or the use of their employees or other specified persons
- A civil structure or any other original works pertaining to the In-situ rehabilitation of existing slum dwellers using land as a resource through private participation and beneficiary led individual house construction/ enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana is exempted effective 1 March 2016.
- The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1March 2016, on which appropriate stamp duty, was paid, shall remain exempt.
- Services by way of construction, erection, etc., of original works pertaining to low cost houses up to a carpet area of 30/60 sq. mtr. (Metro/non metro city) per house in a housing project approved by the competent authority under the “Affordable housing in partnership” component of PMAY or any housing scheme of a State Government are being exempted from service tax.
- The consideration charged by the artist for the purpose of attracting service tax has been increased to Rupees 1.50 lakh from existing Rupees 1 lakh.
- Services by air conditioned stage carrier is now sought to be taxed.
- Services of general insurance business provided under, “Niramaya” Health Insurance scheme in collaboration with private/public insurance companies are being exempted from service tax.
- Services of life insurance business provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India is being exempted from service tax.
- Services provided by Employees Provident Fund Organisation (EPFO) to persons governed under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 is now exempted.

Notification No. 11/2016-ST: Information Technology Software

- Service in relation to Information Technology Software previously leviable to service tax under section 66B read with section 66E of the Finance Act, 1994 has been exempted when such software is recorded on such media and such other conditions as are specified. Thus the levy of central excise duty/CVD and service tax will be mutually exclusive.

Notification No. 14/2016-ST: Rate of Interest (Effective Assent of Finance Bill)

- The Rate of interest is proposed to be changed from existing 18per cent to 15per cent.

Notification No. 16/2016-ST: Notification for deletion of support service

- 1 April 2016 is being notified as the date from which the words by way of support services shall stand deleted from paragraph 1, sub-paragraph (i), clause (b) of Notification No. 07/2015-ST.

Notification No. 18/2016-ST: Amendment in Reverse Charge Mechanism (Effective 1 April 2016)

- Services provided by a mutual fund agent or distributor to a mutual fund or asset management is no more covered under reverse charge mechanism.
- Scope of RCM has been narrowed in case of selling or marketing agent of lottery tickets by reducing it to those of the State Government under the provisions of the Lottery (Regulations) Act.
- Services provided by a senior advocate to an advocate or partnership firm of advocates providing legal service is being excluded and thereby Service Tax would be levied on such service under forward charge.

Notification No. 19/2016-ST: Amendment in Service Tax Rules (Effective 1 April 2016)

- The benefit of quarterly payment of Service Tax is being extended to 'One Person Company' (OPC) and HUF.
- The facility of payment of Service Tax on receipt basis is being extended to 'One Person Company' (OPC).
- The rate of Service Tax on single premium annuity (insurance) policies is being reduced from 3.5per cent to 1.4per cent of the premium, in cases where the amount allocated for investment, or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service.
- Annual return for the financial year to which the return relates are required to be filed in addition to the existing returns in such form and manner as may be specified before 30 November from the end of the year for certain class of assessee.

Notification No. 12/2015: Amendment in Notification 25/2012.

Additional services in entries 26,26A & new entry No 26B have been inserted w.e.f. 19/05/2015 and the said specified services are exempted from levy of service tax.

General Insurance Business provided under "Pradhan Mantri Suraksha Bima Yojna" Scheme is added in Entry No 26.

Life Insurance Business provided under "Pradhan Mantri Jeevan Jyoti Bima Yojana" and "Pradhan Mantri Jan Dhan Yogana" Schemes are added in Entry No 26A.

Notification No. 19/2015: Service Tax Waived On Inward Foreign Remittance For Certain Past Period

Services provided by an Indian Bank or other entity acting as an agent to the Money Transfer Service Operators in relation to remittance of foreign currency from outside India to India which is chargeable to service tax under Section 66B of Finance Act, 1994 which was not being paid according to the industry practice has been waived for the period starting from 1st day of July, 2012 to 13th day of October, 2014.

Notification No. 20/2015: Specified Amendments In Notification No. 25/2012.

- In paragraph 1, clause (g) have been altered and clauses (ga) & (gb) have been newly inserted w.e.f. 21/10/2015.
  Services by following persons are exempt from levy of service tax:

- business facilitator or business correspondent to a banking company with respect to Basic Savings Bank Deposit Account covered by Pradhan Mantri Yojana in the banking companies rural areas branch by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding.
- any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in clause (g).
- business facilitator or a business correspondent to an insurance company in a rural area.

Notification No. 22/2015: Rate Of Swachh Bharat Cess.

Swachh Bharat Cess shall be levied at the rate of 0.5 per cent of the value of taxable services w.e.f 15th day of November, 2015.

Notification No. 23/2015: Swachh Bharat Cess Calculation On Abated Value.

CBEC has notified that abatement as provided under notification No. 26/2012-Service Tax, dated 20th June, 2012 would be allowed for the purpose of calculation of Swachh Bharat Cess.

Further it has also clarified that value of taxable services for the purposes of the Swachh Bharat Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

Notification No. 24/2015: Swachh Bharat Cess On The Provisions Of Notification No 30/2012.

CBEC has notified that Notification No 30/2012-ST shall be applicable for purpose of levy of Swachh Bharat Cessf w.e.f. 15th day of November, 2015.

Notification No. 25/2015: Option To Levy Swachh Bharat Cess At Composition Rates For Certain Services.

Computation mechanism has been provided to pay SBC by insertion of new sub rule 7D of Rule 6 of Service Tax Rules, 1994 have been inserted w.e.f. 15th day of November, 2015 to give an option to pay SBC on certain services such as life insurance business, purchase or sale of foreign currency, distributor or selling agent of lottery tickets instead of at the rate of flat 0.5 per cent as specified in Notification No 22/2012.

Notification No. 01/2016: Widening The Scope Of Refund In Case Of Exporter Of Goods

CBEC has notified that services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods would be allowed as refund. Further the prescribed rate of refund has been increased so as to be commensurate with the increased rate of service tax.

Notification No. 02/2016: Refund Of Swachh Bharat Cess Paid On Specified Services Used In Sez.

CBEC has notified that SEZ Unit or the Developer of SEZ shall be entitled to:

- ☐ refund of the Swachh Bharat Cess paid on the specified services on which ab-initio exemption is admissible but not claimed; and
- ☐ the refund of amount as determined by multiplying total service tax distributed to it in terms of clause (a) by effective rate of Swachh Bharat Cess and dividing the product by rate of service tax specified in section 66B of the Finance Act, 1994

Notification No. 07/2016: Amendment In Notification No. 25/2012.

Service Tax shall not be chargeable on the Services provided by Government or a local authority to a business entity with a turnover up to rupees ten lakh in the preceding financial year.

CIRCULARS

Circular No. 183/02/2015-St: Clarification On Rate Of Service Tax

The rate of Service Tax is being increased from 12.36% (inclusive of cesses) to 14%. from the date to be notified. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax.

Circular No. 185/4/2015-St: Detailed Manual Scrutiny Of Service Tax Return

With the introduction of Point of Taxation Rules, 2011 which shifted the liability of payment of service tax from receipt basis to accrual and the advent of negative list based comprehensive taxation of services in 2012, a new set of return scrutiny guidelines have been issued vide this circular.

Circular No. 186/05/2015-St: Service Tax Levy On Services Provided By A Goods Transport Agency

CBEC based on the query raised by certain association has clarified that a single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction.

Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service.

Circular No: 1010/16/2015-St: Revised Monetary Limits For Arrest In Central Excise And Service Tax

With the increase in limit of prosecution to Rupees one crore or more, CBEC has decided to revise the limits for arrests in Central Excise and Service tax. Henceforth, arrest of a person in relation to offences specified under clause (a) to (d) of sub-section (1) of Section 9 of the Central Excise Act, 1944 or under clause (i) or (ii) of sub-section (1) of section 89 of the Finance Act, 1994, may be made in cases where the evasion of Central Excise duty or Service Tax or the misuse of Cenvat Credit is equal to or more than rupees one crore.

Circular No: 188/7/2015-St: Regarding Accounting Code For Payment Of Swachh Bharat Cess

With the introduction of SBC, it was necessary to notify the account codes under which the said liability can be paid.

Accordingly, accounting codes have been allotted by the Office of the Controller General of Accounts for the new Minor Head 506-Swachh Bharat Cess and new Sub-heads as under:

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts (Interest)	Penalties	Deduct Refunds
0044-00-506	00441493	00441494	00441496	00441495

Circular No: 190/9/2015-St: Clarification On Applicability Of Service Tax On The Services Received By Apparel Exporters In Relation To Fabrication Of Garments

Field formations were taking a view that the services received by apparel exporters is of manpower supply, which neither falls under the negative list nor is specifically exempt contrary to this trade was of the view that the services received by them is of job work involving a process amounting to manufacture or production of goods, and thus would fall under negative list [section 66D (f)] and hence would not attract service tax which has been clarified by the CBEC through this circular.

Instruction No: 354/311/2015-Tru: HIc Recommendation Regarding Valuation Of Flats For Levy Of Service Tax – Education Guide Vs. Circular

Based on the High Level Committee recommendation CBEC has directed that in valuing the service of construction provided by a builder/developer to a landowner, who transfers his land/development rights to builder, for getting, in return, constructed flats/dwellings from builder/developer, the Service Tax assessing authorities should be guided by the said Board Circular dated 10.2.2012 and not the Education Guide

CUSTOMS

- A new class of warehouses for enabling storage of specific goods under physical control of the department, is added under the definition of Warehouse.
- The concept of warehousing station has been omitted under the Customs Act.
- The period of limitation has been increased from one year to two years in cases not involving fraud, suppression of facts, willful mis-statement, etc.
- Certain class of importers and exporters has been given an option for deferred payment of customs duties.
- Board has been empowered to frame regulations for allowing transit of certain goods and conveyance without payment of duty.
- A new set of regulations are being prescribed for the licensing and cancellation of warehouse.
- The existing section 59 governing warehousing bonds submitted by importers availing duty deferred warehousing is being substituted so as to fix the bond amount at thrice the duty involved and to furnish security as prescribed.
- Payment of rent and warehouse charges is being omitted in view of the privatization of services, and free market determination of rates, including those by facilities in the public sector.
- Payment of fees to Customs for supervision of manufacturing facilities under Bond has been deleted and has been empowered to Principal Commissioner or Commissioner of Customs to license such facilities.
- Sample of goods imported can be removed from warehouse without payment of duty.
- Separate tariff lines for laboratory created or laboratory grown or manmade or cultured or synthetic diamonds has been inserted effective from 01/01/2017.
- Various notifications pertaining to Advance Licence and Duty Free Import Authorization Schemes retrospectively, to correct the reference to “section 8” in such notifications to “section 8B” so as to clearly provide that exemption from safeguard duty under section 8B of the Customs Tariff Act, 1975 was/is available under these notifications on imports under Advance Licence and Duty Free Import Authorization Schemes.
- The value of the limit for bona fide gifts imported by post or as air freight from Rs 10,000 to Rs 20,000

PROPOSALS INVOLVING CHANGES IN BCD, CVD, SAD AND EXPORT DUTY RATES

Sr. No.	Description	Duty	New rate (per cent)	Old Rate (per cent)
1.	Coal; briquettes, ovoids and similar solid fuels manufactured from coal	BCD	2.5	2.5 / 10
2.	All acyclic hydrocarbons and all cyclic hydrocarbons [other than para-xylene which attracts Nil BCD and styrene which attracts 2per cent BCD]	BCD	2.5	5 / 2.5
3.	Specified fibres and yarns	BCD	2.5	5
4.	Specified fabrics [for manufacture of textile garments for export] of value equivalent to 1per cent of FOB value of exports in the preceding financial year subject to the specified conditions. The entitlement for the month of March 2016 shall be one twelfth of one per cent. of the FOB value of exports in the financial year 2014-15.	BCD	NIL	Various rates
5.	E-Readers	BCD	7.5	NIL
6.	specified telecommunication equipment [Soft switches and Voice over Internet Protocol (VoIP) equipment namely VoIP phones etc.]	BCD	10	NIL
7.	Gold dore bars.	CVD	8.75	8
8.	Engine for xEV (hybrid electric vehicle)	BCD CVD	NIL 6	Applicable Applicable
9.	Iron Ore Lumps (below 58per cent Fe content)	Export Duty	NIL	30
10.	Imitation jewellery	BCD	15	10
11.	specified tariff lines in Chapters 84, 85 and 90	BCD	10	7.5
12.	Zinc alloys	BCD	7.5	5

NOTIFICATION

Notification 30/2016-Cus(NT): Amendment in Baggage Rules (Effective 1 April 2016)

- An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant on arrival in India shall be allowed clearance free of specified duty articles for personal effects upto the value of Rupees Fifty thousand except for specified countries.

Notification 32/2016-Cus(NT): Amendment in Import of Goods at Concessional Rate

- The existing Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 are being substituted with a view to simplify the rules, including allowing duty exemptions to importer/manufacturer based on self-declaration instead of obtaining permissions from the Central Excise authorities.

Notification No. 33/2016-Cus(NT): Rate of Interest (Effective from Assent of Finance Bill)

- The Rate of interest is proposed to be changed from existing 18 per cent to 15 per cent.

CENTRAL EXCISE

- ☐ The period of limitation has been increased from one year to two years in cases not involving fraud, suppression of facts, willful mis-statement, etc.
- ☐ Consequent to 2017 Harmonized System of Nomenclature some editorial changes have been made under Third Schedule effective from 01/01/2017.

Sr. No.	Description	New rate (per cent)	Old Rate (per cent)
1.	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured	21	18
2.	Tariff Value of readymade garments and made up articles of textiles	60 per cent of RSP	30 per cent of RSP
3.	Branded readymade garments and made up articles of textiles of RSP of Rs.1000 or more	2 per cent [without CENVAT credit] or 12.5 per cent [with CENVAT credit]	Nil [without CENVAT credit] or 6 per cent/12.5 per cent [with CENVAT credit]
4.	Specified articles of Jewellery	NIL (turnover increased to Rs 6 crore)	1 per cent [without CENVAT credit] or 12.5 per cent [with CENVAT credit]
5.	Electric motor, shafts, sleeve, chamber, impeller, washer required for the manufacture of centrifugal pump	6 per cent	12.5 per cent
6.	Engine for xEV (hybrid electric vehicle)	6 per cent	12.5 per cent
7.	Ready Mix Concrete manufactured at the site of construction for use in construction work at such site	2 per cent/6 per cent	NIL

- ☐ To extend Retail Sale Price [RSP] based assessment of excise duty to
  - o all goods falling under heading 3401 and 3402 [with abatement rate of 30 per cent],
  - o aluminium foils of a thickness not exceeding 0.2 mm [with abatement rate of 25 per cent],
  - o wrist wearable devices (commonly known as 'smart watches') [with abatement rate of 35 per cent], and
  - o Accessories of motor vehicle and certain other specified goods [with abatement rate of 30 per cent].
  - o Infrastructure Cess is being levied on motor vehicles with certain specifications with immediate effect.
- ☐ Excise duty of 2 per cent (without CENVAT credit) or 12.5 per cent (with CENVAT credit) is being levied on readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff except those falling under 6309 and 6310 of retail sale price (RSP) of Rs.1000 and above when they bear or are sold under a brand name.

NOTIFICATION

Notification 05/2016-Ce(Nt): Amendments In Central Excise Rules, 2002

- Optional centralized registration is being extended to manufacturers of Articles of Jewellery [excluding articles of silver jewellery, other than studded with diamonds, ruby, emerald or sapphire].
- Duty paid or payable under Provisional Assessment would be chargeable to interest as per the rates specified.

Notification 13/2016-Ce(Nt): Amendments In Cenvat Credit Rules, 2004

- The definition of Capital goods is expanded to include any equipment or appliance used in an office.
- Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India has been excluded from the definition of exempted service.
- All capital goods which have a value up to Rs 10,000 per piece would be treated as inputs.
- A new Cenvat credit Mechanism has been notified for manufacturer of final product or provider of output service
- A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, in addition to options given in sub-rules (1), (2) and (3), shall have the option to pay for every month an amount equal to fifty per cent.
- A manufacturer of final products or provider of output services, shall submit to the Superintendent of Central Excise an annual return for each financial year, by the 30th day of November of the succeeding year.

Notification No. 22/2015: Utilization Of Cess By Service Provider

CBEC has notified by amending the Cenvat Credit Rules, 2004 that:

- Educations Cess & Secondary Higher Education Cess paid on inputs or capital goods received in the premises of the provider of output service on or after 01.06.2015, can be utilized for payment of Service Tax on any output service.
- It further notified that 50% credit of EC & SHEC carried forward from F.Y.2014-15 can also be utilized for payment of Service Tax on any output service.
- Also credit of EC & SHEC on input service of which any invoice, bill, challan or Service Tax Certificate for transportation of goods by rail received by output service on or after 1st June 2015, can also be utilized for payment of Service Tax on any output service.

Notification No. 18/2015: Electronic Data

Central Board of Excise and Customs through this notification has specified the conditions, safeguards and procedures for issue of invoices, preserving records in electronic form and authentication of records and invoices by digital signatures.

It has further been notified that the records in electronic form should be maintained and preserved for a period of 5 years immediately after the financial year to which such records maintain.

Notification No. 15/2015: Amendment To Notification No. 12/2014-Ce (Nt)

Assesses engaged in the business of Supply manpower for any purpose or security services is not eligible for Refund of unutilized CENVAT Credit under Rule 5B of CENVAT Credit to the Service Provider w.e.f. 1st April 2015.

Notification No. 14/2015: Amendment To Rule 6 Of Cenvat Credit Rules,2004

Under Rule 6(3), rate of reversal of Cenvat Credit has been increased from 6% to 7% w.e.f. 1st June 2015.

Notification No. 12/2015: Utilization Of Cess By Manufacturer

CBEC has notified by amending Rule 3(7)(b) Cenvat Credit Rules, 2004 that:

- Educations Cess & Secondary Higher Education Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after 1st March,2015, can be utilized for payment of duty of excise leviable under First Schedule to the Excise Tariff Act.
- It further provided that 50% credit of EC & SHEC paid on capital good received in the factory of manufacture of final product carried forward from F.Y.2014-15 can also be utilized for payment of duty of excise leviable under First Schedule to the Excise Tariff Act.
- Also EC & SHEC paid on input services received by the manufacturer of final product on or after 1st March, 2015, can be utilized for payment of duty of excise leviable under First Schedule to the Excise Tariff Act.

Notification No. 02/2016: Amendment In Cenvat Credit Rules

An explanation has been inserted under Rule 2(l) so as to clarify that sales promotion includes services by way of sale of dutiable goods on commission basis.

Amendment has been made in Rule 3(4) by way of insertion of proviso to notify that CENVAT Credit of any duty cannot be utilized for the payment of Swachh Bharat Cess. Accordingly Swachh Bharat Cess is always to be paid in cash.

INDUSTRY SPECIFIC ANALYSIS

FINANCE SECTOR

Introduction

With the potential to become the fifth largest banking industry in the world by 2020 and third largest by 2025 according to KPMG-CII report, India's banking and financial sector is expanding rapidly. The Indian Banking industry is currently worth Rs. 81 trillion (US $ 1.31 trillion) and banks are now utilizing the latest technologies like internet and mobile devices to carry out transactions and communicate with the masses. The sector comprises commercial banks, insurance companies, non-banking financial companies, co-operatives, pension funds, mutual funds and other smaller financial entities.

The Government of India has introduced several reforms to liberalize, regulate and enhance this industry. The Government and Reserve Bank of India (RBI) have taken various measures to facilitate easy access to finance for Micro, Small and Medium Enterprises (MSMEs). These measures include launching Credit Guarantee Fund Scheme for Micro and Small Enterprises, issuing guideline to banks regarding collateral requirements and setting up a Micro Units Development and Refinance Agency (MUDRA). With a combined push by both government and private sector, India is undoubtedly one of the world's most vibrant capital markets.

As per The Economic Survey 2015-16, post Fourteenth Finance Commission (FFC) recommendations, ushered in a new era of 'co-operative federalism with shared responsibilities' between the centre and the states, and among the states for achieving development goals together.

Market Size

- In India the size of banking assets reached US$ 1.46 trillion up to November, 2015 and is expected to touch US$ 28.5 trillion by financial year 2025. Banks total credit up to November, 2015 stood at US$ 1.02 trillion.
- As per The Association of Mutual Funds in India (AMFI) assets of the mutual fund industry have reached a size of Rs 12.95 trillion (US$ 194 billion) up to November 2015.
- In the period between April 2015 to September 2015, the life insurance industry recorded a new premium income of ₹562.86 billion (US$ 8.4 billion), indicating a growth rate of 14.45%. The general insurance industry recorded a 12.6% growth in Gross Direct Premium underwritten in financial year 2016 up to the month of October 2015 at ₹550 billion (US$ 8.23 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 % over the next five years. The insurance industry is planning to hike penetration levels to 5% by 2020, and could top the US$ 1 trillion mark in the next 7 years. The total market size of India's insurance sector is projected to touch US$ 350-400 billion by 2020.
- Investment corpus in India's pension sector is expected to cross US$ 1 trillion by 2025, following the passage of the Pension Fund Regulatory and Development Authority (PFRDA) Act 2013.

Investments

The increased uses of social media such as Facebook, has provided a new platform to the banking sector to attract customers. In September 2013 ICICI bank launched a Facebook bill payment and fund transfer

service called 'Pockets' for customer convenience. Investment of FDI in the insurance sector stood at US$ 341 million in Mar-Sept, 2015, showing a growth of 152% compared to the same period last year.

- Insurance firm AIA Group Ltd has decided to increase its stake in Tata AIA Life Insurance Co Ltd, a joint venture owned by Tata Sons Ltd and AIA Group from 26% to 49%.
- Canada-based Sun Life Financial Inc. plans to increase its stake from 26% to 49% in Birla Sun Life Insurance Co Ltd, a joint venture with Aditya Birla Nuvo Ltd, through buying of shares worth Rs 1,664 crore (US$ 249 million).
- The Securities and Exchange Board of India (SEBI) plans to gradually introduce more commodity products and allow more participants in the commodity derivatives market in India.
- 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.
- A Reserve Bank of India (RBI) committee headed by Deputy Governor Mr. Gandhi has recommended granting commercial banking license to multi-state urban cooperative banks(UCB) having business of more than ₹20,000 crore (US$ 3 billion).
- India's largest microfinance company Bandhan has set up Bandhan Bank Ltd, banking and financial services company, post the receipt of license from RBI.
- India has moved a step closer to having a Singapore- or Dubai-like financial hub, with the Securities and Exchange Board of India (SEBI) approving a framework for international financial centers (IFCs).

Government Initiatives

The Government had outlined various measures in the Union Budget 2015-16 with the aim to reviving and accelerating investment which includes fiscal consolidation with emphasis on expenditure reforms and continuation of fiscal reforms with rationalization of tax structure. Following are the other measures taken by the governments;

- The Government has announced several schemes to improve the extent of financial inclusion. The Prime Minister of India has launched the Micro Unit Development and Refinance Agency (MUDRA) to fund and promote microfinance institutions (MFIs), which would in turn provide loans to small and vulnerable sections of the business community. Financial Services Secretary Mr Hasmukh Adhia has announced that the ministry will launch a campaign for loans under Pradhan Mantri Mudra Yojana (PMMY) in order to double loan disbursement to the small business sector to over Rs100,000 crore (US$ 15 billion).
- Government of India's 'Jan Dhan' initiative for financial inclusion is gaining momentum, as the number of bank accounts opened by July 15, 2015 has more than doubled to 169 million from 68.7 million at end of October 2014, 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). Further 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.
- The Union Cabinet has approved 100% FDI under the automatic route for non-bank entities that operate White Label Automated Teller Machine (WLA), subject to certain conditions.
- The Insurance Regulatory and Development Authority of India (IRDA), as part of its endeavour to increase insurance sector growth, has allowed a new distribution avenue called the 'point of sale'

person, who will be allowed to sell simple standardised insurance products in the non-life and health insurance segments, which are largely pre-underwritten.

Budget Proposals

To undertake important banking sector reforms and public listing of general insurance companies undertake significant changes in FDI policy.

- ☐ Government will permit mobilisation of additional finances to the extent of Rs.31,300 crore by NHAI, PFC, REC, IREDA, NABARD and Inland Water Authority through raising of Bonds during 2016-17.
- ☐ Reforms in FDI policy in the areas of Insurance and Pension, Asset Reconstruction Companies, Stock Exchanges.
- ☐ A comprehensive Code on Resolution of Financial Firms to be introduced.
- ☐ Statutory basis for a Monetary Policy framework and a Monetary Policy Committee through the Finance Bill 2016.
- ☐ A Financial Data Management Centre to be set up.
- ☐ RBI to facilitate retail participation in Government securities.
- ☐ Amendments in the SARFAESI Act 2002 to enable the sponsor of an ARC to hold up to 100% stake in the ARC and permit non institutional investors to invest in Securitization Receipts.
- ☐ New derivative products will be developed by SEBI in the Commodity Derivatives market
- ☐ Comprehensive Central Legislation to be bought to deal with the menace of illicit deposit taking schemes.
- ☐ Increasing members and benches of the Securities Appellate Tribunal.
- ☐ Allocation of Rs.25,000 crore towards recapitalisation of Public Sector Banks.
- ☐ Target of amount sanctioned under Pradhan Mantri Mudra Yojana increased to Rs.1,80,000 crore.
- ☐ General Insurance Companies owned by the Government to be listed in the stock exchanges.
- ☐ Government proposes to utilize the vast Postal network with nearly 1,54,000 points of presence spread across the villages of the country so that Postal Department will make its proposed Payments Bank venture successful which will further contribute to Pradhan Mantri Jan Dhan Yojana. To provide better access to financial services, especially in rural areas, massive nationwide rollout of ATMs and Micro ATMs in Post Offices over the next three years.
- ☐ It is proposed that NBFCs registered with RBI and having asset size of Rs.500 crore and above will be considered for notifications as 'Financial Institution' in terms of the SARFAESI Act, 2002.
- ☐ It is proposed to establish a National Investment and Infrastructure Fund (NIIF) and to ensure an annual flow of Rs. 20,000 crore to it.
- ☐ It is proposed to begin this process this year by setting up a Public Debt Management Agency (PDMA) which will bring both India's external borrowings and domestic debt under one roof.
- ☐ It is proposed to create a Task Force to establish a sector-neutral Financial Redressal Agency that will address grievances against all financial service providers.

- It is proposed to introduce soon several measures that will incentivize credit or debit card transactions, and disincentivise cash transactions. A Note on 'Promotion of Payments' through cards and 'Digital Means' is at final stage of approval.
- Non-banking financial companies shall be eligible for deduction to the extent of 5% of its income in respect of provision for bad and doubtful debts.
- Limited period Compliance Window for domestic taxpayers to declare undisclosed income or income represented in the form of any asset and clear up their past tax transgressions by paying tax at 30%, and surcharge at 7.5% and penalty at 7.5%, which is a total of 45% of the undisclosed income.

TAX PROPOSALS

Indirect Tax

- Notification No. 09/2016-ST: Exemption of Service tax on general insurance services provided under 'Niramaya' Health Insurance Scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability.
- Notification No. 13/2016-CE(NT): A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, in addition to options given in sub rules (1), (2) and (3) of rule 6 shall have the option to pay for every month an amount equal to fifty per cent.
- Securities Transaction tax in case of 'Options' is proposed to be increased from 0.017% to 0.05%.

Road Ahead

India is today one of the most vibrant global economies, on the back of robust banking and insurance sectors. The country is projected to become the 5th largest banking sector globally by 2020, as per a joint report by KPMG-Confederation of Indian Industry (CII). The report also expects bank credit to grow at a compound annual growth rate (CAGR) of 17% in the medium term leading to better credit penetration. Life Insurance Council, the industry body of life insurers in the country also projects a CAGR of 12–15% over the next few years for the financial services segment.

Also, the relaxation of foreign investment rules has received a positive response from the insurance sector, with many companies announcing plans to increase their stakes in joint ventures with Indian companies. Over the coming quarters there could be a series of joint venture deals between global insurance giants and local players. The relaxation in the foreign direct investment (FDI) limit to 49% can result in additional investments up to ₹60,000 crore (US$9 billion).

INFORMATION TECHNOLOGY IN INDIA

Introduction

India is the world's largest sourcing destination for the information technology (IT) industry as per recent survey, accounts for approximately 67 per cent of the US$ 124-130 billion market. The industry employs about 10 million workforces. More importantly, the industry has led the economic transformation of the country and altered the perception of India in the global economy. India's cost competitiveness in providing IT services, which is approximately 3-4 times cheaper than the US, continues to be the

mainstay of its unique selling proposition (USP) in the global sourcing market. However, India is also gaining prominence in terms of intellectual capital with several global IT firms setting up their innovation centres in India.

The IT-BPM sector in India grew at a Compound Annual Growth rate (CAGR) of 15 per cent over 2010-15, which is 3-4 times higher than the global IT-BPM spend, and is estimated to expand at a CAGR of 9.5 per cent to US$ 300 billion by 2020.

As per Economic Survey, the worldwide IT-BPM spend in 2015 was US$2.3 trillion including hardware. Over the next decade, 80 per cent of incremental expenditures may be driven by digital technologies, such as platforms, cloud-based applications, big data analytics, mobile systems, social media and cyber security, as well as services needed to integrate these technologies with remaining legacy core technologies.

As per Economic Survey ,Total revenue (exports plus domestic) of the IT-BPM sector for 2015-16 including and excluding hardware is expected to touch US$143 billion and US $129 billion, with growths of 8.3 per cent and 9.3 per cent over the previous year respectively.

Digital India proposal was initiated by the Government of India to ensure that Government services are made available to citizens electronically by improving online infrastructure and by increasing Internet connectivity. It was launched on 1 July 2015 by Prime Minister Narendra Modi. The initiative includes plans to connect rural areas with high-speed internet networks.

A two-way platform is planned to be created where the service providers and the consumers will benefit. The scheme will be monitored and administrated by the Digital India Advisory group which will be chaired by the Ministry of Communications and IT . It will be an inter-Ministerial initiative where all ministries and departments will offer their own services to the public: Healthcare, Education, Judicial, etc.

Market Size

As per National Association of Software and Services Companies (NASSCOM), the Indian Information Technology (IT) sector is expected to grow 11 per cent per annum and triple its current annual revenue to reach US$ 350 billion by FY 2025.

India, the fourth largest base for new businesses in the world and home to over 3,100 tech start-ups, is set to increase its base to 11,500 tech start-ups by 2020, as per a report by NASSCOM and Zinnov Management Consulting Pvt Ltd.

India's internet economy is expected to touch Rs 10 trillion (US$ 151.6 billion) by 2018, accounting for 5 per cent of the country's gross domestic product (GDP), according to a report by the Boston Consulting Group (BCG) and Internet and Mobile Association of India (IAMAI). India's internet user base reached over 350 million by June 2015, the third largest in the world, while the number of social media users grew to 143 million by April 2015 and smart phones grew to 160 million.

India's technology and BPM sector (including hardware) is estimated to have generated US$ 146 billion in revenue during FY15 compared to US$ 118 billion in FY14, implying a growth rate of 23.72 per cent

The contribution of the IT sector to India's GDP rose to approximately 9.5 per cent in FY15 from 1.2 per cent in FY98

Employment Information

The IT and ITeS sector has generated massive employment in the past and continues the trend of providing jobs. With online shopping, social media and cloud computing flourishing more than ever before, there is great demand for IT professionals in e-commerce and business to consumer firms.

NASSCOM reports stated that the industry added 160,000 employees in 2013, and provided direct employment to 3.1 million people and indirect employment to 10 million people.

IT-ITeS exports constitute the major source of employment in this industry and its share has increased over the years

Employment in the industry, including its key computer occupations, is expected to grow much faster than the 14-percent average growth for all occupations across all industries.

Cities like Hyderabad, Trivandrum, Chennai, Delhi-NCR, Bangalore, Mumbai and Pune together are providing jobs to a huge number of people.

Investments

Indian IT's core competencies and strengths have attracted significant investments from major countries. The computer software and hardware sector in India attracted cumulative Foreign Direct Investment (FDI) inflows worth US$ 18.17 billion between April 2000 and September 2015, according to data released by the Department of Industrial Policy and Promotion (DIPP). With the immense opportunities that the government has to offer to the IT/ITeS companies a number of MNC's are investing in India.

Indian start-ups are expected to receive funding worth US$ 5 billion by the end of 2015, a 125 per cent increase in a year, according to a report by IT Industry association NASSCOM.

About 554 start-ups received funding this year compared to 342 during last year. Seed and venture capital funds made investments worth US$ 3.4 billion this year, three times the investment made last year. Venture Capital (VC) funding to the IT/ITeS sector amounted to 55 per cent of total VC funding made this year.

Most large technology companies looking to expand have so far focused primarily on bigger enterprises, but a report from market research firm Zinnov highlighted that the small and medium businesses will present a lucrative opportunity worth US$ 11.6 billion in 2015, which is expected to grow to US$ 25.8 billion in 2020. Moreover, India has nearly 51 million such businesses of which 12 million have a high degree of technology influence and are looking to adopt newer IT products, as per the report.

- Global private equity (PE) firm Blackstone Group has acquired a minority stake in an Indian travel, transportation and logistics software firm, IBS Software, for US$ 170 million, by buying the stake from General Atlantic and few other shareholders
- US-based Callidus Software Inc., a cloud-based sales, marketing, learning and customer experience solutions provider, has opened its centre in Hyderabad and also launched its 'The Lead to Money' suite in Indian markets.
- Wipro Ventures, Wipro's US$ 100 million corporate venture arm, plans to invest in early-stage venture capital (VC) funds based in the US to pursue a strategy of investing/partnering country-focused VCs.

- Reliance is building a 650,000 square feet (sq. ft.) data centre in India—its 10th data centre in the country—with a combined capacity of about 1 million sq. ft. and an overall investment of US$ 200 million.

Government Initiatives

- As per Economic Survey , the government has been actively supporting the sector, it being the key partner in the various flagship programmes of the government like Digital India, Make in India, Skill India, E-governance and Startup India. Software products with 4.5 per cent year-on-year growth are the fastest-growing segment in the Indian market, expanding on the back of demand for mobile app development, security software, system software and customer analytics products, and increased adoption of software as a service (SAAS) and cloud.
- As per Economic Survey ,the government has introduced the game-changing potential of technology-enabled Direct Benefits Transfers (DBT), namely the JAM (Jan Dhan-Aadhaar-Mobile) Number Trinity solution, which offers possibilities for effectively targeting public resources to those who need them most, and including all those who have been deprived in multiple ways.
- The Human Resource Development (HRD) Ministry has entered into a partnership with private companies to open three Indian Institutes of Information Technology (IIITs), through public-private partnership (PPP), at Nagpur, Ranchi and Pune.
- Government of India is planning to develop five incubation centres for 'Internet of Things' (IoT) start-ups, as a part of Prime Minister Mr Narendra Modi's Digital.
- India and the United States (US) have agreed to jointly explore opportunities for collaboration on implementing India's ambitious Rs 1.13 trillion (US$ 18.22 billion) 'Digital India Initiative'. The two sides also agreed to hold the US-India Information and Communication Technology (ICT) Working Group in India later this year.

Budget Proposals

- A new Digital Literacy Mission Scheme for rural India to cover around 6 crore additional household within the next 3 years.
- Digital Depository for School Leaving Certificates, College Degrees, Academic Awards and Mark sheets to be set-up.
- Entrepreneurship Education and Training through Massive Open Online Courses
- Introduce Direct Benefit Transfer (DBT) on pilot basis for fertilizer.
- Launched the Deen Dayal Upadhyay Gramin Kaushal Yojana. Rs. 1,500crore has been set apart for this scheme. Disbursement will be through a digital voucher directly into qualified student's bank account.
- The National Optical Fibre Network Programme (NOFNP) of 7.5 lakh kms. Networking 2.5 lakh villages is being further speeded up by allowing willing States to undertake its execution, on reimbursement of cost as determined by Department of Telecommunications.
- 'Start-up India Action Plan' to establish a Fund of Funds which intends to raise Rs 2500 crores annually for four years to finance the start-ups.

TAX PROPOSALS

Direct Tax

- The new manufacturing companies under this sector which are incorporated on or after 1.3.2016 are proposed to be given an option to be taxed at 25% + surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.

Indirect Tax

- Notification No. 11/2016-ST : Service in relation to Information Technology Software previously leviable to service tax under section 66B read with section 66E of the Finance Act, 1994 has been exempted when such software is recorded on such media and such other conditions as are specified. Thus the levy of central excise duty/CVD and service tax will be mutually exclusive.
- Service tax on the services of Information Technology Software on media bearing RSP is being exempted from Service Tax with effect from 1st March, 2016 provided Central Excise duty is paid on RSP in accordance with Section 4A of the Central Excise Act.

Road Ahead

India is the topmost off shoring destination for IT companies across the world. Having proven its capabilities in delivering both on-shore and off-shore services to global clients, emerging technologies now offer an entire new gamut of opportunities for top IT firms in India. Social, mobility, analytics and cloud (SMAC) are collectively expected to offer a US$ 1 trillion opportunity. Cloud represents the largest opportunity under SMAC, increasing at a CAGR of approximately 30 per cent to around US$ 650-700 billion by 2020. The social media is the second most lucrative segment for IT firms, offering a US$ 250 billion market opportunity by 2020. The Indian e-commerce segment is US$ 12 billion in size and is witnessing strong growth and thereby offers another attractive avenue for IT companies to develop products and services to cater to the high growth consumer segment.

INFRASTRUCTURE

Background

Infrastructure and economic growth go hand by hand. Investment in infrastructure at times through public spending is undertaken to spur up the economic growth and employment. But years of underinvestment in infrastructure have left the country with poorly functioning transit systems and power grids that have further endangered its slowing economy. Burgeoning trade is putting pressure on India's inefficient ports, and rapid urbanization is straining the country's unreliable electricity and water networks.

The infrastructure sector in India has evolved from purely Government funded projects to newer business models involving partial or complete ownership of the private sector. Going ahead, the sector is poised to bounce back with new opportunities. But growth of the infrastructure sector is dependent on solving some key challenges related to reducing regulatory uncertainty, developing appropriate financing mechanisms and ensuring efficient project management.

Recent Developments

- The Government of India has earmarked Rs 50,000 crore (US$ 7.5 billion) to develop 100 smart cities across the country. The Government released its list of 98 cities for the smart cities project in August 2015.
- France has announced a commitment of € 2 billion (US$ 2.17 billion) to convert Chandigarh, Nagpur and Puducherry into smart cities.
- The Construction Industry Development Board (CIDB) of Malaysia has proposed to invest US$ 30 billion in urban development and housing projects in India, such as a mini-smart city adjacent to New Delhi Railway Station, a green city project at Garhmukhteshwar in Uttar Pradesh and the Gang cleaning projects.
- The Government of India has unveiled plans to invest US$ 137 billion in its rail network over the next five years.
- The Government of India has announced highway projects worth US$ 93 billion, which include government flagship National Highways Building Project (NHDP) with total investment of US$ 45 billion over next three years.
- International Finance Corporation (IFC), part of The World Bank group, plans to invest at least US$ 700 million in existing transport and logistics infrastructure projects in India.
- The World Bank has approved a US$ 650 million debt funding for a part of the eastern arm of the Dedicated Freight Corridor (DFC) project in India.

Government Initiatives

- The government has rolled out stuck projects worth Rs 4 lakh crore (US$ 60 billion) in the past six months (ending November 2015), while stating that infrastructure development is the government's top priority in order to improve economic growth.
- Government of India plans to launch the National Infrastructure Investment Fund (NIFF) with an initial corpus of at least Rs 40,000 crore (US$ 6 billion).
- The Ministry of Urban Development has approved an investment of Rs 19,170 crore (US$ 2.88 billion) for improving basic urban infrastructure in 474 cities in 18 states and Union Territories (UTs).
- The central government has approved amendments to 'The National Waterways Bill, 2015' which will provide for enacting a central legislation to declare 106 additional inland waterways, as the national waterways.
- The Government of India plans to award 100 highway projects under the public-private partnership (PPP) mode in 2016, with expectations that recent amendments in regulations would revive investor sentiments in PPP projects in the infrastructure sector.
- The Reserve Bank of India (RBI) has notified 100 per cent foreign direct investment (FDI) under automatic route in the construction development sector. The new limit came into effect in December 2014.
- The Government of India has relaxed rules for FDI in the construction sector by reducing minimum built-up area as well as capital requirement. It has also liberalised the exit norms. In fact, the Cabinet has also approved the proposal to amend the FDI policy.

- In the Budget 2015-16, the capital outlays for roads, and railways have been increased by Rs 140.3 billion (US$ 2.11 billion) and Rs 100.5 billion (US$ 1.51 billion) respectively.
- India and the US have signed a memorandum of understanding (MoU) in order to establish Infrastructure Collaboration Platform. The document showcases the relationship between both the Governments which intend to facilitate US industry participation in Indian infrastructure projects to improve the bilateral relationship and benefit both economies. The MoU's scope envisages efforts in the areas of Urban Development, Commerce and Industry, Railways, Road Transport and Highways, Micro Small and Medium Enterprises, Power, New & Renewable Energy, among others.
- The government plans to construct 1,500 major bridges and 200 railway over and under bridges at a cost of Rs.30,000 crore under a scheme named Setubhratam Pariyojana.
- In the next six years, the government plans to invest Rs.60,000 crore to develop 9,000km of national highways. At present, national highways with a road length of 100,475km carry 40% of the road traffic. The road sector is also likely to see more investments through the Special Accelerated Road Development Programme for North-Eastern region (SARDP-NE). The three-phase project plans to improve around 10,000km of national highways and state roads in the north-east.
- To develop the potential of inland waterways transport, a project Jal Marg Vikas is being undertaken at a cost of Rs.4,200 crore. The Inland Waterways Authority of India (IWAI) plans to implement another project for the transportation of 3 million metric tonnes per annum of imported coal from the Bay of Bengal to NTPC Ltd's Barh power plant in Bihar.

Future Prospects

Total infrastructure spending is expected to be about 10 per cent of Gross Domestic Product (GDP) during the 12th Five-Year Plan (2012–17), up from 7.6 per cent during the previous plan (2007–12).

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. To support the growing demand, cargo capacity in India is expected to increase to 2,493.1 MMT by 2017.

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.

The Indian construction equipment industry is reviving after a gap of four years and is expected to grow to US$ 5 billion by FY2019-20 from current size of US$ 2.8 billion, according to a report released by the Indian Construction Equipment Manufacturers' Association. Significant allocation to the infrastructure sector in the 12th Five-Year Plan, and investment requirement of US$ 1 trillion is expected to create huge demand for construction equipment in India.

As on March 2015, projects worth US$ 32.69 billion have been awarded through PPP model, with as many as 165 PPP projects still under progress. During the next five years, investment through PPP is expected to be US$ 31 billion.

In FY 15, major ports handled 581.3 million metric tonnes (MMT) of cargo, while non-major ports handled 471.2 MMT of cargo. Since ports handle almost 95 per cent of trade volumes in India, the rising trade has contributed significantly to the country's cargo traffic.

Budget Proposals

- ☐ Amendments to be made in Motor Vehicles Act to open up the road transport sector in the passenger segment.
- ☐ Action plan for revival of un-served and under-served airports to be drawn up in partnership with state Governments.
- ☐ To provide calibrated marketing freedom in order to incentivise gas production from deep-water, ultra deep-water and high pressure-high temperature areas
- ☐ Comprehensive plan, spanning next 15 to 20 years, to augment the investment in nuclear power generation to be drawn up.
- ☐ Public Utility (Resolution of Disputes) Bill will be introduced during 2016-17
- ☐ Guidelines for renegotiation of PPP Concession Agreements will be issued
- ☐ New credit rating system for infrastructure projects to be introduced
- ☐ Reforms in FDI policy in the areas of Insurance and Pension, Asset Reconstruction Companies, Stock Exchanges.
- ☐ 100% FDI to be allowed through FIPB route in marketing of food products produced and manufactured in India.
- ☐ A new policy for management of Government investment in Public Sector Enterprises, including disinvestment and strategic sale.

Road Ahead

- ☐ India needs Rs 31 trillion (US$ 465 billion) to be spent on infrastructure development over the next five years, with 70 per cent of funds needed for power, roads and urban infrastructure segments.
- ☐ The proposed 100 smart cities project will boost the growth of Indian Infrastructure.
- ☐ The government has also announced to increase the outlays on roadways and railways by Rs. 14031 and Rs. 10050 crores respectively.
- ☐ Again by 2022 the government has promised to complete 1,00,000 KM of road along with the completion of already under construction 1,00,000 KM road.
- ☐ Instead of thermal power; India is now all set to embrace green energy and The Ministry of New Renewable Energy has revised its target of renewable energy capacity to 1,75,000 MW till 2022, comprising 100,000 MW Solar, 60,000 MW Wind, 10,000 MW Biomass and 5000 MW Small Hydro.

REAL ESTATE

Background

The real estate sector in India assumed greater prominence with the liberalization of the economy, as the consequent increase in business opportunities and labour migration led to rising demand for commercial and housing space.

The real estate sector in India is growing at a phenomenal rate of 30% per year. This sector is the second largest employer in India, after the agricultural sector.

Having attained maturity, the real estate sector is attracting huge investments, especially (Foreign Direct Investment) FDI. This sector continues to be a favoured destination for global investors. It is the fourth largest sector in terms of FDI inflows.

Today, real estate in India addresses the demand for built-up space, from a variety of property segments such as offices, residential units, shopping malls, hospitality industry, manufacturing sector and logistics parks, to name a few.

The real estate sector is also active in the establishment of SEZs and the building of townships; it is spreading to the smaller cities and underpins their growth. Infrastructure developments closely parallel real estate developments.

Recent Developments

- Edelweiss Alternative Asset Advisors Ltd plans to raise US$ 1 billion for its first residential real estate fund called the Edelweiss Real Estate Fund, which will finance investments in five property markets in India - National Capital Region (NCR), Mumbai, Pune, Bengaluru and Chennai.
- Edelweiss Alternative Asset Advisors and Milestone Capital are investing Rs 7,200 crore (US$ 1.08 billion) in India's real estate sector while private equity firms like Goldman Sachs, Warburg Pincus and Singapore's GIC are exploring viable projects for investments, as a result of government's effort to boost real estate sector.
- Macquarie Infrastructure and Real Assets (MIRA), the realty investment arm of Australian Macquarie Group Ltd, plans to invest in real estate projects in India and is in talks with Tata Housing Development Co. to jointly set up an investment platform.
- Real estate firm Supertech has planned to invest about Rs 2,000 crore (US$ 300 million) in Gurgaon over the next few years by launching several luxury and affordable projects.
- PE firm Warburg Pincus invested Rs 1,800 crore (US$ 270 million) in Piramal Realty for a minority stake in the company.
- China's Fosun International Limited is seeking to invest US$ 100 million in Locon Solutions, the owner of Housing.com. SoftBank, Falcon Edge Capital and a few others have also invested US$ 90 million in Locon Solutions

Government Initiatives

- The Government of Rajasthan became the first state to initiate private investments in affordable housing by signing four Memoranda of Understanding (MoUs) with private players for an investment of Rs 5,400 crore (US$ 810 million).
- The Ministry of Housing and Urban Poverty Alleviation (HUPA) has commissioned a study by Indian Institute of Technology, Kanpur on testing of new construction technologies, with the objective of promoting new housing technologies in the country.
- Under the Housing for All scheme, 6 crores houses are to be built by 2022, mostly for the economically weaker sections and low-income groups, through public-private-partnership (PPP) and interest subsidy. Out of which 4 crores are to be built in rural areas and 2 crores in urban areas.

- The Government of India has relaxed the norms to allow Foreign Direct Investment (FDI) in the construction development sector. The Government has allowed FDI of up to 100 percent for townships and settlements developments projects. During April 2000–September 2015, the real estate sector accounted for 9 per cent of total FDI inflows into India.
- The Securities and Exchange Board of India (SEBI) has notified final regulations that will govern real estate investment trusts (REITs) and infrastructure investment trusts (InvITs). This move will enable easier access to funds for cash-strapped developers and create a new investment avenue for institutions and high net worth individuals, and eventually ordinary investors.

Future Prospects

Rapid urbanisation bodes well for the sector. The number of Indians living inurbane areas will increase from the 434 million in 2015 to about600 million by 2031.

India's real estate sector's market size is expected toincrease1.92 times by 2020. The market size of real estate in India is expected to increase at a CAGR of 15.2 per cent during FY2008 –2028 and is estimated to be worth USD853 billion by 2028.

FDI in the sector is estimated to grow to USD25 billion by FY22.

Real estate contribution to India's GDP is estimated to increase to about 13 per cent by 2028. Increasing share of real estate in the GDP would be supported by increasing industrial activity, improving income level, and urbanisation.

Budget Proposals

With a view to incentivise affordable housing sector hundred per cent deduction of the profits of an assessee developing and building affordable housing projects has been proposed, if the housing project is approved by the competent authority before the 31st March, 2019 subject to following conditions:-

(i) The project is completed within a period of three years from the date of approval,

(ii) The project is on a plot of land measuring not less than 1000 sq. metres where the project is within 25 km from the municipal limits of four metros namely Delhi, Mumbai, Chennai & Kolkata and in any other area, it is measuring not less than 2000 sq. metres where the size of the residential unit in the said areas is not more than thirty sq. metres and sixty sq. metres, respectively,

(iii) where residential unit is allotted to an individual, no such unit shall be allotted to him or any member of his family, etc

Additional deduction U/S 80 EE in respect of interest on loan taken for residential house property from any financial institution up to Rs. 50,000. This incentive is proposed to be extended to a house property of a value less than fifty lakhs rupees in respect of which a loan of an amount not exceeding thirty five lakh rupees has been sanctioned during the period from the 1st day of April, 2016 to the 31stday of March, 2017. It is also proposed to extend the benefit of deduction till the repayment of loan continues.

Road Ahead

Real estate sector has witnessed an investment of about $10billion since 2015, the highest in last seven years, mostly in debt form that poses a high refinancing risk if, housing sales remain slow.

The slowdown in sales in the housing sector has resulted in a sharp increase in the inventory of unsold units, especially in the northern and western regions. It is estimated that at the current rate of monthly sales, the unsold stock in the northern region would need 65 months to be absorbed.

Despite weak sales and rising inventory, the housing prices in many cities and towns have increased in 2015. In 2015, out of 26 cities, 20 witnessed increase in prices over 2014, with the maximum increase observed in Guwahati (9%) followed by Pune (8%).

The construction sector has witnessed a significant slowdown in last few years, with growth rates of 0.6% in 2012-13, 4.6% in 2013-14, 4.4% in 2014-15 and 3.7% in 2015-16 led by weakening of both domestic and global growth.

With increasing corporate expanding their business, demand for office space would continue to behigh in the key 8 metros. Retail space in shopping malls across the key cities is projected to be high.

Residential sector still has enormous potential for growth. With housing requirements growing across cities and funds investing in the asset class primarily in the form of NCDs providing fixed returns, investments in the right project have the potential to yield healthy returns.

Further, demand for space from sectors such as education and healthcare has opened up ample opportunities in the real estate sector.

As a growth enabler, it is essential to develop the real estate sector to support the growth of over 300 other sectors and employments. However, the key challenge is the lack of technology and funding, where a massive gap exists.

Realising the challenge at hand, several key reforms have been introduced recently and many more are lined up to improve global inflow of funds and promote growth of the sector.

ENGINEERING

Introduction

The engineering sector is the largest sector among the industrial segments in India and provides direct and indirect employment to over 4 million skilled and non-skilled workers. This Sector has witnessed a remarkable growth over the last few years driven by increased investments in infrastructure and industrial production. The engineering sector, 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 has appointed the Engineering Export Promotion Council (EEPC) as the apex body in charge of promotion of engineering goods, products and services from India. Exports from the Engineering segment had registered a compound annual growth rate (CAGR) of 12.6% over the period Fiscal Year 2008-13 wherein transport equipment is the leading contributor to engineering exports.

India became a permanent member of the Washington Accord (WA) in June 2014. The country is now a part of an exclusive group of 17 countries who are permanent signatories of the WA, an elite international agreement on engineering studies and mobility of engineers.

Market size

The engineering sector is one of the major contributors to the country's total merchandise shipments. The capital goods & engineering turnover in India is expected to reach US$ 125.4 billion by FY17.

Engineering exports from India in FY 2014-15 stood at US$ 70.7 billion registering a growth of 14.6% over the previous fiscal, as demand in key markets such as the US and the UAE is on the rise. Apart from these traditional markets, markets in Eastern and Central European countries such as Poland also hold huge promise.

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 favorable regulatory policies and growth in the manufacturing sector has enabled several foreign players to invest in India.
- As per the Report of Department of Industrial Policy and Promotion (DIPP), the foreign direct investment (FDI) inflows into India's miscellaneous mechanical and engineering industries during April 2000 to June 2015 stood at around US$ 4,053.72 million.
- Essar Projects, the engineering, procurement & construction (EPC) arm of Essar Group, in a joint venture with Italy's Saipem has won a US$ 1.57 billion contract from Kuwait National Petroleum Company (KNPC) for setting up part of the Al-Zour Refinery Project in Kuwait
- India's engineering and construction major, Punj Lloyd, won an order worth Rs 477 crore (US$ 71.87 million) for Ennore LNG tankage project from Mitsubishi Heavy Industries of Japan.
- Vistara, the Tata Sons-Singapore Airlines JV, signed an agreement with Airbus for engineering support services which include components supply and airframe maintenance.
- The engineering and R&D division of HCL Technologies will likely cross the US$ 1 billion mark in the next financial year as the company sees larger deals in a market that's widely expected to be the next big source of growth for the Indian IT sector. HCL Tech's engineering services unit contributed about 17 per cent to the company's revenue in the September quarter, coming in at US$ 245 million.
- Reliance Infrastructure acquired India's largest ship building and heavy industries company Pipavav Defence and offshore Engineering Company Limited, whose infrastructure will facilitate Reliance Infrastructure to build submarines and aircraft carriers on the back of a technological alliance with Swedish defence company SAAB.
- FDI inflows includes Automobile industry, Electrical equipment, Miscellaneous mechanical and engineering industry, Industrial machinery, Machine tools, Agriculture machinery, Earth-moving machinery and Industrial instrument

Government Initiative

The 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% FDI. With the aim to boost the manufacturing sector, the government has relaxed the excise duties on factory gate tax, capital goods, consumer durables and vehicles. It has also reduced the basic customs duty from 10% to 5% on forged steel rings used in the manufacture of bearings of wind operated electricity generators.

The government has also taken steps to improve the quality of technical education in the engineering sector by allocating a sum of ₹500 crore (US$ 75.33 million) for setting up five more IITs in the states of Jammu, Chhattisgarh, Goa, Andhra Pradesh and Kerala.

Further steps have also been taken to encourage companies to perform and grow better. For instance, EIL was recently 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.

As per Railway Budget 2016-17, almost all contracts for civil engineering works to be awarded by March 31st 2016; Rs 24,000 crore contracts awarded since November 2014 as against Rs 13,000 crore contracts awarded in last 6 years; propose to take up North-South, East-West & East Coast freight corridors through innovative financing including PPP.

EPC projects standard document finalized, will implement at least 20 projects through this mode in 2016-17; by 2017-18, endeavour to award all works valuing above Rs. 300 crore through EPC contracts.

In 2016-17 -targeted commissioning 2,800 kms of track; commissioning Broad Gauge lines at over 7 kms per day against an average of about 4.3 kms per day in the last 6 years. Would increase to about 13 kms per day in 2017-18 and 19 kms per day in 2018-19; will generate employment of about 9 crore man days in 2017-18 and 14 crore man days in 2018-19.

Government's `Make in India' campaign has received the attention of several infrastructure and engineering multi nationals including GE and ThyssenKrupp, which are considering investing in the country. The Government has also awarded a record 56 defence manufacturing permits to private sector entities like Mahindra, Tata and Pipavav, etc., in the past year to set up production units for major military equipment.

TAX PROPOSALS:

Direct Tax

- ☐ Deduction under Section 80JJAA of the Income Tax Act will be available to all assesses who are subject to statutory audit under the Act.
- ☐ The new manufacturing companies under this sector which are incorporated on or after 1.3.2016 are proposed to be given an option to be taxed at 25% plus surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.
- ☐ Relatively small enterprises i.e. companies with turnover not exceeding Rs.5 crore (in the financial year ending March 2015), lower the income tax rate to 29% plus surcharge and cess.

Indirect Tax

- ☐ Customs duty on capital goods hiked from 7.5% to 10%
- ☐ Customs Single Window Project to be implemented at major ports and airports starting from beginning of next financial year.

Road Ahead

Government's focus on infrastructure development is expected to keep demand for the engineering sector high. Continued growth of manufacturing sector and favourable regulatory policies would further propel the sector's growth. The engineering sector is a growing market. Spending on engineering services is projected to increase to US$ 1.1 trillion by 2020.

AGRICULTURE

Introduction

Agriculture plays a vital role in India's economy. Over 58 per cent of the rural households depend on agriculture as their principal means of livelihood. As per the Economic Survey 2015-16 twenty years on, India's position in agriculture has changed, it has become more competitive in agriculture and it now relies relatively more on domestic support (and less on tariff protection) for agriculture both to sustain domestic production and address low incomes for farmers.

A rich agriculture resource base - India was ranked No.1 in the world in 2013 in terms of production of bananas, mangoes, papayas, chick peas, ginger, lemons & limes, whole fresh buffalo milk, goat milk and buffalo meat. India ranks second in the world in the production of sugarcane, dry beans, lentils and safflower oil. Further, India is at third position in the production of cabbages, cashew nuts, cauliflower, coconuts, garlic, onions, green peas, potatoes, rice paddy, tea, wheat and tomatoes.

As per the Economic Survey 2015-16 the 2015 El Nino has been the strongest since 1997, depressing production over the past year. But if it is followed by a strong La Nina, there could be a much better harvest in 2016-17.

India exported $39 billion worth of agricultural products in 2013, making it the seventh largest agricultural exporter worldwide and the sixth largest net exporter.

Market Size

Over the recent past, multiple factors have worked together to facilitate growth in the agriculture sector in India. These include growth in household income and consumption, expansion in the food processing sector and increase in agricultural exports. Rising private participation in Indian agriculture, growing organic farming and use of information technology are some of the key trends in the agriculture industry.

With an annual output of 138 MT, India is the largest producer of milk. It also has the largest bovine population. India is the largest importer of pulses at 19.0 MT and 3.4 MT, respectively. India, the second-largest producer of sugar, accounts for 14 per cent of the global output. It is the sixth-largest exporter of sugar, accounting for 2.76 per cent of the global exports.

Spice exports from India are expected to reach US$ 3 billion by 2016–17 due to creative marketing strategies, innovative packaging, strength in quality and strong distribution networks. The spices market in India is valued at Rs 40,000 crore (US$ 6.16 billion) annually, of which the branded segment accounts for 15 per cent.

The procurement target for rice during marketing season (MS) 2015–16 has been finalised as 30 MT.

The total horticulture produce reached 277.4 million metric tonnes in 2013, making India the second largest producer of horticultural products after China. Of this, India in 2013 produced 81 million tonnes of fruits, 162 million tonnes of vegetables, 5.7 million tonnes of spices, 17 million tonnes of nuts and plantation products (cashew, cacao, coconut, etc.), 1 million tonnes of aromatic horticulture produce and 1.7 million tonnes of flowers (7.6 billion cut flowers).

Investments

Several players have invested in the agricultural sector in India, mainly driven by the government's initiatives and schemes.

According to the Department of Industrial Policy and Promotion (DIPP), the Indian agricultural services and agricultural machinery sectors have cumulatively attracted foreign direct investment (FDI) equity inflow of about US$ 2,182 million from April 2000 to June 2015.

- Mahindra & Mahindra (M&M), India's leading tractor and utility vehicle manufacturer, announced its entry into pulses retailing under the brand 'NuPro'. Going forward, the company plans to foray into e-retailing and sale of dairy products.
- Fertilizer cooperative IFFCO launched a joint venture with Japanese firm Mitsubishi Corp for manufacturing agrochemicals in India.
- Acumen, a not-for-profit global venture fund, has invested Rs 11 crore (US$ 1.7 million) in Sahayog Dairy, an integrated entity in the segment, based at Harda district in Madhya Pradesh.
- Rabo Equity Advisors, the private equity arm of Netherlands-based Rabo Group, raised US$ 100 million for the first close of its second fund – India Agri Business Fund II. The fund plans to invest US$ 15–17 million in 10–12 companies.
- Oman India Joint Investment Fund (OIJIF), a joint venture (JV) between the State Bank of India (SBI) and State General Reserve Fund (SGRF), invested Rs 95 crore (US$ 14.62 million) in GSP Crop Science, a Gujarat-based agrochemicals company.

Government Initiatives

Given the importance of the agriculture sector, the Government of India, in its Budget 2015–16, planned several steps for the sustainable development of agriculture. The government has already taken steps to address two major factors (soil and water) critical to improve agriculture production.

Steps have been taken to improve soil fertility on a sustainable basis through the soil health card scheme and to support the organic farming scheme 'Paramparagat Krishi Vikas Yojana'. Other steps include improved access to irrigation through 'Pradhanmantri Gram Sinchai Yojana'; enhanced water efficiency through `Per Drop More Crop'; continued support to Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and the creation of a unified national agriculture market to boost the incomes of farmers.

The Government of India recognises the importance of micro irrigation, watershed development and 'Pradhan Mantri Krishi Sinchai Yojana'; thus, it allocated a sum of Rs 5,300 crore (US$ 815 million) for it. It urged the states to focus on this key sector. The state governments are compelled to allocate adequate funds to develop the agriculture sector, take measures to achieve the targeted agricultural growth rate and address the problems of farmers.

- India and Lithuania have agreed to intensify agricultural cooperation, especially in sectors like food and dairy processing.

- Gujarat Government has planned to connect 26 Agricultural Produce Market Committees (APMCs) via electronic market platform, under the National Agriculture Market (NAM) initiative.
- The State Government of Telangana plans to spend Rs 81,000 crore (US$ 12.1 billion) over the next three years to complete ongoing irrigation projects and also undertake two new projects for lifting water from the Godavari and Krishna river.
- The National Dairy Development Board (NDDB) announced 42 dairy projects with a financial outlay of Rs 221 crore (US$ 34.02 million) to boost milk output and increase per animal production of milk.
- The government planned to invest Rs 50,000 crore (US$ 7.7 billion) to revive four fertiliser plants and set up two plants to produce farm nutrients.
- The Ministry of Food Processing Industries took some new initiatives to develop the food-processing sector that would enhance the income of farmers and export of agro and processed foods, among others.
- The Government of Telangana allocated Rs 4,250 crore (US$ 654 million) for the first phase of the farm loan waiver scheme. The scheme is expected to benefit 3.6 million farmers who took loans of Rs 100,000 (US$ 1,539) or below before March 31, 2014.
- Railway Budget 2016-17 proposed to develop Rail side logistics parks and warehousing in PPP mode, 10 goods sheds will be developed by TRANSLOC, the Transport Logistics Company of India, in 2016. To soon inaugurate India's first rail auto hub in Chennai. Encourage development of cold storage facilities on vacant land near freight terminals. Local and fisherman would be given preferential usage of the facility. A policy in this regard would be issued in the next 3 months.

Budget Proposals

Government reorient its interventions in the farm and non-farm sectors to double the income of the farmers by 2022. The total allocation for Agriculture and Farmer's welfare is proposed at Rs35,984 crore.

The **'Pradhan Mantri Krishi Sinchai Yojana'** has been strengthened and will be implemented in mission mode. 28.5 lakh hectares will be brought under irrigation under this Scheme. The scheme has been allotted Rs.1223 Crore which includes Rs.723.06 crore on micro irrigation. Implementation of 89 irrigation projects under Accelerated Irrigation Benefits Programme **(AIBP)**, which have been languishing, will be fast tracked. This will help to irrigate 80.6 lakh hectares. 5Lakh farm ponds and dug wells in rain fed areas and 10 lakh compost pits for production of organic manure will be taken up under MGNREGA. The scheme is allotted Rs.38,500 crore.

A policy for conversion of city waste into compost has also been approved by the Government under the Swachh Bharat Abhiyan.

Major Steps proposed by the Finance Minister in Budget 2016-17 to address Agriculture & Farmer's welfare

- A dedicated Long Term Irrigation Fund will be created in NABARD with an initial corpus of about Rs.20,000 crore
- Programme for sustainable management of ground water resources with an estimated cost of Rs.6,000 crore will be implemented through multilateral funding
- Soil Health Card scheme will cover all 14 crore farm holdings by March 2017.

- 2,000 model retail outlets of Fertilizer companies will be provided with soil and seed testing facilities during the next three years
- Promote organic farming through 'Parmparagat Krishi Vikas Yojana' and 'Organic Value Chain Development in North East Region'. An amount of Rs.300 crore has been allocated in the financial year of 2015- 16 against which Rs.197 crore has been released till 12.1.2016.
- Unified Agricultural Marketing e-Platform to provide a common e-market platform for wholesale markets. Rs.5Crore has been released for Small Farmers Agribusiness Consortium (SFAC).
- Allocation under Pradhan Mantri Gram Sadak Yojana increased to Rs.19,000 crore. Will connect remaining 65,000 eligible habitations by 2019.
- To reduce the burden of loan repayment on farmers, a provision of Rs.15,000 crore has been made in the BE 2016-17 towards interest subvention
- Rs.850 crore for four dairying projects - 'Pashudhan Sanjivani', 'Nakul Swasthya Patra', 'E-Pashudhan Haat' and National Genomic Centre for indigenous breeds
- 100% FDI to be allowed through Foreign Investment Promotion Board (FIPB) route in marketing of food products produced and manufactured in India.
- Government has approved creation of buffer stock of pulses through procurement at Minimum Support Price and at market price through Price Stabilisation Fund. This Fund has been provided with a corpus of Rs.900 crore to support market interventions.
- Chapter VI of the Bill (clause 158) proposes to levy Krishi Kalyan Cess, on any or all the taxable services at the rate of 0.5% of the value of taxable services with effect from 1st June, 2016. Proceeds would be exclusively used for financing initiatives for improvement of agriculture and welfare of farmers. Input tax credit of this cess will be available for payment of this cess.
- Domestic taxpayers can declare undisclosed income or such income represented in the form of any asset by paying tax at 30%, surcharge at 7.5% and penalty at 7.5%. Surcharge levied at 7.5% of income disclosed will be called Krishi Kalyan surcharge, to be used for agriculture and rural economy.

Road Ahead

The agriculture sector in India is expected to generate better momentum in the next few years due to increased investments in agricultural infrastructure such as irrigation facilities, warehousing and cold storage. Factors such as reduced transaction costs and time, improved port gate management and better fiscal incentives would contribute to the sector's growth. Furthermore, the growing use of genetically modified crops will likely improve the yield for Indian farmers.

With 67 per cent of Indian soil characterised by low organic carbon, there is great scope for enhancing the use of organic fertilizers.

There is tremendous potential to increase availability of agricultural produce by reducing wastages. Increasing the share of processing can be done by increasing reliance on markets, rationalizing and targeting subsidy, as well as disbursing it through DBT (Direct Benefit Transfer)

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